

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB,)	
2101 Webster Street, Suite 1300)	
Oakland, CA 94612,)	
)	
Plaintiff,)	
)	Civ. No. _____
v.)	
)	
GINA MCCARTHY,)	
in her official capacity as Administrator,)	
U.S. Environmental Protection Agency,)	
1200 Pennsylvania Avenue, N.W.)	
Washington, DC 20460,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. With this action, Plaintiff Sierra Club seeks to compel the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to respond to two petitions to object to the proposed operating permits for two coal-fired power plants in North Carolina, which both are causing dangerous sulfur dioxide pollution in surrounding communities—Duke Energy’s Asheville Steam Electric Plant (“Asheville Plant”) and Roxboro Steam Electric Plant (“Roxboro Plant”). *See* 42 U.S.C. § 7661d(b)(2). The Clean Air Act imposes upon the EPA Administrator a non-discretionary duty to grant or deny such petitions within sixty days of their filing. *Id.*

2. Sierra Club filed a petition on June 17, 2016 (“Asheville Petition”), asking EPA to object to the operating permit (“Asheville Permit”) issued by the Western North Carolina

Regional Air Quality Agency (“WNCRAQA”) under Title V of the Clean Air Act for the Asheville Plant. On June 23, 2016, Sierra Club filed a separate petition (“Roxboro Petition”) asking EPA to object to the operating permit (“Roxboro Permit”) issued by the North Carolina Department of Environmental Quality (“DEQ”) under Title V of the Clean Air Act for the Roxboro Plant.

3. More than sixty days have passed since the filing of Sierra Club’s Asheville and Roxboro Petitions. Nevertheless, EPA has not granted or denied the petitions, in contravention of the mandatory, sixty-day deadline for such action. *Id.* The Administrator, therefore, has violated and continues to violate her nondiscretionary duties under the Clean Air Act.

4. 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 Asheville and Roxboro Petitions no later than sixty days after such order.

JURISDICTION

5. 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. This Court has authority to order declaratory and injunctive relief pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

NOTICE

6. By certified letters dated August 25, 2016, Sierra Club provided the Defendant with written notice of the Administrator’s failure to perform her nondiscretionary duties at issue in this case and of its intent to bring this action, as required by 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3. *See* Exhibits 1 (Letter from Kathryn Amirpashaie, counsel for Plaintiff, to Gina McCarthy, Administrator of the EPA, re Asheville Petition (Aug. 25, 2016)) and 2

(Letter from Kathryn Amirpashaie, counsel for Plaintiff, to Gina McCarthy, Administrator of the EPA, re Roxboro Petition (Aug. 25, 2016)). A period of sixty days has elapsed since EPA was notified of Sierra Club's claims and intent to file suit, therefore, notice was proper. *See* 42 U.S.C. § 7604(b)(2).

VENUE

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1).

A substantial part of the events or omissions giving rise to Sierra Club's claims occurred in the District of Columbia. Defendant Administrator McCarthy is an officer of the United States, sued for acts and omissions in her official capacity, and her official residence is in the District of Columbia. In addition, EPA has its principal office in the District of Columbia.

PARTIES

8. Plaintiff Sierra Club is the oldest and largest grassroots environmental organization in the United States, with over 640,000 members nationally, including nearly 16,000 members in North Carolina. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club and its members are greatly concerned about the effects of air pollution on the environment and human health and have a long history of involvement in activities related to air quality and source permitting under the Clean Air Act.

9. 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).

10. EPA's failure to perform the mandatory duties described in this Complaint has

injured and continues to injure the health, recreational, environmental, organizational, and procedural interests of Sierra Club and its members.

11. Sierra Club members live, raise their families, work, recreate, and conduct educational, advocacy, and other activities in areas where they are exposed to dangerous air pollutants emitted from the Asheville and Roxboro Plants. Such air pollutants, which include sulfur dioxide, are associated with a variety of adverse effects on human health and damage to wildlife and vegetation, thereby threatening the health of Sierra Club members and their use and enjoyment of the air, environment, wildlife, and scenery adversely impacted by such pollutants.

12. EPA's failure to respond to Sierra Club's Petitions causes harm by creating doubt and concern for Sierra Club members about whether the Asheville and Roxboro Permits are operating in compliance with the requirements of the Clean Air Act and about whether they and their families are being exposed to unsafe concentrations of sulfur dioxide.

