

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWEST DIVISION**

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STATES OF NORTH DAKOTA, SOUTH DAKOTA  
NEVADA, AND TEXAS,

Plaintiffs,

v.

REGINA MCCARTHY, in her official  
Capacity as Administrator of the  
United States Environmental Protection Agency,

Defendant.

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**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**CIVIL ACTION NO. \_\_\_\_\_**

**INTRODUCTION**

1. The States of North Dakota, South Dakota, Nevada and Texas file this suit to compel the Administrator of the U.S. Environmental Protection Agency (“**Administrator**” or “**EPA**”), to take action mandated by the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. (the “**CAA**”) to designate areas of the country as attaining or not attaining the revised primary sulfur dioxide (“**SO<sub>2</sub>**”) National Ambient Air Quality Standard (“**NAAQS**”). On June 2, 2010 the Administrator signed and EPA promulgated the revised SO<sub>2</sub> NAAQS. *See* 75 Fed. Reg. 35,520 (June 22, 2010) (the “**SO<sub>2</sub> NAAQS**”). Once EPA sets a new or revised NAAQS, the CAA requires States to submit within one year to EPA information indicating which part of that State meets the new or revised NAAQS. 42 U.S.C. § 7407(d). Plaintiffs the States of North Dakota, South Dakota, Nevada and Texas each timely submitted to EPA their proposed designations. The CAA then establishes a nondiscretionary duty for the Administrator to designate all areas of the country as (1) “attainment” (if they are attaining the new or revised NAAQS), (2) “nonattainment” (if they are not attaining the NAAQS), or (3) “unclassifiable” (if there is inadequate information to make a designation). EPA must make such designations within three years from the date that the SO<sub>2</sub> NAAQS was

promulgated. 42 U.S.C. § 7407(d)(1)(B)(i). The Administrator has failed to meet the three-year statutory deadline, thereby violating her nondiscretionary duties under the CAA and harming Plaintiffs who must implement the SO<sub>2</sub> NAAQS in their States.

### **JURISDICTION, NOTICE AND VENUE**

2. This action arises under CAA 42 U.S.C. §§ 7401 et seq. This Court has jurisdiction over Plaintiffs' claims pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331, 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201, 2202 and 1361.

3. By certified letter posted July 3, 2013, Plaintiffs the States of North Dakota, South Dakota, Nevada and Texas provided the Administrator with written notice, in the form and manner required by 42 U.S.C. § 7604(b) and under 40 C.F.R. §§ 54.2, 54.3, of the Administrator's failure to perform nondiscretionary duties under the Act as complained of herein and the States' intent to commence this action. More than 60-days have passed since the States gave such notice and the Administrator has continued her failure to perform such nondiscretionary duties.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because: a) Plaintiff the State of North Dakota resides in this district; b) the district is one in which Defendant performs its official duties; and c) a substantial part of the events and omissions giving rise to this claim has occurred and is occurring in this district because EPA has failed to designate any area in North Dakota as attainment or nonattainment with the SO<sub>2</sub> NAAQS.

5. Pursuant to D.N.D. Gen. L.R. 3.1(A), this case is properly assigned to the Southwestern Division of this Court because Plaintiff North Dakota resides in Bismarck, North Dakota and a substantial part of the events and omissions giving rise to this claim has occurred and is occurring in this district.

## PARTIES

6. The State of North Dakota, through its Department of Health (“**NDDH**”), implements and enforces the State’s various environmental regulatory programs. Specifically, the NDDH oversees the State’s permitting programs for stationary sources under Titles I and V of the federal CAA, which includes the requirement that North Dakota submit a state implementation plan (“**SIP**”) specifying the manner in which it will achieve and maintain the SO<sub>2</sub> NAAQS. CAA § 107(a).

7. North Dakota has complied with its duties under § 107(d)(1)(A) and submitted to the Administrator its SO<sub>2</sub> NAAQS designations for all areas within its jurisdiction. In particular, utilizing data gathered from North Dakota’s extensive network of ambient air quality monitoring sites located across the State, the NDDH submitted to EPA on May 25, 2011, SO<sub>2</sub> ambient monitoring data that demonstrate compliance in all areas of the State with the SO<sub>2</sub> NAAQS. Based on the existing SO<sub>2</sub> ambient monitoring data collected by the NDDH, the State recommended to EPA that the entire State of North Dakota be designated as attainment for the SO<sub>2</sub> NAAQS. EPA has failed to act on North Dakota’s recommendation that the entire State be designated as attainment.

8. The State of South Dakota has complied with its duties under §107(d)(1)(A) and submitted to the Administrator its SO<sub>2</sub> NAAQS designations for all areas within its jurisdiction. In particular, the South Dakota Department of Environment and Natural Resources (“**SDDENR**”) submitted on June 2, 2011 its recommendation that EPA designate all counties in South Dakota as attaining the 1-hour SO<sub>2</sub> standard. South Dakota included a technical analysis of the results of monitoring SO<sub>2</sub> across the State, utilizing data gathered from South Dakota’s network of ambient air quality monitoring sites located in several counties around the State chosen based on concentration of SO<sub>2</sub> emitting sources, population density, specific source impact, or reflecting background and regional transport data. EPA has failed to act on South

Dakota's recommendation that all counties in South Dakota be designated as in attainment for the SO<sub>2</sub> NAAQS.

9. The State of Nevada, through its Department of Conservation and Natural Resources, Division of Environmental Protection ("**NDEP**") implements and enforces the State's various environmental regulatory programs. Specifically, the NDEP oversees the State's permitting programs for stationary sources under Titles I and V of the federal CAA, which includes the requirement that Nevada submit a SIP specifying the manner in which it will achieve and maintain the SO<sub>2</sub> NAAQS. CAA § 107(a).

10. The State of Nevada has complied with its duties under § 107(d)(1)(A) and submitted to the Administrator its SO<sub>2</sub> NAAQS designations for all areas within its jurisdiction. On May 3, 2011, the NDEP, on behalf of the Governor, sent to U.S. EPA its proposed air quality designations for the State of Nevada for the 2010 revision to the SO<sub>2</sub> national ambient air quality standard. There are three area designations allowed under the Clean Air Act: attainment, for those areas in attainment with the federal air pollution standards; non-attainment, for those areas failing to meet the standard; and unclassifiable, for those areas where monitoring has not been required because the level of pollution is expected to be too low to warrant monitoring. For the new 1-hour SO<sub>2</sub> standard, even where monitors exist, no monitoring has been done because it is a new standard. Nevada's proposed designation was unclassifiable for the entire State. EPA has failed to act on Nevada's recommendation that the entire State be designated as unclassifiable.

11. The State of Texas, through its Texas Commission on Environmental Quality ("**TCEQ**"), implements and enforces the State's various environmental regulatory programs. Specifically, the TCEQ oversees the State's permitting programs for stationary sources under Title I of the federal CAA, which includes the requirement that Texas submit a SIP specifying the manner in which it will achieve and maintain the SO<sub>2</sub> NAAQS. CAA § 107(a).

12. The State of Texas has complied with its duties under § 107(d)(1)(A) and submitted to the Administrator its SO<sub>2</sub> NAAQS designations for all areas within its jurisdiction. In particular, utilizing data gathered from Texas' extensive network of ambient air quality monitoring sites located across the State, the State of Texas submitted SO<sub>2</sub> ambient monitoring data to EPA on June 2, 2011 and April 20, 2012. Based on the existing SO<sub>2</sub> ambient monitoring data collected by the TCEQ, on April 20, 2012, the State recommended to EPA that Dallas, Ellis, El Paso, Galveston, Gregg, Harris, Jefferson, Kaufmann, McLennan and Nueces counties be designated as attainment and that all other Texas counties be designated as unclassifiable. EPA has failed to act on Texas' recommendations.

13. The acts and omissions of EPA alleged herein impair Plaintiffs' role and responsibility to make Title I and Title V permitting decisions and to enforce those permitting decisions based upon whether an area is in attainment or nonattainment of the SO<sub>2</sub> NAAQS. For example, stationary sources must be permitted by the States before they begin operation. Stationary sources are any facility or operation that "emits or may emit any air pollutant," including SO<sub>2</sub>. 42 U.S.C. 7411(a)(3). Whether an area is designated by the Administrator as attainment or nonattainment for SO<sub>2</sub> will directly affect how a State proceeds with its permitting of a stationary source and what limitations may be placed on that source so as to ensure the States' compliance with the SO<sub>2</sub> NAAQS. Until EPA issues its SO<sub>2</sub> attainment designations, Plaintiffs – and the sources they regulate – live in great uncertainty. They face the prospect that at any time during the permitting process, EPA can take an area deemed "attainment" by the permitting state and deem it not to be attainment. That, in turn, will lengthen and complicate the overall permitting process, or even make permitting impossible.

14. Additionally, the acts and omissions of EPA alleged herein deprive Plaintiffs of their procedural rights and protections to which they would otherwise be

entitled, including, but not limited to, the right to judicially challenge final SO<sub>2</sub> designations that are contrary to the data submitted by the individual Plaintiffs to EPA.

15. For all the foregoing reasons, the acts and omissions complained of herein cause Plaintiffs injuries for which they have no adequate remedy at law. Granting the requested relief would redress these injuries.

16. Defendant Regina McCarthy is the Administrator of the United States Environmental Protection Agency. In that role, Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duty to designate areas as attainment, nonattainment or unclassifiable with the SO<sub>2</sub> NAAQS as set forth in 42 U.S.C. § 7407(d)(1)(B)(i).

#### **LEGAL FRAMEWORK**

17. The CAA requires EPA to set and to revise periodically national air quality standards that limit concentrations in the ambient air of certain pollutants, including SO<sub>2</sub>. CAA §§ 108-110, 42 U.S.C. §§ 7408-7410. These “national ambient air quality standards” are supposed to be set at levels that protect the public health and welfare with an adequate margin of safety. CAA §§ 109(b), 42 U.S.C. §§ 7409(b).

18. Once EPA sets a new or revised ambient standard, the Act requires States to play a leading role in implementing that standard. In particular, under CAA § 107(d), 42 U.S.C. § 7407(d), within one year of EPA’s setting of a new ambient standard, the governor of each state must submit to EPA information indicating which parts of that State meet that standard (designated “attainment areas”), which parts of the State do not meet the standard (“nonattainment areas”), and which parts of the State cannot be classified attainment or nonattainment because adequate data are not available to make a determination one way or another (“unclassifiable areas”). Based primarily upon the § 107(d) recommendations submitted by the States, EPA must then publish final “designations” of all areas as attainment, nonattainment, or unclassifiable.

19. EPA must promulgate the designations of all areas (or portions thereof) submitted by each Governor under 42 U.S.C. § 7407(d)(1)(A), with such modifications as EPA deems necessary, “as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised [NAAQS].” 42 U.S.C. § 7407(d)(1)(B)(i). “Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.” *Id.* If the Governor of a State “fails to submit the list” of designations required by 42 U.S.C. §7407(d)(1)(A) in whole or in part, 42 U.S.C. § 7407(d)(1)(B)(ii) requires the Administrator (as part of the action required by 42 U.S.C. §7407(d)(1)(B)(i)) to promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State. 42 U.S.C. § 7407.

