

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

SIERRA CLUB)	
85 Second Street, 2 nd Floor)	
San Francisco, CA 94105)	
)	
Plaintiff,)	
)	Civ. No.
v.)	
)	
REGINA MCCARTHY, in her official capacity as)	
Administrator of the United States Environmental)	
Protection Agency)	
Ariel Rios Building)	
1200 Pennsylvania Avenue, N.W.)	
Washington, DC 20460)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. The Administrator of The United States Environmental Protection Agency (“Administrator” or “EPA”) has failed to perform her non-discretionary duty to grant or deny seven petitions filed by Sierra Club (collectively, “Petitions”). *See* 42 U.S.C. § 7661d(b)(2) (authorizing such petitions). Filed in 2012, these Petitions asked EPA to object to the air pollution operating permits (collectively, “the Permits”) issued by the Pennsylvania Department of Environmental Protection (“PaDEP”) pursuant to the Clean Air Act for seven coal-fired power plants: GenOn Shawville Generating Station (“Shawville”); Sunbury Generation Power Plant (“Sunbury”); AES Beaver Valley Power Station (“Beaver Valley”); AES Mitchell Power Station (“Mitchell”); AES Hatfield’s Ferry Power Station (“Hatfield’s Ferry”); EME Homer City

Generating Station (“Homer City”); and FirstEnergy Bruce Mansfield Power Station (“Bruce Mansfield”).

2. Although more than 60 days have passed, the EPA Administrator has not granted or denied Sierra Club’s Petitions, in contravention of a mandatory 60-day deadline for action. 42 U.S.C. § 7661d(b)(2). She is therefore in violation of her nondiscretionary duty under the Clean Air Act. Accordingly, Sierra Club seeks a declaration that the Administrator is in violation of the Clean Air Act and an order compelling the Administrator to grant or deny Sierra Club’s Petitions.

II. JURISDICTION

3. The instant action arises under the Clean Air Act, 42 U.S.C. § 7661d(b). This Court has jurisdiction over Sierra Club’s claims pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331, 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

III. NOTICE

4. By certified letter dated May 21, 2013, Sierra Club provided the Administrator with written notice of Sierra Club’s claims concerning EPA’s failure to take action on the Petitions and of Sierra Club’s intent to bring suit to remedy these violations of the Clean Air Act. Sierra Club provided this notice pursuant to 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3. A copy of this notice is provided as Exhibit A to this Complaint.

IV. VENUE

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). EPA maintains a Regional Office in Philadelphia, Pennsylvania. This Regional Office has oversight responsibility for PaDEP air quality programs and is in large part responsible for ensuring that

EPA performs the nondiscretionary duty at issue in this Complaint. In addition, a substantial part of the events or omissions giving rise to Sierra Club's claims occurred in EPA's Philadelphia office.

V. PARTIES

6. Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 598,000 members nationally, including over 23,000 members in Pennsylvania. Sierra Club's mission is to protect and enhance the quality of the natural and human environment, and its activities include public education, advocacy, and litigation to enforce environmental laws. Sierra Club and its members are greatly concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.

7. Sierra Club is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Sierra Club may commence a civil action under 42 U.S.C. § 7604(a).

8. Sierra Club has members in Pennsylvania whose health, economic, aesthetic and environmental interests have been, are being, and will be adversely affected by the EPA acts and omissions complained of herein. Sierra Club members live, raise their families, work, attend school, travel, and recreate in areas where they are exposed to dangerous air pollutants emitted from the Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield plants. Such air pollutants, which include sulfur dioxide, nitrogen oxides, and fine particulate matter, are associated with a variety of adverse effects on human health, and with impairment of visibility and damage to wildlife and vegetation. The Permits upon which the Petitions are based allow the plants listed above to release such air pollutants, thereby threatening the health of such Sierra club members and their use and enjoyment of the air,

environment, wildlife, scenery and outdoor views adversely impacted by such pollutants. The Administrator's acts and omissions complained of herein cause injury to Sierra Club members by threatening their health and welfare, and by denying them measures and procedures provided under the Clean Air Act to protect their health and welfare from air pollution in places where they live, work, recreate, and conduct other activities. The health, recreational, aesthetic, organizational, and procedural interests of Sierra Club and its members have been and continue to be adversely affected by the EPA acts and omissions complained of herein.

9. Sierra Club's interests and its members' interests have been, are being, and will continue to be, harmed by EPA's failure to act on Sierra Club's Petitions for objection to the Permits for the seven plants named herein. EPA's failure to respond to Sierra Club's Petitions creates doubt and concern for Sierra Club members about whether the permits for these seven plants comply with the requirements of the Clean Air Act and protect them from exposure to pollutants to the extent required by law.

10. The acts and omissions of EPA alleged herein further deprive Sierra Club and its members of procedural rights and protections to which they are entitled. During the permitting process for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield, Sierra Club provided comments critical of the Permits' terms and limits. Subsequently, Sierra Club petitioned EPA to object to the issuance of the Permits. The Clean Air Act gives Sierra Club a procedural right to a timely decision on its Petitions. EPA's failure to take action on Sierra Club's Petitions prevents Sierra Club and its members from challenging an unfavorable EPA decision or from benefiting from a favorable decision on the Petitions.

11. The Clean Air Act violations alleged in this Complaint have injured and continue to injure the interests of Sierra Club and its members. Granting the relief requested in this lawsuit would redress these injuries.

12. Regina McCarthy is the Administrator of the EPA. The Administrator is responsible for implementing the Clean Air Act, including the requirement to grant or deny Sierra Club's Petitions within 60 days. Ms. McCarthy is sued in her official capacity.

VI. LEGAL BACKGROUND

13. The Clean Air Act aims "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1). To help meet this goal, the 1990 amendments to the Clean Air Act created the Title V permit program, an operating permit program that applies to all major sources of air pollution. See 42 U.S.C. §§ 7661-7661f.

14. Major sources of air pollution must obtain a valid Title V operating permit, which records applicable air pollution control requirements in a single document. See 42 U.S.C. §§ 7661a(a), 7661c(a).

15. The Clean Air Act provides that the EPA Administrator may approve state programs to administer the Title V permitting program with respect to sources within their borders. See 42 U.S.C. § 7661a(d). The Administrator approved Pennsylvania's administration of its Title V permit program in 1996. See Clean Air Act Final Full Approval Of Operating Permits Program; Final Approval of Operating Permit and Plan Approval Programs Under Section 112(l); Final Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Plan Approvals and Operating Permits Under Section 110; Commonwealth of Pennsylvania, 61 Fed. Reg. 39,597 (July 30, 1996) (codified at 40 C.F.R. pt. 52).

16. Before a state with an approved Title V permit program may issue a Title V permit, the state must forward the proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1)(B). EPA then has 45 days to review the proposed permit. 42 U.S.C. § 7661d(b). EPA must object to the issuance of the permit if EPA finds that the permit does not comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1).

17. After EPA's 45-day review period expires, "any person may petition the Administrator within 60 days" to object to the Title V permit. 42 U.S.C. § 7661d(b)(2).

18. The Clean Air Act requires that "[t]he Administrator shall grant or deny such petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2).

19. If EPA objects to a permit, the permitting authority may not issue the permit unless it is revised. 42 U.S.C. § 7661d(b)(3). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator, the Administrator shall modify, terminate, or revoke such permit. *Id.*

20. If EPA fails to comply with a non-discretionary duty, such as acting on a petition within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to compel EPA to perform its duty. *See* 42 U.S.C. § 7604(a).

