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AC 73-000-4869



BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

April 25, 2013

The Honorable Robert Perciasepe  
Acting Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

RECEIVED  
2013 APR 29 PM 1:49  
OFFICE OF THE  
EXECUTIVE SECRETARIAT

**Re: Notice of Intent to Sue for Failure to Timely Promulgate New Source Standards of Performance and Regulations Providing Emission Guidelines for Certain Greenhouse Gas Emissions from Fossil Fuel-Fired Electric Utility Generating Units (Power Plants)**

Dear Acting Administrator Perciasepe:

Conservation Law Foundation (“CLF”) hereby respectfully requests that you, as the Administrator of the U.S. Environmental Protection Agency (“EPA” or “the Agency”), remedy the Agency’s ongoing failure under the Clean Air Act to promulgate final standards of performance for greenhouse gas emissions, including carbon dioxide, from new power plants, as required by 42 U.S.C. §7411(b), and to propose and finalize regulations that provide for, *inter alia*, a plan and emission guidelines for the control of carbon dioxide emissions from existing power plants, as required by 42 U.S.C. §7411(d). This letter provides notice as required under section 304 of the Clean Air Act, 42 U.S.C. §7604, and 40 C.F.R. Part 54, of CLF’s intention to sue unless the Agency promptly corrects these failures.

EPA has issued proposed performance standards for greenhouse gas emissions from new power plants. *Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units*, 40 C.F.R. Part 60, Subpart TTTT, 77 Fed. Reg. 22,392 (April 13, 2012). The Clean Air Act requires that such standards must be finalized within a year of proposal. *See* 42 U.S.C. §7411(b)(1)(B). EPA’s failure to finalize these standards by April 13, 2013 violates the statute. Additionally, EPA also must issue regulations that establish a plan to address greenhouse gas emissions from existing power plants. *Id.* at §7411(d). EPA’s ongoing failure to issue proposed or final regulations that provide for emission guidelines to control carbon dioxide from existing power plants, *see id.* at §7411(d)(1), constitutes agency action unreasonably delayed, as set forth herein.



CLF, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, is a regional, nonprofit, nonpartisan, member-supported environmental advocacy organization with approximately 4,147 members living in the six-state New England region. CLF's work focuses on four program areas – Clean Energy and Climate Change, Clean Water and Healthy Forests, Healthy Oceans and Healthy Communities, and Environmental Justice – to help protect New England's people, natural resources, and communities. On behalf of its members, whose health and well-being is impacted by climate change, CLF has been deeply involved in a variety of actions seeking reductions in anthropogenic greenhouse gas emissions in order to avoid the worst effects of climate change. In furtherance of this mission, CLF submitted detailed comments on EPA's proposed standards of performance for carbon dioxide emissions from new power plants. *See Comments of Clean Air Task Force and Conservation Law Foundation*, Docket ID Nos. EPA-HQ-OAR-2011-0660-9962 and -9963.

Power plants are the nation's leading emitters of greenhouse gas pollution – accounting for nearly 40 percent of the nation's carbon dioxide emissions and significantly contributing to climate change. As EPA recognized in its proposed standards of performance for carbon dioxide emissions from new power plants, the climate change effects of such pollution are projected to include “more frequent and intense heat waves, more severe wildfires, degraded air quality, heavier and more frequent downpours and flooding, increased drought, greater sea level rise and storm surge, more intense storms, harm to water resources, continued ocean acidification, harm to agriculture, and harm to wildlife and ecosystems.”<sup>1</sup> In the absence of limits on the greenhouse gas emissions from power plants, the electricity sector's contribution to the greenhouse gas pollution that contributes to these impacts is expected to grow in the next 20 years.

Under the Clean Air Act, EPA must issue standards of performance for emissions from each category of new stationary sources that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare.” 42 U.S.C. §7411(b)(1)(A). The Act requires that EPA “shall promulgate, *within one year after such publication*, such [final] standards....” 42 U.S.C. §7411(b)(1)(B) (emphasis added). EPA is further required to propose and finalize regulations that include emission guidelines covering the emissions of certain pollutants for any existing sources “to which a standard of performance under [42 U.S.C. §7411] would apply if such existing source were a new source....” 42 U.S.C. §7411(d)(1).