20. Accordingly, EPA must promulgate designations for all areas of every State within three years after the promulgation of a new or revised NAAQS. 42 U.S.C. § 7407(d)(1)(B). These designations must be published by EPA in the Federal Register. 42 U.S.C. § 7407(d)(2).

21. Upon EPA’s failure to perform a non-discretionary duty, such as the duty to promulgate designations of all areas no later than three years from the date of the promulgation of a new or revised NAAQS, the CAA authorizes that any person, which includes a State, (42 U.S.C. §7602(e)), to bring suit to compel EPA to perform its nondiscretionary duty. 42 U.S.C. § 7604(a)(2).

#### **STATEMENT OF FACTS**

22. On December 8, 2009, EPA proposed to adopt a new, 1-hour SO<sub>2</sub> ambient air quality standard. 74 Fed. Reg. 64,810.

23. On June 2, 2010, EPA’s Administrator signed the final 1-Hour SO<sub>2</sub> rule. On June 3, 2010, EPA publicly distributed the rule. *See* 77 Fed. Reg. at 46,295 n.1. That made June 2, 2011 (or, under EPA’s logic, June 3, 2011), the date by which states

had to submit to EPA their § 107(d) designation recommendations for the final rule. 75 Fed. Reg. 35520.

24. On May 25, 2011, Governor Dalrymple submitted North Dakota's SO<sub>2</sub> designations to EPA, and requested that all areas of the State be designated as complying with the 1-hour SO<sub>2</sub> NAAQS. Exhibit A.

25. On June 2, 2011, Secretary Steven M. Pirner of the SDDENR submitted South Dakota's SO<sub>2</sub> designations to EPA, and requested that all counties in South Dakota be designated as attaining the 1-hour SO<sub>2</sub> NAAQS. Exhibit B.

26. On May 3, 2011, the NDEP, on behalf of the Governor, sent to EPA its proposed air quality designations for the State of Nevada for the 2010 revision to the SO<sub>2</sub> national ambient air quality standard, and requested that all areas of the State be designated as unclassifiable. Exhibit C.

27. On June 2, 2011, Governor Rick Perry submitted Texas' initial SO<sub>2</sub> designations to EPA. Exhibit D. On April 20, 2012, Governor Perry submitted Texas' revised recommendation for SO<sub>2</sub> designations. Exhibit E. Texas' revised recommendation requested that Dallas, Ellis, El Paso, Galveston, Gregg, Harris, Jefferson, Kaufmann, McLennan and Nueces counties be designated as attainment and that all other Texas counties be designated as unclassifiable. *See id.*

28. On August 3, 2012, the Administrator announced that she would take an additional year to promulgate the SO<sub>2</sub> NAAQS designations, stating that "EPA is now required to complete initial designations for this NAAQS by June 3, 2013." Extension of Deadline for Promulgating Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard, 77 Fed Reg. 46,295 (August 3, 2012). While the final SO<sub>2</sub> NAAQS rule was signed by the Administrator on June 2, 2010, EPA did not publicly distribute the rule until June 3, 2010. *See* 77 Fed. Reg. at 46,295 n.1. As such EPA has established June 3, 2013 as the date by which it was obligated under 42 U.S.C. § 7407(d)(1)(B)(i) to issue the SO<sub>2</sub> NAAQS designations for all areas of the United States.

29. “[O]n or about February 7, 2013,” EPA sent responses to the States and Tribes on the “designation recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard” that the States had submitted to EPA in mid-2011. 78 Fed. Reg. 17915 (March 25, 2013).

30. In EPA’s response letter to Governor Dalrymple dated February 6, 2013, EPA acknowledged that “the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas of North Dakota.” Exhibit F at 1. However, EPA then went on to say in its letter that it was “not yet prepared to propose designation action in North Dakota” and was, “therefore, deferring action to designate areas in North Dakota.” Exhibit F at 1.

31. EPA responded to the State of South Dakota by letter to its Governor, the Honorable Dennis Daugaard, on February 6, 2013. EPA acknowledged that its “review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in South Dakota.” Exhibit G at 1. However, EPA then went on to say in its letter that it was “not yet prepared to propose designation action in South Dakota, and is, therefore, currently deferring action to designate areas in South Dakota.” Exhibit G at 1.

32. EPA responded to the State of Nevada by letter to its Governor, the Honorable Brian Sandoval, on February 6, 2013. EPA acknowledged that its “review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in Nevada.” Exhibit H at 1. However, EPA then went on to say in its letter that it was “not yet prepared to propose designation action in Nevada and is therefore currently deferring action to designate areas in Nevada.” Exhibit H at 1.

33. In EPA’s response letter to Governor Perry dated February 7, 2013, EPA acknowledged that “EPA’s review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas of Texas.”

Exhibit I at 1. However, EPA then stated that it “is not yet prepared to propose designation action in Texas and is therefore currently deferring action to designate areas in Texas.” Exhibit I at 1.

34. On August 5, 2013, EPA published in the Federal Register air quality designations of nonattainment for only 29 areas in 16 States for the 2010 primary SO<sub>2</sub> NAAQS. Air Quality Designations for the Revised SO<sub>2</sub> NAAQS, 78 Fed. Reg. 47,191, 47,193 (August 5, 2013) (to be codified at 40 C.F.R. pt. 81). None of the areas designated by EPA as nonattainment are located in North Dakota, South Dakota, Nevada or Texas. In its rule, EPA expressly stated that it was “not yet prepared” to issue designations for any other areas in the nation and that it intended to address such designations in separate future actions. 78 Fed. Reg. at 47,191.

35. In short, contrary to the express requirements of the Clean Air Act, the Administrator failed by June 2 or 3, 2013 – and through the date of this filing – to promulgate designations pursuant to 42 U.S.C. § 7407(d)(1)(B), and to publish such designations in the Federal Register, as required by 42 U.S.C. § 7407(d)(2). EPA promulgated no designations for areas contained within the States of North Dakota, South Dakota, Nevada and Texas. EPA’s promulgated designations for a handful of other areas – only 29 areas in 16 States – does not cure its failure to meet its nondiscretionary duty to promulgate designations for all areas in the United States by June 3, 2013. 42 U.S.C. §§ 7407(d)(1)(B) and (d)(2).

#### **CLAIM FOR RELIEF**

36. Plaintiffs incorporate all preceding allegations.

37. The Administrator had a nondiscretionary duty to promulgate and publish notice in the Federal Register promulgating final designations of all areas in each State, including North Dakota, South Dakota, Nevada and Texas, for the SO<sub>2</sub> NAAQS no later than three years from promulgation of the revised SO<sub>2</sub> NAAQS. 42 U.S.C. §§ 7407(d)(1)(B), 7407(d)(2).

38. The Administrator failed to promulgate or publish notice in the Federal Register promulgating final designations for all areas in each State for the revised SO<sub>2</sub> NAAQS within three years of promulgation of that NAAQS.

39. The Administrator's failure to promulgate or publish notice in the Federal Register promulgating final designations for all areas in the States of North Dakota, South Dakota, Nevada and Texas for the revised SO<sub>2</sub> NAAQS continues as of the date of this Complaint.

40. For all of the foregoing reasons, the Administrator has failed to perform acts and duties that are "not discretionary with the Administrator" within the meaning of the CAA's citizen suit provision. 42 U.S.C. § 7604(a). EPA's violations are ongoing and will continue unless remedied by this Court.

41. As such, an order from this Court is warranted declaring that the Administrator has failed to perform her duties under 42 U.S.C. §§ 7407(d)(1)(B), 7407(d)(2) for the States of North Dakota, South Dakota, Nevada and Texas and directing her to perform such acts and duties forthwith.

#### **REQUEST FOR RELIEF**

WHEREFORE, the States of North Dakota, South Dakota, Nevada and Texas respectfully request that the Court:

1. Declare that EPA is in violation of the Clean Air Act with regard to its failure to timely perform each mandatory duty listed above;

2. Issue a mandatory injunction requiring EPA to perform its mandatory duties by a date certain forthwith;

3. Retain jurisdiction of this matter for purposes of enforcing the Court's order;

4. Grant North Dakota, South Dakota, Nevada and Texas, their reasonable cost of litigation, including attorneys' and expert witness fees; and

5. Grant such relief as the Court deems proper.

Dated this 11th day of September, 2013.

Respectfully submitted,

**STATE OF NORTH DAKOTA  
WAYNE STENEHJEM  
ATTORNEY GENERAL**

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\*Applications for Admission to the District of  
North Dakota or *pro hac vice* motions to be  
filed.



— State of —  
**North Dakota**

*Office of the Governor*

**Jack Dalrymple**  
*Governor*

May 25, 2011

Mr. James B. Martin  
Regional Administrator  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Re: Sulfur Dioxide Attainment Status Recommendation

Dear Administrator Martin:

On June 22, 2010, the United States Environmental Protection Agency (“EPA”) published its Final Rule regarding the Primary National Ambient Air Quality Standard for Sulfur Dioxide (“SO<sub>2</sub>”), commonly referred to as the SO<sub>2</sub> Primary National Ambient Air Quality Standards. *See* 75 Fed. Reg. 35520 (June 22, 2010) (the “Final Rule” or the “1-hour SO<sub>2</sub> Standard”). The Final Rule sets the 1-hour SO<sub>2</sub> Standard at 75 parts per billion (“ppb”), within the range originally proposed by EPA<sup>1</sup>. As set forth in the Final Rule, EPA requested that states submit their initial SO<sub>2</sub> designations to the agency no later than June 2, 2011. *See* 75 Fed. Reg. 35569. Enclosed please find the initial SO<sub>2</sub> designations of the state of North Dakota. *See* Attachment A, North Dakota SO<sub>2</sub> Designations.

The North Dakota Department of Health (“Department”) operates an extensive network of ambient air quality monitoring sites located across the state. In addition to the state’s network, the state also collects data from eight industry operated source specific air quality monitoring sites, and one air quality monitoring site operated by the National Park Service. The monitoring sites are located across the state. *See* Attachment B, North Dakota Air Quality Monitoring Network. North Dakota has historically provided designation determinations to EPA based upon monitoring data. The data collected from North Dakota’s extensive monitoring system forms the foundation for its initial SO<sub>2</sub> designations.

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<sup>1</sup> *See* 74 Fed. Reg. 64,810; December 8, 2009; Docket No. EPA-HQ-OAR-2007-0352.

Mr. James B. Martin

May 25, 2011

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As set forth in the attached, the 3-year average results of SO<sub>2</sub> ambient monitoring data in North Dakota demonstrates compliance in all areas of the state with the 1-hour SO<sub>2</sub> Standard. *See Attachment C, North Dakota SO<sub>2</sub> Monitoring Data*. The ambient monitoring data collected, which forms the basis for the initial SO<sub>2</sub> designations, has been entered into the Air Quality Subsystem. The Department believes the monitoring data to be complete and accurate. Based on the existing SO<sub>2</sub> ambient monitoring data collected by the Department, it is recommended that the entire State of North Dakota be designated as attainment for the new 1-hour SO<sub>2</sub> standard.

