

## Law Office of Robert Ukeiley

---

255 Mountain Meadows Rd. • Boulder, CO 80302 • tel.303-442-4033

Robert Ukeiley  
[rukeiley@igc.org](mailto:rukeiley@igc.org)

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

June 21, 2017

Scott Pruitt  
Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to perform mandatory duty to ensure adequate protection against conflicts of interest in air pollution permitting and enforcement**

Dear Administrator Pruitt,

On behalf of the Center for Biological Diversity (CBD), the Center for Environmental Health (CEH) and the Sierra Club, I am writing to inform you that CBD, CEH and Sierra Club intend to file suit against you for “a failure of the Administrator [of the United States Environmental Protection Agency (“EPA”)] to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). As explained below, EPA has failed to perform a mandatory duty to promulgate federal implementation plans to ensure that Mississippi and Alabama prohibit conflicts of interest for those who approve air pollution permits or enforces air pollution protective measures. Mississippi and Alabama are almost **40 years** late in having this requirement in place. EPA should remedy its violations of this mandatory duty to ensure that people who work for polluters are not approving air pollution permits or making decisions about enforcing pollution permits.

The Clean Air Act requires that state plans to implement the Clean Air Act require that “any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or enforcement orders” under the Clean Air Act. 42 U.S.C. § 7428(a)(1). It also requires that “any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.” 42 U.S.C. § 7428(a)(1). The Clean Air Act required states to have these common sense prohibitions on the “fox guarding the hen house” by August 7, 1978.

42 U.S.C. § 7410(a)(2)(E)(ii) requires that the state plans to implement the Clean Air Act for each new or revised national ambient air quality standard ensure that the state plan contain the anti-corruption provisions of 42 U.S.C. § 7428. On March 2, 2015 EPA issued a determination that the Mississippi state plan to implement the Clean Air Act failed to include a provision which required that at least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders. Thus, EPA disapproved Mississippi's state plan as failing to comply with 42 U.S.C. § 7410(a)(2)(E)(ii). 80 Fed. Reg. 11,131 (March 2, 2015). This rule was effective April 1, 2015.

On April 2, 2015, EPA issued a determination that Alabama's state plan failed to comply with both the requirement that least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders and the requirement that potential conflicts of interest of state boards and heads of executive agencies be adequately disclosed. 80 Fed. Reg. 17,689, 17,690 (April 2, 2015). EPA's rule, with regard to Alabama lacking the conflict of interest provision which it should have had in 1978, was effective May 4, 2015.

EPA has a duty, mandated by Congress, to issue a federal plan to implement Clean Air Act provisions no later than two years after EPA disapproves a state plan because it fails to meet Clean Air Act requirements. 42 U.S.C. § 7410(c)(1). Thus, EPA has a Congressional mandated duty to issue a federal plan to address conflicts of interest in Mississippi and Alabama by no later than May 4, 2017.

May 4, 2017 has come and gone. Yet the Trump Administration's EPA Administrator, Scott Pruitt, has not issued a federal plan to implement these Clean Air Act's conflict of interest provisions for Mississippi and Alabama. Therefore, Administrator Pruitt is in violation of his Congressional mandated duty.

Mr. Pruitt appears to have sufficient time and resources to try to repeal vital Clean Air Act protections. For example, on April 18, 2017, while Mr. Pruitt and his EPA should have been creating conflict of interest rules for Mississippi and Alabama pursuant to a mandate from Congress, instead they were telling the U.S. Court of Appeals for the District of Columbia Circuit that they want to consider rolling back or even revoking a rule that protects children and others from mercury poisoning from coal-burning power plants. *See Murray Energy Corp v. US EPA*, Case # 16-1127 (D.C. Cir) Doc.#167687, Respondent EPA's Motion to Continue Oral Argument (Apr. 18, 2017). But in our system of government, executive branch officials like Administrator Pruitt are required to do what Congress has mandated rather than voluntarily take dangerous actions to appease fossil fuel special interests.

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

Administrator Scott Pruitt

June 21, 2017

Page 3

The Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA. 94612  
Attn: Jonathan Evans  
Tel: (510) 844-7100 x318

Center for Environmental Health  
2201 Broadway, Suite 302  
Oakland, CA 94612  
Attn: Caroline Cox  
Tel: (510) 655-3900

And

Sierra Club  
2101 Webster St., Suite 1300  
Oakland, CA 94612  
Attn: Andrea Issod  
Tel: (415) 977-5544

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

CBD, CEH, Sierra Club and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will have to file or amend a complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ukeiley".

Robert Ukeiley  
Counsel for CBD, CEH and Sierra Club