



November 15, 2021

Michael Regan, Administrator
United States Environmental Protection Agency
Office of the Administrator
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: 60-Day Notice of Intent to sue for failure to perform nondiscretionary duty under the Clean Air Act –Regional Haze 309(g) SIP revision for PacifiCorp Jim Bridger Power Plant

Administrator Regan:

I am deeply disappointed to have to provide this notice to you that the State of Wyoming intends to file a citizen suit against the United States Environmental Protection Agency (EPA) and the Administrator of the EPA for failing to perform a nondiscretionary duty under the Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.* In spite of my early and specific outreach to you shortly after you were confirmed about this urgent matter, you have failed to fulfill your duty under 42 U.S.C. § 7410(k), to approve or disapprove Wyoming's Regional Haze 309(g) State Implementation Plan (SIP) revision for PacifiCorp's Jim Bridger Power Plant within the time prescribed by law. This failure needlessly and recklessly imperils the employment of many Wyoming workers, threatens electricity consumers with increased energy costs, threatens to undermine the reliability of the nation's electricity grid, undermines the integrity of the regional haze program and EPA itself, damages our cooperative relationship, and actually does greater harm to the environment -- and for what, shallow talking points on the international stage?

Let me begin with a little background. In 2014, EPA published a final Regional Haze Rule that approved the NOx portion of Wyoming's SIP requiring controls of NOx emissions from the Jim Bridger Power Plant Units 1-4. 79 Fed. Reg. 5032 (Jan 30, 2014). In particular, EPA approved Wyoming's requirement that PacifiCorp install low NOx burners (LNB) and separated overfire air (SOFA) plus selective catalytic reduction (SCR) at Jim Bridger Units 1-4 as part of the State's Reasonable Progress Long Term Strategy. PacifiCorp installed these control technologies on Units 3 and 4 in 2015 and 2016 as required by the SIP. PacifiCorp has also installed LNB and SOFA at Units 1 and 2.

Due to the significant cost of installing SCR at Units 1 and 2, on February 5, 2020, PacifiCorp submitted a Regional Haze Reasonable Progress Reassessment to the State of Wyoming proposing an alternative to installing SCR. This alternative regional haze compliance strategy for the Jim Bridger Power Plant included visibility enhancing emission limits, a four-factor "reasonable progress" analysis, reduced plant-wide month-by-month emissions limits for the two principle haze-causing pollutants, NOx and SO₂, and an annual total emissions cap for both pollutants for all four Units.

Before submitting the reassessment to the State, PacifiCorp and the Wyoming Department of Environmental Quality worked directly with EPA to develop the alternative and to address all of EPA's questions and concerns.

PacifiCorp's proposed alternative was significantly better than the existing SCR requirement in every possible way. The proposed alternative was far more cost efficient than SCR. In fact, the capital cost of SCR was over \$297 million compared to just over \$16 million for the visibility enhancing emission limits. The visibility enhancing emission limits were also much more cost effective per ton at \$349 per ton compared to a whopping \$4,744 per ton for SCR, resulting in reduced cost to ratepayers during a time of increasing inflation nationally.

Moreover, the visibility enhancing emission limits would actually result in greater visibility improvement than SCR. First, even EPA agreed in 2014 that the visibility benefits from installing SCR in addition to LNB and SOFA at Units 1 and 2 were modest and imperceptible at 0.10 to 0.15 deciviews. Installing SCR would reduce NOx emissions from these units by 5,848 tons/year. But even EPA recognizes that it is SO₂, not NOx that is "the predominant cause of regional haze on the Colorado Plateau in the western US." 79 Fed. Reg. at 5097. By implementing the visibility enhancing emissions limits, the proposed alternative would reduce NOx and SO₂ emissions by 6,056 tons/year. Thus, the proposed alternative would result in greater visibility improvement than the NOx only reductions associated with the installation of SCR. This conclusion was confirmed by updated CALPUFF modeling. Moreover, the plant-wide limit would cap all emissions from the source, including particulate matter, producing additional visibility benefits.