If you have any questions, please contact the Division of Air Quality of the Department of Health at (701)328-5188.

Sincerely,

  
Jack Dalrymple  
Governor

C: Terry Dwelle, State Health Officer  
L. David Glatt, Chief, EHS  
Terry O'Clair, Director, Air Quality  
Maggie Olson, Assistant Attorney General  
Paul Seby, Special Assistant Attorney General

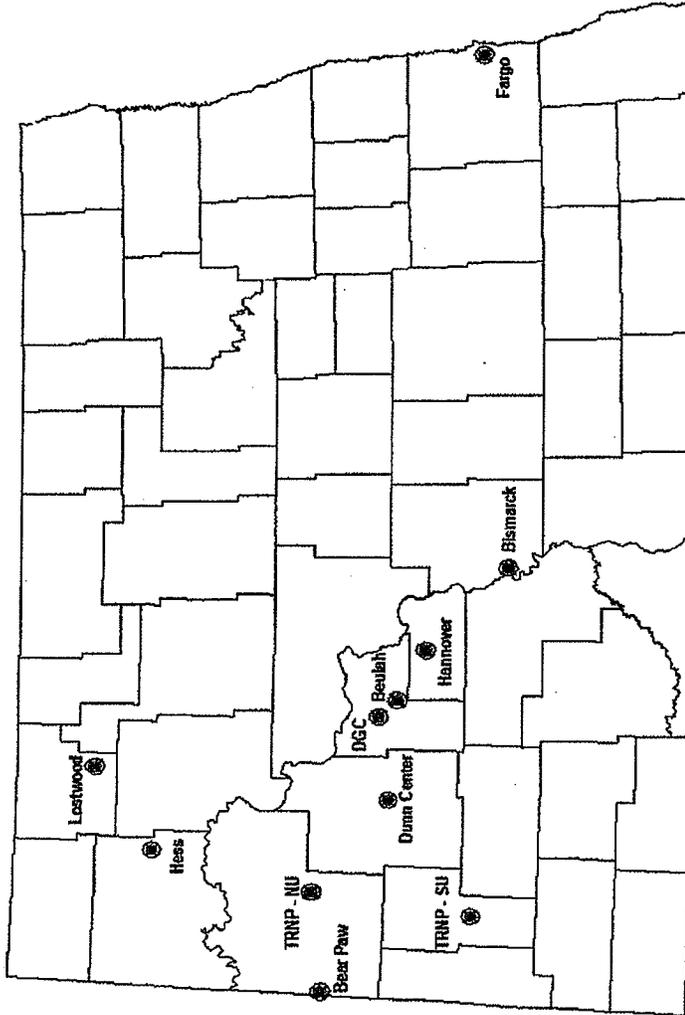
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ATTACHMENT A  
NORTH DAKOTA SO<sub>2</sub> DESIGNATION  
RECOMMENDATIONS

<u>Designated Area Status</u>	<u>Recommended</u>
Metropolitan Fargo – Moorhead (MN) AQCR 130	Attainment
Rest of State - AQCR 172	Attainment

ATTACHMENT B

**North Dakota Air Quality Monitoring Network**



## Attachment C-1

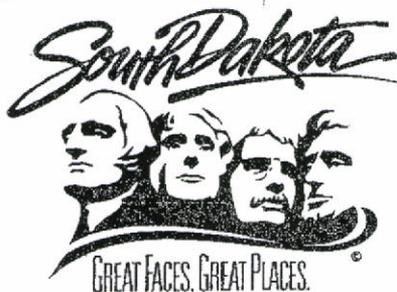
NORTH DAKOTA  
STATE/NPS MONITORS  
1-HOUR SO<sub>2</sub> (ppb)

Year	<u>TRNP-SU</u>		<u>Lostwood</u>		<u>Bismarck</u>		<u>Fargo</u>		<u>Dunn Center</u>		<u>TRNP-NU</u>		<u>Beulah</u>		<u>Hannover</u>	
	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.
2006	6.0		31.0		23.0		4.7		13.0		10.0		26.0		45.0	
2007	7.0		32.4		31.0		4.8		10.0		13.2		40.0		63.0	
2008	6.0	6.3	36.8	33.4	34.0	29.3	4.7	4.7	16.0	13.0	10.5	11.2	31.0	32.3	55.0	54.3
2009	9.0	7.3	55.6	41.6	30.0	31.7	5.9	5.1	9.5	11.8	10.1	11.3	26.0	32.3	42.0	53.3
2010	6.0	7.0	45.2	45.9	41.0	35.0	6.1	5.6	19.0	14.8	11.2	10.6	52.0	36.3	59.0	52.0

Attachment C-2

NORTH DAKOTA  
INDUSTRY MONITORS  
1-HOUR SO<sub>2</sub> (ppb)

Year	<u>Bear Paw 3</u>		<u>Bear Paw 5</u>		<u>DGC12</u>		<u>DGC14</u>		<u>DGC16</u>		<u>DGC17</u>		<u>Hess 1</u>		<u>Hess 3</u>	
	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.	Annual 99 <sup>th</sup> Pctl.	3-yr. Avg. 99 <sup>th</sup> Pctl.
2006	27.0		27.0	28.0	26.0	26.0	39.0	36.0	20.0	20.0	48.0		48.0			
2007	15.0		25.0	37.0	36.0	36.0	30.0	38.0	25.0	25.0	67.0		67.0			
2008	9.0	17.0	14.0	29.0	26.0	29.3	29.0	43.0	32.7	32.7	39.0	39.0	37.0	27.3	50.0	55.0
2009	16.0	13.3	9.0	38.0	27.0	29.7	23.0	28.0	27.3	27.3	36.3	36.3	34.0	32.0	65.0	60.7
2010	21.0	15.3	15.0	46.0	54.0	35.7	44.0	37.0	32.0	32.0	36.0	36.0	27.0	32.7	77.0	64.0



**DEPARTMENT of ENVIRONMENT  
and NATURAL RESOURCES**

PMB 2020  
JOE FOSS BUILDING  
523 EAST CAPITOL  
PIERRE, SOUTH DAKOTA 57501-3182  
[www.state.sd.us/denr](http://www.state.sd.us/denr)

June 2, 2011

James B. Martin  
Regional Administrator  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Dear Mr. Martin:

On March 24, 2011, EPA notified the Governor of South Dakota that EPA revised the sulfur dioxide National Ambient Air Quality Standard and initial area designations are due by June 3, 2011. EPA revised the primary sulfur dioxide standard by adding a 1-hour average concentration.

On January 18, 2011, Governor Daugaard submitted a letter to you designating the Secretary of the Department of Environment and Natural Resources as his designee for submitting designations and other matters which involves South Dakota's Air Quality Program. In that capacity, I recommend EPA designate all counties in South Dakota as attaining the 1-hour sulfur dioxide standard (see Attachment A) based on the attached supportive document. Attachment B provides the technical analysis for designating all of South Dakota's counties in attainment. Attachment C provides a copy of the Air Quality System AMP450 report showing the yearly 99<sup>th</sup> percentile concentrations for each site and includes the one year of data collected near the Big Stone Power Plant in Roberts County.

Thank you for the opportunity to propose designations for the revised primary sulfur dioxide standard and I look forward to your concurrence. If you have questions, please contact Brian Gustafson at 605-773-3151.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Pirner', is written over a horizontal line.

Steven M. Pirner  
Secretary

Attachments

cc: Monica Morales, EPA Region 8

**Attachment A**  
**South Dakota Area Designations**  
**1-hour Sulfur Dioxide Standard**

<b>Designated Area</b>	<b>Designation Type</b>	<b>Classification Type</b>
<b>Aurora County</b>	Attainment	
<b>Beadle County</b>	Attainment	
<b>Bennett County</b>	Attainment	
<b>Bon Homme County</b>	Attainment	
<b>Brookings County</b>	Attainment	
<b>Brown County</b>	Attainment	
<b>Brule County</b>	Attainment	
<b>Buffalo County</b>	Attainment	
<b>Butte County</b>	Attainment	
<b>Campbell County</b>	Attainment	
<b>Charles County</b>	Attainment	
<b>Clark County</b>	Attainment	
<b>Clay County</b>	Attainment	
<b>Codington County</b>	Attainment	
<b>Corson County</b>	Attainment	
<b>Custer County</b>	Attainment	
<b>Davison County</b>	Attainment	
<b>Day County</b>	Attainment	
<b>Deuel County</b>	Attainment	
<b>Dewey County</b>	Attainment	
<b>Douglas County</b>	Attainment	
<b>Edmunds County</b>	Attainment	
<b>Fall River County</b>	Attainment	
<b>Faulk County</b>	Attainment	
<b>Grant County</b>	Attainment	
<b>Gregory County</b>	Attainment	
<b>Haakon County</b>	Attainment	
<b>Hamlin County</b>	Attainment	
<b>Hand County</b>	Attainment	
<b>Hanson County</b>	Attainment	
<b>Harding County</b>	Attainment	
<b>Hughes County</b>	Attainment	
<b>Hutchinson County</b>	Attainment	
<b>Hyde County</b>	Attainment	
<b>Jackson County</b>	Attainment	
<b>Jerauld County</b>	Attainment	
<b>Jones County</b>	Attainment	
<b>Kingsbury County</b>	Attainment	
<b>Lake County</b>	Attainment	

<b>Designated Area</b>	<b>Designation Type</b>	<b>Classification Type</b>
<b>Lawrence County</b>	Attainment	
<b>Lincoln County</b>	Attainment	
<b>Lyman County</b>	Attainment	
<b>Marshall County</b>	Attainment	
<b>McCook County</b>	Attainment	
<b>McPherson County</b>	Attainment	
<b>Meade County</b>	Attainment	
<b>Mellette County</b>	Attainment	
<b>Miner County</b>	Attainment	
<b>Minnehaha County</b>	Attainment	
<b>Moody County</b>	Attainment	
<b>Pennington County</b>	Attainment	
<b>Perkins County</b>	Attainment	
<b>Potter County</b>	Attainment	
<b>Roberts County</b>	Attainment	
<b>Sanborn County</b>	Attainment	
<b>Shannon County</b>	Attainment	
<b>Spink County</b>	Attainment	
<b>Stanley County</b>	Attainment	
<b>Sully County</b>	Attainment	
<b>Todd County</b>	Attainment	
<b>Tripp County</b>	Attainment	
<b>Turner County</b>	Attainment	
<b>Union County</b>	Attainment	
<b>Walworth County</b>	Attainment	
<b>Yankton County</b>	Attainment	
<b>Ziebach County</b>	Attainment	

## Attachment B Determining Area Designations

### 1. Air Monitoring

Sulfur dioxide 1-hour concentrations in South Dakota are low statewide. The highest design value concentration was recorded at the SD School Site in Sioux Falls at 19% of the new 1-hour standard. The Badlands and Wind Cave sites have the lowest design value concentrations at 8% of the standard. The concentrations in South Dakota are low for several reasons. First, the state's population and sulfur dioxide emissions from area sources are low. Second, all but five sources with Title V air quality permits in the state emit sulfur dioxide emissions less than 100 tons per year. Finally, sulfur dioxide emissions from area sources will continue to decline because of the move to ultra low sulfur fuels that began in 2010.

