



May 26, 2022

Mr. Michael Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator: mail code 1101A
1200 Pennsylvania Ave, NW
Washington, DC 20460
regan.michael@epa.gov

By Email and Certified Mail

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator Regan:

This letter is submitted on behalf of the following organizations to notify you pursuant to § 7604(b) of the Clean Air Act that these organizations intend to commence a civil action for the U.S. Environmental Protection Agency's failure to perform nondiscretionary duties under the Act:

Blue Ridge Environmental Defense
League
P.O. Box 4455
North Myrtle Beach, SC 29597

Saratoga Sites Against Norlite
Emissions
PO Box 320
Cohoes, NY 12047

Citizens for Arsenal Accountability
P.O. Box 3034
Radford, VA 24141

Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Louisiana Bucket Brigade
3416 Canal Street
New Orleans, LA 70119

United Congregations of Metro
East
13 Vieux Carre Drive, Suite 2
East St. Louis, IL 62203.

Missouri Coalition for the
Environment
725 Kingsland Avenue, Suite 100
St. Louis, MO 63130

Utah Physicians for a Healthy
Environment
423 West 800 South, Suite A108
Salt Lake City, UT 84101

River Valley Organizing
506 Walnut Street
East Liverpool, OH, 43920

As further specified below, the U.S. Environmental Protection Agency (“EPA” or “the agency”) has failed to perform a nondiscretionary act or duty under the Clean Air Act. Specifically, EPA has not conducted the rulemakings required by 42 U.S.C. § 7412(d)(6) and (f)(2) for the national emission standards for hazardous waste combustors, codified at 40 C.F.R. Part 63, Subpart EEE. This notice is provided to you as Administrator of the EPA in your official capacity as a prerequisite to bringing a civil action. 42 U.S.C. § 7604(b)(2); 40 C.F.R. Part 54.

BACKGROUND

Section 7412(d)(6) of the Clean Air Act requires the Administrator to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies)” the emissions standards for hazardous air pollutants promulgated under § 7412(d) “no less often than every 8 years.” 42 U.S.C. § 7412(d)(6).

Section 7412(f)(2) requires the Administrator to review the health and environmental risk remaining after implementation of the § 7412(d) standards “within 8 years after promulgation” of the § 7412(d) standards. 42 U.S.C. § 7412(f)(2). EPA must either promulgate additional standards if “required in order to provide an ample margin of safety to protect public health . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect,” or state that no such standards are required. *Id.*

EPA first promulgated § 7412(d) standards for hazardous waste incinerators, cement kilns, and lightweight aggregate kilns in 1999, 64 Fed. Reg. 52,828 (Sept. 30, 1999). Because those standards did not satisfy the Clean Air Act’s minimum stringency requirements, the D.C. Circuit vacated the standards as unlawful. *Cement Kiln Recycling Coal. V. EPA*, 255 F.3d 855 (D.C. Cir. 2001). EPA next promulgated replacement standards, including new standards for hazardous waste industrial/commercial/institutional boilers, process heaters, and hydrochloric acid production furnaces, in 2005. 70 Fed. Reg. 59,402 (Oct. 12, 2005) (amended by 70 Fed. Reg. 75,042 (Dec. 19, 2005); 71 Fed. Reg. 62,388 (Oct. 25, 2006); and 73 Fed. Reg. 18,970 (Apr. 8, 2008)). EPA then issued a rule revising those replacement standards in 2008. 73 Fed. Reg. 64,068 (Oct. 28, 2008).

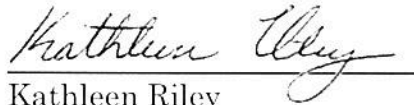
Sierra Club challenged both EPA’s 2005 replacement standards and its 2008 revised replacement standards. It also filed petitions for reconsideration of these standards, which EPA granted. After the D.C. Circuit vacated similarly defective § 7412(d) standards for brick kilns in *Sierra Club v. EPA*, 479 F.3d 875 (D.C. Cir. 2007), EPA moved for partial voluntary remand of the hazardous waste combustor standards in 2008 and for complete voluntary remand in 2009. The D.C. Circuit granted EPA’s motions and the hazardous waste combustor standards have been on remand to the agency ever since. EPA, however, has not issued a response or even a proposed response to the remand.

EPA'S UNMET NONDISCRETIONARY DUTY

More than eight years have passed since EPA promulgated § 7412(d) standards for Hazardous Waste Combustors on October 12, 2005, and on October 28, 2008. *See* 70 Fed. Reg. 59,402 (Oct. 12, 2005); 73 Fed. Reg. 64,068 (Oct. 28, 2008). EPA was thus required to conduct the required § 7412(d)(6) and (f)(2) review rulemakings by October 12, 2013, and October 28, 2016, i.e., within eight years, but has not done so. EPA is therefore in ongoing violation of the Clean Air Act.

The above-listed organizations hereby give notice of their intent to file suit 60 days from the postmark of this letter to compel EPA to promptly conduct the required § 7412(d)(6) and (f)(2) rulemakings for Hazardous Waste Combustors. Please contact us at your earliest convenience to discuss the resolution of these claims.

Sincerely,



Kathleen Riley

Associate Attorney

James Pew

Senior Attorney

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Washington, DC 20001

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Defense League, Citizens for Arsenal
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Missouri Coalition for the Environment,
River Valley Organizing, Saratoga Sites
Against Norlite Emissions, Sierra Club,
United Congregations of Metro East, Utah
Physicians for a Healthy Environment*