



1000 Vermont Avenue, NW  
Suite 1100  
Washington, DC 20005  
Main: 202-296-8800  
Fax: 202-296-8822  
[www.environmentalintegrity.org](http://www.environmentalintegrity.org)

February 1, 2016

*Via Certified Mail*

Ms. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

***Re: Notice of Intent to Sue for Unreasonable Delay in Responding to a  
Petition for the Regulation of Ammonia as a Criteria Pollutant***

Dear Administrator McCarthy,

We are writing on behalf of Iowa Citizens for Community Improvement, Clean Wisconsin, Center for Food Safety, The Humane Society of the United States, the Association of Irrigated Residents, Food & Water Watch, and the Environmental Integrity Project (“Plaintiffs”) to provide you with notice of our intent to file suit against the U.S. Environmental Protection Agency (EPA) and you, in your official capacity as Administrator of EPA, for unreasonable delay in responding to our April 5, 2011 “Petition for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109” (“Petition,” Attachment A).

Our 2011 Petition specifically requested that EPA use its authority under the federal Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*, to find that ammonia endangers public health and welfare, to designate ammonia as a CAA “criteria pollutant” under CAA § 108, and to establish National Ambient Air Quality Standards (NAAQS) for ammonia in the ambient air to protect public health and welfare with an adequate margin of safety under CAA § 109. Attachment A, at 1.

As explained in the Petition, ammonia gas harms public health and welfare in numerous ways, including directly causing acute and chronic respiratory health impacts; mixing with other pollutants to form fine particulate matter, which causes respiratory symptoms, decreased lung function, aggravated asthma symptoms, heart disease, and

premature death; decreasing quality of life in rural communities; polluting water and soil through deposition; creating regional haze that reduces visibility in parks and other scenic places; and decreasing property values. Large livestock operations are the leading source of ammonia gas emissions in the U.S.

Despite the significant and growing body of scientific research demonstrating that ambient ammonia pollution emitted by animal feeding operations (AFOs), concentrated animal feeding operations (CAFOs), and other sources cause and contribute to air pollution that endangers public health and welfare, EPA has not acted to directly regulate this pollutant under the CAA, and, as a result, thousands of sources continue to emit ammonia pollution unabated. CAFOs are not currently required to meet any testing, performance, or emission standards under the CAA.

Nearly five years have passed since EPA received the 2011 Petition. EPA has not formally responded or taken any meaningful action on the Petition. Records obtained in May 2014 pursuant to a July 2013 Freedom of Information Act request indicate that EPA is not actively considering the Petition or moving toward a final determination on the Petition, but rather has yet to take the matter under any meaningful consideration. *See* Attachment B.

On January 28, 2015, Plaintiffs filed a complaint under the Administrative Procedure Act to remedy EPA's unreasonable delay in responding to the Petition. *Env'tl. Integrity Project v. United States Env'tl. Prot. Agency*, No. 15-0139 (ABJ), 2015 WL 7737307, at \*1 (D.D.C. Dec. 1, 2015). The Court dismissed the case after finding that the CAA's citizen suit provision "provides the cause of action" for an unreasonable delay claim, that the citizen suit provision requires plaintiffs to notify the EPA 180 days before filing suit, and that Plaintiffs had not provided notice. *Id.* at \*10.

Accordingly, Plaintiffs are hereby providing notice of their intent to sue to remedy EPA's unreasonable delay under the CAA.<sup>1</sup> Section 304 of the CAA provides that the "district courts of the United States shall have jurisdiction to compel (consistent

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<sup>1</sup> Plaintiffs do not concede that an Administrative Procedure Act claim is improper, nor do they waive the right to bring suit under both the CAA and the Administrative Procedure Act in the future. Plaintiffs The Humane Society of the United States, the Association of Irrigated Residents, Center for Food Safety, and the Environmental Integrity Project are parties to another unreasonable delay suit involving a separate rulemaking petition submitted to EPA, which seeks the listing and regulation of CAFOs as stationary sources under the CAA. *See Humane Soc'y of the United States v. United States Env'tl. Prot. Agency*, No. 15-141 (D.D.C. filed Jan. 28, 2015). This letter also does not in any way concede that the Administrative Procedure Act claim regarding that petition is improper.

with paragraph (2) of this subsection) agency action unreasonably delayed,”<sup>2</sup> and requires that citizen litigants provide notice to EPA 180 days before commencing an action for unreasonable delay. 42 U.S.C. § 7604(a). Under § 304(a), this letter serves to notify you that Plaintiffs intend to file suit against you in federal district court any time beginning 180 days from the postmarked date of this letter to cure the unreasonable delay discussed above. *See* 40 C.F.R. § 54.2 (a), (d).

Plaintiffs include the following organizations:

Plaintiff Environmental Integrity Project (EIP) is a national nonprofit organization headquartered in Washington, D.C. EIP is dedicated to advocating for more effective enforcement of environmental laws, including the CAA. EIP advocates for application of clean air laws to AFOs nationwide, because these operations endanger public health and welfare with their unrestricted pollution emissions. EIP also works to gather and analyze pollution data and provide this information to the public, and has been actively engaged in EPA’s ongoing process, now stalled, to develop accurate tools to estimate AFO air pollution.

Plaintiff Center for Food Safety (CFS) is a national nonprofit membership organization dedicated to protecting human health and the environment by curbing the proliferation of harmful food production technologies, such as AFOs, and instead promoting sustainable agriculture. CFS represents over 700,000 farmer and consumer members throughout the country who support safe, sustainable agriculture. CFS’s mission is to protect the public’s right to know how their food is produced. CFS utilizes regulatory actions, citizen engagement, legislation, and when necessary, litigation, to promote transparency and accountability in the factory farm industry. CFS believes that EPA must regulate ammonia and other pollutants from factory farms in order to protect human health and the environment and create a healthier, safer food supply. CFS is located at 303 Sacramento St., 2<sup>nd</sup> Floor, San Francisco, CA 94111, and can be reached at (415) 826-2770.