Table B-1 displays the three year calculated design value concentration for each site. The design value concentration for the SD School, Wind Cave, and Badlands Sites used data from 2008 to 2010. Both Union County sites have only two years of data. Roberts County only has 13 months of data.

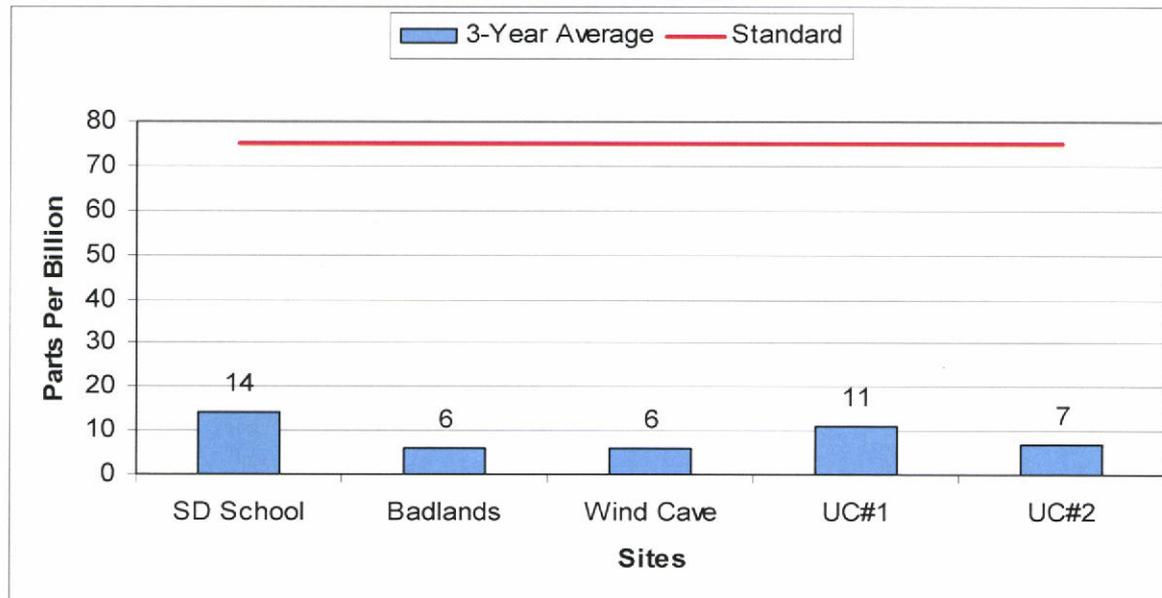
**Table B-1 – Site Design Values Concentrations in South Dakota**

Site	County	99 <sup>th</sup> Percentile	3-Year Average	Attainment
SD School	Minnehaha	2008 – 27 parts per billion 2009 – 10 parts per billion 2010 – 5 parts per billion	14 parts per billion	Yes
Badlands	Jackson	2008 – 5 parts per billion 2009 – 5 parts per billion 2010 – 9 parts per billion	6 parts per billion	Yes
Wind Cave	Custer	2008 – 3 parts per billion 2009 – 10 parts per billion 2010 – 5 parts per billion	6 parts per billion	Yes
UC #1	Union	2009 – 10 parts per billion 2010 – 12 parts per billion	11 parts per billion	<sup>1</sup>
UC #2	Union	2009 – 6 parts per billion 2010 – 9 parts per billion	7 parts per billion	<sup>1</sup>
Big Stone II	Roberts	2001 - 5 parts per billion 2002 - 14 parts per billion	10 parts per billion	<sup>1</sup>

<sup>1</sup> – Not comparable to the standard because there is less than 3 years of data.

The sulfur dioxide 1-hour concentrations collected in the state during the years of 2001 to 2002 and 2008 to 2010 demonstrate there were no 1-hour concentrations exceeding the new primary standard as calculated following the form of the standard. The highest three year average was recorded at the SD School Site with a three year average concentration level of 14 parts per billion.

Figure B-1 provides a graph comparison of the design values for each site compared to the 1-hour sulfur dioxide standard. Although the Big Stone II, Union County #1 and Union County #2 Sites do not have three years of data, the two year average of the 99<sup>th</sup> percentile is provided for comparison purposes.

**Figure B-1 – Data Compared to the 1-hour Sulfur Dioxide Standard**

The Badlands and Wind Cave sites represent rural areas consisting mainly of rangeland and forested areas in the western half of South Dakota while the Union County sites represent the farming area in the eastern half of South Dakota. The SD School Site represents South Dakota's largest populated area in the Sioux Falls Metropolitan Statistical Area (MSA). The Big Stone II site represents sulfur dioxide concentrations near South Dakota's largest emitting sulfur dioxide source. Based on the monitoring data which reflects the potential highest and lowest sulfur dioxide concentrations in the state, South Dakota is attaining the 1-hour sulfur dioxide National Ambient Air Quality Standard in every county in the state.

## 2. Air Modeling

EPA's Memorandum from Stephen D. Page to Regional Air Division Directors, I-X, dated March 24, 2011, indicates EPA may initially designate an area as attainment if it is clear it meets the new sulfur dioxide National Ambient Air Quality Standards (NAAQS). EPA further states it does not believe it would be appropriate to designate areas as attainment without appropriate refined dispersion modeling and where available, air quality monitoring data indicating no violations of the NAAQS. DENR agrees modeling may be used as a tool by states but disagrees it is the only tool to demonstrate attainment for the following reasons:

1. DENR recently used AERMOD to model the impacts of an existing coal-fired electric power plant using sulfur dioxide emissions being reported to EPA in accordance with the Acid Rain Program. A receptor was placed on two ambient air quality monitoring sites to compare hourly monitoring data to the hourly modeling data. This comparison assumed no other sulfur dioxide emitting sources were impacting the monitors. In reality, if the model was accurate, the modeling results would be less than the monitoring results. The comparison indicated AERMOD may over-predict the concentrations of sulfur dioxide greater than a factor of two (see Appendix D for analysis).

2. In accordance with 40 CFR Part 51, Appendix W, uncertainties and accuracy of the models are discussed. As noted in section 9.1.2, Studies of Model Accuracy, “(1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of  $\pm 10$  to 40 percent are found to be typical, *i.e.*, certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site are poorly correlated with actually observed concentrations and are much less reliable.”
3. EPA did not provide states or the public an opportunity to comment on EPA’s new policy of placing more confidence on a model for designations than ambient air quality monitoring. In the proposed rule, EPA stated it would use monitoring for designation purposes but in the final rule it required modeling for attainment designations. This flip flop was initiated by one city and three states suggesting the use of modeling for designations. If you turn this around, 47 states and the rest of the nation’s cities agreed monitoring should be used for designations.
4. This flip flop is also contrary to EPA’s previous decisions, court cases, and rule:
  - a. On page 26382 of the Federal Register, Vol. 43, No. 118, June 19, 1972, EPA states in the preamble to the 1977 PSD rules, “...EPA intends that monitoring should generally focus on obtaining data necessary for required review against NAAQS. Although the increment consumption must of necessity be tracked through the use of modeling, EPA does not intend that there be no “real world” checks on the accuracy of modeling.”
  - b. In *Alabama Power Co. v. Costle* C.A.D.C. 1979, the U.S. Court of Appeals, District of Columbia Circuit states, “We discern from the statute a technology-forcing objective. Congress intended that monitoring would impose a certain discipline on the use of modeling techniques, which would be the principal device relied upon for the projection of the impact on air quality of emissions from a regulated source. This projects that the employment of modeling techniques be held to earth by a continual process of confirmation and reassessment, a process that enhances confidence in modeling, as a means for realistic projection of air quality.”
  - c. This is further emphasized by EPA’s current rules under the Prevention of Significant Deterioration program. In accordance with 40 CFR §52.21(m)(2), if the Administrator believes it is necessary, the owner or operator shall conduct ambient air quality monitoring, “...to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.” Even after a PSD source has demonstrated it is can construct and operate and not cause a violation of the National Ambient Air Quality standard or PSD increment using modeling, EPA may require a source to conduct monitoring to ensure the modeling provided realistic results and no violations will occur.

Historically, both Congress and EPA intended for monitoring to be the real determination on if an area is attaining the National Ambient Air Quality Standards. If EPA wants to use modeling as the only tool to designate areas attaining or not attaining the 1-hour sulfur dioxide standard, the actual requirement to use modeling should have been proposed in the rule to allow everyone an opportunity to comment on this decision. DENR believes monitoring provides the reality check both Congress and EPA believe are necessary for states to demonstrate an area is attaining or not attaining the standard and should be used for the 1-hour sulfur dioxide standard.

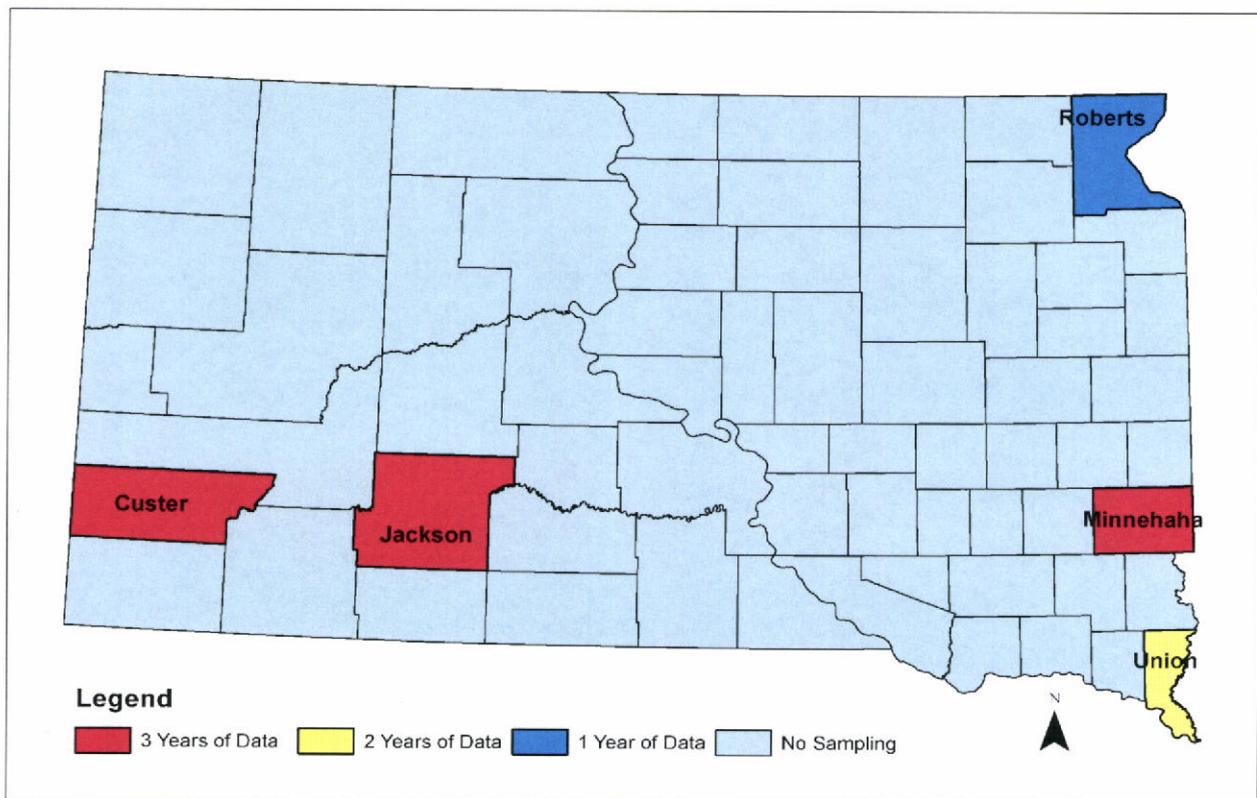
### 3. Sulfur Dioxide Monitoring Network in South Dakota

