

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

November 1, 2017

Scott Pruitt
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Federal 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 for Illinois

Dear Administrator Pruitt,

On behalf of the Center for Biological Diversity, the Center for Environmental Health and the Sierra Club, I am writing to inform you that the three groups 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 a federal implementation plan to ensure that Illinois prohibits conflicts of interest for those who approve air pollution permits or enforces air pollution protective measures. Illinois is 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 August 26, 2015 EPA issued a determination that the Illinois’ state plan failed to comply with both the requirement 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 and the requirement that potential conflicts of interest of state boards and heads of executive agencies be adequately

Administrator Scott Pruitt

November 1, 2017

Page 2

disclosed. 80 Fed. Reg. 51,730, 51,731 (August 26, 2015). This rule, with regard to Illinois lacking the conflict of interest provision which it should have had in 1978, was effective September 25, 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 Illinois by no later than September 25, 2017.

September 25, 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 Illinois. 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 Illinois 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:

The Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Attn: Robert Ukeiley
Tel: (720) 496-8568

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

Administrator Scott Pruitt

November 1, 2017

Page 3

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.

The Groups 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 "R. Ukeiley".

Robert Ukeiley
Senior Attorney
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