13. EPA's failure to respond to Sierra Club's Petitions also causes harm by depriving Sierra Club and its members of protections to which they are entitled under the Clean Air Act and their procedural right to a timely decision on the Petitions.

14. EPA's failure to act prevents Sierra Club and its members from challenging unfavorable EPA decisions or benefiting from favorable decisions on the Petitions.

15. Granting the relief requested in this lawsuit would redress Sierra Club's injuries.

16. Gina McCarthy is sued in her official capacity as the Administrator of the EPA. She is responsible for taking various actions to implement and enforce the Clean Air Act, including the mandatory duty at issue in this case.

LEGAL BACKGROUND

17. The core purpose of the Clean Air Act is the protection of public health against

the effects of harmful air pollution. *See* 42 U.S.C. § 7401(b)(1). Consistent with this goal, the Act requires EPA to establish health-based National Ambient Air Quality Standards (“NAAQS”) for certain pollutants, including sulfur dioxide, set at a level adequate to protect the public from the harmful effects of exposure to those pollutants. *See* 42 U.S.C. § 7409(b)(1).

18. In recognition of the serious public health threat posed by exposure to sulfur dioxide, EPA has established NAAQS for sulfur dioxide, first in 1971, *see* U.S. EPA, Final Rule, National Primary and Secondary Ambient Air Quality Standards, 36 Fed. Reg. 8186 (April 30, 1971), and again in 2010, when the Agency revoked and replaced the 1971 standard. *See* U.S. EPA, Final Rule, Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010) (codified at 40 C.F.R. § 50.17(a)) (setting a one-hour standard of 75 parts per billion (“ppb”)).

19. North Carolina DEQ and WNCRAQA have adopted the 2010 standard for sulfur dioxide. *See* 15A N.C.A.C. § 2D.0402(d) (“The primary one-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion.”); WNCRAQA Code § 4.0402(d) (same).

20. State and regional air quality agencies that are delegated implementation authority under the Clean Air Act must develop and implement plans that include “applicable requirements,” 40 C.F.R. § 70.2(1), the compliance with which advances attainment of the federal NAAQS and other standards. These applicable requirements are executed with respect to individual facilities through permitting programs established under Title V of the Act. *See* 42 U.S.C. §§ 7410, 7661.

21. Major stationary sources of air pollution cannot operate except in compliance with an operating permit issued pursuant to Title V of the Clean Air Act, 42 U.S.C. § 7661a(a), and such permits “shall include enforceable emission limitations and standards . . . and such

other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan,” 42 U.S.C. § 7661c(a); *see also* 40 C.F.R. § 70.6(a)(1).

22. EPA delegated to DEQ the authority to administer the Clean Air Act’s Title V operating permit program in North Carolina, and to WNCRAQA the authority to administer the program in Buncombe County and the City of Asheville. *See* Clean Air Act Final Full Approval of Operating Permit Programs; North Carolina, Mecklenburg County, and Western North Carolina, 66 Fed. Reg. 45,941 (Aug. 31, 2001); *see also* N.C.G.S. § 143-215.112.

23. DEQ and WNCRAQA must issue Title V permits for individual facilities that include enforceable emission limitations and standards necessary to assure those facilities’ compliance with all applicable requirements. 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.6(a)(1).

24. Both the North Carolina and WNCRAQA implementation plans include applicable requirements expressly prohibiting air pollution sources from causing the exceedance of an ambient air quality standard and affirmatively requiring permit conditions to prevent such pollution. Specifically, both North Carolina and WNCRAQA regulations provide that: “No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section.”

15A N.C.A.C. § 2D.0401(c); WNCRAQA Code § 4.0401(c) (emphasis added).

25. In addition, the “Emission Control Standards” of North Carolina’s and WNCRAQA’s regulations require that: “In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Chapter to be exceeded at any point beyond the premises on

which the source is located.” 15A N.C.A.C. § 2D.0501(c); WNCRAQA Code § 4.0501(c).

