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January 31, 2018

VIA CERTIFIED MAIL

Administrator Scott Pruitt
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 Pruitt:

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 time frame required by 42 U.S.C. § 7661d(b)(2), grant or deny the petition submitted by Sierra Club seeking an objection by EPA to the significant Title V permit modification, Permit No. 561209 (hereafter “Proposed Permit”), proposed by the Tennessee Department of Environment and Conservation (“TDEC”) for Tennessee Valley Authority’s Gallatin Fossil Plant (“Gallatin”). Sierra Club’s petition was delivered via electronic filing to EPA on November 20, 2017. 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 CAA section 505(b)(2) to grant or deny the petition within 60 days after it was filed. *See* 42 U.S.C. § 7661d(b)(2).

I. Gallatin 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. 42 U.S.C. § 7661a(a). Tennessee’s construction and

operating permit programs have been approved by EPA and, accordingly, TDEC is responsible for issuing Title V permits to facilities within the State. *See* Tennessee Air Pollution Control Regulations Chapter 1200-03-09; *see also* 40 C.F.R. Part 70, Appendix A, Tennessee (a)(2) (“The State's operating permit program is hereby granted final full approval effective on November 30, 2001.”).

Gallatin’s current Title V permit was issued on June 30, 2016, and expires June 29, 2021. On June 28, 2017, TDEC issued a Public Notice of a proposed significant modification to Title V Permit No. 561209, for publishing in the Sumner County News-Examiner on July 7, 2017. Per that notice, public comments were due by August 9, 2017. On August 9, 2017, Sierra Club submitted timely comments on the Proposed Permit. In pertinent part, Sierra Club’s comments raised issue with: the permit’s unacceptably lax compliance mechanisms for opacity, particulate matter (“PM”), and fugitive dust emissions; its failure to include appropriate monitoring and reporting provisions to ensure compliance with a 2011 Consent Decree; its impermissible startup/shutdown/malfunction provisions; and its failure to set forth an appropriate short-term sulfur dioxide (“SO₂”) emissions limit.

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

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], including 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). Accordingly, the timing for EPA to object to the Proposed Permit for Gallatin and for the public to petition EPA to object to the Proposed Permit was as follows: EPA’s 45-day review period ended on November 5, 2017, and the 60-day public petition period ended on January 4, 2018. *See* EPA Region 4 Proposed Title V Permits Public Petition Deadlines for Tennessee, attached hereto as Exhibit 1.

EPA did not object to the Gallatin Proposed Permit within the allotted 45-day time frame. Consequently, Sierra Club filed a petition to object to the Proposed Permit on November 20, 2017, within 60 days of 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, the Petition raised objections to the Proposed Permit’s impermissibly lax compliance requirements for opacity and PM and its unreasonably permissive SO₂ limit.

According to CAA section 505(b)(2), the Administrator was required to respond to Sierra Club’s November 20, 2017 petition within 60 days, either granting or denying the Petition. 42

U.S.C. § 7661d(b)(2) (“The Administrator shall grant or deny such petition within 60 days after the petition is filed.”). However, as of today, EPA has yet to respond to the petition to object to the Gallatin 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.” 42 U.S.C. § 7604(a)(2). 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 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.

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 Gallatin on November 20, 2017. The Administrator had 60 days—until January 19, 2018—to grant or deny the petition to object to the Proposed Permit. *See* 42 U.S.C. § 7661d(b)(2). As of January 31, 2018, the Administrator has not yet 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. 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. 54.2(a). Accordingly, through this letter, 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 November 20, 2017 petition to object to the Proposed Title V Permit renewal for Gallatin. 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

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cc via e-mail only:

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EXHIBIT 1

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.



Tennessee Proposed Title V Permits

The following permits have been submitted to EPA Region 4 as Proposed Title V permits. While EPA has the right to a 45-day review period for all Proposed Title V permits, EPA Region 4 targets only a subset of these permits for comprehensive review. To find out which permits have been targeted for EPA Region 4 review, please contact the Region 4 staff person(s) listed at the bottom of this page.

