



EARTHJUSTICE

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**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

July 10, 2003

Acting Administrator,  
Environmental Protection Agency  
1101A EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

RE: Notice of Citizen Suit Concerning Clean Air Act Deadline

Dear Acting Administrator:

This is a notice of "a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2). This notice is given pursuant to section 304(b)(2), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54 as a prerequisite to bringing a civil action. The organizations giving this notice are Sierra Club, 85 Second Street, 2d Floor, San Francisco, California 94105 ((415) 977-5500); and, United States Public Interest Research Group, 218 D Street, SE, Washington, D.C. 20003 (202) 546-9707.

EPA's Clean Air Act regulations for emissions of hazardous air pollutants from mobile sources provide that "[n]o later than July 1, 2003, the Administrator shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are appropriate pursuant to section 202(l)(2) of the [Clean Air] Act." 40 C.F.R. § 80.1045 (emphasis added). In the preamble to those regulations, EPA explained that

EPA is including a regulatory provision in section 80.825 that establishes a schedule for a future rulemaking to promulgate any additional vehicle and fuel controls that EPA determines are appropriate under section [Clean Air Act] 202(l)(2). This rulemaking will reassess the standards in place at the time using the information collected through the Technical Analysis Plan ... and other activities related to mobile sources and air toxics. ... EPA commits to issue a proposed rule by July 1, 2003, and to take final action on the proposal by July 1, 2004.

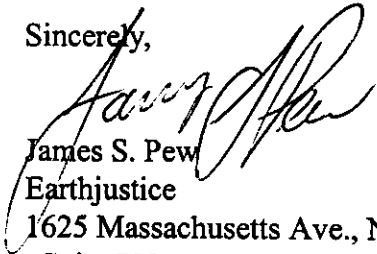
66 Fed. Reg. 17230, 17259 (March 29, 2001) (emphasis added).<sup>1</sup>

<sup>1</sup> EPA's reference to 40 C.F.R. § 80.825 was erroneous. The agency's obligation to propose new regulations by July 1, 2003 appears in 40 C.F.R. § 80.1045.

Although the July 1, 2003 deadline has passed, you have not issued the proposal required by 40 C.F.R. § 80.1045. Accordingly, you have failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 304(a)(2).

**60-Day Notice.** Under section 304 of the Clean Air Act, 42 U.S.C. § 7604, Sierra Club and United State Public Interest Research Group may commence a citizen suit to compel you to perform any or all of the above duties at any time beginning sixty days from the postmark date of this letter. 40 C.F.R. § 54.2(d).

I am acting as attorney for Sierra Club and United States Public Interest Research Group in this matter. Please address any communications to me at the address and telephone number set forth below.

Sincerely,  
  
James S. Pew  
Earthjustice  
1625 Massachusetts Ave., NW,  
Suite 702  
Washington, D.C. 20036-2212  
(202) 667-4500