



VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED AND EMAIL

February 13, 2019

Mr. Andrew Wheeler  
Acting Administrator  
Environmental Protection Agency  
1101A EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460  
wheeler.andrew@epa.gov

RE: Notice of Citizen Suit Concerning Clean Air Act Deadlines for Coke Oven Source Category Rulemakings and Study

Dear Acting Administrator Wheeler,

This is a notice of “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” under Clean Air Act § 304, 42 U.S.C. § 7604(a)(2). This notice is provided to you as Administrator of the U.S. Environmental Protection Agency (“EPA”), in your official capacity, pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54 as a prerequisite to bringing a civil action.

The organizations giving this notice are: Gasp, 2320 Highland Ave. S., Suite 270, Birmingham, AL 35205, (205) 938-4272; Louisiana Bucket Brigade, 2803 Saint Phillip Street, New Orleans, LA 70119, (504) 482-3433; PennFuture, 200 First Avenue, Suite 200, Pittsburgh, PA 15222, (412) 456-2785; and Sierra Club, 2101 Webster St Suite 1300, Oakland, CA 94612, (415) 977-5500.

**Section 112(d) – MACT Review and Revision.** Section 112(d)(6) of the Clean Air Act requires EPA to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [§ 112] no less often than every 8 years.” 42 U.S.C. § 7412(d)(6).

More than eight years have passed since EPA promulgated Clean Air Act § 112 regulations for the following categories:

- (1) Coke Ovens: Pushing, Quenching, and Battery Stacks, 40 C.F.R. Part 63 Subpart CCCCC (68 Fed. Reg. 18,008 (Apr. 14, 2003) and 70 Fed. Reg. 44,285 (August 2, 2005));  
and

(2) Coke Oven Batteries, 40 C.F.R. Part 63 Subpart L (58 Fed. Reg. 57,898 (Oct. 27, 1993), and 70 Fed. Reg. 19,992 (Apr. 15, 2005)).  
EPA has not reviewed and revised, as necessary, emission standards for these categories, as Clean Air Act § 112(d)(6) requires.

For Subpart CCCCC Coke Ovens, EPA violated and is in ongoing violation of the Act as of its action deadline of at least August 2, 2013, or alternatively, April 14, 2011. For Subpart L Coke Oven Batteries, EPA violated and is in ongoing violation of the Act as of its action deadline of April 15, 2013. Accordingly, EPA has failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 304. 42 U.S.C. § 7604(a)(2).

**Section 112(f) - Standards to Protect Health and Environment.** Section 112(f) of the Clean Air Act provides that:

(A) . . . [T]he Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [§ 112(d)], promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. . . .

If standards promulgated pursuant to [§ 112(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for this source category.

. . .

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under [§ 112(d)] for each source category or subcategory concerned.

42 U.S.C. § 7412(f)(2).

More than eight years have passed since EPA promulgated standards under § 112(d) for the following categories of major sources of hazardous air pollutants:

- (1) Coke Ovens: Pushing, Quenching, and Battery Stacks, 40 C.F.R. Part 63 Subpart CCCCC (68 Fed. Reg. 18,008 (Apr. 14, 2003) and 70 Fed. Reg. 44,285 (August 2, 2005));  
and
- (2) Coke Oven Batteries, 40 C.F.R. Part 63 Subpart L (58 Fed. Reg. 57,898 (Oct. 27, 1993), and 70 Fed. Reg. 19,992 (Apr. 15, 2005)).

For both categories, EPA failed to either promulgate § 112(f) standards or determine that such standards are not “required in order to provide an ample margin of safety to protect public health in accordance with this section . . . or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.” 42 U.S.C. § 7412(f)(2)(A).

For Subpart CCCCC Coke Ovens, EPA violated and is in ongoing violation of the Act, as of its action deadline of at least August 2, 2013, or alternatively, April 14, 2011. For Subpart L Coke Oven Batteries, EPA violated and is in ongoing violation of the Act, as of its action deadline of April 15, 2013. Accordingly, EPA has failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 304. 42 U.S.C. § 7604(a)(2).

**Section 112(n) – Coke Oven Study.** Section 112(n)(2) of the Clean Air Act provides that:

(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities.

...

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d).

(D) There are authorized to be appropriated \$5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph.

42 U.S.C. § 7412(n)(2).

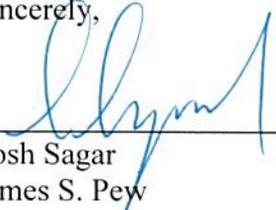
EPA has neither undertaken nor completed the required study assessing coke oven production emission control technologies, nor has a report on the results of such a study been submitted to Congress. Accordingly, EPA violated and is ongoing violation of Clean Air Act

§ 112(n)(2), as of its action deadline October 1, 1997, *see id.*, and has failed to perform a nondiscretionary duty within the meaning of Clean Air Act § 304, 42 U.S.C. § 7604(a)(2).

**60-Day Notice.** Under Clean Air Act § 304, the above-listed organizations may commence a citizen suit to compel you to perform any or all of the above duties at any time beginning sixty days from the postmark date of this letter, which is February 13, 2019. *See* 40 C.F.R. § 54.2(d).

**Contact Information.** We are acting as attorneys for the above-listed organizations in this matter. Please contact us at your earliest convenience regarding this matter. Please address any communications to us at the address and telephone number set forth below.

Sincerely,



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Tosh Sagar  
James S. Pew  
Earthjustice  
1625 Massachusetts Ave., NW, Suite 702  
Washington, D.C. 20036-2243  
Tel: (202) 797-4300  
tsagar@earthjustice.org  
jpew@earthjustice.org

cc: Matthew Z. Leopold, General Counsel, Office of General Counsel, EPA  
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA  
Peter Tsigotis, Director, Office of Air Quality Planning and Standards, EPA