The first sampling effort in South Dakota to collect hourly sulfur dioxide data was near the Big Stone Power Plant. The monitoring location for sulfur dioxide was based on modeling indicating the area of highest concentrations near the facility and in South Dakota. A continuous 12-month period of air monitoring was completed in the years of 2001 and 2002 as part of a Prevention of Significant Deterioration permit application. Sulfur dioxide levels were low with a 99<sup>th</sup> percentile 1-hour average concentration level of 10 parts per billion.

DENR operates a network of air monitoring sites which began collecting hourly sulfur dioxide data in 2002. The first site was established at the Hilltop Site in Sioux Falls. The monitor was later moved to the SD School Site and continues today. In 2005, two more locations were added at the Badlands and Wind Cave National Parks. In 2009, two more locations were added in Union County.

The current sampling network includes sites in several counties around the state with goals of high concentration, population, source impact, background and regional transport. See Figure B-2 for a map of the state showing the counties with sulfur dioxide air monitoring data.

*Figure B-2 – South Dakota Counties with Sulfur Dioxide Data*



#### 4. South Dakota's Population and Sulfur Dioxide Emissions

If EPA still wishes to use a policy of using modeling for designation purposes, the final rule on page 35551 states, "...we believe that for a short-term 1-hour standard it is more technically appropriate, efficient, and effective to use modeling as the principle means of assessing compliance for medium to larger source, and to rely more on monitoring for groups of small sources and sources not as conducive to modeling."

Sulfur dioxide emissions from Title V major sources throughout South Dakota are low to medium with one source that could be considered large. Table B-2 provides a list of the top 10 major sources emitting sulfur dioxide in calendar year 2009 and represents 75% of the state's total emissions from permitted sources.

**Table B-2 – Top 10 Sulfur Dioxide Emitters in South Dakota (tons per year)**

#	County	Facility	Tons/Year
1	Grant	Otter Tail Power Company – Big Stone I	11,651
2	Pennington	Black Hills Corporation – Ben French	823
3	Pennington	GCC Dacotah	285
4	Brookings	South Dakota State University	183
5	Sioux Falls	John Morrell & Company	170
6	Brookings	Valero Renewable Fuels Company	85
7	Spink	Redfield Energy	42
8	Turner	Great Plains Ethanol	21
9	Minnehaha	Sioux Falls Water Reclamation Facility	13
10	Codington	Glacial Lakes Energy	11
<b>Top 10 Total =</b>			<b>13,284</b>
<b>Total for Entire State</b>			<b>17,826</b>

South Dakota has counties with low population and no large sources of sulfur dioxide emissions as can be seen in Table B-2. The sulfur dioxide concentrations in these areas would be similar to the concentrations South Dakota is experiencing at its Badlands, Wind Cave, and Union County monitoring sites depending on what rural area one is located. DENR believes these sites meet EPA's requirement that monitoring should be used for designation purposes, not modeling.

South Dakota has other counties with low population and several sources of sulfur dioxide that would not be considered large sources of sulfur dioxide emissions (see Attachment E). These counties would have concentrations somewhere in between the concentrations at the rural sites and SD School Site. DENR believes these sites meet EPA's requirement that monitoring should be used for designation purposes, not modeling.

The largest city in South Dakota is Sioux Falls with a population of less than 153,888. The largest of the three MSAs in the state includes the city of Sioux Falls and includes the counties of Minnehaha, Lincoln, McCook, and Turner. The combined 2010 Census population for the Sioux Falls MSA is 228,261. Table B-3 provides a list of the top 10 most populated counties in the state and the largest city within the county. The largest populated area in South Dakota has sources of sulfur dioxide

emissions that would not be considered large sources of sulfur dioxide. DENR believes even this site meets EPA's requirement that monitoring should be used for designation purposes, not modeling.

**Table B-3 – Ten Highest Population Counties in South Dakota**

<b>Number</b>	<b>County</b>	<b>Population</b>	<b>Largest City</b>	<b>Population</b>
<b>1</b>	Minnehaha	169,468	Sioux Falls	153,888
<b>2</b>	Pennington	100,948	Rapid City	67,956
<b>3</b>	Lincoln	44,828	Sioux Falls	153,888
<b>4</b>	Brown	36,531	Aberdeen	26,091
<b>5</b>	Brookings	31,965	Brookings	22,056
<b>6</b>	Codington	27,227	Watertown	21,482
<b>7</b>	Meade	25,434	Sturgis	6,627
<b>8</b>	Lawrence	24,097	Spearfish	10,494
<b>9</b>	Yankton	22,438	Yankton	14,454
<b>10</b>	Davison	19,504	Mitchell	15,254

Grant County has the highest emission total for sulfur dioxide in South Dakota and the emissions are generated by the Big Stone I Power Plant. DENR does not believe modeling is necessary even at this site since modeling was used to determine the location of highest concentrations and an ambient air monitor was located at the modeling site in Roberts County and recorded concentrations just over 13% of the 1-hour sulfur dioxide standard. In addition, sulfur dioxide emissions will be lowered from Big Stone I once the control equipment required by the Regional Haze Program is installed. Therefore, even Grant County should be designated attainment based on monitoring results.

# Attachment C

## Air Quality System Report AMP450

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AIR QUALITY SYSTEM  
QUICK LOOK REPORT (AMP450)

May 11, 2011

Sulfur dioxide (42401)		South Dakota										Parts per billion (008)									
SITE ID	P O C	FQAO CITY	COUNTY	ADDRESS	YEAR	METH	OBS	COMP	1ST		2ND		99TH		1ST		2ND		Days		ARITH MEAN CRT EDT
									MAX	1-HR	MAX	1-HR	FTIL	1-HR	MAX	24-HR	MAX	>24HR	24-HR	STD	
46-033-0132	3	0973	Not in a city Custer	WIND CAVE NATIONAL PARK, SOUTH DAKOTA	2008	060	8678	4	4.0	4.0	3.0	1.4	1.3	0	1.3	0	.23	N	0		
46-033-0132	3	0973	Not in a city Custer	WIND CAVE NATIONAL PARK, SOUTH DAKOTA	2009	060	6487	3	32.0	20.0	10.0	5.7	3.0	0	3.0	0	.53*				0
46-033-0132	3	0973	Not in a city Custer	WIND CAVE NATIONAL PARK, SOUTH DAKOTA	2010	060	8640	4	16.0	10.0	5.0	2.8	2.6	0	2.6	0	.12				0
46-071-0001	3	0973	Not in a city Jackson	BADLANDS PO BOX 6 HEADQUARTER S DAKOTA	2008	060	8616	4	7.0	6.0	5.0	6.0	5.0	0	5.0	0	1.28	N	0		
46-071-0001	3	0973	Not in a city Jackson	BADLANDS PO BOX 6 HEADQUARTER S DAKOTA	2009	060	8645	4	7.0	6.0	5.0	3.2	2.9	0	2.9	0	.84				0
46-071-0001	3	0973	Not in a city Jackson	BADLANDS PO BOX 6 HEADQUARTER S DAKOTA	2010	060	8307	4	17.0	11.0	9.0	3.7	3.3	0	3.3	0	1.04				0
46-099-0008	3	0973	Sioux Falls	2001 E 8th St	2008	060	8095	3	31.0	30.0	27.0	10.0	8.9	0	8.9	0	.89	Y	0		
46-099-0008	3	0973	Sioux Falls	2001 E 8th St	2009	060	8184	4	18.0	14.0	10.0	2.8	2.3	0	2.3	0	.20				0
46-099-0008	3	0973	Sioux Falls	2001 E 8th St	2010	060	8678	4	6.0	6.0	5.0	1.9	1.7	0	1.7	0	.25				0
46-109-4003	3	0973	Not in a city Roberts	482ND AVE	2001	060	1390	0	5.0	5.0	5.0	.7	.7	0	.7	0	.04*	N	0		
46-109-4003	3	0973	Not in a city Roberts	482ND AVE	2002	060	6935	3	28.0	20.0	14.0	5.3	4.0	0	4.0	0	.19*	N	0		
46-127-0001	3	0973	Not in a city Union	31986 475th Ave	2009	560	8589	4	10.5	10.0	9.6	4.3	3.5	0	3.5	0	.22				0

Note: The \* indicates that the mean does not satisfy summary criteria.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 AIR QUALITY SYSTEM  
 QUICK LOOK REPORT (AMP450)

May. 11, 2011

Sulfur dioxide (42401)		South Dakota										Parts per billion (008)							
SITE ID	P O C	FQAO CITY	COUNTY	ADDRESS	YEAR	METH OBS	COMP QTRS	1ST		2ND		99TH		1ST		2ND		Devs	
								MAX 1-HR	MAX 1-HR	MAX 1-HR	MAX 1-HR	MAX 24-HR	MAX 24-HR	MAX >24HR	ARITH MEAN	CERT EDT			
46-127-0001	3	0973	Not in a city Union	31986 475th Ave	2010	560 8640	4	30.3	26.0	11.5	8.2	4.2	0	.40	0				
46-127-0002	3	0973	Not in a city Union	31307 473rd Ave	2009	560 8657	4	9.0	9.0	6.0	3.3	1.3	0	.16	0				
46-127-0002	3	0973	Not in a city Union	31507 473rd Ave	2010	560 8628	4	26.2	15.9	8.6	3.8	3.5	0	.32	0				

Note: The \* indicates that the mean does not satisfy summary criteria.

## Attachment D

### AERMOD Modeling Accuracy

This analysis was taken from DENR's section 4.4.1 – Modeling Accuracy of the Statement of Basis for Hyperion Energy Center's extension request for its Prevention of Significant Deterioration air quality permit #28.0701-PSD.

