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

February 27, 2025

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

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](mailto: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 2018 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 2018 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).

In 2022, EPA denied petitions for small refinery hardship relief submitted by Kern Energy under the RFS, including Kern Energy’s 2018 petition. On July 26, 2024, the U.S. Court of Appeals for the D.C. Circuit (“D.C. Circuit”) vacated EPA’s denials of Kern Energy’s hardship petitions and remanded the petitions to EPA. *Sinclair Wyoming Refining Co., LLC v. EPA*, 114 F.4th 693 (D.C. Cir. 2024) (“Sinclair Wyoming”). EPA has a non-discretionary duty to act on any petition for small refinery hardship relief within 90 days of receipt of the petition. EPA failed to perform that non-discretionary duty when it failed to act on Kern Energy’s remanded petitions by December 19, 2024—90 days after EPA received the petitions back from the D.C. Circuit on September 20, 2024. *Mandate, Sinclair Wyoming*, No. 22-1073 (D.C. Cir. Sept. 20, 2024), Dkt. No. 2075974. EPA’s failure to act on Kern Energy’s remanded petitions

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 EPA to compel that action.

After the D.C. Circuit remand, on November 27, 2024, Kern Energy served a supplemental letter on EPA supporting its remanded 2018 petition (“Supplemental Letter”). While Kern Energy contends that the 90-day deadline runs from the date of the D.C. Circuit mandate and expired on December 19, 2024, in an abundance of caution, Kern Energy is serving the present notice more than 90 days after service of its Supplemental Letter on EPA.

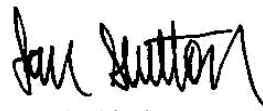
Kern Energy urges the Administrator to decide Kern Energy’s 2018 hardship petition immediately, in order to avoid the need for litigation.

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,



Ian S. Shelton  
BAKER & MCKENZIE LLP

Attorneys for Kern Energy

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