VII. FACTUAL BACKGROUND

A. Shawville

21. Shawville is a major stationary source of air pollution located in Shawville, Pennsylvania. The facility's operation consists primarily of four coal-fired boilers.

22. In November 2010, PaDEP issued a proposed Title V renewal permit for Shawville. On January 4, 2011, Sierra Club submitted detailed comments on the proposed

permit during the public comment period. Sierra Club supplemented those comments on the then still-pending proposed permit on September 22, 2011.

23. PaDEP submitted Shawville's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on March 28, 2012. EPA did not raise any objections to the permit.

24. On May 25, 2012, Sierra Club filed a petition ("Shawville Petition") requesting that the Administrator object to the issuance of Shawville's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods for the sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with the Plant's sulfur dioxide and particulate matter emissions limits.

The Shawville Petition was timely filed within 60 days following the conclusion of EPA's review period.¹ 42 U.S.C. § 7661d(b)(2).

25. Sierra Club's Shawville Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

¹ On May 15, 2013, Sierra Club supplemented the Shawville Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until after it had already submitted the Shawville Petition to EPA.

26. EPA had 60 days, until July 24, 2012, to grant or deny Sierra Club's Shawville Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

B. Sunbury

27. Sunbury is a major stationary source of air pollution located in Shamokin Dam, Pennsylvania. The facility consists of six coal-fired combustion units.

28. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Sunbury. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

29. PaDEP submitted Sunbury's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 9, 2012. EPA did not raise any objections to the permit.

30. On September 7, 2012, Sierra Club filed a petition ("Sunbury Petition") requesting that the Administrator object to the issuance of Sunbury's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits;
- address the fact that the previous installation of Low NOx Burners on four of the Plant's boilers may have triggered permitting requirements under the New Source Review and/or Prevention of Significant Deterioration programs.

The Sunbury Petition was timely filed within 60 days following the conclusion of EPA's review period.² 42 U.S.C. § 7661d(b)(2).

31. Sierra Club's Sunbury Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

32. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Sunbury Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

C. Beaver Valley

33. Beaver Valley is a major stationary source of air pollution located in Shippingport, Pennsylvania. The facility's operation consists primarily of four pulverized coal-fired boilers.

34. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Beaver Valley. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

35. PaDEP submitted Beaver Valley's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

² On May 15, 2013, Sierra Club supplemented the Sunbury Petition in order to address PaDEP's Comments and Response Document, which was not provided to Sierra Club until after the September 7, 2012 petition.

36. On September 7, 2012, Sierra Club filed a petition (“Beaver Valley Petition”) requesting that the Administrator object to the issuance of Beaver Valley’s Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide and particulate matter emissions limits.

The Beaver Valley Petition was timely filed within 60 days following the conclusion of EPA’s review period.³ 42 U.S.C. § 7661d(b)(2).

37. Sierra Club’s Beaver Valley Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

38. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club’s Beaver Valley Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

D. Mitchell

39. Mitchell is a major stationary source of air pollution located in Courtney, Pennsylvania. The main sources at this facility are one pulverized coal-fired boiler and three oil-fired boilers.

³ On May 15, 2013, Sierra Club supplemented the Beaver Valley Petition in order to address PaDEP’s Comments and Response Document, which was not provided to Sierra Club until months after the September 7, 2012 petition.

40. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Mitchell. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

41. PaDEP submitted Mitchell's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

42. On September 7, 2012, Sierra Club filed a petition ("Mitchell Petition") requesting that the Administrator object to the issuance of Mitchell's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits.

The Mitchell Petition was timely filed within 60 days following the conclusion of EPA's review period.⁴ 42 U.S.C. § 7661d(b)(2).

43. Sierra Club's Mitchell Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

⁴ On May 15, 2013, Sierra Club supplemented the Mitchell Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until December 12, 2012, months after the September 7, 2012 petition.

44. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Mitchell Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

E. Hatfield's Ferry

45. Hatfield's Ferry is a major stationary source of air pollution located in Masontown, Pennsylvania. The facility's operation consists primarily of three pulverized coal cell-fired units.

46. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Hatfield's Ferry. Sierra Club submitted detailed comments on July 20, 2012, during the public comment period for the proposed permit.

47. PaDEP submitted the proposed Title V permit for Hatfield's Ferry to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

48. On September 7, 2012, Sierra Club filed a petition ("Hatfield's Ferry Petition") requesting that the Administrator object to the issuance of Hatfield's Ferry's Title V permit on the basis that the permit, among other things failed to:

- explicitly include the applicable prohibition on air pollution;
- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- ensure compliance with applicable particulate matter emissions limits and monitoring requirements; and

- require adequate monitoring of visible emissions.

The Hatfield's Ferry Petition was timely filed within 60 days following the conclusion of EPA's review period.⁵ 42 U.S.C. § 7661d(b)(2).

49. Sierra Club's Hatfield's Ferry Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

50. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club's Hatfield's Ferry Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

F. Homer City

51. Homer City is a major stationary source of air pollution located in Homer City, Pennsylvania. The facility's operation consists primarily of three coal-fired boilers.

52. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Homer City. Sierra Club submitted detailed comments on June 25, 2012, during the public comment period for the proposed permit.

53. PaDEP submitted Homer City's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on July 12, 2012. EPA did not raise any objections to the permit.

⁵ On May 15, 2013, Sierra Club supplemented the Hatfield's Ferry Petition in order to address PaDEP's Comments and Response Document since that document was not provided to Sierra Club until December 21, 2012, months after the September 7, 2012 petition.

54. On September 7, 2012, Sierra Club filed a petition (“Homer City Petition”) requesting that the Administrator object to the issuance of Homer City’s Title V permit on the basis that the permit, among other things, failed to:

- explicitly include the applicable prohibition on air pollution;
- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits;
- address current violations of the prohibition on air pollution and ongoing violations of the national ambient air quality standard for sulfur dioxide; and
- ensure compliance with applicable particulate matter limits and compliance monitoring requirements.

The Homer City Petition was timely filed within 60 days following the conclusion of EPA’s review period.⁶ 42 U.S.C. § 7661d(b)(2).

55. Sierra Club’s Homer City Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

56. EPA had 60 days, until November 6, 2012, to grant or deny Sierra Club’s Homer City Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

G. Bruce Mansfield

⁶ On May 15, 2013, Sierra Club supplemented the Homer City Petition in order to address PaDEP’s Comments and Response Document since that document was not provided to Sierra Club until December 24, 2012, months after the September 7, 2012 petition.

57. Bruce Mansfield is a major stationary source of air pollution located in Shippingport, Pennsylvania. The facility's operation consists primarily of three pulverized coal-fired boilers.

58. On May 25, 2012, PaDEP issued a proposed Title V renewal permit for Bruce Mansfield. Sierra Club submitted detailed comments on July 20, 2012, during the public comment period for the proposed permit.

59. PaDEP submitted Bruce Mansfield's proposed Title V permit to EPA for review in accordance with the Clean Air Act. EPA's 45-day review period for the proposed permit ended on August 20, 2012. EPA did not raise any objections to the permit.