#### 4.4.1 Model Accuracy

The modeling analysis indicates Hyperion will not cause or contribute to a violation of the new 1-hour sulfur dioxide National Ambient Air Quality Standard; but the analysis does show the modeled concentration plus the background monitoring concentration is within 2 percent of the new 1-hour sulfur dioxide National Ambient Air Quality Standard. Therefore, DENR considered several factors involving how realistic the models predict the concentration and what facility or facilities is contributing to the modeling concentration.

The high modeled sulfur dioxide concentrations are located in the southeast corner of the modeling domain. The facility contributing to the high modeled concentration for sulfur dioxide (greater than 90% contribution) is the MidAmerican George Neal facilities in Iowa. During these periods when MidAmerican George Neal is the majority contributor, Hyperion's contribution is less than 1%.

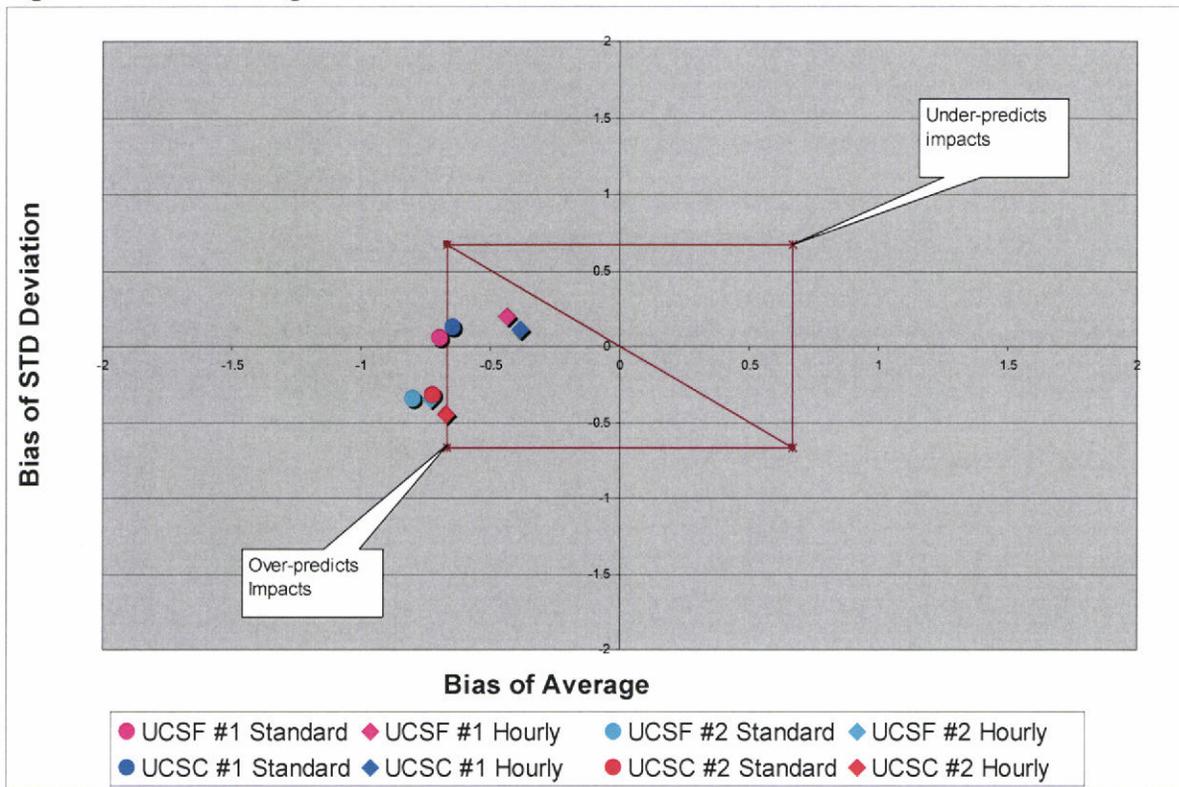
In accordance with 40 CFR Part 51, Appendix W, uncertainties and accuracy of the models are discussed. As noted in section 9.1.2, Studies of Model Accuracy, "(1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of  $\pm 10$  to 40 percent are found to be typical, *i.e.*, certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable."

To determine if the AERMOD is correctly quantifying the sulfur dioxide concentration, DENR conducted a screening test to determine if AERMOD would meet a minimum operational performance for the 1-hour sulfur dioxide National Ambient Air Quality Standard. DENR used the fractional bias procedure identified in EPA's Protocol for Determining the Best Performing Model (EPA – 454/R-92-025). DENR modeled MidAmerican George Neal facilities actual emissions from March 31, 2009 through March 31, 2010, at two receptor points in South Dakota using the two meteorological data sets for Union County. The two receptor points used were the location of the two sulfur dioxide monitoring stations currently being operated by DENR in Union County. The modeled results were then compared to the monitored results using the screening approach specified in EPA's protocol. Since the new 1-hour sulfur dioxide National Ambient Air Quality standard represents a new form of a standard, DENR compared both the highest 25 hourly readings and the highest 25 readings representing the form of the standard (e.g., highest 25 daily 1-hour values).

Figure 4-1 shows a graphical representation of the screening test. As identified in the protocol "Models that plot close to the center (0,0) are relatively free from bias, while models that plot further

away from the center tend to over or under-predict. Values equal to -0.67 are equivalent to over-predictions by a factor of two while values equal to +0.67 are equivalent to under-predictions by a factor of two. As the graph indicates, AERMOD over-predicts the concentrations of sulfur dioxide with five of the eight scenarios indicating the model would over-predict the concentrations greater than a factor of two.

Figure 4-1 – Screening Test



Based on the analysis, the model is over-predicting the impact MidAmerican George Neal will have on the sulfur dioxide concentrations in the modeling domain. If it is over-predicting MidAmerican George Neal it is also likely over-predicting all of the sources in the area including Hyperion. Since the approved models are inherently conservative, DENR believes actual monitoring data will be lower than what is being predicted by the models.

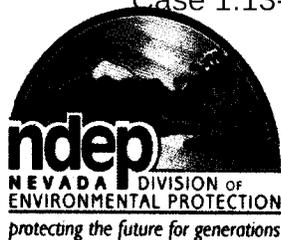
**Attachment E**  
**South Dakota's Sulfur Dioxide Emissions**  
**From National Emission Inventory**

Table E-1 contains sulfur dioxide emissions data from the National Emission Inventory (NEI) for 2002 and 2009. The 2002 NEI was included because the inventory included a calculation of emission from area and fugitive sources of sulfur dioxide. Union County is shown as the fourth highest county with sulfur dioxide emissions even though there are no existing Title V sources in the county that emits sulfur dioxide emissions in that quantity. DENR investigated this further and found the sulfur dioxide emissions in the 2002 NEI inventory are the result of coal burning. There is no coal burning facility in Union County. Therefore, the information for Union County is inaccurate. The 2009 emissions are from Title V sources only.

**Table E-1 – Sulfur Dioxide Emissions in 2002 and 2009**

<b>County</b>	<b>2002 NEI Emissions (tons)</b>	<b>2009 Title V Source Emissions (tons)</b>
<b>Grant</b>	11,918.8	11,652.0
<b>Minnehaha</b>	3,320.1	182.4
<b>Pennington</b>	2,738.6	1,118.1
<b>Union</b>	1,531.7	0.0
<b>Brookings</b>	1,237.7	267.5
<b>Codington</b>	904.6	11.5
<b>Brown</b>	680.6	2.9
<b>Yankton</b>	603.2	0.2
<b>Davison</b>	431.2	1.1
<b>Lincoln</b>	295.3	0.9
<b>Beadle</b>	290.8	0.3
<b>Lake</b>	263.1	2.4
<b>Hutchinson</b>	202.7	0.0
<b>Lawrence</b>	179.5	2.3
<b>Spink</b>	160.2	41.7
<b>Roberts</b>	158.1	0.1
<b>Bon Homme</b>	143.2	0.1
<b>Marshall</b>	140.4	0.0
<b>Meade</b>	135.7	0.0
<b>Kingsbury</b>	134.7	0.2
<b>Day</b>	131.9	0.0
<b>Charles Mix</b>	128.5	0.0
<b>Moody</b>	111.2	0.0
<b>McCook</b>	108.6	0.0
<b>Clay</b>	107.3	1.0
<b>Turner</b>	99.7	23.4
<b>Clark</b>	98.1	1.0
<b>Edmunds</b>	91.7	8.9

<b>County</b>	<b>2002 NEI Emissions (tons)</b>	<b>2009 Title V Source Emissions (tons)</b>
Fall River	90.6	0.0
Tripp	90.3	0.0
Hamlin	87.9	0.0
Hand	87.3	0.0
Deuel	85.2	2.5
Custer	83.1	0.0
Perkins	80.4	0.0
Sanborn	76.1	0.0
Hughes	74.7	0.0
Lyman	72.8	0.0
Potter	72.7	0.0
Miner	68.7	0.0
Butte	68.2	2.3
Walworth	66.4	0.5
Gregory	65.8	0.0
Brule	63.9	0.0
Faulk	63.4	0.0
Douglas	59.2	0.0
McPherson	56.1	0.0
Haakon	55.2	0.0
Hanson	54.8	0.0
Sully	52.5	0.0
Aurora	51.0	0.0
Corson	50.1	0.0
Jackson	44.7	0.0
Campbell	44.0	0.0
Todd	41.6	0.0
Jones	36.2	0.0
Bennett	35.5	0.0
Jerauld	33.6	0.0
Hyde	32.6	0.1
Dewey	30.8	0.0
Shannon	29.9	0.0
Stanley	22.8	0.0
Mellette	15.7	0.0
Ziebach	13.7	0.0
Harding	11.1	0.0
Buffalo	9.1	0.0
<b>Statewide Total</b>	<b>28,425</b>	<b>13,323</b>



# STATE OF NEVADA

Department of Conservation & Natural Resources

Brian Sandoval, Governor

Leo M. Drozdoff, P.E., Director

DIVISION OF ENVIRONMENTAL PROTECTION

Colleen Cripps, Ph.D., Administrator

May 3, 2011

Jared Blumenfeld  
Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
Mail Code ORA-1  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**RE: Recommended Area Designations for the 2010 Primary National Ambient Air Quality Standards for Sulfur Dioxide (75 FR 35520, June 22, 2010)**

Dear Mr. ~~Blumenfeld~~ <sup>Jared</sup>:

On behalf of Governor Sandoval, as his appointed designee, pursuant to section 107(d)(1) of the 1990 Clean Air Act Amendments and the recently promulgated sulfur dioxide (SO<sub>2</sub>) rule, I am submitting this letter requesting that the State of Nevada be designated for the 1-hour SO<sub>2</sub> NAAQS as follows:

- All hydrographic areas in the State of Nevada, Unclassifiable

The State of Nevada is divided into three jurisdictions for the purposes of air quality management: the Nevada Division of Environmental Protection (NDEP); the Department of Air Quality and Environmental Management (DAQEM) in Clark County; and the Air Quality Management Division (AQMD) of the Washoe County District Health Department (Washoe County). Each jurisdiction has evaluated their monitoring and modeling data regarding the SO<sub>2</sub> NAAQS and offers their area designation recommendations.