26. Those regulations, which represent a specific strategy by North Carolina for ensuring clean air, further require that: “When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.” *Id.*

27. Before DEQ or WNCRAQA may issue, renew, or significantly modify a Title V permit, the permitting authority must send the proposed Title V permit to EPA for review. 42 U.S.C. § 7661d(a)(1). EPA then has forty-five 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 requirements under the Clean Air Act. *Id.*

28. If the Administrator does not object in writing to the issuance of a proposed permit on her own accord, any person may, within sixty days after the expiration of EPA’s review period, petition the Administrator to take such action. 42 U.S.C. § 7661d(b)(2).

29. The Clean Air Act sets a mandatory deadline by which EPA must respond to any such petition, requiring that the Administrator “shall grant or deny such petition within 60 days after the petition is filed.” *Id.*

30. 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.*

31. If EPA fails to comply with a non-discretionary duty, such as acting on a petition to object within the statutorily mandated sixty-day 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).

FACTUAL BACKGROUND

A. Sulfur Dioxide Pollution from Duke Energy's Asheville Plant

32. Duke Energy owns and operates the half-century old, coal-burning power plant just south of the City of Asheville in Buncombe County, North Carolina. The Asheville Plant, which includes two coal-fired electric generating units, is a major stationary source of air pollution and subject to Title V of the Clean Air Act.

33. Despite being equipped with ratepayer-funded pollution control technology—*i.e.*, flue gas desulfurization systems or “scrubbers”—the Asheville Plant remains a significant source of sulfur dioxide and, in recent years, the Plant's sulfur dioxide emission rates have increased.

34. Data reported by Duke Energy show that it has not been operating the Asheville Plant's scrubbers at their maximum demonstrated efficiency and that it has been burning coal with higher sulfur content.

35. Air dispersion modeling has demonstrated that on one out of every three to four days between 2010 and 2014, emissions from the Asheville Plant caused downwind ambient sulfur dioxide concentrations higher than the 75-ppb health-based standard—on some days, nearly three and a half times higher.

B. WNCRAQA's Proposed Title V Permit for the Asheville Plant

36. On March 26, 2015, WNCRAQA issued a draft Title V renewal permit for the Asheville Plant (Permit No. 11-628-15).

37. Sierra Club members were among the hundreds of Asheville residents who attended an April 29, 2015 public hearing on the draft permit. Public testimony at the hearing was nearly uniform in support of a revised permit with numerical limits on sulfur dioxide

emissions that would allow the community to monitor and enforce compliance with the permit and the requirement that the Asheville Plant not cause any exceedance of governing ambient air quality standards.

38. On April 30, 2015, Sierra Club submitted timely comments on the Asheville Permit, along with sulfur dioxide air dispersion modeling results, and subsequently shared those comments with EPA.

39. On April 15, 2016, WNCRAQA submitted a revised proposed Title V permit for the Asheville Plant to EPA for review. The proposed permit included revised numerical emission limits for sulfur dioxide based on air dispersion modeling, but only stringent enough to ensure that the Asheville Plant will not cause exceedances of the 1971 air quality standard for sulfur dioxide—the very standard that EPA revoked as not being protective of human health and that EPA replaced in 2010 with the 75-ppb standard.

40. EPA's forty-five day review period for the Asheville Permit ended on May 30, 2016. EPA did not object to the proposed Title V permit in writing.

C. Sulfur Dioxide Pollution from Duke Energy's Roxboro Plant

41. Duke Energy also owns and operates another half-century old, coal-burning power plant northwest of the City of Roxboro in Person County, North Carolina. The Roxboro Plant, which includes four coal-fired electric generating units, is a major stationary source of air pollution and subject to Title V of the Clean Air Act.

42. Like the Asheville Plant, the Roxboro Plant is equipped with ratepayer-funded scrubbers, yet it also remains a significant source of sulfur dioxide and, in recent years, the Plant's sulfur dioxide emission rates have increased.

43. Data reported by Duke Energy show that it has not been operating the Roxboro

Plant's scrubbers at their maximum demonstrated efficiency and that it has been burning coal with higher sulfur content.

44. Air dispersion modeling has demonstrated that on one out of every three days between 2012 and 2015, emissions from the Roxboro Plant caused downwind ambient sulfur dioxide concentrations higher than the 75-ppb standard—on some days, nearly three times higher.

D. DEQ's Proposed Title V Permit for the Roxboro Plant

45. On April 4, 2016, DEQ issued a draft Title V permit for the Roxboro Plant (Permit No. 01001T49) that retained the existing numerical emission limits for sulfur dioxide that were set to ensure compliance with the obsolete 1971 NAAQS that was revoked and replaced in 2010 with the 75-ppb standard.

