



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND EMAIL

April 8, 2016

Ms. Gina McCarthy  
Administrator  
Environmental Protection Agency  
1101A EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460  
mccarthy.gina@epa.gov

RE: Notice of Citizen Suit Concerning Clean Air Act Deadlines

Dear Administrator McCarthy,

This is a notice of “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, 42 U.S.C. § 7604(a)(2). This notice is provided to you as Administrator of the U.S. Environmental Protection Agency (“EPA”), in your official capacity, pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54 as a prerequisite to bringing a civil action.

The organizations giving this notice are: Community In-Power and Development Association Inc., 600 Austin Ave., Port Arthur, TX 77640, (409) 498-1088; Hoosier Environmental Council, 3951 N. Meridian St., Suite 100, Indianapolis, IN 46208, (317) 685-8800; Ohio Valley Environmental Coalition, P.O. Box 6753, Huntington, WV 25773, (304) 522-0246; Utah Physicians for a Healthy Environment, 423 W. 800 S., Suite A108, Salt Lake City, UT 84101, (801) 502-5450.

**Section 7412(f) - Standards to Protect Health and Environment.** Title 42, section 7412(f) of the Clean Air Act provides that:

(A) . . . [T]he Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [§ 7412(d)], promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. . . . If standards promulgated pursuant to

[§ 7412(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for this source category.

...

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under [§ 7412(d)] for each source category or subcategory concerned.

42 U.S.C. § 7412(f)(2). More than eight years have passed since EPA promulgated the following standards under 42 U.S.C. § 7412(d) for the following categories of major sources of hazardous air pollutants:

- (1) Primary Copper Smelting, 67 Fed. Reg. 40,478 (June 12, 2002) (40 C.F.R. Part 63 Subpart QQQ);
- (2) Generic MACT II - Carbon Black Production, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (3) Generic MACT II – Cyanide Chemicals Manufacturing, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (4) Generic MACT II – Spandex Production, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (5) Coke Ovens: Pushing, Quenching, and Battery Stacks, 68 Fed. Reg. 18,008 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart CCCCC);
- (6) Flexible Polyurethane Foam Fabrication Operations, 68 Fed. Reg. 18,062 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart MMMMM);
- (7) Refractory Products Manufacturing, 68 Fed. Reg. 18,730 (Apr. 16, 2003) (40 C.F.R. Part 63 Subpart SSSSS);
- (8) Semiconductor Manufacturing, 68 Fed. Reg. 27,913 (May 22, 2003) (40 C.F.R. Part 63 Subpart BBBB);
- (9) Primary Magnesium Refining, 68 Fed. Reg. 58,615 (Oct. 10, 2003) (40 C.F.R. Part 63 Subpart TTTTT); and
- (10) Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 68 Fed. Reg. 70,904 (Dec. 19, 2003) (40 C.F.R. Part 63 Subpart IIII).

Nonetheless, you have neither promulgated standards for these categories pursuant to Clean Air Act § 7412(f), nor determined that such standards are not “required in order to provide an ample margin of safety to protect public health in accordance with this section . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.” 42 U.S.C. § 7412(f)(2). There are no § 7412(f)(2) standards or final

residual risk determinations currently in force or effect after publication in the Federal Register for these sources. Accordingly, you have failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 7604(a)(2) for each of the above-listed standards and source categories.

**Section 7412(d)(6) – MACT Review and Revision.** Title 42, section 7412(d)(6) of the Clean Air Act requires EPA to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [§ 112] no less often than every 8 years.” 42 U.S.C. § 7412(d)(6). More than eight years have passed since EPA promulgated Clean Air Act § 7412 regulations for the following categories:

- (1) Primary Copper Smelting, 67 Fed. Reg. 40,478 (June 12, 2002) (40 C.F.R. Part 63 Subpart QQQ);
- (2) Generic MACT II - Carbon Black Production, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (3) Generic MACT II – Cyanide Chemicals Manufacturing, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (4) Generic MACT II – Spandex Production, 67 Fed. Reg. 46,258 (July 12, 2002) (40 C.F.R. Part 63 Subpart YY, UU);
- (5) Coke Ovens: Pushing, Quenching, and Battery Stacks, 68 Fed. Reg. 18,008 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart CCCCC);
- (6) Flexible Polyurethane Foam Fabrication Operations, 68 Fed. Reg. 18,062 (Apr. 14, 2003) (40 C.F.R. Part 63 Subpart MMMMM);
- (7) Refractory Products Manufacturing, 68 Fed. Reg. 18,730 (Apr. 16, 2003) (40 C.F.R. Part 63 Subpart SSSSS);
- (8) Semiconductor Manufacturing, 68 Fed. Reg. 27,913 (May 22, 2003) (40 C.F.R. Part 63 Subpart BBBBB);
- (9) Primary Magnesium Refining, 68 Fed. Reg. 58,615 (Oct. 10, 2003) (40 C.F.R. Part 63 Subpart TTTTT); and
- (10) Mercury Emissions from Mercury Cell Chlor-Alkali Plants, 68 Fed. Reg. 70,904 (Dec. 19, 2003) (40 C.F.R. Part 63 Subpart IIIII).

Nonetheless, you have not reviewed and revised EPA’s emission standards for these categories, as Clean Air Act § 7412(d)(6) requires. There are no revised, final standards promulgated as a result of the requisite § 7412(d)(6) review, or a § 7412(d)(6) determination currently in force or effect after publication in the Federal Register for these sources. Accordingly, you have failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 7604(a)(2).

**60-Day Notice.** Under § 7604 of the Clean Air Act, the above-listed organizations may commence a citizen suit to compel you to perform any or all of the above duties at any time beginning sixty days from the postmark date of this letter, which is April 8, 2016. *See* 40 C.F.R. § 54.2(d).

**Contact Information.** We are acting as attorneys for the above-listed organizations in this matter. Please contact us at your earliest convenience regarding this matter. Please address any communications to us at the address and telephone number set forth below.

Sincerely,



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cc: Avi S. Garbow, General Counsel, Office of General Counsel, EPA  
Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation, EPA  
Steve Page, Director, Office of Air Quality Planning and Standards, EPA