The NDEP recommends that all of the hydrographic areas in their jurisdiction be designated unclassifiable because sufficient monitoring data are not available to make an attainment or nonattainment designation. Additionally, for Prevention of Significant Deterioration baseline and increment tracking purposes, the term "State of Nevada" used in Nevada's area designation recommendation refers collectively to all the individual section 107(d) hydrographic areas in Nevada, as shown on the State of Nevada Division of Water Resources' map titled *Water Resources and Inter-Basin Flows* (September 1971) and subsequent revisions approved by EPA in Federal Register actions.

The Department of Air Quality and Environmental Management (DAQEM) staff in Clark County determined that Clark County does not have adequate data to recommend designation of attainment for the 1-hour SO<sub>2</sub> standard. For initial designations, the SO<sub>2</sub> rule requires States to use monitoring data for years 2008-2010. DAQEM has only one

Jared Blumenfeld, Regional Administrator, EPA R9

May 3, 2011

Page 2

active SO<sub>2</sub> monitor which began collecting data January 1, 2011. DAQEM historically collected SO<sub>2</sub> data at four other monitors in Clark County, but none have been operational since 2007. Therefore, DAQEM recommends that all hydrographic areas in the County be designated as unclassifiable, since Clark County has no SO<sub>2</sub> monitoring data for 2008-2010. A copy of DAQEM's recommendation letter is enclosed.

The Air Quality Management Division (AQMD) of the Washoe County District Health Department (Washoe County) has historically not monitored for SO<sub>2</sub> due to the fact that there are no sources of any significance with the AQMD's jurisdiction. Therefore, Washoe County recommends that all hydrographic areas in the County be designated as unclassifiable due to insufficient monitoring data. A copy of Washoe County's recommendation letter is enclosed.

If you should have any questions about Nevada's recommended area designations, please contact Greg Remer, Chief, Bureau of Air Quality Planning, at (775) 687-9359.

Sincerely,



Colleen Cripps, Ph.D.  
Administrator

Enclosures

cc w/o enclosures:

Dale Erquiaga, Senior Advisor, Office of the Governor  
Leo Drozdoff, Director, Nevada Department of Conservation and Natural Resources  
Greg Remer, Chief, Bureau of Air Quality Planning, NDEP  
Michael Elges, Deputy Administrator, NDEP  
Kevin Dick, Director, AQMD, Washoe County District Health Department  
Lewis Wallenmeyer, Director, Clark County DAQEM  
Lisa Hanf, Chief, Planning Office, USEPA Region IX (AIR-2)

Certified Mail: 7010 3090 0002 0466 7764



OFFICE OF THE GOVERNOR

RICK PERRY  
GOVERNOR

June 2, 2011

Alfredo Armendariz, Ph.D.  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Dear Dr. Armendariz:

Pursuant to the requirements in Section 107(d)(3) of the Federal Clean Air Act, enclosed is the State of Texas' recommendation for area designations under the 2010 one-hour sulfur dioxide (SO<sub>2</sub>) primary National Ambient Air Quality Standard (NAAQS) of 75 parts per billion (ppb).

The Texas Commission on Environmental Quality (TCEQ) recommends nonattainment designation for Texas counties with SO<sub>2</sub> regulatory design values exceeding 75.4 ppb; attainment designations for counties with SO<sub>2</sub> regulatory design values of 75.4 ppb or less; and identification as unclassifiable for all other counties in Texas at this time. Staff recommends a nonattainment designation for Jefferson County; attainment designations for Dallas, Ellis, El Paso, Galveston, Gregg, Harris, Kaufman, McLennan and Nueces counties; and identification as unclassifiable for all other Texas counties.

Enclosed is a resolution containing the State of Texas' recommendation for area designations under the 2010 SO<sub>2</sub> one-hour primary NAAQS, along with supporting documentation.

If you have any questions or need additional information, please feel free to contact TCEQ Chairman Dr. Bryan Shaw at (512) 239-5510.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry".

Rick Perry  
Governor

RP:tbp

Enclosures

cc: Bryan W. Shaw, Ph.D.

**ENCLOSURE****One-Hour Design Values (DV) in Texas Counties with Regulatory Sulfur Dioxide (SO<sub>2</sub>) Monitors**

<b>County</b>	<b>2009 Design Values*</b>	<b>2010 Preliminary Design Values**</b>
Jefferson	<b>80</b>	77
Gregg	75	66
Ellis	57	31
Harris	56	47
Galveston	41	42
Nueces	28	33
Kaufman	14	14
El Paso	11	11
Dallas	9	8
McLennan	6	6

\* 2009 DV calculated using 2007 through 2009 verified monitoring data

\*\* 2010 DV calculated using 2008 and 2009 verified data and 2010 data not yet verified

Note: Bolded text depicts DVs exceeding the 2010 SO<sub>2</sub> primary NAAQS of 75 ppb.

**ENCLOSURE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



**Resolution Concerning Sulfur Dioxide  
National Ambient Air Quality Standard Designations**

2011-0204-RES

WHEREAS, the Texas Commission on Environmental Quality (Commission) met on April 20, 2011, to discuss and consider designation recommendations for the 2010 one-hour primary sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS) for submittal to the Governor for his consideration and transmittal to the United States Environmental Protection Agency (EPA); and

WHEREAS, the Commission finds that the EPA revised the SO<sub>2</sub> NAAQS effective August 23, 2010, establishing a new one-hour primary SO<sub>2</sub> NAAQS at 75 parts per billion (ppb); and

WHEREAS, the Commission acknowledges that the Federal Clean Air Act (FCAA), § 107(d), requires the EPA, after the promulgation of a new or revised NAAQS, to designate areas as attainment, nonattainment, or unclassifiable; and

WHEREAS, the Commission acknowledges that the FCAA, § 107(d), also establishes a process for each Governor to provide recommendations to the EPA regarding appropriate designations for the 2010 one-hour primary SO<sub>2</sub> NAAQS for their state, including appropriate geographic boundaries; and

WHEREAS, the Commission acknowledges that the EPA has specified a deadline for the submittal of recommended designations for the 2010 one-hour primary SO<sub>2</sub> NAAQS of June 2, 2011; and

WHEREAS, the Commission acknowledges that the EPA recommends states identify areas not in compliance with the new or revised NAAQS using the most recent three years of air quality data, preferably data from calendar years 2008 through 2010, stored in the EPA Air Quality System (AQS), from Federal Reference Method and Federal Equivalent Method monitors that are sited and operated in accordance with 40 Code of Federal Regulations (CFR) Part 58;

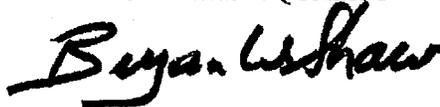
NOW THEREFORE, BE IT RESOLVED THAT:

The Commission hereby requests the Governor of Texas to submit a recommendation for the 2010 one-hour primary SO<sub>2</sub> NAAQS to the EPA for consideration, consisting of nonattainment designations for Texas counties with SO<sub>2</sub> regulatory design values exceeding 75.4 ppb; attainment designations for counties with SO<sub>2</sub> regulatory design values of 75.4 ppb or less; and identification as unclassifiable for all other counties in Texas, along with data analysis supporting this recommendation, by June 2, 2011; and

The Commission directs commission staff to provide supplemental information to the EPA to support designations, as necessary.

Issued date: **APR 29 2011**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

A handwritten signature in black ink that reads "Bryan W. Shaw". The signature is written in a cursive style with a horizontal line underneath the name.

Bryan W. Shaw, Ph.D., Chairman



**OFFICE OF THE GOVERNOR**

RICK PERRY  
GOVERNOR

April 20, 2012

Al Armendariz, Ph.D.  
Regional Administrator  
U.S. Environmental Protection Agency (EPA), Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Dear Dr. Armendariz:

Pursuant to the requirements in Section 107(d)(1)(A) of the Federal Clean Air Act, enclosed is a revised recommendation for designation of areas in Texas with regard to the 2010 National Ambient Air Quality Standard for one-hour sulfur dioxide (SO<sub>2</sub>) of 75 parts per billion (ppb). The most recent monitoring data show that Jefferson County is now in attainment of the standard. I am requesting to revise my recommendation to reflect this change.

The Texas Commission on Environmental Quality (TCEQ) developed the enclosed revision to the June 2011 Texas recommendation, considering the latest available, certified regulatory monitoring data for Jefferson County from the 2009 – 2011 period. This revised recommendation reflects the improved air quality in Jefferson County, which has a 2009 – 2011 design value of 68 ppb. In accordance with the EPA Office of Air Quality Planning and Standards' Director Stephen Page's March 24, 2011, SO<sub>2</sub> area designations memorandum, the commission understands that EPA intends to accept the most recently certified three years (2009 – 2011) of monitoring data as the basis for modifying previously submitted state designations.

If you have any questions or need additional information, please feel free to contact TCEQ Chairman Dr. Bryan Shaw at (512) 239-5510.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry".

Rick Perry  
Governor

RP:trp

Enclosure

cc: Bryan W. Shaw, Ph.D.

State of Texas  
2010 One-Hour Sulfur Dioxide (SO<sub>2</sub>) Standard  
Revised Designation Recommendation

Based on the 2011 design values, each county listed below should be designated attainment. All the rest of the counties in Texas should be designated unclassifiable.

<b>County</b>	<b>2010 Design Value*</b>	<b>2011 Design Value**</b>
Jefferson	77	68
Gregg	66	NA
Ellis	57	NA
Harris	56	NA
Galveston	41	NA
Nueces	28	NA
Kaufman	14	NA
El Paso	11	NA
Dallas	9	NA
McLennan	6	NA

\* 2010 design values are calculated using 2008 through 2010 certified monitoring data.

\*\* 2011 design values are calculated using 2009 through 2011 certified monitoring data. Only Jefferson County data have been certified by the TCEQ for 2011 on an expedited basis.

NA = not available



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

**FEB 06 2013**

Ref: 8P-AR

The Honorable Jack Dalrymple  
Governor of North Dakota  
State Capitol  
Bismarck, North Dakota 58505

Dear Governor Dalrymple:

Thank you for your recommendations dated May 25, 2011, on air quality designations for the state of North Dakota for the 2010 revision to the primary National Ambient Air Quality Standard for sulfur dioxide (SO<sub>2</sub>). Reducing levels of sulfur dioxide pollution is an important part of the U. S. Environmental Protection Agency's (EPA) commitment to a clean, healthy environment. Exposure to SO<sub>2</sub> can cause a range of adverse health effects, including narrowing of the airways which can cause difficulty breathing and increased asthma symptoms. This letter is to notify you of the EPA's preliminary intentions regarding your recommended designations.

On June 3, 2010, the EPA strengthened the health-based or "primary" standard for SO<sub>2</sub> by establishing a standard for 1-hour average SO<sub>2</sub> concentrations at a level of 75 parts per billion. The Clean Air Act requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to one year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.