46. On May 4, 2016, Sierra Club submitted timely comments on the Roxboro Permit, along with sulfur dioxide air dispersion modeling results, and shared those comments with EPA. Sierra Club's comments urged DEQ to issue a revised permit with numerical limits on sulfur dioxide emissions that would allow the surrounding community to monitor and enforce compliance with the permit and the requirement that the Roxboro Plant not cause any exceedance of governing ambient air quality standards.

47. DEQ submitted the Roxboro Plant's proposed Title V permit to EPA for review; EPA's forty-five day review period for the Roxboro Permit began on April 4, 2016 and ended on May 19, 2016. EPA did not object to the proposed Title V permit in writing.

E. Sierra Club's Petitions to Object to the Asheville and Roxboro Title V Permits

48. On June 17, 2016, Sierra Club filed a petition requesting that the Administrator object to the issuance of the Asheville Plant's Title V operating permit because the permit fails to impose conditions that ensure compliance with applicable requirements under the Clean Air Act.

49. On June 23, 2016, Sierra Club filed a petition requesting that the Administrator object to the issuance of the Roxboro Plant's Title V operating permit because the permit fails to impose conditions that ensure compliance with applicable requirements under the Clean Air Act.

50. The Asheville and Roxboro Petitions were timely filed within sixty days of the conclusion of EPA's respective forty-five day review periods.

51. Sierra Club's Asheville and Roxboro Petitions are based on objections that were raised with reasonable specificity during the public comment periods for the permits, in accordance with 42 U.S.C. § 7661d(b)(2). Specifically, Sierra Club seeks objection by EPA because the permits lack numerical limits on the emission of sulfur dioxide stringent enough to ensure that the governing ambient air quality standard will not be exceeded downwind of the plants. The Asheville and Roxboro Petitions present a narrow question of law for the Agency's consideration: Where the express terms of a state or local Clean Air Act implementation plan prohibit air pollution sources from causing the exceedance of a governing ambient air quality standard, must an operating permit include conditions specifically tailored to ensure that the source will not cause such exceedances?

52. EPA had sixty days, until August 16, 2016, to grant or deny Sierra Club's Asheville Petition. 42 U.S.C. § 7661d(b)(2).

53. EPA had sixty days, until August 22, 2016, to grant or deny Sierra Club's Roxboro Petition. 42 U.S.C. § 7661d(b)(2).

54. As of the date of filing of this Complaint, EPA has not yet granted or denied the Asheville or Roxboro Petitions or given Sierra Club any indication that it intends to do so.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 7661d(b)(2)

(Failure to Grant or Deny Petition to Object to Title V Permit for Asheville Plant)

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

56. The Administrator had a mandatory duty to grant or deny Sierra Club's Asheville Petition within sixty days after filing. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

57. More than sixty days have passed since Sierra Club filed its June 17, 2016 Asheville Petition requesting that EPA object to the Title V Permit for the Asheville Plant.

58. As of the filing of this Complaint, the Administrator has not granted or denied Sierra Club's Asheville Petition.

59. Thus, the Administrator has violated and continues to violate the Clean Air Act.

60. 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). The Administrator's violation is ongoing and will continue unless remedied by this Court.

SECOND CLAIM FOR RELIEF

VIOLATION OF 42 U.S.C. § 7661d(b)(2)

(Failure to Grant or Deny Petition to Object to Title V Permit for Roxboro Plant)

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

62. The Administrator had a mandatory duty to grant or deny Sierra Club's Roxboro Petition within sixty days after filing. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed").

63. More than sixty days have passed since Sierra Club filed its June 23, 2016 Roxboro Petition requesting that EPA object to the Title V Permit for the Roxboro Plant.

64. As of the filing of this Complaint, the Administrator has neither granted nor denied the Roxboro Petition.

65. Thus, the Administrator has violated and continues to violate the Clean Air Act.

66. 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). The Administrator's violation is ongoing and will continue unless remedied by this Court.

