

# LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

April 7, 2008

*Via Certified Mail (Return Receipt Requested)*

Administrator Stephen L. Johnson  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: Sixty Day Notice of Intent to File Clean Air Act Citizen Suit Based On Failure of EPA Administrator to Take Timely Final Action Regarding Petition to Object to Hawaii Covered Source Permit No. 0625-01-C (Title V)

Dear Administrator Johnson:

This office represents Susie Collins and Scott Enright, Petitioners in a matter before you concerning the Tradewinds Forestry Products ("Tradewinds") Title V operating permit. The Tradewinds permit, as proposed by the State of Hawaii as Covered Source Permit No. 0625-01-C, would result in excessive amounts of air pollutants, including hazardous air pollutants, in violation of the Clean Air Act and threatening to cause degradation of air quality in the community of O'Okala and impart adverse health effects upon its residents, including Petitioners.

Pursuant to Section 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2) and in accordance with 40 C.F.R. Part 54, Petitioners hereby submit this Notice of Intent to Sue. Assuming no further action is forthcoming, sixty days after the date of this letter, we intend to file suit in U.S. District Court to redress your failure to take timely final action in response to the Petition submitted by this office concerning the Tradewinds Title V Permit, CSP 0625-01-C.

Petitioners and other members of the public commented on Hawaii's proposed action on CSP 0625-01-C, raising a number of issues concerning the adequacy of the analysis and the technical information and assumptions employed in calculating the emissions associated with the proposed activity. In particular, the petition observed that Tradewinds had proposed, and Hawaii apparently agreed, to use a lower emissions factor to calculate the air pollution emitted under said permit, when in fact substantial evidence indicated that the fuel source would cause emissions considerably greater than calculated under the permit application and thereby exceed the threshold and be considered a major source due to higher hazardous air pollutant emissions. Section 505(b)(1) of the Clean Air Act and 40 Code of Federal Regulations § 70.8(d) require EPA to review this draft permit to determine if the permit contains provisions that are not in compliance with the Clean Air Act, and if EPA determines the permit is not in compliance, the Administrator shall object in writing within 45 days of receiving the proposed permit. If EPA

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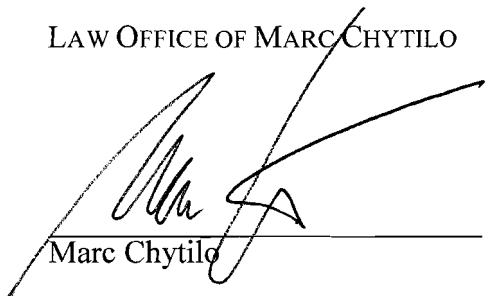
does not object in the 45 day period, any person may petition the Administrator, asking the Administrator to object to the permit. The petition must be filed within 60 days of the end of the 45 day review period, and once filed, the Administrator must grant or deny such a petition within 60 days. § 505(b)(2).

When the Administrator took no action on the Tradewinds CSP 0625-01-C draft Title V permit within the 45 day review period, Petitioners timely submitted on February 4, 2008 a petition under § 505(b)(2) asking the Administrator to review the permit and grant their petition. The Administrator has taken no action by the 60<sup>th</sup> day following such submittal, and as such, has failed to perform a nondiscretionary duty imposed by the Clean Air Act. This letter formally notices the Administrator of Petitioners' demand for timely action on the petition for review of CSP 0625-02-C and the intention to file legal action to enforce the Administrator's obligations in this regard.

This Notice is submitted on behalf of: 1) Susie Collins, Post Office Box 42, O'okala, Hawaii, 96774; and 2) Scott Enright, Post Office Box 42, O'okala, Hawaii, 96774. The full name and address of the person giving Notice is Marc Chytilo, Law Office of Marc Chytilo, Post Office Box 92233, Santa Barbara, California 93190, 805.682-0585, fax 805.682-2379, Email [airlaw5@cox.net](mailto:airlaw5@cox.net).

Sincerely,

LAW OFFICE OF MARC CHYTILO



Marc Chytilo