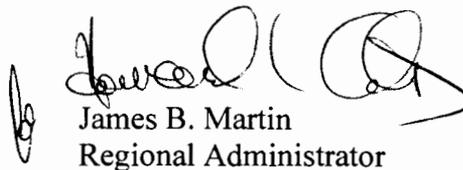
At this time the EPA is proceeding with designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address the designations for all other areas in separate future actions. With input from a diverse group of stakeholders, EPA has developed a comprehensive implementation strategy for these future actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub>. The strategy is available at: <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. The EPA will continue to work closely with you and our other partners at the state, tribal and local levels to ensure health-protective, commonsense implementation of the 1-hour SO<sub>2</sub> standard.

The EPA's review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in North Dakota. Consequently, the EPA is not yet prepared to propose designation action in North Dakota, and is, therefore, currently deferring action to designate areas in North Dakota. The EPA expects to be able to proceed with designation action in North Dakota

once additional data are gathered pursuant to our comprehensive implementation strategy. In a separate future action or actions the EPA will notify you of our intended designations for these areas, and seek public comment on these actions, no later than 120 days prior to promulgating any final designations.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding initial designations on the SO<sub>2</sub> standard, please visit our website at [www.epa.gov/so2designations](http://www.epa.gov/so2designations). Should you have any questions, please do not hesitate to call me, or have your staff contact Crystal Ostigaard of my staff at (303) 312-6602 or [ostigaard.crystal@epa.gov](mailto:ostigaard.crystal@epa.gov).

Sincerely,



James B. Martin  
Regional Administrator

Enclosure

cc: David Glatt, Section Chief, NDDH  
Terry O'Clair, Director, NDDH

Gina McCarthy, Assistant Administrator for Air and Radiation  
Stephen D. Page, Director, Office of Air Quality Planning and Standards

12147



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>



FEB 06 2013

Gov  
DENR 7 Fuji  
Matt

Ref: 8P-AR

The Honorable Dennis Daugaard  
Governor of South Dakota  
State Capitol  
Pierre, South Dakota 57501

Dear Governor Daugaard:

Thank you for your staff's recommendations dated June 2, 2011, on air quality designations for the state of South Dakota for the 2010 revision to the primary National Ambient Air Quality Standard for sulfur dioxide (SO<sub>2</sub>). Reducing levels of sulfur dioxide pollution is an important part of the U. S. Environmental Protection Agency's (EPA) commitment to a clean, healthy environment. Exposure to SO<sub>2</sub> can cause a range of adverse health effects, including narrowing of the airways which can cause difficulty breathing and increased asthma symptoms. This letter is to notify you of the EPA's preliminary intentions regarding your recommended designations.

On June 3, 2010, the EPA strengthened the health-based or "primary" standard for SO<sub>2</sub> by establishing a standard for 1-hour average SO<sub>2</sub> concentrations at a level of 75 parts per billion. The Clean Air Act requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to one year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.

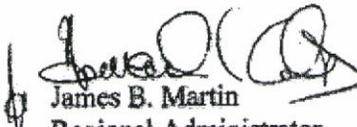
At this time the EPA is proceeding with designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address the designations for all other areas in separate future actions. With input from a diverse group of stakeholders, EPA has developed a comprehensive implementation strategy for these future actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub>. The strategy is available at: <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. The EPA will continue to work closely with you and our other partners at the state, tribal and local levels to ensure health-protective, commonsense implementation of the 1-hour SO<sub>2</sub> standard.

The EPA's review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in South Dakota. Consequently, the EPA is not yet prepared to propose designation action in South Dakota, and is, therefore, currently deferring action to designate areas in South Dakota. The EPA expects to be able to proceed with designation action in South Dakota

once additional data are gathered pursuant to our comprehensive implementation strategy. In a separate future action or actions the EPA will notify you of our intended designations for these areas, and seek public comment on these actions, no later than 120 days prior to promulgating any final designations.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding initial designations on the SO<sub>2</sub> standard, please visit our website at [www.epa.gov/so2designations](http://www.epa.gov/so2designations). Should you have any questions, please do not hesitate to call me, or have your staff contact Crystal Ostigaard of my staff at (303) 312-6602 or [ostigaard.crystal@epa.gov](mailto:ostigaard.crystal@epa.gov).

Sincerely,

  
James B. Martin  
Regional Administrator

Enclosure

cc: Steven M. Pirner, P.E. Secretary, DENR  
Brian Gustafson, Administrator, AQP

Gina McCarthy, Assistant Administrator for Air and Radiation  
Stephen D. Page, Director, Office of Air Quality Planning and Standards



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105-3901**

**FEB 06 2013**

**OFFICE OF THE  
REGIONAL ADMINISTRATOR**

The Honorable Brian Sandoval  
State Capitol Building  
101 North Carson Street  
Carson City, Nevada 89701

Dear Governor Sandoval:

Thank you for your staff's recommendations dated May 3, 2011 on air quality designations for the state of Nevada for the 2010 revision to the primary National Ambient Air Quality Standard for sulfur dioxide (SO<sub>2</sub>). Reducing levels of SO<sub>2</sub> pollution is an important part of the U. S. Environmental Protection Agency's (EPA) commitment to a clean, healthy environment. Exposure to SO<sub>2</sub> can cause a range of adverse health effects, including narrowing of the airways which can cause difficulty breathing and increased asthma symptoms. This letter is to notify you of the EPA's preliminary intentions regarding your recommended designations.

On June 3, 2010, the EPA strengthened the health-based or "primary" standard for SO<sub>2</sub> by establishing a standard for 1-hour average SO<sub>2</sub> concentrations at a level of 75 parts per billion. The Clean Air Act requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to one year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.

At this time the EPA is proceeding with designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address the designations for all other areas in separate future actions. With input from a diverse group of stakeholders, EPA has developed a comprehensive implementation strategy for these future actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub>. The strategy is available at: [www.epa.gov/airquality/sulfurdioxide/implement.html](http://www.epa.gov/airquality/sulfurdioxide/implement.html). The EPA will continue to work closely with you and our other partners at the state, tribal and local levels to ensure health-protective, common sense implementation of the 1-hour SO<sub>2</sub> standard.

The EPA's review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in Nevada. Consequently, the EPA is not yet prepared to propose designation action in Nevada and is therefore currently deferring action to designate areas in Nevada. The EPA expects to be able to proceed with designation action in Nevada once additional data are gathered pursuant to our comprehensive implementation strategy. In a separate future action or actions

the EPA will notify you of our intended designations for these areas, and seek public comment on these actions, no later than 120 days prior to promulgating any final designations.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding initial designations of the SO<sub>2</sub> standard, please visit our website at: [www.epa.gov/so2designations](http://www.epa.gov/so2designations). Should you have any questions, please do not hesitate to call me, or have your staff contact Deborah Jordan, Director, Air Division at 415-947-8715, or [jordan.deborah@epa.gov](mailto:jordan.deborah@epa.gov).

Sincerely,

  
for Jared Blumenfeld

cc: Colleen Cripps, Administrator, Nevada Division of Environmental Protection  
Mike Elges, Deputy Administrator, Nevada Division of Environmental Protection  
Rob Bamford, Chief, Air Quality Planning Bureau, Nevada Division of Environmental Protection  
Lewis Wallenmeyer, Director, Clark County Department of Air Quality and Environmental Management  
Kevin Dick, Director, Air Quality Management Division, Washoe County Board of Health  
Gina McCarthy, Assistant Administrator for Air and Radiation  
Stephen D. Page, Director, Office of Air Quality Planning and Standards



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 - 2733

February 7, 2013

Office of the Regional Administrator

The Honorable Rick Perry  
Governor of Texas  
Post Office Box 12428  
Austin, Texas 78711

Dear Governor Perry:

Thank you for your recommendations dated June 2, 2011, and April 20, 2012, on air quality designations for the state of Texas for the 2010 revision to the primary National Ambient Air Quality Standard for sulfur dioxide. Reducing levels of sulfur dioxide pollution is an important part of the U. S. Environmental Protection Agency's commitment to a clean, healthy environment. Exposure to SO<sub>2</sub> can cause a range of adverse health effects, including narrowing of the airways which can cause difficulty breathing and increased asthma symptoms. This letter is to notify you of the EPA's preliminary intentions regarding your recommended designations.

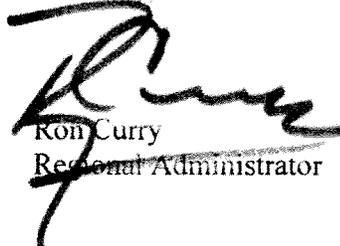
On June 3, 2010, the EPA strengthened the health-based or "primary" standard for SO<sub>2</sub> by establishing a standard for 1-hour average SO<sub>2</sub> concentrations at a level of 75 parts per billion. The Clean Air Act requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to one year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.

At this time, the EPA is proceeding with designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address the designations for all other areas in separate future actions. With input from a diverse group of stakeholders, the EPA has developed a comprehensive implementation strategy for these future actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub>. The strategy is available at: <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. The EPA will continue to work closely with you and our other partners at the state, tribal and local levels to ensure health-protective, commonsense implementation of the 1-hour SO<sub>2</sub> standard.

The EPA's review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in Texas. Consequently, the EPA is not yet prepared to propose designation action in Texas and is therefore currently deferring action to designate areas in Texas. The EPA expects to be able to proceed with designation action in Texas once additional data are gathered pursuant to our comprehensive implementation strategy. In a separate future action or actions the EPA will notify you of our intended designations for these areas, and seek public comment on these actions, no later than 120 days prior to promulgating any final designations.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding initial designations on the SO<sub>2</sub> standard, please visit our website at [www.epa.gov/so2designations](http://www.epa.gov/so2designations). Should you have any questions, please do not hesitate to call me at (214) 665-2100, or have your staff contact Mr. Guy Donaldson of my staff at (214) 665-7242, or via email at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov).

Sincerely,



Ron Curry  
Regional Administrator

cc: Mr. Bryan W. Shaw, Ph.D.  
Chairman, Texas Commission on Environmental Quality

Mr. Zak Covar  
Executive Director, Texas Commission on Environmental Quality

Mr. Steve Hagle, P.E.,  
Deputy Director, Air, Texas Commission on Environmental Quality

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 State of North Dakota, State of South Dakota, State of Nevada and State of Texas

**(b)** County of Residence of First Listed Plaintiff Burleigh, North Dakota  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
 North Dakota Office of Attorney General, 500 N. 9th Street, Bismarck, ND 58501, 701-328-3640

**DEFENDANTS**  
 Regina McCarthy, in her official capacity as Administrator of the US Environmental Protection Agency

County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Sections 7407(d)(1)(B) and 7407(d)(2)

Brief description of cause:  
EPA Administrator's failure to perform her non-discretionary duty to promulgate sulfur dioxide area designations.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

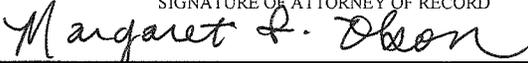
**DEMAND \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE Kandis A. Westmore (N. Dist. Calif.) DOCKET NUMBER 3:13-cv-03953

DATE 09/11/2013

SIGNATURE OF ATTORNEY OF RECORD  


FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.