REQUEST FOR RELIEF

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

A) A declaration that the Administrator has violated the Clean Air Act by failing to grant or deny Sierra Club's Asheville and Roxboro Petitions requesting that EPA object to the Title V operating permits for the Asheville and Roxboro Plants;

B) An order compelling the Administrator to perform her mandatory duties to grant

or deny Sierra Club's Asheville and Roxboro Petitions seeking objection to the Title V operating permits for the Plants by a date certain;

C) An order retaining jurisdiction over this matter until such time as the Administrator has performed her 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,

Dated: November 10, 2016

/s/ Kathryn Amirpashaie

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EXHIBIT 1

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August 25, 2016

VIA CERTIFIED MAIL

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

Dear Administrator McCarthy:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), 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 your failure to perform a nondiscretionary duty set forth under Title V of the Clean Air Act (“CAA” or “Act”). Specifically, Sierra Club intends to file suit over your failure to, within the timeframe required by Section 505(b)(2) of the Act,¹ grant or deny the petition submitted by Sierra Club seeking an objection by EPA to the Title V Operating Permit, Permit No. 11-628-15 (hereafter “Proposed Permit”), proposed by the Western North Carolina Regional Air Quality Agency (“WNCRAQA”) for Duke Energy Progress, Inc.’s Asheville Steam Electric Plant (“Asheville Plant”), located in Buncombe County, North Carolina. Sierra Club’s petition was mailed to EPA on June 17, 2016, via FedEx overnight delivery. As of today, more than 60 days have passed without EPA taking action on said petition, in violation of the Administrator’s nondiscretionary duty under Section 505(b)(2) to grant or deny the petition within 60 days after it was filed.²

¹ See 42 U.S.C. § 7661d(b)(2).

² *Id.*

I. The Asheville Plant Is 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.³ EPA delegated to North Carolina the authority to administer the CAA's Title V operating permit program within the state.⁴ North Carolina adopted laws and regulations granting WNCRAQA, a local air agency, the authority to implement the program in Buncombe County and the City of Asheville.⁵ WNCRAQA subsequently adopted regulations to fulfill this delegation.⁶

The previous Title V permit for the Asheville Plant was issued on January 18, 2011, and expired on May 31, 2015. WNCRAQA received Duke Energy's permit renewal application on August 22, 2014 and, on March 26, 2015, noticed a draft Title V permit renewal for public comment and scheduled a public hearing for April 29, 2015. "Written comments from the public were accepted via email and regular mail from March 26th until May 7, 2015."⁷ On April 30, 2015, Sierra Club submitted timely comments on the draft permit, urging WNCRAQA to establish modeling-based, numerical emission limits stringent enough to ensure that the people of Asheville would no longer be exposed to unsafe amounts of sulfur dioxide.⁸

Among other issues raised in those comments, Sierra Club criticized the draft permit as failing to comply with requirements under the Clean Air Act and the WNCRAQA local implementation plan due to the impermissibly lenient proposed numerical limits for sulfur dioxide emissions.⁹ More specifically, Sierra Club submitted air dispersion modeling demonstrating that the 24-hour, 2.3 lbs/MMBtu limits for sulfur dioxide emissions included in the draft permit were not stringent enough to ensure that compliance with such limits will ensure compliance with the applicable narrative prohibition that the Plant not cause downwind exceedances of the governing ambient air quality standard for sulfur dioxide.¹⁰ To translate the narrative prohibitions into clear numerical emission limits, WNCRAQA needed to set one-hour

³ 42 U.S.C. § 7661a(a).

⁴ Clean Air Act Final Full Approval of Operating Permit Programs; North Carolina, Mecklenburg County, and Western North Carolina, 66 Fed. Reg. 45,941 (Aug. 31, 2001).

⁵ *See id*; *see also* N.C.G.S. § 143-215.112.

⁶ *See generally* WNCRAQA Code §§ 17.0501 *et seq.*

⁷ Western North Carolina Regional Air Quality Agency Memorandum, "Public Comments Regarding Proposed Title V Permit Renewal for Duke Energy Progress, Inc. – Asheville Steam Plant Facility," Nov. 16, 2015 (Revised Mar. 22, 2016), at 1, available at <https://www.buncombecounty.org/common/wncAir/Memo%20to%20Board%20with%20Appendices.pdf>.

⁸ Sierra Club Comments on Draft Title V Permit Renewal for Duke Energy Progress' Asheville Steam Electric Plant, Permit No. 11-628-15 (Apr. 30, 2015).