In addition, the proposed alternative had other significant benefits beyond getting greater visibility for substantially less money. Implementing the visibility enhancing emission limits would also result in less impacts from mercury, carbon monoxide, carbon dioxide, particulate matter, sulfuric acid, coal consumption, coal combustion residual production and disposal, and raw water consumption. SCR also requires the use and storage of ammonia (a hazardous substance) while the proposed alternative does not. SCR also uses a significant amount of electricity, which could otherwise be put to use elsewhere. The proposed alternative would save 10.4 MW or enough electricity to power approximately 8,761 homes. Finally, because the visibility enhancing emission limits are plant-wide, they provide the entire facility flexibility to "load follow" or accommodate the intermittent influx of renewable energy in the western power grid. Thus, the alternative would make the electricity grid more robust.

Presented with all these advantages, no known disadvantages, and EPA's buy-in, Wyoming began the SIP revision process. During the public comment period on the revision, EPA submitted minor technical comments, which Wyoming fully addressed. Notably, EPA did not express any substantive concerns with the revision, the supporting data, the conclusions drawn from that data, or in any way signal that the revision would not meet the legal requirements of the regional haze program. The science was, and remains, clear. The environmental, social, and economic outcomes of the alternative are superior in every way.

Accordingly, Wyoming determined that the revision ensured reasonable progress as required by the CAA and submitted the revisions to EPA for approval on May 12, 2020. EPA acknowledged receipt

of the revised SIP submission on May 14, 2020. EPA then began its formal review process. In fact, it appears that EPA actually finished that process last year. Wyoming was notified on November 23, 2020, that the former Region 8 Administrator, Gregory Sopkin, had signed the proposed action on November 20, 2020, and that Wyoming would be informed when the action would be published in the Federal Register. But that did not happen.

After the change in administrations, EPA decided to ignore the decision of the Regional Administrator, and reconsider his prior approval. That process took months, during which, I specifically brought this matter to your attention and asked you to follow through on all the hard work that had been done by both the State and the EPA. Instead of following through and approving the revision, Wyoming was verbally notified in June 2021 that EPA was not going to act on the SIP revision at all. Not because it failed to meet the requirements of the CAA. If that was the case, EPA would simply disapprove the revision. Instead, all I can glean from EPA's willful refusal to do its job, is that the agency is trying to use the regional haze program to further its goal of shutting down coal fired power plants. In short, I am convinced that EPA's refusal to act on Wyoming's SIP revision is nothing more than an old fashioned shakedown.

EPA is aware that the current SIP requires PacifiCorp to install SCR on Unit 2 by December 31, 2021, which it could not do at this late hour, even if it made sense to do so. If EPA does not take action on Wyoming's SIP revision before this impending deadline then PacifiCorp will be forced to shut down that unit, lay off employees, and buy power to make up for the lost generation. That cost will be passed on to consumers in Wyoming and across the west creating a social and economic injustice. This would be irresponsible if EPA's failure were mere neglect, but here EPA's failure is a willful dereliction of duty to accomplish a goal that it cannot accomplish through lawful means.

The CAA imposes a nondiscretionary duty on the Administrator to approve or disapprove a SIP revision within twelve months of being deemed complete. 42 U.S.C. § 7410(k)(2). On May 14, 2020, EPA acknowledged receipt of Wyoming's SIP revision. EPA did not make a completeness finding within six months as required by 42 U.S.C. § 7410(k)(1)(B). Thus, Wyoming's SIP revision was deemed complete by operation of law on November 14, 2020. 42 U.S.C. § 7410(k)(1)(B). Twelve months later, on November 14, 2021, EPA was required to act on Wyoming's SIP revision in accordance with 42 U.S.C. § 7410(k)(2)-(3), but failed to do so. Thus, EPA has failed to do its duty, failed to follow the law, and failed the citizens of Wyoming.