60. On October 18, 2012, Sierra Club filed a petition ("Bruce Mansfield Petition") requesting that the Administrator object to the issuance of Bruce Mansfield's Title V permit on the basis that the permit failed to:

- include sufficiently stringent sulfur dioxide numerical emission limits;
- include proper averaging periods in its sulfur dioxide emission limits; and
- require adequate monitoring to assure compliance with sulfur dioxide, particulate matter, and visible emissions limits.

The Bruce Mansfield Petition was timely filed within 60 days following the conclusion of EPA's review period. 42 U.S.C. § 7661d(b)(2).

61. Sierra Club's Bruce Mansfield Petition was based on objections that were raised with reasonable specificity during the public comment period for the proposed permit or arose subsequent to the public comment period, in accordance with 42 U.S.C. § 7661d(b)(2).

62. EPA had 60 days, until December 18, 2012, to grant or deny Sierra Club's Bruce Mansfield Petition. 42 U.S.C. § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the petition.

VIII. CLAIM FOR RELIEF

63. Sierra Club incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

64. The Administrator had a mandatory duty to grant or deny Sierra Club's Petitions within 60 days after they were filed. *See* 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

65. It has been more than 60 days since the Administrator received Sierra Club's Petitions requesting that EPA object to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield.

66. As of date of filing this Complaint, the Administrator has not granted or denied Sierra Club's Petitions.

67. Therefore, the Administrator has violated and continues to violate the Clean Air Act, 42 U.S.C. § 7661d(b)(2).

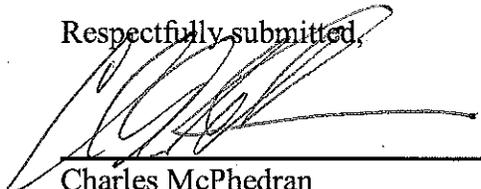
68. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a). EPA's violation is ongoing, and will continue unless remedied by this Court.

IX. REQUEST FOR RELIEF

WHEREFORE, Sierra Club respectfully requests that this Court enter judgment providing the following relief:

- A) A declaration that EPA has violated the Clean Air Act by failing to grant or deny Sierra Club's Petitions requesting that EPA object to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield;
- B) An order compelling EPA to perform its mandatory duty to grant or deny Sierra Club's Petitions for objection to the Title V Permits for Shawville, Sunbury, Beaver Valley, Mitchell, Hatfield's Ferry, Homer City, and Bruce Mansfield, by an expeditious certain date;
- C) An order retaining jurisdiction over this matter until such time as EPA has complied with its non-discretionary duties under the Clean Air Act;
- D) An order awarding Sierra Club its costs of litigation, including reasonable attorneys' fees; and
- E) Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated: October 18, 2013

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May 21, 2013

VIA CERTIFIED MAIL

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator:

This letter provides notice that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency ("EPA") and the Administrator of the EPA, based on EPA's failure to perform a nondiscretionary duty pursuant to 42 U.S.C. § 7661d(b)(2) of the Clean Air Act ("CAA" or "Act"), to either grant or deny seven separate petitions to object to the proposed Title V permits ("Proposed Permits") for seven Pennsylvania power plants, filed by Sierra Club pursuant to Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), within 60 days after the petitions were filed. 42 U.S.C. § 7661d(b)(2). This notice is provided pursuant to 42 U.S.C. § 7604(b). The seven facilities for which Sierra Club filed petitions to object and for which this notice is being provided are as follows:

- (1) GenOn Shawville Generating Station, filed on May 28, 2012;
- (2) Sunbury Generation Power Plant, filed on September 7, 2012;
- (3) AES Beaver Valley Power Station, filed on September 7, 2012;
- (4) AES Mitchell Power Station, filed on September 7, 2012;
- (5) AES Hatfield's Ferry Power Station, filed on September 7, 2012;
- (6) EME Homer City Generating Station, filed on September 7, 2012; and

(7) FirstEnergy Bruce Mansfield Power Station, filed on October 18, 2012.

I. These Facilities are Subject to Title V of the Clean Air Act

Title V of the CAA requires specified sources of air pollution to obtain an operating permit from a permitting authority. 42 U.S.C. § 7661a(a). Pennsylvania's state operating permit and Title V permit programs have been approved by EPA and, accordingly, the Pennsylvania Department of Environmental Protection ("PaDEP") is responsible for issuing Title V permits to facilities within the State. 25 Pa. Code Chapter 127, Subchapters F and G; 61 Fed. Reg. 39,597 (July 30, 1996).

GenOn Shawville is subject to Title V/State Operating Permit No. 17-00001, which expired in October 2005. In April 2005, PaDEP received from GenOn Shawville an application for renewal of the Plant's Title V permit. Five and a half years later, in November of 2010, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. On January 4, 2011, Sierra Club submitted timely comments on that Proposed Permit to PaDEP.¹ Sierra Club supplemented those comments on the then still-pending Proposed Permit on September 22, 2011, providing further detail on the sulfur dioxide air pollution issue raised in Sierra Club's original comments. On March 26, 2012, PaDEP issued a final Title V permit for the Plant.

Sunbury Generation is subject to Title V/State Operating Permit No. 55-00001, which expired on November 16, 2005. On May 12, 2005, PaDEP received from Sunbury Generation an application for renewal of the Plant's Title V permit. Six and a half years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

AES Beaver Valley is subject to Title V/State Operating Permit No. 04-00446, which expired on March 8, 2011. On May 26, 2010, PaDEP received from AES Beaver Valley an application for renewal of the Plant's Title V permit. Two years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 29, 2012, PaDEP issued a final Title V permit for the Plant.

AES Mitchell Power is subject to Title V/State Operating Permit No. 63-00016, which expired on March 26, 2007. On September 27, 2006, PaDEP received from AES Mitchell Power

¹ PaDEP granted an extension to the 30-day comment period for the Sierra Club to submit comments on the proposed Title V permit for the Shawville Station. The comment deadline was extended by agreement until January 4, 2011 on the grounds that a file review of documents underlying the draft permit were not available until December 16, 2010.

an application for renewal of the Plant's Title V permit. Over five and a half years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

AES Hatfield's Ferry is subject to Title V/State Operating Permit No. 32-00099, which expired on November 29, 2006. On May 26, 2006, PaDEP received from AES Hatfield's Ferry an application for renewal of the Plant's Title V permit. Six years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on July 20, 2012.² Subsequently, on November 30, 2012, PaDEP issued a final Title V permit for the Plant.

EME Homer City is subject to Title V/State Operating Permit No. 32-00055, which expired on January 30, 2009. On July 31, 2008, PaDEP received from EME Homer City an application for renewal of the Plant's Title V permit. Nearly four years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on June 25, 2012. Subsequently, on November 16, 2012, PaDEP issued a final Title V permit for the Plant.

FirstEnergy Bruce Mansfield is subject to Title V/State Operating Permit No. 04-00235, which expired on November 22, 2007. On May 22, 2007, PaDEP received from FirstEnergy Bruce Mansfield an application for renewal of the Plant's Title V permit. Five years later, on May 25, 2012, PaDEP issued a Proposed Permit for public notice and comment, and provided the Proposed Permit to EPA for its review. Sierra Club submitted timely comments on that Proposed Permit to PaDEP on July 20, 2012. Subsequently, on April 2, 2013, PaDEP issued a final Title V permit for the Plant.

