



1 Thomas Circle, Suite 900
Washington, DC 20005
main: 202-296-8800
fax: 202-296-8822
www.environmentalintegrity.org

September 30, 2015

Via Certified Mail

Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20406
McCarthy.Gina@epa.gov

Re: Notice of Intent to Sue for Violations of Nondiscretionary Duties to Review and Revise Emission Factors under Section 130 of the Clean Air Act Every Three Years

Dear Administrator McCarthy,

We are writing on behalf of Air Alliance Houston, Texas Environmental Justice Advocacy Services (“TEJAS”), Community In-power and Development Association, Inc. (“CIDA”), and Louisiana Bucket Brigade (“Plaintiffs”) to provide you with notice of their intent to file suit against Administrator McCarthy, in her official capacity as Administrator of the U.S. Environmental Protection Agency (EPA), for failure to perform nondiscretionary duties under section 130 of the Clean Air Act (CAA), 42 U.S.C. § 7430, which requires the Administrator to review and, if necessary, revise emission factors for oil and gas flares; including, but not limited to, those incorporated in EPA’s WebFire database (the Agency’s online emission factor repository, retrieval, and development tool) and AP-42 at Chapter 5.3.

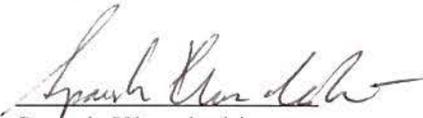
Under section 130 of the CAA, 42 U.S.C. § 7430, the Administrator has a mandatory duty to review and, if necessary, revise the emission factors used to estimate emissions of volatile organic compounds (VOCs) from emission sources at least once every three years. This nondiscretionary duty to “review and, if necessary, revise” emission factors under section 130 includes a duty to make a determination – yes or no – as to whether revision of the emission factor is appropriate.¹ The Administrator has failed to perform the nondiscretionary duty to review and, if necessary, revise, at least once every three years, emission factors used to estimate emissions of VOCs from flares at oil and gas facilities.

¹ See *Env’tl Def. Fund v. Thomas*, 870 F.2d 892, 894-95 (2d Cir. 1989) (holding that “the Administrator has a non-discretionary duty to make *some* formal decision whether to revise [] NAAQS” under section 109 of the CAA, 42 U.S.C. § 7409(d), which requires the Administrator to “complete a thorough review of the criteria published under Section 108 ... and promulgate such new standards as may be appropriate” every 5 years); *Our Children’s Earth Found. v. U.S. Env’tl. Prot. Agency*, 527 F.3d 842, 849 (9th Cir. 2008) (holding that the duty to determine whether revision is appropriate is implicit in EPA’s non-discretionary duty to review and “if appropriate, revise” effluent limitation guidelines once every five years under section 304 of the CWA, 33 U.S.C. 1311(d)).

The existing emission factors for VOC releases from oil and gas flares are woefully outdated and have not been reviewed within three years. The oil and gas flare factor included in WebFire estimates that 5.6 pounds of VOCs are released from flares for every million cubic feet of gas produced.² This factor appears to have been first published in the Agency's Criteria Pollutant Emission Factors for the 1985 NAPAP Emission Inventory.³ EPA republished these same factors in the 1990 revision of this document, but it does not appear that the Agency reviewed the basis for these factors at that time.⁴ In Chapter 5.3 of AP-42, EPA states that flares at natural gas sweetening plants are expected to have "negligible hydrocarbon emissions" based on unpublished stack test data from 1974.⁵ EPA has not reviewed this determination since then. Finally, Chapter 13.5 of AP-42 includes a total hydrocarbon emission factor (THC), a surrogate for estimating VOCs. EPA originally published this emission factor in AP-42 in 1991 and has not reviewed it under Section 130 of the CAA since then.⁶ While EPA recently revised Chapter 13.5 to add an SCC code to the THC emission factor, there is no evidence in the record for that final action indicating that EPA reviewed the emission factor as it applies to oil and gas flares as required under Section 130 of the CAA.

Plaintiffs have explained the importance of maintaining accurate emission factors in our Notice of Intent to Sue for the Agency's failure to review and revise emission factors more broadly in August, 2012.⁷ Plaintiffs intend to sue the Administrator for failure to perform the nondiscretionary duty under section 130 of the CAA and seek to compel EPA to review and revise the AP-42 emission factors used to estimate emissions of VOCs from flares at oil and gas facilities. If you have any questions regarding the allegations in this notice or would like to discuss this matter further, please contact me at the number or email below

Respectfully Submitted



Sparsh Khandeshi
Environmental Integrity Project
1000 Vermont Ave. NW
Suite 1100
Washington, DC 20005
202.263.4456 or 202.263.4446
skhandeshi@environmentalintegrity.org

² U.S. EPA, Technology Transfer Network Clearinghouse for Inventories & Emissions Factors, <http://cfpub.epa.gov/webfire/index.cfm?action=fire.SearchEmissionFactors>, (Search "EPA Emission Factors" using simple search for "31000205").

³ U.S. EPA, Criteria Pollutant Emission Factors for the 1985 NAPAP Emissions Inventory, EPA/600/7-87/015, 107 (May 1987).

⁴ U.S. EPA, AIRS Facility Subsystem Source Classification Codes and Emission Factor Listing for Criteria Air Pollutants, EPA 450/4-90-003, 153 (Mar. 1990).

⁵ U.S. EPA, Compilation of Air Pollutant Emission Factors; Volume I: Stationary Point and Area Sources, Chapter 5.3 Natural Gas Processing, 5.3-3, reference 5 (Jan. 1995).

⁶ *Id.*

⁷ Attached as Appendix A.

Counsel for:

Adrian Shelley
Executive Director
Air Alliance Houston
2409 Commerce Street
Houston, TX 77003

Juan Parras
Executive Director
TEJAS
6733 Harrisburg Boulevard
Houston, TX 77011

Hilton Kelley
Executive Director
CIDA
1301 Kansas Avenue
Port Arthur, TX 77642

Anne Rolfes
Founding Director
Louisiana Bucket Brigade
4226 Canal Street
New Orleans, LA 70119

CC (Via Certified Mail):

Loretta Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Janet McCabe
Assistant Administrator for the Office of Air and Radiation
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20406

Peter Tsirigotis
Sector Policies and Programs Division Director
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20406

Michele Walter
United States Department of Justice
Environmental & Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044

Bob Schell
United States Environmental Protection Agency
109 T.W. Alexander Drive
MC: D243-05
Research Triangle Park, NC 27709

Appendix A