



CHESAPEAKE BAY FOUNDATION

Saving a National Treasure

RECEIVED
2017 JAN 18 PM 4:45

OFFICE OF THE
EXECUTIVE SECRETARIAT

OFFICERS

HARRY T. LESTER
CHAIR
JANE P. BATTEN
VICE CHAIR
CAROLYN GROOBIEY
VICE CHAIR
WILLIAM C. BAKER
PRESIDENT
KENNETH A. TROSHINSKY
TREASURER
MARY TOD WINCHESTER
SECRETARY

TRUSTEES

SUSAN APLIN
W. RUSSELL G. BYERS, JR.
D. KEITH CAMPBELL
MICHAEL J. CHIARAMONTE
CATHERINE CULLEN
THOMAS M. DAVIS III
LAURI FITZ PEGADO
HARRY S. GRUNER
ANN FRITZ HACKETT
MICHAEL J. HANLEY
CHRISTIAN HODGES
JEANNE TRIMBLE HOFFMAN
MARK J. HOURIGAN
BURKS B. LAPHAM
KATIE Z. LEAVY
BYRON F. MARCHANT
PAMELA MURPHY
ELIZABETH OLIVER FARROW
MARK S. ORDAN
ARNOLD I. RICHMAN
ANNE B. SHUMADINE
J. SEDWICK SOLLERS III
BISHOP EUGENE TAYLOR SUTTON
SANDRA TAYLOR
SUSAN P. WILMERDING
PETER L. WOICKE

HONORARY TRUSTEES

DONALD F. BOESCH, Ph.D.
LOUISA C. DUEMLING
RICHARD L. FRANYO
ALAN R. GRIFFITH
C. A. PORTER HOPKINS
ROBERT A. KINSLEY
T. GAYLON LAYFIELD III
H.F. LENFEST
M. LEE MARSTON
WAYNE A. MILLS
MARIE W. RIDDER
JAMES E. ROGERS
RUSSELL C. SCOTT
TRUMAN T. SEMANS
SIMON SIDAMON ERISTOFF
JENNIFER STANLEY
THOMAS H. STONER
AILEEN BOWDOIN TRAIN
ALAN L. WURTZEL

January 11, 2018

Via Certified Mail – Return Receipt Requested

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Notice of Intent to Sue Pursuant to the Clean Air Act for Failure to Perform a Nondiscretionary Duty to Act on Delaware's Clean Air Act Section 126 Petition Regarding the Conemaugh Generating Station

Dear Administrator Pruitt:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the Chesapeake Bay Foundation, Inc. ("CBF") intends to file a citizen suit against the United States Environmental Protection Agency ("EPA") and the Administrator of the EPA for failure to perform a nondiscretionary duty as mandated by Section 126 of the Clean Air Act ("CAA"), 42 U.S.C. § 7426(b). Specifically, EPA has failed to hold a public hearing and either grant or deny the Section 126 Petition filed by the Delaware Department of Natural Resources and Environmental Control ("DNREC") regarding air pollution emitted by the Conemaugh Generating Station located in Indiana County, Pennsylvania.

On November 28, 2016, DNREC petitioned EPA to make a finding that the Conemaugh Generating Station is emitting air pollutants that significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 8-hour ozone National Ambient Air Quality Standards ("NAAQS") in Delaware. Pursuant to Section 126 of the CAA, "[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator *shall* make such a finding or deny the petition." 42 U.S.C. § 7426(b) (emphasis added).

On January 23, 2017, EPA granted itself a six-month extension to hold a public notice-and-comment process and respond to Delaware's 126 Petition. *See* 82 Fed. Reg. 7695 (Jan. 23, 2017). As of the date of this notice letter, both the sixty days and the six-month extension have expired and EPA has not granted or denied Delaware's 126 Petition, nor held a public hearing. EPA has therefore failed to perform its mandatory, nondiscretionary duty as required by CAA Section 126. 42 U.S.C. § 7426(b).

The citizen suit provision 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). The CAA requires citizens to provide the Administrator with sixty days'

*CBF Notice of Intent to Sue EPA
January 11, 2018*

notice prior to commencing an action under the citizen suit provision. 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R. § 54.2(a).

The Chesapeake Bay Foundation hereby notifies the EPA Administrator that, absent corrective action by EPA within the sixty-day notice period, CBF intends to file a citizen suit against EPA and the Administrator for failure to perform the nondiscretionary duty mandated by CAA Section 126. 42 U.S.C. § 7426(b). Pursuant to 40 C.F.R. § 54.3(a), the Chesapeake Bay Foundation's address is 6 Herndon Avenue, Annapolis, Maryland, 21403. CBF will seek injunctive and declaratory relief, the costs of litigation, and other appropriate relief as allowed.

If you have any questions concerning this notice letter or if you believe this notice is incorrect in any respect, please contact the undersigned counsel. During the notice period, we are available to discuss this matter with you.

Sincerely,



Jon A. Mueller
Chesapeake Bay Foundation
6 Herndon Ave.
Annapolis, MD 21403
Telephone: (410) 268-8816
Email: jmueller@cbf.org
Counsel for the Chesapeake Bay Foundation, Inc.

cc via certified mail:

Jeff Sessions
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

cc via first class mail:

Cosmo Servidio
Regional Administrator
U.S. EPA Region 3
1650 Arch Street
Mail Code: 3RA00
Philadelphia, PA 19103-2029

Matthew P. Denn
Attorney General
Delaware Department of Justice
New Castle County
820 North French Street
Wilmington, DE 19801



CHESAPEAKE BAY FOUNDATION

Saving a National Treasure

c/o Arrel Solaski

PHILIP MERRILL ENVIRONMENTAL CENTER

6 HERNDON AVENUE | ANNAPOLIS, MD 21403

CERTIFIED MAIL®



7015 3430 0000 7333 1260



Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

JAN 17 2018

RETURN RECEIPT
REQUESTED

RETURN RECEIPT
REQUESTED