⁹ *Id.* at 8–10.

¹⁰ *Id.*

limits of approximately 0.029 pounds of sulfur dioxide per MMBtu for the Asheville coal units—an emission rate that the Plant was achieving in 2006.

II. EPA Failed to Grant or Deny Sierra Club’s Petition to Object to the Proposed Permit for the Asheville Plant within the Statutorily Required Timeframe

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.”¹¹ 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.¹² Accordingly, the timing for EPA to object to the Proposed Permit for Asheville and for the public to petition EPA to object to the Proposed Permit was as follows: WNCRAQA submitted the proposed permit to EPA on April 15, 2016; EPA’s 45-day review period ended on May 30, 2016; and the 60-day public petition period ended on July 29, 2016.

EPA did not object to the Asheville Proposed Permit within the allotted 45-day time frame. Consequently, Sierra Club filed a petition to object to the Proposed Permit on June 17, 2016, within 60 days after the expiration of EPA’s 45-day review period, in accordance with 42 U.S.C. § 7661d(b)(2). The Petition to EPA was properly based on issues raised during the public comment period for the Proposed Permit. Specifically, Sierra Club’s Petition showed that the Proposed Permit lacks the conditions necessary to ensure compliance with applicable requirements that prohibit the exceedance of governing ambient air quality standards—*i.e.*, sufficiently stringent numerical limits on the emission of sulfur dioxide.

According to CAA section 505(b)(2) of the CAA, the Administrator was required to respond to Sierra Club’s June 17, 2016 petition to object within 60 days, either granting or denying the petition.¹³ However, as of August 25, 2016, EPA has yet to respond to the petition to object to Asheville’s Title V Permit.

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 may 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.”¹⁴ Section 505(b)(2) of the CAA expressly provides that the “Administrator shall grant or deny [a petition to object] within 60 days after the petition is

¹¹ 42 U.S.C. § 7661d(b)(1).

¹² 42 U.S.C. § 7661d(b)(2).

¹³ *Id.* (“The Administrator shall grant or deny such petition within 60 days after the petition is filed.”).

¹⁴ 42 U.S.C. § 7604(a)(2).

filed.”¹⁵ 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.

IV. Sierra Club Intends to File a Citizen Suit to Compel EPA to Grant or Deny the Petition to Object

Sierra Club filed a timely petition to object to the Proposed Title V Permit for the Asheville Plant on June 17, 2016. The Administrator had 60 days to grant or deny the petition to object to the Proposed Permit.¹⁶ To date, the Administrator has not granted or denied the Petition to Object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club’s Petition within the statutorily mandated time frame, 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 CAA section 304(a)(2) where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.¹⁷ Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit under CAA section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Sierra Club’s June 17, 2016 petition to object to the proposed Title V permit for the Asheville Plant. If the violation remains 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 Petition 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 this issue, please contact me directly at kmalawoffice@gmail.com or (703) 771-8394.

Sincerely,

/s Kathryn Amirpashaie

¹⁵ 42 U.S.C. § 7661d(b)(2) (emphasis added).

¹⁶ See *id.*

¹⁷ *Id.*; see also 40 C.F.R. § 54.2(a).

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT 2

Law Office of Kathryn M. Amirpashaie, PLC
406 Blue Ridge Avenue NE, Leesburg, Virginia 20176

Kathryn M. Amirpashaie

Telephone: 703.771.8394
E-Mail: kmalawoffice@gmail.com

August 25, 2016

VIA CERTIFIED MAIL

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

Dear Administrator McCarthy:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), 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 your failure to perform a nondiscretionary duty set forth under Title V of the Clean Air Act (“CAA” or “Act”). Specifically, Sierra Club intends to file suit over your failure to, within the timeframe required by Section 505(b)(2) of the Act,¹ grant or deny the petition submitted by Sierra Club seeking an objection by EPA to the Title V Operating Permit, Permit No. 01001T49 (“Proposed Permit”), proposed by the North Carolina Department of Environmental Quality, Division of Air Quality (“DAQ”) for Duke Energy Progress, LLC’s Roxboro Steam Electric Plant (“Roxboro Plant”), located in Caswell County, North Carolina. The petition was mailed to EPA on June 23, 2016, via FedEx overnight delivery. As of today, more than 60 days have passed without EPA taking action on said petition, in violation of the Administrator’s nondiscretionary duty under Section 505(b)(2) to grant or deny the petition within 60 days after it was filed.²

¹ See 42 U.S.C. § 7661d(b)(2).