Accordingly, I hereby give notice under 42 U.S.C. § 7604 that the State of Wyoming intends to sue EPA in sixty days to remedy this failure. Attorney General Hill will be serving you with that lawsuit at the first moment allowed by the CAA. At the end of the sixty-day notice period, Wyoming intends to seek an order from the court finding that the EPA has failed to perform the nondiscretionary duty described herein, ensuring compliance with the duty, recovering attorneys' fees and other costs of litigation, and granting all other available relief.

For my part, I intend to take every action available to me to protect the people of Wyoming and ensure that Unit 2 does not shut down at the end of this year due to EPA's dereliction of duty. First, because I have grave concerns about the effect of an abrupt, unplanned shutdown on the reliability and adequacy of the electricity grid, by copy of this letter I am requesting that the Wyoming Public

Service Commission initiate an appropriate investigation under Wyo. Stat. Ann. § 37-2-117. I think it is imperative that the Public Service Commission ascertain the ramifications of EPA's failure to act on Wyoming's SIP revision. The citizens of Wyoming and the American people deserve to know when EPA recklessly misuses its authority, which raises their electricity rates and carelessly risks the reliability of their grid. Moreover, discarding years of good work responsibly addressing regional haze concerns in order to find some facile way to put working families out of a job so climate cognoscenti can opine wistfully in the salons of DC and the UN about global warming is simply unconscionable. The decline in domestic coal fired generation capacity is well known as is the fact that CO2 emissions have only increased. EPA's failure to honor its commitments is astonishing, counterproductive, and will prove to be ultimately futile.

Second, because I believe that EPA's failure to act threatens the employment of Wyoming workers at the Jim Bridger Power Plant, by copy of this letter, I am encouraging the employees of this facility to request that you initiate an investigation and hold a public hearing under 42 U.S.C. § 7621(b). As you know, upon receipt of such a request, you have a duty to initiate such an investigation and, upon request, to hold a public hearing. I firmly believe that you personally should attend such a public hearing to hear and see firsthand how the actions of your agency will adversely affect the men and women who work at this facility, their families, and their community. You should have to look these people in the eye if the actions of your agency are going to put them out of work.

Third, if you do not act to approve Wyoming's SIP revision by December 15, 2021, I will not hesitate to use my authority under 42 U.S.C. § 7410(g) to issue a temporary emergency suspension of the existing SIP compliance deadline. I will not stand idly by while EPA refuses to do its job so it can force a shutdown that is otherwise beyond its authority, threatens the employment of these workers, harms their community and creates a grave injustice.

In closing, I want to reiterate how disappointed I am to have to provide this notice. Wyoming strives to work collaboratively with EPA and did so here. I remain open to continued dialogue with you, and hope that we will have a followup phone call this week. You still have time to fix this by approving Wyoming's SIP revision by mid-December, and I encourage you to do so immediately. It should not be hard as you already have a signed approval in your possession. Approving the revision would also go a long way to restoring my trust in you and your agency. I hope you will take advantage of this opportunity before we have to meet in court.

Sincerely,



Mark Gordon
Governor

cc: Attorney General Bridget Hill
Senator John Barrasso
Senator Cynthia Lummis
Representative Liz Cheney
Governor Brad Little

Dan Dockstader, President, Wyoming Senate
Eric Barlow, Speaker, Wyoming House of Representatives
Christopher Petrie, Chairman, Wyoming Public Service Commission
Michael Robinson, Deputy Chairman, Wyoming Public Service Commission
Mary Throne, Commissioner, Wyoming Public Service Commission
Todd Parfitt, Director, Wyoming Department of Environmental Quality
Robin Cooley, Director, Wyoming Department of Workforce Services
Brenda Hensen, Director, Wyoming Department of Revenue
Randy (Doc) Wendling, Chair, Sweetwater County Commissioners
Tim Kaumo, Mayor, City of Rock Springs
Pete Rust, Mayor, City of Green River
Jim Willox, President, Wyoming County Commissioners Association
Deb Thomas, Acting Administrator for Region 8
Gary Hoogeveen, President and CEO, Rocky Mountain Power
Lisa A. Grow, President and CEO, IDACORP, Inc. and Idaho Power