

**The Law Office of  
William J. Moore, III**

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*via certified U.S. Mail,  
return receipt requested,  
and e-mail ([mccarthy.gina@epa.gov](mailto:mccarthy.gina@epa.gov))*

July 6, 2016

The Honorable Gina A. McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, Mail Code: 1101A  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**Re: Sierra Club's Notice of Intent to File Citizen Suit Pursuant to Section 304 of  
Clean Air Act**

Dear Administrator McCarthy:

I am writing on behalf of the Sierra Club to notify the Administrator of Sierra Club's intent to file suit against the Administrator pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2) for the Administrator's failure to perform a nondiscretionary duty to grant or deny Sierra Club's April 11, 2016 petition filed pursuant to Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), seeking an objection to Proposed Title V Permit No. 1500101002 for the operation of PacifiCorp's Hunter Power Plant located in Castle Dale, Utah 84513 within the deadline imposed by the Act. 42 U.S.C. § 7661d(b)(2). Section 304(b)(2) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7404(b)(2), requires that citizens provide at least sixty (60) days notice before bringing suit against the Administrator for failing to perform a nondiscretionary duty. Accordingly, Sierra Club provides notice that it intends to sue the Administrator for the failure to grant or deny Sierra Club's above-referenced petition within the required sixty (60) day period after submission to EPA as mandated by Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2).

**A. Relevant Procedural History**

The first Title V permit for PacifiCorp's Hunter Plant was originally issued on January 7, 1998, and that permit was designated to expire January 7, 2003. PacifiCorp submitted a Title V permit renewal application in December of 2001, but the Utah Division of Air Quality (UDAQ) did not issue a draft Title V renewal for public comment until September 15, 2015, after Sierra

Club filed a mandamus action in state court to force UDAQ to issue the renewal.<sup>1</sup>

On November 13, 2015, Sierra Club submitted timely comments<sup>2</sup> to UDAQ relating to the PacifiCorp-Hunter draft Title V renewal permit (Permit Number: 1500101002-Draft). On January 11, 2016, UDAQ issued a brief “Response to Public Comments” memorandum and submitted the Proposed Title V Permit No. 1500101002 for the PacifiCorp Hunter Power Plant to EPA for its forty-five (45) day review. EPA’s forty-five (45) day review period concluded on February 25, 2016, with EPA failing to issue any objection to the Draft Permit. On March 3, 2016, UDAQ issued the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002). On April 11, 2016, Sierra Club filed a timely petition with the Administrator seeking an objection to the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002). This petition was filed well within the sixty (60) day period following the expiration of EPA’s forty-five (45) day review, which did not expire until April 25, 2016.

**B. Failure to Perform a Nondiscretionary Duty to Grant or Deny Sierra Club’s April 11, 2016 Petition to Object to the Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002) Issued by the Utah Division of Air Quality**

Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2), provides that “[i]f the Administrator does not object in writing to the issuance of a [Title V] permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. . . . [and *t*]he Administrator shall grant or deny such petition within 60 days after the petition is filed.” (emphasis added). Accordingly, since Sierra Club filed its petition regarding Title V Operating Permit for the PacifiCorp-Hunter Power Plant (Permit No. 1500101002) on April 11, 2016, the Administrator was required to act to grant or deny that petition within sixty (60) days (or by June 10, 2016). However, the Administrator has failed to take any action regarding that petition to date, which constitutes a failure to perform a mandatory, non-discretionary duty to take final action on the Title V petition with the Act’s prescribed time period. *See generally New York Pub. Interest Research Group v. Whitman*, 214 F. Supp. 2d 1, 1-2 (D.D.C. 2002). Accordingly, the Administrator is in violation of Clean Air Act Section 505(b)(2), 42 U.S.C. § 7661d(b)(2), and has violated that provision on every day since June 10, 2016, when the Administrator failed to comply with the Clean Air Act’s Section 505(b)(2) deadline to take action on Sierra Club’s Title V petition.

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<sup>1</sup> *See Sierra Club vs. Bryce Bird, et al.*, Civil Case No. 150905990 (3rd District Utah) (filed Aug. 21, 2015).

<sup>2</sup> Stipulated Order Regarding Deadline to Answer the Complaint at ¶ 2, *Sierra Club v. Bryce Bird, et al.*, (filed Oct. 15, 2015) (public comment period on Hunter Title V renewal permit deadline November 13, 2015).

**C. Notice of Intent to Sue**

Please take notice that if this violation remains unresolved after expiration of the sixty (60) day period from the date of this notice to sue, Sierra Club intends to file suit against the Administrator in federal court for the failure to act in accordance with, and to fulfill the duty created by, Section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2).

**D. Sierra Club's Contact Information**


As required by 40 C.F.R. § 54.3, the Sierra Club's address is Sierra Club, 2101 Webster Street, Suite 1300, Oakland, California 94612.

**E. Sierra Club's Counsel**

The Sierra Club has retained the undersigned as legal counsel to represent it. Counsel's contact information is as follows: William J. Moore, III, William J. Moore, III, P.A., 1648 Osceola Street, Jacksonville, Florida 32204, telephone (904) 685-2172, e-mail [wmoore@wjmlaw.net](mailto:wmoore@wjmlaw.net).

This notice provides information sufficient for the Administrator to determine that she have failed to perform a mandatory act or duty. If, however, you or anyone within your agency has any questions relating to this notice, please feel free to give me a call to discuss them.

Sincerely,

  
William J. Moore, III

cc: Loretta E. Lynch  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Shaun McGrath, Regional Administrator  
U.S. EPA Region 8  
1595 Wynkoop Street  
Mail Code: 8RA  
Denver, CO 80202-1129