² *Id.*

I. The Roxboro Plant Is 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.³ EPA delegated to North Carolina the authority to administer the CAA's Title V operating permit program within the state.⁴ North Carolina adopted laws and regulations granting the North Carolina Department of Environmental Quality the authority to fulfill this delegation, including administering the CAA's Title V permit program.⁵

The current Title V permit for the Roxboro Plant was issued on February 7, 2014. On June 26, 2016, DAQ received from Duke Energy an application for modification of Roxboro's Title V permit⁶ and, subsequently, noticed a Draft Permit for public comment, with comments due on May 4, 2016.⁷ On May 4, 2016, Sierra Club submitted timely comments on the Draft Permit, urging DAQ to establish modeling-based, numerical emission limits stringent enough to ensure that the people who live near the Roxboro Plant and who recreate on Hyco Lake would no longer be exposed to unsafe amounts of sulfur dioxide.⁸

Among other issues raised in those comments, Sierra Club criticized the Draft Permit as failing to comply with requirements under the Clean Air Act and the North Carolina state implementation plan due to the impermissibly lenient proposed numerical limits for sulfur dioxide emissions.⁹ More specifically, Sierra Club called for modeling-based numerical limits stringent enough to ensure that compliance with such limits will ensure compliance with the applicable narrative prohibition that the Plant not cause downwind exceedances of the 75-ppb standard—*i.e.*, one-hour limits of approximately 0.12 pounds of sulfur dioxide per MMBtu (an emission rate that the Plant was achieving in 2008 and 2009).¹⁰

³ 42 U.S.C. § 7661a(a).

⁴ Clean Air Act Final Full Approval of Operating Permit Programs; North Carolina, Mecklenburg County, and Western North Carolina, 66 Fed. Reg. 45,941 (Aug. 31, 2001).

⁵ See generally 15A N.C.A.C. 2Q.0501 *et seq.*

⁶ See North Carolina Division of Air Quality, Air Permit Review, Duke Energy Progress, LLC – Roxboro Plant, available at https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/permits/permit_reviews/Duke_Roxboro_rev_04012016.pdf.

⁷ See Public Notice of Intent to Issue an Air Quality Permit to Duke Energy Progress, LLC – Roxboro Steam Electric Plant, State of North Carolina Department of Environmental Quality Division of Air Quality, available at https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/permits/public_notice/Duke_Roxboro_int_04012016.pdf.

⁸ Sierra Club Comments on DAQ's Intent to Issue an Air Quality Title V Operating Permit to Duke Energy Progress for its Roxboro Steam Electric Plant, Permit No. 01001T49 (May 4, 2016).

⁹ *Id.*

¹⁰ *Id.* at 5.

II. EPA Failed to Grant or Deny Sierra Club's Petition to Object to the Proposed Permit for the Roxboro Plant within the Statutorily Required Timeframe

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."¹¹ 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.¹² Accordingly, the timing for EPA to object to the Proposed Permit for Roxboro and for the public to petition EPA to object to the Proposed Permit was as follows: EPA's 45-day review period ended on May 19, 2016;¹³ and the 60-day public petition period ended on July 18, 2016.

EPA did not object to the Roxboro Proposed Permit within the allotted 45-day time frame. Consequently, Sierra Club filed a petition to object to the Proposed Permit on June 23, 2016, within 60 days after the expiration of EPA's 45-day review period, in accordance with 42 U.S.C. § 7661d(b)(2). The Petition to EPA was properly based on issues raised during the public comment period for the Proposed Permit. Specifically, Sierra Club's Petition showed that the Proposed Permit lacks the conditions necessary to ensure compliance with applicable requirements that prohibit the exceedance of governing ambient air quality standards—*i.e.*, sufficiently stringent numerical limits on the emission of sulfur dioxide.

According to CAA section 505(b)(2) of the CAA, the Administrator was required to respond to Sierra Club's June 23, 2016 petition to object within 60 days, either granting or denying the petition.¹⁴ However, as of August 25, 2016, EPA has yet to respond to the petition to object to Roxboro's Title V Permit.