II. Citizens May Petition EPA to Object to Proposed Title V Permits

As per CAA section 505(b)(1), within 45 days of receipt of a proposed Title V permit, the Administrator of the EPA "shall . . . object" to the permit's issuance if it "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements" of the CAA and "the requirements of an applicable implementation plan." 42 U.S.C. § 7661d(b)(1). If EPA does not object during this period, any person may petition the Administrator for issuance of an objection within 60 days after the expiration of the 45-day review period. 42 U.S.C. § 7661d(b)(2). The timing for EPA to object to the Proposed Permits

² As noted in Sierra Club's comments, on June 8, 2012, PaDEP granted an extension to the 30-day comment period for the Sierra Club to submit comments on the proposed Title V permit for the Hatfield's Ferry Plant. The comment deadline was extended by agreement until July 20, 2012.

for the seven facilities noted above and for the public to petition EPA to object to the Proposed Permits was as follows:

- EPA's 45-day review period for GenOn Shawville's Proposed Permit ended on March 28, 2012; the 60-day public petition period ended on May 28, 2012.
- EPA's 45-day review period for Sunbury Generation's Proposed Permit ended on July 9, 2012; the 60-day public petition period ended on September 7, 2012.
- EPA's 45-day review period for AES Beaver Valley's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for AES Mitchell's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for AES Hatfield's Ferry's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for EME Homer City's Proposed Permit ended on July 12, 2012; the 60-day public petition period ended on September 10, 2012.
- EPA's 45-day review period for FirstEnergy Bruce Mansfield's Proposed Permit ended on August 20, 2012; the 60-day public petition period ended on October 19, 2012.

EPA did not object to any of the seven Proposed Permits within the respective 45-day time frames. Accordingly, Sierra Club filed petitions to object as follows:

- GenOn Shawville on May 25, 2012;
- Sunbury Generation on September 7, 2012;
- AES Beaver Valley on September 7, 2012;
- AES Mitchell on September 7, 2012;
- AES Hatfield's on September 7, 2012;
- EME Homer City on September 7, 2012; and
- FirstEnergy Bruce Mansfield on October 18, 2012.

Sierra Club's petitions to EPA were properly based on issues raised in Sierra Club's prior comments to PaDEP on the Proposed Permit for each of these seven facilities. Specifically, Sierra Club's petitions sought EPA objection on the basis that the Proposed Permits, among other things, failed to: (1) include numerical emission limits and monitoring sufficient to prevent the Plants from causing impermissible air pollution in the form of harmful concentrations of sulfur dioxide and violations of an applicable acid rain provision; (2) require adequate monitoring to assure compliance with particulate matter emission limits; and (3) require adequate monitoring to assure compliance with opacity limits. According to Section 505(b)(2) of the CAA, the Administrator was required to respond to Sierra Club's petitions to

object within 60 days, either granting or denying the petitions. 42 U.S.C. § 7661d(b)(2) (“The Administrator shall grant or deny such petition within 60 days after the petition is filed.”).

Through a letter dated March 26, 2012, PaDEP provided the Sierra Club with its Comments and Response Document and the final Title V Operating Permit for Shawville. Letter attached hereto as Exhibit 1. On December 4, 2012, PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for Sunbury to Sierra Club. Email attached hereto as Exhibit 2. Likewise, on December 12, 2012 PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for AES Mitchell to Sierra Club. Email attached hereto as Exhibit 3. On December 20, 2012, Sierra Club emailed PaDEP in an effort to obtain the Comments and Response Document and Title V Operating Permit for the four remaining facilities: Beaver Valley, Hatfield’s Ferry, Homer City, and Bruce Mansfield. In response, on December 21, 2012, PaDEP emailed a copy of its Comments and Response Document and the final Title V Operating Permit for Beaver Valley and Hatfield’s Ferry to Sierra Club. Emails attached hereto as Exhibits 4 and 5, respectively. Likewise, on December 24, 2012, PaDEP emailed a copy of its Comments and Response Document for Homer City to Sierra Club. Email attached hereto as Exhibit 6. PaDEP has yet to provide Sierra Club with its Comments and Reponse Document for Bruce Mansfield.

On May 15, 2013, Sierra Club submitted, via USPS Express Mail, supplements to its petitions to EPA to object to the Proposed Permits for GenOn Shawville, Sunbury Generation, AES Mitchell, AES Hatfield’s Ferry, and EME Homer City, addressing the Comments and Response Documents provided by PaDEP after Sierra Club’s filings of the initial petitions to object. Likewise, on May 16, 2013, Sierra Club submitted a supplement to its petition to EPA to object to the Title V permit for AES Beaver Valley.³

As of May 21, 2013, EPA has yet to respond to any of Sierra Club’s petitions to object to the Title V permits for these seven facilities.

III. Citizens May Sue EPA for Failure to Timely Grant or Deny a Petition to Object

Section 304(a)(2) of the CAA provides that any person can sue the Administrator of the EPA “where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.” 42 U.S.C. § 7604(a)(2). Section 505(b)(2) of the CAA expressly provides that the “Administrator shall grant or deny [a Title V petition] within 60 days after the petition is filed.” 42 U.S.C. § 7661d(b)(2) (emphasis added). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within 60 days of the filing of a petition under this section. Accordingly, in the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action.

³ Sierra Club has not yet received from PaDEP its Comments and Response Document or the final Title V permit for Bruce Mansfield and, therefore, reserves the right to supplement its previously filed petition upon review of that document.

IV. Sierra Club Intends to File a Citizen Suit

As stated above, Sierra Club filed timely petitions to object to the Proposed Title V Permits for GenOn Shawville, Sunbury Generation, AES Beaver Valley, AES Mitchell Power, AES Hatfield's Ferry, EME Homer City, and FirstEnergy Bruce Mansfield. The Administrator had 60 days—until July 24, 2012—to grant or deny Sierra Club's petition to object to the Proposed Permit for GenOn Shawville. 42 U.S.C. § 7661d(b)(2). Likewise, the Administrator had 60 days—until November 6, 2012—to grant or deny Sierra Club's petitions to object to the permits for Sunbury Generation, AES Beaver Valley, AES Mitchell, AES Hatfield's, and EME Homer City. *Id.* Finally, the Administrator had 60 days—until December 18, 2012—to grant or deny Sierra Club's Petition to the Proposed Permit for FirstEnergy Bruce Mansfield. *Id.* As of May 21, 2013, the Administrator has not yet granted or denied any of these seven petitions to object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club's petitions to object and is in violation of 42 U.S.C. § 7661d(b)(2).

The CAA requires citizens to provide the Administrator with 60 days notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA, under CAA Section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Sierra Club's petitions to object to the Proposed Title V Permits for these seven facilities. If these violations remain unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. An order compelling EPA and the Administrator to grant or deny Sierra Club's petitions within 60 days from the date of the order;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please contact Sierra Club attorney Zachary Fabish directly at zachary.fabish@sierraclub.org or (202) 675-7917.

Sincerely,

/s Kathryn Amirpashaie

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Counsel for the Sierra Club

CC. VIA E- MAIL:

Shawn M. Garvin, Regional Administrator, U.S. Environmental Protection Agency, Region III, 1650 Arch Street (3RAOO) Philadelphia, PA 19103-2029

Diana Esher, Director, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street (3AP00), Philadelphia, PA 19103-2029

Kathleen Cox, Associate Director, Office of Permits & Air Toxics, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street (3AP01), Philadelphia, PA 19103

Exhibit 1



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHCENTRAL REGIONAL OFFICE

March 26, 2012

Mr. Zachery Fabish
Project Attorney
The Sierra Club
408 C Street NE
Washington, DC 20002

Re: Renewal Title V Operating Permit 17-00001

Dear Mr. Fabish:

Enclosed please find a copy of Title V Operating Permit 17-00001 (renewal). Pursuant to 25 Pa Code Chapter 127, after consideration of all comments received and revisions to the proposed operating permit, the Title V operating permit complies with all Federal and State regulatory requirements including the requirements from 40 CFR § 70.6(c)(1) which requires monitoring in accordance with 40 CFR Part 64 for particulate matter emissions from Shawville's electric generating units. Therefore, the Department decided to issue Title V Operating Permit 17-00001 to GenOn REMA, LLC for their Shawville facility. The official issuance date of this Title V permit is March 26, 2012. Title V Operating Permit 17-00001 (renewal) became effective on March 26 2012 and will expire on March 25, 2017. Please include the following identification number with any correspondence to the Department concerning this Title V operating permit: 17-00001.

Additionally, the Title V operating permit addresses the comments that the Sierra Club submitted on the Department's notice of intent to issue published in the November 20, 2010 *Pennsylvania Bulletin*. The comment period for the November 20, 2010 notice was extended until January 4, 2011 to afford the Sierra Club an opportunity to submit comments on the notice. The Department received Sierra Club's comments via letters dated January 4, 2011, and supplemental comments via correspondence dated September 22, 2011. A summary of the applicable Title V operating permit requirements for periodic monitoring of particulate matter is provided in the information below. Additionally, this letter contains the Department's item-by-item response to the Sierra Club's comments on the Department's November 20, 2010 notice on Title V Operating Permit 17-00001 as they were presented in the Sierra Club's January 4, 2011 and September 22, 2011 correspondence.

1. *Comment:* The draft permit lacks adequate periodic monitoring regarding the plant's particulate matter emissions.

The Department agrees and disagrees with the commenter. First, the commenter confuses the applicability of the regulations in 25 Pa. Code §§123.11(3) and 139.12(4). Each of the cited regulations is an independently applicable requirement and must be included in the Title V

Mr. Zachery Fabish

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March 26, 2012

operating permit, as appropriate. However, the commenter is incorrect as to the basic purpose and authority of 25 Pa. Code §139. Whenever a facility is required to perform source testing, e.g. through the requirements of any order, plan approval or other permit, such testing must be performed using the methods in 25 Pa. Code §139. When stack testing is conducted, the facility must, at a minimum, take a sample every hour. However, the commenter has assumed that if an hourly sample is required during stack testing, then the standard for which compliance is being evaluated must also be applied as an hourly average. This assumption is incorrect. By this reasoning, if a facility that is subject to a daily average or other longer term limit, either through the SIP or a federal standard, and it is required to use a continuous emissions monitor to determine compliance, the averaging period for determining compliance would presumptively become the sampling frequency of the CEMS. This would obviously lead to an absurd result since the performance specification for the CEMS could require, for example, that sampling occur every 15 minutes.

The authority of 25 Pa. Code §139, which is to establish source testing requirements, is clearly outlined in 25 Pa. Code, Article III, Air Resources. In 25 Pa. Code §139.3, General Requirements, section (a) states that “The Department will use the methods set forth in this chapter to assess emissions from stationary sources...” Similarly, the requirement specified in 25 Pa. Code §139.11 states that “The following provisions are applicable to source tests for determining emissions from stationary sources...” And most tellingly, for particulate matter, §139.12(1) states that “[t]ests for determining emissions of particulate matter from stationary sources shall conform with the following...” Nowhere in the regulation is there a suggestion that source testing requirements amend, revise, or change an emissions standard.

The Department agrees with the commenter that the Title V operating permit must include monitoring requirements sufficient to assure compliance with the permit terms and conditions. However, the Department disagrees that the monitoring in the proposed Title V operating permit fails to meet the commenter’s standard that “...monitoring must assure *continuous* compliance where emission limits have instantaneous parameters”. In determining whether the permit has included “adequate periodic monitoring”, the commenter has failed to consider all of the monitoring requirements in the permit. An emissions limit that must be met at all times does not necessarily require that *emissions* be monitored continuously. In fact, that would be technically impossible even with a CEMS.

In 40 CFR Part 64, EPA has established regulations for enhanced monitoring that relies primarily on parametric monitoring, i.e. monitoring that relies on a surrogate for direct emissions. The Department has determined that the Shawville plant is subject to Part 64 and is required to submit and comply with a compliance assurance monitoring plan (CAM). The Title V operating permit reflects requirements from GenON’s CAM plan and includes additional periodic monitoring to assure compliance with 40 CFR Part 64. Additionally, the CAM requirements were revised and now are similar to the proposed protocol, “*Compliance Assurance Monitoring (CAM) Protocol for an Electrostatic Precipitator (ESP) for Controlling Particulate Matter (PM) Emissions from a Coal-Fired Boiler*” which was published by EPA for CAM guidance. In the proposed guidance, a computer model uses ESP parameter monitoring and stack testing data to evaluate ESP performance. Similarly, the CAM requirements for Shawville use COMS and stack testing data to predict the particulate matter emission rate every hour of operation. The

CAM monitoring requirements are established to reasonably assure compliance with the particulate matter emission limitation of 25 Pa. Code §123.11 in accordance with the requirements of 40 CFR Part 64. Furthermore, since the continuous opacity monitoring system (COMS) at the Shawville plant is required to meet Pennsylvania's plan for opacity monitoring requirements, which is approved by EPA to meet the requirements of 40 CFR 51.214, the COMS satisfy the general criteria of 40 CFR §§64.3(a) and (b) pursuant to 40 CFR §64.3(d)(2). Taken together, the CAM monitoring requirements and periodic particulate matter testing provide adequate periodic monitoring for the particulate matter standard in §123.11(3).

2. *Comment.* The draft permit includes inadequate compliance assurance monitoring requirements regarding Shawville's particulate matter.

The commenter provides specific examples as to how the monitoring in the permit is inadequate to assure compliance.

The commenter states that the draft permit improperly relies on opacity monitoring as the method to ensure continuous compliance with the particulate matter limits because opacity monitoring fails to "adequately capture secondary particulate matter emissions". The Department disagrees with this comment. Although the definition of "particulate matter" in 25 Pa. Code §121 includes both the solid and liquid fractions, compliance with the standard in 25 Pa. Code §123.11(3) is to be determined according to 25 Pa. Code §139.12. The latter clearly states that the test method for particulate matter shall include only dry filters and does not require testing for condensable particulate matter emissions. On its face, the definition of particulate matter and the standard in 25 Pa. Code §123.11(3) would appear to be in conflict. However, the particulate matter standard in 25 Pa. Code §123.11(3) was adopted in September 1971, with the last revision occurring in 1972. At that time the emission standard was intended to be an indicator and protective of the National Ambient Air Quality Standard (NAAQS) for total suspended particulate. Compliance with the TSP NAAQS, and the limits adopted to implement the TSP NAAQS, were based on Method 5 testing, i.e. total filterable particulate matter. The indicators for NAAQS have evolved to include both the filterable and condensable components of PM-10 and PM-2.5. However, the emission standard in 25 Pa. Code §123.11(3) has not evolved and remains a TSP-based emissions standard. The merits of opacity monitoring as an indicator of condensable emissions, is, therefore, moot.

