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December 18, 2017

VIA CERTIFIED MAIL

Administrator Scott Pruitt  
U.S. Environmental Protection Agency  
Mail code: 1101A  
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, pursuant to 42 U.S.C. § 7604(b), 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 your failure to perform a nondiscretionary duty set forth under the Clean Air Act (“CAA” or “Act”). *See* 42 U.S.C. § 7604(a)(2). Specifically, Sierra Club intends to file suit over your failure to act within the time frame required by 42 U.S.C. § 7410(k)(2), to approve or disapprove a May 16, 2016 Pennsylvania State Implementation Plan (“SIP”) submittal from the Pennsylvania Department of Environmental Protection (“DEP”) concerning amendments to 25 Pa. Code Chapters 121 and 129 to adopt additional reasonably available control technology (“RACT”) requirements for major sources of oxides of nitrogen (“NOx”) and volatile organic compound (“VOC”) emissions (hereinafter “8-Hour Ozone RACT SIP”).

I. Failure to Act on Pennsylvania’s SIP Submission Within the Time Frame Required by CAA Section 110(k)(2)

By law, within sixty days of receipt of a SIP or SIP revision from a state, the EPA Administrator must determine whether the submittal is administratively complete and meets established minimum criteria. 42 U.S.C. § 7410(k)(1)(B). If, after six months, the Administrator has failed to make this requisite completeness determination, the SIP or SIP revision is deemed

complete by operation of law. *Id.* Once a SIP submission is deemed complete, either by the Administrator or by operation of law, the EPA Administrator has a nondiscretionary duty to approve or disapprove the SIP within 12 months. 42 U.S.C. § 7410(k)(2).

On May 16, 2016, the Pennsylvania DEP submitted to EPA a revision to Pennsylvania's SIP concerning amendments to 25 Pa. Code Chapters 121 and 129 to adopt additional RACT requirements for major sources of NO<sub>x</sub> and VOC emissions. *See* Transmittal Letter from John Quigley, Secretary, Pennsylvania DEP, to Shawn M. Garvin, Regional Administrator, EPA, dated May 16, 2016, attached hereto as Exhibit 1. These amendments were submitted to EPA “to fulfill certain 8-hour ozone RACT requirements for the 1997 and 2008 ozone National Ambient Air Quality Standards and to satisfy requirements of the Clean Air Act (42 U.S.C.A. §§ 7401—7671q) for sources located in ozone nonattainment areas and the Ozone Transport Region.” *Id.* at 1. In accordance with 42 U.S.C. § 7410(k)(1)(B), the EPA Administrator had sixty days from the May 16, 2016 SIP submittal to determine whether minimum completeness criteria had been met. EPA failed to make this determination. Accordingly, on November 16, 2016, Pennsylvania’s 8-Hour Ozone RACT SIP submittal was deemed complete by operation of law. *See* 42 U.S.C. § 7410(k)(1)(B).

The EPA Administrator was, therefore, required by law to act on Pennsylvania’s 8-Hour Ozone RACT SIP submittal in accordance with 42 U.S.C. § 7410(k)(3) no later than twelve months after November 16, 2016. 42 U.S.C. 7410(k)(1)(B), (2). Despite this clear, nondiscretionary duty, EPA failed to act. On November 16, 2017, the statutory twelve month deadline passed. *See id.* As of today, EPA has neither approved nor disapproved Pennsylvania’s 8-Hour Ozone RACT SIP submittal. Therefore, EPA is in violation of its nondiscretionary duty under 42 U.S.C. 7410(k)(2). Accordingly, Sierra Club intends to commence a civil action to enforce this nondiscretionary duty unless EPA has fully performed its duty within 60 days of the postmark date of this letter.

## II. Citizens May Sue EPA for Failure to Timely Make a Finding of Failure to Submit

Section 304(a)(2) 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.” 42 U.S.C. § 7604(a)(2). Section 110(k)(2) of the CAA expressly provides that “[w]ithin 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator’s discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3). 42 U.S.C. § 7410(k)(2). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within twelve months of the completeness determination, whether that determination was made by the Administrator or by operation of law. Accordingly, in the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action.

### III. Sierra Club Intends to File a Citizen Suit

The CAA requires citizens to provide the Administrator with 60 days notice prior to bringing an action under CAA section 304(a)(2) 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(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, through this letter, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator under CAA section 304(a)(2) for failing to perform the nondiscretionary duty of acting on Pennsylvania's 8-Hour Ozone RACT SIP submittal to either approve or disapprove the SIP. The Administrator had twelve months from the minimum completeness determination—until November 16, 2017—to act on the SIP submittal in accordance with section 110(k)(3). 42 U.S.C. § 7410(k)(2). As of today, December 18, 2017, the Administrator has not yet approved or disapproved Pennsylvania's May 16, 2016 8-Hour Ozone RACT SIP submittal. If this violation remains unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief from the Courts:

1. An order compelling EPA and the Administrator to issue an approval or disapproval of Pennsylvania's 8-Hour Ozone RACT SIP submittal in accordance with 42 U.S.C. § 7410(k);
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving this issue, please contact either of the undersigned counsel.

*/s/ Kathryn Amirpashaie*

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# **EXHIBIT 1**



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SECRETARY

May 16, 2016

Mr. Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street, (Mail Code: 3RA00)  
Philadelphia, PA 19103-2029

Dear Mr. Garvin:

Enclosed for your approval is a revision to Pennsylvania's State Implementation Plan ("SIP") concerning amendments to 25 Pa. Code Chapters 121 and 129 (relating to general provisions; and standards for sources) to adopt additional reasonably available control technology ("RACT") requirements for major sources of oxides of nitrogen ("NO<sub>x</sub>") and volatile organic compound ("VOC") emissions. The final rulemaking adopting these RACT amendments was effective upon publication in the *Pennsylvania Bulletin* on April 23, 2016 (46 Pa.B. 2036). These amendments are being submitted to the U.S. Environmental Protection Agency (EPA) to fulfill certain 8-hour ozone RACT requirements for the 1997 and 2008 ozone National Ambient Air Quality Standards and to satisfy requirements of the Clean Air Act (42 U.S.C.A. §§ 7401—7671q) for sources located in ozone nonattainment areas and the Ozone Transport Region.

The final rulemaking adds §§ 129.96—129.100 (relating to additional RACT requirements for major sources of NO<sub>x</sub> and VOCs) to implement presumptive RACT requirements and RACT emission limitations for certain major stationary sources of NO<sub>x</sub> and VOC emissions including boilers, electric generating units, engines, and turbines, as well as other sources not regulated elsewhere in 25 Pa. Code Chapter 129. The final rulemaking also amends § 121.1 (relating to definitions) to revise or add terms to support the interpretation of the provisions codified in §§ 129.96—129.100. Revisions to existing SIP-approved language in § 121.1 are made for the following terms: "CEMS – continuous emissions monitoring system," "major NO<sub>x</sub> emitting facility," "major VOC emitting facility," and "stationary internal combustion engine or stationary reciprocating internal combustion engine." New language is codified in § 121.1 for the following terms: "process heater," "refinery gas," "regenerative cycle combustion turbine," "simple cycle combustion turbine," and "stationary combustion turbine."

This SIP revision submission includes one paper copy each of the final RACT rulemaking notice, the proposed rulemaking notice published in the *Pennsylvania Bulletin* at 44 Pa.B. 2392, documentation of the public participation process including proof of public notice and the proposed rulemaking notice, and the Department's public comment and response document. This submission also includes one compact disc of electronic files that are exact duplicates of the paper copy documents, including a copy of the signed transmittal letter.

The Department certifies that the public participation requirements of 40 CFR § 51.102 were met, including that public hearings were held on the dates and at the locations advertised in the

proposed rulemaking notice (44 Pa.B. 2392, 2397). The Commonwealth followed all of the applicable procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the SIP revision.

Should you have questions regarding this SIP submittal, please contact Joyce E. Epps, Director of the Bureau of Air Quality, by e-mail at [jeepps@pa.gov](mailto:jeepps@pa.gov) or by telephone at 717.787.9702.

Sincerely,

A handwritten signature in black ink, appearing to read "John Quigley". The signature is stylized with large loops and a long horizontal stroke at the end.

John Quigley  
Secretary

Enclosures

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$ 0.00

Postage	\$ 6.65
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**PA OZONE RACT SIP**

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