

Thu Jul 20 11:39:56 EDT 2017
Hope.Brian@epamail.epa.gov
FW: Maryland Department of the Environment Letter to EPA RE: 126 Petition
To: CMS.OEX@epamail.epa.gov

OCIR.

From: Brian Hug -MDE- [mailto:brian.hug@maryland.gov]
Sent: Thursday, July 20, 2017 10:52 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>; R3 RA <R3_RA@epa.gov>
Cc: Ben Grumbles <ben.grumbles@maryland.gov>; George Aburn -MDE- <george.aburn@maryland.gov>
Subject: Maryland Department of the Environment Letter to EPA RE: 126 Petition

I am forwarding the attached on behalf of Secretary Ben Grumbles

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Brian J. Hug
Program Manager
Air Quality Planning Program
Maryland Department of the Environment
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Baltimore, Maryland 21230
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Maryland

Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

July 20, 2017

CERTIFIED MAIL

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

Re: Notice of Intent to Sue Pursuant to the Clean Air Act for Failure to Perform a Non-Discretionary Duty to Approve or Disapprove a Section 126 Petition

Dear Administrator Pruitt:

The State of Maryland, by and through the Maryland Department of the Environment, hereby gives notice that it intends to bring suit under section 304 of the Clean Air Act, 42 U.S.C. § 7604, against the Administrator of the United States Environmental Protection Agency (“EPA”), for failure to perform a non-discretionary duty under the Clean Air Act, 42 U.S.C. §§ 7401 through 7671q.

Section 126(b) of the Clean Air Act, 42 U.S.C. § 7426(b), authorizes any state to petition the EPA for a finding that a major source or group of stationary sources in upwind states emits air pollutants in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)¹ by contributing significantly to nonattainment or maintenance problems in downwind states. On November 16, 2016, Maryland served the EPA with a petition pursuant to section 126 of the Clean Air Act, seeking a finding that 36 power plant units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting nitrogen oxides (“NOx”) in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i), commonly referred to as the “good neighbor provision”, by significantly contributing to Maryland’s nonattainment or interfering with its maintenance of the 2008 and the revised 2015 8-hour ozone National Ambient Air Quality Standards.

¹ The text of 42 U.S.C. § 7426(b) cross references Clean Air Act section 7410(a)(2)(D)(ii) instead of 7410(a)(2)(D)(i). The courts have confirmed that this is a scrivener’s error and the correct cross reference is to section 7410(a)(2)(D)(i). *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

The Honorable Scott Pruitt

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Pursuant to 42 U.S.C. § 7426(b), “[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.” On January 3, 2017, the EPA issued itself a six-month extension of time to act on the petition pursuant to 42 U.S.C. § 7607(d)(10). *See* 82 Fed. Reg. 22-01 (January 3, 2017). In accordance with that extension, the EPA was required to act on Maryland’s petition no later than July 15, 2017. *Id* at 23. As of the date of this notice, that deadline has expired.

To date, the EPA has not taken action on Maryland’s section 126 petition, nor has the EPA held or scheduled a public hearing on the matter, despite its legal obligation to do so pursuant to 42 U.S.C. § 7426. Consequently, the State of Maryland is writing to provide notice that it intends to file suit against the Administrator and the EPA for failing to timely perform a nondiscretionary duty under the Clean Air Act to act on Maryland’s petition. This letter provides notice under section 304 of the Clean Air Act, 42 U.S.C. § 7604(b), and 40 C.F.R. Part 54. Pursuant to 40 C.F.R. § 54.3, the Administrator is hereby notified that the name and address of the person giving the notice on behalf of the State of Maryland is shown below. Unless the EPA takes the required actions before the end of the applicable notice period, the State of Maryland intends to bring suit in the United States District Court for the District of Maryland under section 304 of the Clean Air Act, 42 U.S.C. § 7604(a)(2).

Sincerely,



Ben Grumbles
Secretary

cc: The Honorable Larry Hogan, Governor of Maryland
The Honorable Brian E. Frosh, Attorney General of Maryland
The Honorable Jeff Sessions, Attorney General of the United States