The commenter states that the draft permit should include, at the very least, quarterly stack tests for condensable particulate matter. The Department disagrees with this comment for the reasons stated above.

The commenter states that continuous emissions monitoring systems for fine particles (as PM-2.5) and for particulate matter in general should be required in the permit. As justification for this claim, the commenter lists facilities that have been required to install particulate matter CEMS, they describe the health concerns associated with particulate matter, particularly PM-10 and PM-2.5, and note that PM CEMS are widely available. Finally, the commenter concludes that "...because it is the only technology that "provides a reasonable assurance of ongoing compliance with emission limitations or standards" per 40 CFR §64.3(a)(2), it must be implemented...". The Department does not question the information provided by the

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commenter. However, the commenter referred to a requirement in 40 CFR §64.3(a)(2) as justification for requiring installation and operation of PM CEMS. This is contradictory to the requirements of 40 CFR Part 64. 40 CFR Part 64 does not apply to units that have a CEMS (see 40 CFR §60.2(b)(vi)), and by its very existence, the requirements of 40 CFR Part 64 acknowledges something other than CEMS can, in fact, provide a reasonable assurance of ongoing compliance when the monitoring system complies with 40 CFR Part 64. 40 CFR §64.3(a)(1) states that to provide a reasonable assurance of compliance, the owner or operator shall "...design the monitoring to obtain data on one or more indicators of emission control performance...Indicators of performance may include ...direct or predicted emissions (including visible emissions or opacity), process and control device parameters ... or recorded findings of inspection and maintenance activities..."

The commenter states that the permit must have provisions that tie specific opacity levels to particulate matter levels so that violations of opacity standards can readily be translated to violation of the correlating particulate matter standards. The Department disagrees with this comment. 40 CFR §64.3(d) outlines special criteria for the use of COMS and other continuous monitoring methods. Specifically, COMS that satisfies at least one of the requirements listed in 40 CFR §§64.3(d)(2)(i) through (vi) shall be deemed acceptable and satisfies the general design criteria in sections (a) and (b) of 40 CFR §64.3. The COMS at the Shawville facility meet the requirements of 40 CFR §51.214 and therefore, meet the design criteria under CAM. With respect to indicator ranges, §64.3(d)(2) states that a COMS may be subject to the criteria for establishing indicator ranges. In determining whether indicator ranges in this case are necessary, the preamble to CAM rule describes the general approach to CAM. The Department has reviewed the preamble to the CAM rule and included a CAM indicators and a CAM indicator range in the Title V operating permit to predict particulate matter emissions from the Shawville facility.

The Title V operating permit includes the applicable CAM requirements, including a CAM indicator parameter and a CAM indicator parameter range pursuant to 40 CFR §§64.3(d)(3)(ii) and 64.6(c)(1)(i), respectively. The Title V operating permit also identifies an excursion for the units at Shawville which covers the permit requirements of 40 CFR §64.6(c)(2). Additionally, the excursion reporting conditions in the Title V operating permit satisfy the requirements of 40 CFR §64.3(d)(3)(i). The Title V operating permit requires all CAM indicators to be measured at least every 15 minutes to satisfy the requirements in 40 CFR §64.3(b)(4)(ii). Therefore, the performance requirements established in 40 CFR §64.6(c)(1)(iii) are satisfied. The Title V operating permit also incorporated the operational requirements when an excursion is detected by reference. The operational requirements are codified in 40 CFR §64.7 and included in the Title V operating permit.

An important aspect of the operational requirements of 40 CFR §64.7 is to assure that the control measures are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements. There are two basic approaches to assuring that control measures taken by the owner or operator to achieve compliance are properly operated and maintained so that the owner or operator continues to achieve compliance with applicable requirements. The first approach comes from monitoring the operation of the control device (e.g. electrostatic precipitator) in accordance with applicable

monitoring requirements from an applicable regulatory standard (e.g. NSPS, NESHAP, CAM, etc.). The second approach, as applicable when there is no periodic monitoring in the underlying standard, adds periodic monitoring, sufficient to yield reliable data from the relevant time period that are representative of the source's compliance. However, the second approach is not applicable to Shawville's electric generating units since the first approach is applicable and requires the Department to add periodic monitoring in accordance with the CAM provisions. These approaches are finalized in the "Final Rule Interpreting the Scope of Certain Monitoring Requirements for State and Federal Operating Permits Programs." (71 FR 38147, July 5, 2006) which provides an interpretation by rule for the requirements of 40 CFR § 70.6(c)(1). In addition to the CAM monitoring requirements, the Title V operating permit includes testing, recordkeeping and compliance certification reporting to satisfy the permit requirements specified in 40 CFR § 70.6(c)(1).

The acceptable approach to cover the monitoring of particulate matter emissions from the Shawville facility until compliance with the Mercury and Air Toxics Rule is shown: (1) Documents continued operation of the control measures within ranges of specified indicators of performance (such as emissions, control device parameters and process parameters) that are designed to provide a reasonable assurance of compliance with applicable requirements; (2) indicating any excursions from these ranges; and (3) responding to the data so that excursions are corrected. As outlined in the preamble to the CAM rule, the requirements of 40 CFR Part 64 adopts this approach as an appropriate approach to enhance monitoring in the context of Title V permitting for significant emission units that use control devices to achieve compliance with emission limits. (62 FR 54902, October 22, 1997).

3. *Comment.* The draft permit lacks a compliance schedule for remedying significant, ongoing violations of the Clean Air Act.

The Department disagrees with this comment. The opacity violations reported in the first and second quarter of 2008 (Exhibit 7) were resolved by the Department and the company through the consent assessment of civil penalty that the Sierra Club submitted as Exhibit 10. Therefore, the Department does not have any ongoing violations related to opacity at the Shawville plant. The 2010 second quarter CEMS report submitted as Exhibit 11 in the Sierra Club's comment, which had shown three (3) emission violation days for Units 3 and 4, did not result in any enforcement action as identified on the respective CEMS report. The report was prepared in accordance with the Department's Continuous Source Monitoring Manual by the Department's Continuous Source Monitoring group. Based on the information to date, the Department has no knowledge of any enforcement action that resulted from the notice of violation (NOV) issued by Region 3. Therefore, there is no need or requirement to include a compliance schedule into the Title V operating permit.

4. *Comment.* The draft permit fails to ensure that the Shawville Plant will not cause or contribute to violations of the new one-hour NAAQS for SO₂.

The Department disagrees with these comments and notes that the commenter does not specify what is meant by "include the new ... NAAQS in the provisions that preclude the plant from causing or contributing to ambient air quality exceedances". Pennsylvania's regulations at 25

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March 26, 2012

Pa. Code §121.1 define the term “applicable requirements” for Title V facilities and 25 Pa. Code §127.502(a) states that “[f]or Title V facilities, the applicable requirements for stationary air contamination sources in the Title V facility shall be included in the operating permit”. Nowhere in the definition of “applicable requirement” or in the regulations outlining what must be in the Title V permit, is there a suggestion that a Title V permit must include provisions that would preclude the plant from causing or contributing to a violation of the NAAQS. Until there is an underlying applicable requirement expressly addressing the NAAQS, such as a SIP provision or a federal standard, there is no applicable requirement to preclude the Title V facility from causing ambient air quality exceedances.

5. *Comment.* The draft permit fails to ensure that the Shawville Plant will not cause or contribute to violations of the new one-hour NAAQS for NO₂.

