

COUNTY OF SANTA BARBARA

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October 18, 2007

Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D. C. 20460

BY CERTIFIED MAIL

Re: Notice of Intent to File Clean Air Act Citizen Suit; Failure to Regulate Category 3
Marine Vessels as Required by CAA § 213(a)(3) and 40 C.F.R. 98.4(a)(2)(ii).

Dear Administrator Johnson,

The Santa Barbara County Air Pollution Control District submits this letter to notify you pursuant to Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), that it intends to sue the U.S. Environmental Protection Agency ("EPA") for EPA's failure to comply with a nondiscretionary duty, as set forward in Section 213(a)(3) of the Act, 42 U.S.C. § 7547(a)(3). Specifically, EPA has failed to comply with the mandatory deadline for regulating Category 3 marine vessel engines as set forth in 40 C.F.R. §98.4(a)(2)(ii) requiring such regulations be promulgated by April 27, 2007.

The District is the air pollution control district responsible for air pollution control in the County of Santa Barbara in order to attain and maintain federal and state air quality standards. Although the County does not have a port, it does have 130 miles of coastline that are heavily traveled (over 7,000 transits in 2005) by ocean-going vessels mostly heading to or from the ports of Long Beach, Los Angeles, or Hueneme. Given the location of the Santa Barbara Channels Islands, large ships are often traveling and emitting pollutants just ten to fifteen miles off the coast. These ships are significant emissions sources, growing due to increasing trade with Asia. Currently, ocean-going-vessels emit over 45 percent of the emissions of oxides of nitrogen ("NO_x") in Santa Barbara County. If left uncontrolled, the District projects that marine vessels will contribute almost 75 percent of the County's NO_x pollution by the year 2020.

In 1990, Congress adopted amendments to the Clean Air Act directing EPA to promulgate regulations for categories of nonroad engines it determined were significant contributors to ozone or carbon monoxide levels in more than one nonattainment area. 42 U.S.C. § 7547(a)(2) & (3). These regulations were to be adopted by November 1992. *Ibid.* The regulations were to achieve “the greatest degree of emission reduction achievable through application of technology which the Administrator determines will be available . . .” EPA completed the study in 1991 and made the finding of significance in 1994. The study identified Category 3 marine diesel engines as engines that should be regulated. Category 3 marine diesel engines are some of the largest engines in the world, with greater than 30 liters displacement per cylinder.

EPA adopted a rule in 1999 that regulated domestic Category 1 and 2 marine engines; however, EPA declined to adopt standards for any foreign flagged vessels operating in U.S. waters or Category 3 marine vessel emissions. 64 Fed. Reg. 73,300, Dec. 29, 1999. EPA stated it was deferring to the standards adopted by the International Marine Organization (“IMO”). Following a law suit by the Earth Island Institute, an environmental group, EPA agreed to a settlement that resulted in another rule being issued on February 28, 2003. At that time, EPA adopted a two step approach. First it adopted Tier 1 standards that tracked the previously adopted IMO standards. Second, EPA set a deadline of April 27, 2007 for adopting a rule imposing longer term “Tier 2 standards.” EPA acknowledged that manufacturers were already meeting the IMO standards and that the 2003 rule required no additional emission standards beyond those already achieved in practice. EPA stated, however, its rule made the IMO standards enforceable as a matter of U.S. law. Regarding the delay in new standards, EPA concluded delay was warranted because this would give manufacturers additional time to test and study new technologies and that by 2007 EPA would be in a better position “to make a technology-based decision that maximizes emission reductions.” 68 Fed. Reg. at 9749.

EPA’s 2003 rule withstood a challenge by an environmental group in *Bluewater Network v. Environmental Protection Agency* 372 F.3d 404 (D.C. Cir. 2004). The Court concluded that EPA’s decision to delay on Tier 2 standards was reasonable because Section 213 of the Clean Air Act intended that EPA consider many factors other than just technology, included costs, lead time, safety, noise and energy. *Ibid.* at p. 411. The Court also stated that “perhaps most importantly, the EPA has committed to incorporating the new technologies into stricter emissions standards in the 2007 rulemaking.” *Ibid.* at p. 412.

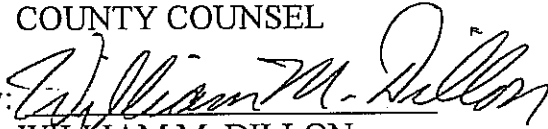
In April 23, 2007, EPA signed off on a “direct final” rule that would yet again extend the deadline for regulating Category 3 marine vessels to December 17, 2009. Many people filed comments objecting to the extension, including the District, which

filed comments on May 8, 2007. EPA withdrew the rule and stated it would institute formal rulemaking.

Since withdrawal of the direct final rule, EPA has failed to take any further steps to promulgate a rule that adopts emission standards for Category 3 marine diesel engines. EPA has a duty to act under Section 213 of the Act. Further, the Act provides that any deadline EPA sets for itself in a federal rule becomes enforceable as if the deadline were in the Act itself. *Sierra Club v. Leavitt*, 355 F.Supp. 544 (D.D.Cir. 2005.)

Under Section 213 of the Act and 40 C.F.R. §98.4(a)(2)(ii), EPA has a nondiscretionary duty to regulate Category 3 marine vessels. Further, EPA cannot adequately fulfill its duty of regulating air pollution from these vessels unless EPA regulates foreign flagged vessels operating in U.S. waters. Should EPA fail to act within 60 days of receipt of this letter, the District intends to file a citizen's suit pursuant to Section 304 of the Clean Air Act for EPA's failure to act.

Sincerely,
STEPHEN SHANE STARK
COUNTY COUNSEL

By: 
WILLIAM M. DILLON
Deputy County Counsel

Attorneys on behalf of the Santa Barbara
County Air Pollution Control District