



August 29, 2017

VIA CERTIFIED MAIL

Administrator Scott Pruitt
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Scott Pruitt:

This letter provides notice that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, based on EPA’s failure to perform a nondiscretionary duty pursuant to Section 126 of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7426(b), to either grant or deny the Delaware Department of Natural Resources and Environmental Control’s (“Delaware”) July 7, 2016 petition concerning the Brunner Island Steam Electric Station (“Brunner Island” or “the Plant”) in York County, Pennsylvania. This notice is provided pursuant to 42 U.S.C. § 7604(b).

On July 7, 2016, Delaware petitioned EPA to make a finding that Brunner Island is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (“NAAQS”) in Delaware. Pursuant to 42 U.S.C. § 7426(b), EPA was required to grant or deny the petition within 60 days. On August 23, 2016, in order to complete its technical analyses and public notice and comment processes, EPA extended its response deadline to March 5, 2017.

I. Citizens May Sue EPA for Failure to Timely Grant or Deny a Section 126 Petition

Section 304(a)(2) of the CAA provides that any person can 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.” 42 U.S.C. § 7604(a)(2). Section 126 of the CAA expressly provides that “[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). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within 60 days of the filing of a petition under this section. EPA extended the deadline to March 5, 2017, but has still failed to perform this nondiscretionary duty. Accordingly, citizens may bring suit to compel such action.

