

August 4, 2017

Via Certified Mail

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to Sue for Failure to Perform a Nondiscretionary Duty to Act on Maryland's "Good Neighbor" Petition Under Section 126 of the Clean Air Act

Dear Administrator Pruitt:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the undersigned public health, environmental, and conservation organizations intend to file a citizen suit against the United States Environmental Protection Agency ("EPA" or "Agency") and its Administrator for failure to perform a nondiscretionary duty as mandated by Section 126 of the Clean Air Act ("CAA"), 42 U.S.C. § 7426(b). Specifically, EPA has failed to hold a public hearing and failed to either grant or deny the Section 126 Petition filed by the Maryland Department of the Environment on November 16, 2016 regarding emissions from 36 coal-fired electric generating units ("EGUs").

On November 16, 2016, the State of Maryland submitted a "Good Neighbor" Petition to EPA under CAA Section 126, which asked the Agency to make a finding that 36 EGUs, at 19 separate power plants in five upwind states, are emitting air pollutants that significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone National Ambient Air Quality Standards in Maryland. The impacts of ground-level ozone pollution on human health are well-documented and include harm to the respiratory system, aggravation of asthma and lung diseases, and premature death. Notably, each of the power plants identified by Maryland's petition—plants located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia—has modern pollution controls already installed that the owners are not fully operating to reduce dangerous ozone-forming pollution. In its petition, Maryland asked EPA to require the affected power plants to effectively run their already-installed pollution controls every day during the ozone season, which extends from May 1 through September 30. Maryland's petition included rigorous air quality modeling showing that its proposed solution would not only help Maryland meet the national, health-based, air quality standards for ozone, but would also help other areas in the region make progress towards achieving those public health standards.

Pursuant to Section 126 of the CAA, "[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition." 42 U.S.C. § 7426(b) (emphasis added). On January 3, 2017, EPA granted itself a 6-month extension to hold a public notice-and-comment process and respond to Maryland's Section 126 Petition. *See* 82 Fed. Reg. 22 (Jan. 3, 2017). As of the date of this notice letter, both the 60 days and the 6-month extension have expired. Yet EPA has not granted or denied

Maryland's Section 126 Petition, and has also failed to hold a public hearing. EPA has, therefore, failed to perform its mandatory, nondiscretionary duty as required by CAA Section 126. 42 U.S.C. § 7426(b). The citizen suit provision of the CAA provides that any person may sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). The CAA requires citizens to provide the Administrator with 60 days' notice prior to commencing an action under the citizen suit provision. 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. § 54.2(a). The district courts have jurisdiction over these suits. 42 U.S.C. § 7604(a).

The undersigned organizations hereby notify you that they intend to file a citizen suit against you, in your official capacity as EPA Administrator, for failure to timely respond to the State of Maryland's November 16, 2016 Petition as mandated by CAA Section 126 and to hold a public hearing on this matter. 42 U.S.C. § 7426(b). Pursuant to 40 C.F.R. § 54.3(a), each organization's address is listed below. The undersigned organizations intend to seek injunctive and declaratory relief, the costs of litigation, and other appropriate relief as allowed.

If you believe any of the foregoing information to be in error or would like to discuss the matters identified in this letter for any reason, please contact Graham McCahan at Environmental Defense Fund at (303) 447-7228 or gmccahan@edf.org.

Sincerely,

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