- Permits undergoing sequential review
- Permits undergoing parallel review
- Return to [Region 4 Proposed Title V Permits and State Contacts](#)

Title V Permits Undergoing Sequential Review**

State	County	Source Name	PA Permit Number	45-Day Review Ends (sequential)	Petition Deadline
TN	Sullivan	Holston Army Ammunition Plant (Area A)	568191	9/25/2017	11/24/2017
TN	Hawkins	Holston Army Ammunition Plant (Area B)	568188	9/25/2017	11/24/2017
TN	Roane	Horsehead Corporation	562547	9/28/2017	11/27/2017
TN	Sumner	TVA - Gallatin Fossil Plant	561209	11/5/2017	1/4/2018

Title V Permits Undergoing Parallel Review**

TN - Parallel

State	County	Source Name	PA Permit Number	45-Day Review Ends (parallel)	Petition Deadline
TN	Sullivan	Eastman Chemical Company (MSOP-21)	572409	8/14/2017	11/13/2017
TN	Sullivan	Eastman Chemical Company (MSOP-13)	572389	8/3/2017	11/13/2017
TN	Roane	US Dept. Of Energy Oak Ridge	571359	8/19/2017	11/15/2017
TN	Hawkins	Holston Army Ammunition Plant (Area B)	568188	7/3/2016	11/24/2017
TN	Sullivan	Holston Army Ammunition Plant (Area A)	568191	7/4/2016	11/24/2017
TN	Roane	Horsehead Corporation	562547	2/28/2016	11/27/2017
TN	Madison	Missouri Smelting Technologies, Inc - MOST Inc.	566782	9/3/2017	12/4/2017
TN	Shelby	Archer Daniels Midland Company	0038-01TV	10/30/2017	12/19/2017

State	County	Source Name	PA Permit Number	45-Day Review Ends (parallel)	Petition Deadline
TN	Greene	Delfasco, LLC	570538	9/25/2017	12/25/2017
TN	McMinn	Resolute FP US Inc. - Calhoun Operations - 54-0012	563810	10/2/2017	1/1/2018
TN	Roane	TVA- Kingston Fossil Plant	572149	9/28/2017	1/1/2018
TN	Sumner	TVA - Gallatin Fossil Plant	561209	8/21/2017	1/4/2018
TN	Green	Plus Mark, Inc.	571746	10/12/2017	1/11/2018
TN	Blount	Arconic Inc. - North Plant	568089	10/14/2017	1/15/2018
TN	Weakley	TVA - Gleason Combustion Turbine Plant	571660	10/27/2017	1/25/2018
TN	Warren	Bridgestone Americas Tire Operations, LLC	569874	10/28/2017	1/26/2018
TN	Loudon	Tate & Lyle Ingredients Americas, LLC	561515	10/28/2017	1/26/2018

State	County	Source Name	PA Permit Number	45-Day Review Ends (parallel)	Petition Deadline
TN	Shelby	St. Jude's Children Research Hospital	00465-01TV	11/2/2017	2/2/2018
TN	Lincoln	Goodman Company, L.P.	566422	11/25/2017	2/26/2018
TN	Marshall	East Tennessee Natural Gas, LLC - Station 3206	572002	11/25/2017	2/26/2018
TN	Obion	Titan Tire Corporation	560469	12/11/2017	3/12/2018
TN	Cheatham	State Industries, Inc.	562496	12/16/2017	3/16/2018
TN	Anderson	Oak Ridge Y-12 National Security Complex	571832	12/17/2017	3/16/2018

* **Sequential Review** means the EPA 45-day review period does not begin until the 30-day public comment period ends. The deadline for the public to petition EPA is 60 days after the EPA 45-day review period ends.

** **Parallel Review** means the EPA 45-day review period runs concurrently with the 30-day public comment period and ends **no earlier** than 15 days after the end of the public comment period. The deadline for the public to petition EPA is 60 days after the EPA 45-day review period ends, calculated as if the Title V permit was under sequential review (i.e., the petition deadline will be the same regardless of whether Parallel or Sequential Review is followed.)

For information about the contents of this page please contact [Eva Land](#)

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