On February 27, 2006, EPA published a final rule revising the standards of performance for coal-fired electric generating units, but declined to regulate greenhouse gases under the Clean

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<sup>1</sup> 77 Fed. Reg. 22,396.

On February 27, 2006, EPA published a final rule revising the standards of performance for coal-fired electric generating units, but declined to regulate greenhouse gases under the Clean Air Act.<sup>2</sup> The U.S. Court of Appeals for the District of Columbia remanded this rule back to EPA, *New York v. EPA*, No. 06-1322 (D.C. Cir. Sept. 24, 2007), after the Supreme Court determined that greenhouse gases were air pollutants under the Clean Air Act, *see Massachusetts v. EPA*, 549 U.S. 497 (2007), a decision precipitated by CLF's and other parties' petition for certiorari with the Supreme Court asking for review of EPA's 2003 denial of a petition seeking regulation of greenhouse gases from motor vehicles.

EPA subsequently published on April 13, 2012, proposed standards of performance for carbon dioxide emissions from new power plants, pursuant to Clean Air Act section 111, 42 U.S.C. §7411. Over a year has passed since publication of the proposed standards, yet as of the date of this notice of intent to sue, EPA has failed to promulgate final greenhouse gas standards of performance for new power plants. Because 42 U.S.C. §7411(b)(1)(B) unambiguously requires EPA to promulgate final standards of performance within one year of the date of publication of a proposal, after April 13, 2013, EPA's continued failure to promulgate final performance standards for carbon dioxide emissions from power plants, constitutes a violation of the statute.

EPA's failure to finalize the proposed standards for new power plants also has prevented EPA from fulfilling its duty to publish emission guidelines covering greenhouse gas emissions from existing power plants, which are the largest source of greenhouse gas emissions. EPA's continuing failure to publish these guidelines is contrary to section 111(d) of the Clean Air Act and the regulations implementing that section. *See* 42 U.S.C. §7411(d); 40 C.F.R. §60.22(a). Given the extensive length of time that has passed since the 2006 revisions, the Supreme Court's 2007 decision in *Massachusetts v. EPA*, the subsequent decision in *New York v. EPA* remanding the flawed 2006 revision to the coal-fired electric generating unit standards of performance, and EPA's Endangerment Finding, 74 Fed. Reg. 66,496 (Dec. 15, 2009), EPA's failure to promulgate final greenhouse gas standards of performance for new power plants, and its failure to issue proposed and final regulations that include emission guidelines for existing sources, constitute agency actions unreasonably delayed within the meaning of 42 U.S.C. §7604(a).

Accordingly, if the Agency fails to correct its failure to promulgate final greenhouse gas standards of performance for power plants within 60 days of this notice, CLF intends to file suit in federal district court against EPA. *See* 42 U.S.C. §§7411(b)(1)(B), 7604(b)(1)(A). Likewise, if the Agency fails to finalize greenhouse gas standards of performance for new power plants and

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<sup>2</sup> *Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units*, 71 Fed. Reg. 9,866 (Feb. 27, 2006).

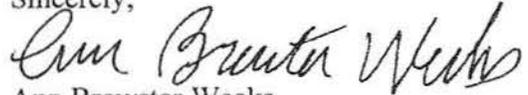
fails to propose regulations that establish a plan to address carbon dioxide emissions from existing power plants within 180 days, CLF intends to file suit against EPA in federal district court for agency action unreasonably delayed. See 42 U.S.C. §§7411(d)(1), 7604(a); 40 C.F.R. §60.22(a).

As required by 40 C.F.R. §54.3, the person providing this notice is:

Conservation Law Foundation  
62 Summer St.  
Boston, MA 02110  
Phone: (617) 350-0990

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Sincerely,



Ann Brewster Weeks  
Darin Schroeder  
Clean Air Task Force  
18 Tremont Street, Suite 530  
Boston, MA 02108  
(617) 624-0234  
[aweeks@catf.us](mailto:aweeks@catf.us)  
[dschroeder@catf.us](mailto:dschroeder@catf.us)

*Counsel for Conservation Law  
Foundation*