See response to item 4 above.

6. *Comment.* The draft permit does not provide sufficient specificity in its requirements for continuous emissions monitoring for SO₂, CO₂ and NO_x.

The Department agrees with this comment. The data collection provisions of 40 CFR §75.10 have been included by reference in the Title V operating permit requirements (see Section D, Source IDs 031 through 034).

The supplemental comments are addressed above within the responses to the accepted comments submitted on January 4, 2011. In lieu of the fact that the supplemental comments were submitted after the expiration of the comment period, the Department has referenced the location of its response to the comments submitted on September 22, 2011 regarding draft Title V operating permit.

Please see below the Department’s item-by-item response to the draft Title V operating permit comments as they were presented in the Sierra Club’s September 22, 2011 letter.

1. *Comment.* PaDEP must timely ensure Shawville’s Compliance with the 1-hour SO₂ NAAQS

The Department plans on submitting revisions to Pennsylvania’s SIP for compliance with the 1-hour SO₂ to EPA prior to the 2014 deadline.

Response to the comment relating to the Draft Permit Would Allow Shawville to Cause Extreme Nonattainment Over a Vast Area

The Department disagrees with the comment based on the information above.

Response to comment relating to the Clean Air Act and Pennsylvania’s SIP Require That Any Title V Permit for the Shawville Plant Ensure Compliance with the 1-Hour SO₂ NAAQS.

The Department disagrees with the comment based on the information above.

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March 26, 2012

Response to comment relating to Pennsylvania Law Additionally Requires Compliance with the 1-Hour SO2 NAAQS

The Department disagrees with the comment based on the information above.

Response to comment relating to Action on Shawville's Title V Permit Renewal Is Long Overdue.

The Department has acted on GenON Shawville's Title V Operating Permit Renewal.

The Department appreciates your efforts to preserve and protect our environment and the residents of our Commonwealth. I hope the above information addresses your concerns. If you have any additional concerns or any questions regarding the terms and conditions of renewal Title V Operating Permit 17-00001, please contact me at 570-327-3648.

Sincerely,



Muhammad Q. Zaman
Environmental Program Manager
Air Quality Program

Enclosure

cc: File
EPA, Region 3
Central Office, Air Quality Permits

Exhibit 2



Kathryn Amirpashaie <kmalawoffice@gmail.com>

Fwd: Title V and Title IV Operating Permits issued to Sunbury Generation LP, Shamokin Dam Borough, Snyder County

Zachary Fabish <zachary.fabish@sierraclub.org>

Tue, Dec 4, 2012 at 1:12 PM

To: Charles McPhedran <cmcphedran@earthjustice.org>, Kathryn Amirpashaie <kmalawoffice@gmail.com>, Maggie Wendler <Maggie.Wendler@sierraclub.org>, Toba Pearlman <toba.pearlman@sierraclub.org>, Josh Stebbins <josh.stebbins@sierraclub.org>, Thomas Schuster <tom.schuster@sierraclub.org>, Mark Kresowik <Mark.Kresowik@sierraclub.org>

FYI - Sunbury final Title V permit has been issued.

-Zack

----- Forwarded message -----

From: **Zaman, Muhammad** <mzaman@pa.gov>

Date: Tue, Dec 4, 2012 at 1:09 PM

Subject: Title V and Title IV Operating Permits issued to Sunbury Generation LP, Shamokin Dam Borough, Snyder County

To: "Zachary Fabish (zachary.fabish@sierraclub.org)" <zachary.fabish@sierraclub.org>,

"joe_minott@cleanair.org" <joe_minott@cleanair.org>, "lauren@gasp-pgh.org" <lauren@gasp-pgh.org>

Cc: "Kohl, Marcus J" <mkohl@pa.gov>, "Epps, Joyce" <jeepps@pa.gov>, "Van Orden, Dean"

<dvanorden@pa.gov>, "Ayers, Geoffrey J" <geayers@pa.gov>, "Herb, Dawn" <dherb@pa.gov>, "Ramamurthy,

Krishnan" <kramamurth@pa.gov>, "Reiley, Robert A." <rreiley@pa.gov>, "Piktel, Joseph" <jpiktel@pa.gov>,

"Allison, Keith" <keallison@pa.gov>

Dear Commenters,

Please see the attached files containing the renewal Title V and Title IV operating permits and the Department's responses to the received comments regarding the proposed Title V operating permit. The Department appreciates the many thoughtful comments, which covered a wide variety of aspects related to the Sunbury Generation LP located in Shamokin Dam Borough, Snyder County, Pennsylvania. I hope this information addresses your concerns. The Department appreciates your efforts in preserving and protecting our environment and the residents of our Commonwealth.

On May. 25, 2012, the Air Quality Program published in the Pa. Bulletin its intent to issue the renewal Title V and Title IV Operating Permits. Sunbury Generation also published a notice in the Daily Item, a paper of general circulation in Snyder County, for three days (5/31, 6/1 and 6/2). During the comment period, the Department received comments from the Sierra Club. Additionally, PennEnvironment solicited over 1000 comments from the general public and submitted them to the Department via email. The renewal Title V operating permit was revised to incorporate several recommendations from the Sierra Club, the EPA and the company. Additionally, the Department sent letters to the company and EPA that addresses their concerns.

Pursuant to 25 Pa Code Chapter 127, all comments submitted during the public comment period have been

reviewed and addressed. After consideration of all comments received and revisions to the proposed renewal Title V Operating Permit, the available information indicates Sunbury Generation LP's facility located in Shamokin Dam Borough, Snyder County will comply with all applicable State and Federal air quality regulatory requirements. Therefore, the Department decided to issue the renewal Title V operating permit 55-00001 to Sunbury Generation LP on November 30, 2012. The renewal Title V operating permit became effective on November 30, 2012, and will expire on November 29, 2017.

If you have any questions regarding the terms and conditions of the renewal Title V and Title IV operating permits, please contact me at [570-327-3648](tel:570-327-3648).

Thanks,

Muhammad Zaman | Environmental Program Manager
Department of Environmental Protection | North Central Regional Office
208 West Third Street Suite 101 | Williamsport PA 17701
Phone: [570.327.3648](tel:570.327.3648) | Fax: [570.327.3420](tel:570.327.3420)
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5 attachments

 **SC_CMTS_LTR.pdf**
889K

 **Sunbury Title V renewal Public comment response.pdf**
268K

 **Signed_TVOP_PG1.pdf**
127K

 **Issued55-00001.pdf**
443K

5/21/13

Case 2:13-cv-06115-JCS Document 1-1 Filed 10/18/16 Page 20 of 30



SUNGEN_ACIDRAIN.pdf

613K

Exhibit 3



Kathryn Amirpashaie <kmalawoffice@gmail.com>

AE-Mitchell (TVOP&ARP-63-00016) Comments and Response

Hochhauser, Martin <mhochhause@pa.gov>

Wed, Dec 12, 2012 at 3:13 PM

To: "kmalawoffice@gmail.com" <kmalawoffice@gmail.com>

Re: AE-Mitchell Power Station TVOP-63-00016 Renewal
Public Comments & Responses

Ms.: Amirpashaie

The Department received a Title V Permit (TVOP) renewal application for the Mitchell Power Station in Union Township, Washington County on September 27, 2006. The Department sent a clerical completeness letter to Allegheny Energy on October 5, 2006, and an administrative completeness letter on November 20, 2006. Notice of our intent to issue the renewal TVOP was published in the Pa. Bulletin on May 26, 2012 and in the Washington, PA, Observer-Reporter on May 27, 28 and 29, 2012. The 30-day public comment period closed on June 28, 2012. Copies of the proposed TVOP and the associated Technical Review Memo were sent to EPA on May 29, 2012. Their 45-day comment period closed on July 13, 2012. The Title V Operating Permit for this facility was issued on November 30, 2012.