Plaintiff The Humane Society of the United States (HSUS) is a nonprofit organization headquartered in the District of Columbia and incorporated in the State of Delaware. HSUS is the largest animal protection organization in the United States, representing millions of members and constituents. Since its establishment in 1954, HSUS has advocated against the inhumane treatment of animals raised for food. To that end, HSUS actively advocates for better laws to protect animals and the environment;

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<sup>2</sup> Paragraph (2) provides that any person may commence a civil action “against the Administrator where there is an alleged 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(a)(2).

conducts mission-specific campaigns; and advocates against practices that injure, harass or otherwise harm animals, including farm animals. Specifically, with its mission to create a humane and sustainable world for all animals—including people and communities—HSUS endeavors to ensure that its members are aware of and not injured by hazardous substances, including ammonia, released by AFOs. HSUS has actively campaigned to regulate air pollutants emitted by AFOs through efforts with the EPA, in Congress, and in the Courts.

Plaintiff Iowa Citizens for Community Improvement (ICCI) is a nonprofit organization that works to empower and unite grassroots Iowans of all ethnic backgrounds to take control of their communities; involve them in identifying problems and needs and in taking action to address them; and be a vehicle for social, economic, and environmental justice. ICCI's thousands of members work to protect rural communities from factory farm air and water pollution at the state and national level. Many ICCI members live, farm, and recreate in rural Iowa, and are directly and adversely affected by AFO ammonia emissions. ICCI is located at 2001 Forest Avenue, Des Moines, Iowa 50311, and can be reached at 515-282-0484.

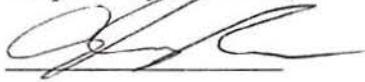
Plaintiff Association of Irrigated Residents (AIR) is a California non-profit corporation that advocates for air quality and environmental health in the San Joaquin Valley, with members living in Kern, Kings, Tulare, Fresno, and Stanislaus counties. Members of AIR live, raise their families, work, and recreate in the San Joaquin Valley. They are adversely affected by exposure to levels of air pollution that exceed the health-based PM<sub>2.5</sub> air quality standards. The adverse effects of such pollution include actual or threatened harm to their health, their families' health, their professional, educational, and economic interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley. On the basis of air quality issues, AIR has fought the growth of local dairy CAFOs in the San Joaquin Valley. For many years, AIR has requested that the San Joaquin Valley Air Pollution Control District regulate ammonia as a precursor to PM<sub>2.5</sub> because it forms ammonium nitrate in the winter. Wintertime PM<sub>2.5</sub> levels in Kern County, at the southern end of the San Joaquin Valley, are the worst in the nation. AIR is located at 29389 Fresno Avenue, Shafter, CA 93263, and can be reached at 661-910-7734.

Plaintiff Clean Wisconsin protects Wisconsin's clean water and air and advocates for clean energy by being an effective voice in the state legislature and by holding elected officials and polluters accountable. Clean Wisconsin's mission is to protect the special places that make Wisconsin such a wonderful place to live, work and play. Clean Wisconsin is located at 634 W. Main St. #300, Madison, WI 53703, and can be reached at 608-251-7020.

Plaintiff Food and Water Watch (FWW) is a national, non-profit consumer advocacy organization with its headquarters in Washington, D.C. and offices throughout the United States. FWW works to ensure safe food and clean water, advocating for safe, wholesome food produced in a humane and sustainable manner and the public, rather than private, control of water resources. For several years, FWW has advocated for stronger regulation of pollution from industrial livestock operations.

If you have any questions regarding this notice, or would like to discuss this matter further, please contact Abel Russ at the number or email address below.

Respectfully submitted,



Abel Russ  
Patton Dycus  
Environmental Integrity Project  
1000 Vermont Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-296-8800  
[aruss@environmentalintegrity.org](mailto:aruss@environmentalintegrity.org)  
[pdycus@environmentalintegrity.org](mailto:pdycus@environmentalintegrity.org)  
*Attorneys for Plaintiffs Environmental Integrity Project, Iowa Citizens for Community Improvement, and Clean Wisconsin*

Cristina Stella  
Center for Food Safety  
303 Sacramento Street, Second Floor  
San Francisco, CA 94111  
415-826-2770 x303  
[cstella@centerforfoodsafety.org](mailto:cstella@centerforfoodsafety.org)  
*Attorney for Plaintiff Center for Food Safety*

Hannah Connor  
Hallie Templeton  
Peter Brandt  
The Humane Society of the United States  
2100 L Street NW  
Washington, DC 20037  
202-676-2354  
[hconnor@humanesociety.org](mailto:hconnor@humanesociety.org)  
[h templeton@humanesociety.org](mailto:h templeton@humanesociety.org)  
[pbrandt@humanesociety.org](mailto:pbrandt@humanesociety.org)  
*Attorneys for The Humane Society of the United States*

Brent Newell  
Center on Race, Poverty & the Environment  
1999 Harrison Street, Suite 650  
Oakland, CA 94612  
415-346-4179 x304  
[bnewell@crpe-ej.org](mailto:bnewell@crpe-ej.org)  
*Attorney for the Association of Irrigated Residents*

Tarah Heinzen  
Food & Water Watch  
1616 P St. NW, Suite 300  
Washington, DC 20036  
202-683-2457  
[theinzen@fwwatch.org](mailto:theinzen@fwwatch.org)  
*Attorney for Food & Water Watch*

