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State Implementation Plans/Clean Air Act: Center for Biological Diversity (and other Groups) Notice of Intent to Sue U.S. Environmental Protection Agency in Regards to Mississippi/Alabama Conflict of Interest Measures

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The Center for Biological Diversity along with the Center for Environmental Health and Sierra Club (collectively "CBD") sent a June 21st Notice of Intent to Sue ("Notice") to the United States Environmental Protection Agency ("EPA") alleging a failure to ensure adequate protection against conflicts of interest in air pollution permitting and enforcement.

CBD alleges that EPA has failed to perform a mandatory duty to promulgate federal implementation plans to ensure that Mississippi and Alabama prohibit conflicts of interest for those who approve air pollution permits or enforce air pollution protective measures.

The Notice states that the Clean Air Act requires that state plans provide that "any board or body which approves permits or enforcement orders under this chapter shall have at least a majority members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or enforcement orders" under the Clean Air Act. Citing 40 U.S.C. § 7428(a)(1). It also states that the Clean Air Act requires that "any potential conflicts of interest by members of such board or body or at the head of an executive agency with similar powers be adequately disclosed." Citing 42 U.S.C. § 7428(a)(1). The cited provisions were stated to have been required to be in place by August 7, 1978.

EPA is stated to have issued on March 2nd, 2015 a determination that the Mississippi state plan to implement the Clean Air Act failed to include a provision which required that at least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement orders. Citing 80 Fed. Reg. 11,131.

The federal agency was also stated to have issued a determination on April 2, 2015 that Alabama's state plan failed to comply with both the requirement that at least a majority of members of any state board or body which issues air pollution permits or enforces air pollution restrictions do not derive any significant portion of their income from companies or people subject to the air pollution permits or enforcement

orders and the requirement that potential conflicts of interest of state boards and heads of executive agencies be adequately disclosed. Citing 80 Fed. Reg. 17,689.

CBD's Notice states that EPA has a mandated duty to issue a federal plan to address conflicts of interest in Mississippi and Alabama by no later than May 4, 2017.

[A copy of the Notice can be downloaded here.](#)