You submitted a protesting comment to the Pennsylvania Department of Environment Protection during the public comment period regarding issuance of this Title V Operating Permit. In accordance with 25 Pa. Code 127.427, we are providing you with a copy of our Comments and Response Document and the final Title V Operating Permit. These documents are appended to the email.

Martin L. Hochhauser, P.E. | AQES
Department of Environmental Protection
400 Waterfront Drive | Pittsburgh, PA 15222
Phone: 412.442.4057 | Fax: 412.442.4194
mhochhause@pa.gov
www.depweb.state.pa.us

2 attachments

 **Final Mitchell Station TVOP C&R 2012.pdf.pdf**
432K

 **AE-Mitchell (TVOP-63-00016) Signed pages for TV & AR.pdf.pdf**
979K



Kathryn Amirpashaie <kmalawoffice@gmail.com>

AE-Mitchell (TVOP&ARP-63-00016) Comments and Response

Hochhauser, Martin <mhochhause@pa.gov>

Wed, Dec 12, 2012 at 3:28 PM

To: "kmalawoffice@gmail.com" <kmalawoffice@gmail.com>

Sorry, the previous email did not contain the entire permits.

[Quoted text hidden]



AE-Mitchell Final(TVOP & ARP-63-00016).pdf.pdf

2497K

Exhibit 4



Kathryn Amirpashaie <kmalawoffice@gmail.com>

Request for Electronic Copies of Final Title V Permits and Comments and Response Documents for Shawville, Beaver Valley, Hatfield's Ferry, Bruce Mansfield, and Homer City

Shaffer, Sheila <sheishaffe@pa.gov>

Fri, Dec 21, 2012 at 11:32 AM

To: "kmalawoffice@gmail.com" <kmalawoffice@gmail.com>

Cc: "Wayner, Mark" <mwayner@pa.gov>, "Hatch, Barbara" <bhatch@pa.gov>, "Mulroy, Marianne" <mmulroy@pa.gov>, "Heilman, Michael" <mheilman@pa.gov>, "Waryanka, Nicholas" <nwaryanka@pa.gov>

Kathryn,

Per your request, the following items have been attached for AES Beaver Valley.

Sheila A. Shaffer | Air Quality Engineering Specialist II

Air Quality | Department of Environmental Protection

400 Waterfront Drive | Pittsburgh, PA 15222

Phone: 412.442.5227 | Fax: 412.442.4194

www.depweb.state.pa.us

From: Wayner, Mark

Sent: Friday, December 21, 2012 10:44 AM

To: Shaffer, Sheila; Waryanka, Nicholas

Subject: FW: Request for Electronic Copies of Final Title V Permits and Comments and Response Documents for Shawville, Beaver Valley, Hatfield's Ferry, Bruce Mansfield, and Homer City

FYI.

From: Kathryn Amirpashaie [<mailto:kmalawoffice@gmail.com>]

Sent: Thursday, December 20, 2012 5:28 PM

To: Wayner, Mark

Cc: Hatch, Barbara; Sherri Liang

[Quoted text hidden]

[Quoted text hidden]

4 attachments

 **AES 04-446TVOP issued 11-29-12.pdf**
248K

 **AES TITLE PAGE SIGNED 11-29-12.pdf**
131K

 **AES C&R DOC SIGNED.pdf**
748K

 **AES C&R Attachment 3 FINAL.pdf**
700K

Exhibit 5



Kathryn Amirpashaie <kmalawoffice@gmail.com>

Hatfield Station documents

Waryanka, Nicholas <nwaryanka@pa.gov>
To: "kmalawoffice@gmail.com" <kmalawoffice@gmail.com>

Fri, Dec 21, 2012 at 12:46 PM

Kathryn,

Per your request, the following items have been attached for Hatfield Station.

Nicholas J. Waryanka, P.E. | Air Quality Engineer
PA DEP | Southwest Regional Office
400 Waterfront Dr. | Pittsburgh, PA 15222
Phone: (412) 442-4172 | Fax: (412) 442-4194
www.dep.state.pa.us

3 attachments



AES Hatfield TVOP&ARP #30-00099.pdf
1523K



Hatfield Renewal TVOP Comments & Response Doc Nov 2012.pdf
1763K



Hatfield Renewal TVOP 2012 List of Commenters.pdf
1502K

Exhibit 6



Kathryn Amirpashaie <kmalawoffice@gmail.com>

Scanned Homer City C & R Doc

Hatch, Barbara <bhatch@pa.gov>
To: Kathryn Amirpashaie <kmalawoffice@gmail.com>

Mon, Dec 24, 2012 at 12:11 PM

 **Homer City TVOP Ren C&R 2012.pdf**
1747K

CIVIL COVER SHEET

Case 2:13-cv-06115-JCJ Document 1-2 Filed 10/18/13 Page 1 of 3

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

13 6115

I. (a) PLAINTIFFS
Sierra Club

DEFENDANTS

Gina McCarthy, in her official capacity as Administrator,
U.S. Environmental Protection Agency

(b) County of Residence of First Listed Plaintiff Washington, DC
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone-Number)
Kathryn M. Amirpashaie, 7556 Blanford Court, Alexandria, VA 22315,
Phone: (703) 851-9111
Charles McPhedran, EARTHJUSTICE, 1617 John F. Kennedy Boulevard,
Suite 1675, Philadelphia, PA 19103
Phone: (215) 717-4521

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Property Damage, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Clean Air Act, 42 U.S.C. §§ 7401 et seq.
Brief description of cause:
Failure to perform nondiscretionary duty to grant or deny seven petitions.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

OCT 18 2013

DATE

10/18/2013

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate judges.

Address of Plaintiff: Sierra Club, 85 Second Street, 2nd Floor, San Francisco, CA 94105

Address of Defendant: Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460

Place of Accident, Incident or Transaction: United States Environmental Protection Agency, Region 3
(Use Reverse Side For Additional Space)

1650 Arch Street, Philadelphia, PA, 19103

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes No

Does this case involve multidistrict litigation possibilities?

Yes No

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
- 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
- 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No
- 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify) _____
- 7. Products Liability
- 8. Products Liability — Asbestos
- 9. All other Diversity Cases
(Please specify) _____

OCT 18 2013

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Charles McPhedran, counsel of record do hereby certify:
 Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
 Relief other than monetary damages is sought.

DATE: 10/18/2013

[Signature]
Attorney-at-Law

PA Bar No. 60123
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 10/18/2013

[Signature]
Attorney-at-Law

PA Bar No. 60123
Attorney I.D.#

JCJ

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Sierra Club v. Gina McCarthy, in her official capacity as Administrator, U.S. Environmental Protection Agency

CIVIL ACTION NO. 13 6115

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

October 18, 2013 Kathryn M. Amirpashaie Sierra Club
Date Attorney-at-law Attorney for
703-851-9111 212-918-1556 kmalawoffice@gmail.com
Telephone FAX Number E-Mail Address

OCT 18 2013