

Tue Nov 29 19:26:41 EST 2022  
EPAExecSec <EPAExecSec@epa.gov>  
FW: EWVI - Notice of Intent to Sue Pursuant to Clean Air Act  
To: "CMS.OEX" <cms.oex@epa.gov>

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**From:** Ford, Aimee E. (WDC) <AFord@perkinscoie.com>  
**Sent:** Tuesday, November 29, 2022 5:48 PM  
**To:** Regan, Michael <Regan.Michael@epa.gov>  
**Cc:** Bunker, Byron <bunker.byron@epa.gov>; Johnson Koch, LeAnn M. (WDC) <LeAnnJohnson@perkinscoie.com>  
**Subject:** EWVI - Notice of Intent to Sue Pursuant to Clean Air Act

Administrator Regan –

On behalf of Ergon-West Virginia, Inc. (EWVI), we submit the attached notice of intent to sue for failure to perform a non-discretionary duty under the Clean Air Act. 42 U.S.C. § 7604(a)(2); *id.* § 7604(b)(2).

Pursuant to 40 CFR § 54.2(a), we are also submitting the notice via certified mail today. Please let us know if you have any trouble accessing the attached.

Regards,

Aimee Ford

**Aimee Ford** | **Perkins Coie LLP**

ASSOCIATE

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

November 29, 2022

LeAnn M. Johnson Koch  
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**VIA CERTIFIED AND EMAIL  
RETURN RECEIPT REQUESTED**

Hon. Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

**Re: Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2) for Failure to Issue  
Decisions on Small Refinery Hardship Petitions Pursuant to § 7545(o)(9)(B)(iii)**

Dear Administrator Regan:

On behalf of Ergon-West Virginia, Inc. (“EWVI”), we submit this notice of intent to sue the Administrator of the United States Environmental Protection Agency (“EPA” or the “Administrator”) for the Administrator’s failure to perform a non-discretionary duty under the Clean Air Act (“CAA”) and to seek a court order requiring the Administrator to perform that nondiscretionary duty. 42 U.S.C. § 7604(a)(2); *id.* § 7604(b)(2).

Specifically, EPA has failed to act on EWVI’s petitions for small refinery hardship relief from the Renewable Fuel Standard (“RFS”) for the 2016, 2017, and 2018 compliance years for two years after EPA’s August 9, 2019 decision to deny those petitions was vacated and remanded to the agency by the U.S. Court of Appeals for the Fourth Circuit on November 17, 2020. *Ergon-W. Virginia, Inc. v. EPA*, 980 F.3d 403 (4th Cir. 2020) (“*Ergon II*”). EPA has a non-discretionary duty to act on any petition for small refinery hardship relief within ninety (90) days after receipt of the petition. 42 U.S.C. § 7545(o)(9)(B)(iii). EPA failed to perform this non-discretionary duty when it did not act upon EWVI’s remanded petitions by April 12, 2021, 90 days after the Fourth Circuit issued the mandate in *Ergon II* on January 11, 2021. EWVI urges the Administrator to issue the 2016–2018 decisions as soon as possible, so it will be unnecessary to file suit.

Hon. Michael Regan  
November 29, 2022  
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Pursuant to 40 C.F.R. § 54.3(a), the full name and address of the person providing this notice is:

LeAnn Johnson Koch  
Perkins Coie LLP  
700 13th Street N.W., Suite 800  
Washington, DC, 20005

Sincerely,

A handwritten signature in black ink, appearing to read "LeAnn Koch", written over a light blue horizontal line.

LeAnn M. Johnson Koch

cc (via email):           Byron Bunker