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* Associated Firm
** In cooperation with
Trench, Rossi e Watanabe
Advogados

January 31, 2025

**VIA CERTIFIED MAIL AND ELECTRONIC MAIL
RETURN RECEIPT REQUESTED**

**CONFIDENTIAL BUSINESS INFORMATION –
DO NOT DISCLOSE**

Hon. Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
WJC Building North/South Room: 1448K
Washington, DC 20460
zeldin.lee@epa.gov

**Re: Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2) for Failure to Issue
Decisions on 2024 Small Refinery Hardship Petition Pursuant to §
7545(o)(9)(B)(iii)**

Dear Administrator Zeldin:

On behalf of Kern Oil & Refining Co. d/b/a Kern Energy (“Kern Energy”), 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 and to seek a court order requiring the Administrator to perform that non-discretionary duty. 42 U.S.C. § 7604(a)(2); *id.* § 7604(b)(2).

Specifically, EPA has not acted on Kern Energy’s petition for small refinery hardship relief from the Renewable Fuel Standard (“RFS”) for the 2024 compliance year within the statutory deadline. EPA had 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 that non-discretionary duty when it failed to act on Kern Energy’s 2024 hardship petition by January 16, 2025—90 days after Kern Energy submitted the petition on October 18, 2024. EPA’s failure to act by the statutory deadline also constitutes “agency action unlawfully withheld” and “unreasonably delayed.” 5 U.S.C. § 706(1). Kern Energy gives notice of its intent to sue to compel that action.



Kern Energy urges the Administrator to decide Kern Energy's 2024 hardship petition immediately, in order to avoid the need for litigation.

Pursuant to 40 C.F.R. § 54.3(a), the full name and address of the person providing this notice on behalf of Kern Energy is:

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Please contact me should you have any questions or wish to discuss the matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Ian Shelton", with a stylized flourish at the end.

Ian S. Shelton
BAKER & MCKENZIE LLP

Attorneys for Kern Energy

cc: Jennifer Haley (Kern Energy, President & CEO) (via email)
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