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 may 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."¹⁵ Section 505(b)(2) of the CAA expressly provides that the "Administrator shall grant or deny [a petition to object] within 60 days after the petition is

¹¹ 42 U.S.C. § 7661d(b)(1).

¹² 42 U.S.C. § 7661d(b)(2).

¹³ See NC Environmental Quality "EPA Comment Period for Duke Energy Progress, LLC - Roxboro Steam Electric Plant" (webpage), available at <http://deq.nc.gov/event/epa-comment-period-duke-energy-progress-llc-roxboro-steam-electric-plant>.

¹⁴ 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed.").

¹⁵ 42 U.S.C. § 7604(a)(2).

filed.”¹⁶ 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.

IV. Sierra Club Intends to File a Citizen Suit to Compel EPA to Grant or Deny the Petition to Object

Sierra Club filed a timely petition to object to the Proposed Title V Permit for the Roxboro Plant on June 23, 2016. The Administrator had 60 days to grant or deny the petition to object to the Proposed Permit.¹⁷ To date, the Administrator has not granted or denied the Petition to Object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club’s Petition within the statutorily mandated time frame, 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 CAA section 304(a)(2) where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.¹⁸ Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit under CAA section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Sierra Club’s June 23, 2016 petition to object to the proposed Title V permit modification for the Roxboro Plant. If the violation remains 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 Petition 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 this issue, please contact me directly at kmalawoffice@gmail.com or (703) 771-8394.

Sincerely,

/s Kathryn Amirpashaie

¹⁶ 42 U.S.C. § 7661d(b)(2) (emphasis added).

¹⁷ See *id.*

¹⁸ *Id.*; see also 40 C.F.R. § 54.2(a).

Kathryn M. Amirpashaie, Esq.
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Leesburg, VA 20176
Tel.: 703.771.8394
E-mail: kmalawoffice@gmail.com

Bridget Lee, Esq.
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009
Tel.: 202.675.6275
E-mail: bridget.lee@sierraclub.org

Counsel for the Sierra Club

cc via e-mail only:

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Michael Lee (lee.michaelg@epa.gov)
Heather McTeer Toney (mcteertoney.heather@epa.gov)
Heather Ceron (ceron.heather@epa.gov)
Carol Kemker (kemker.carol@epa.gov)
Keri Powell (powell.keri@epa.gov)

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<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.68
Total Postage and Fees	\$3.98

Sent To: Roxboro (NO1)
 Admin Gina McCarthy
 U.S. EPA
 1200 PA AVE NW
 City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

I. (a) PLAINTIFFS Sierra Club (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF 88888 (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS Gina McCarthy, in her official capacity as Administrator, United States Environmental Protection Agency COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
---	---

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Kathryn M. Amirpashaie Law Office of Kathryn M. Amirpashaie, PLC 406 Blue Ridge Ave. NE Leesburg, VA 20176 703.771.8394	ATTORNEYS (IF KNOWN)
---	----------------------

II. BASIS OF JURISDICTION <small>(PLACE AN X IN ONE BOX ONLY)</small> <input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES <small>(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</small> <table style="width:100%; border: none;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)		OR		<input type="radio"/> F. Pro Se General Civil	
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)		

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Failure to perform a mandatory duty under 42 U.S.C. 7604(a)(2) [grant or deny a petition to object to Title V CAA permit]

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	Check YES only if demanded in complaint JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 11/10/16	SIGNATURE OF ATTORNEY OF RECORD: K. Amiri
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gina McCarthy, Administrator United States Environmental Protection Agency 1200 Pennsylvania Avenue NW Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kathryn M. Amirpashaie Law Office of Kathryn M. Amirpashaie, PLC 406 Blue Ridge Ave. NE Leesburg, VA 20176

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Channing D. Phillips U.S. Attorney for the District of Columbia c/o Civil Process Clerk U.S. Attorney's Office 555 4th Street NW Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kathryn M. Amirpashaie Law Office of Kathryn M. Amirpashaie, PLC 406 Blue Ridge Ave. NE Leesburg, VA 20176

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Loretta E. Lynch U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue NW Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kathryn M. Amirpashaie Law Office of Kathryn M. Amirpashaie, PLC 406 Blue Ridge Ave. NE Leesburg, VA 20176

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: