



July 19, 2022

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Michael Regan
Administrator
U.S. Environmental Protection Agency
Mailcode 1101A
1200 Pennsylvania Ave. NW
Washington, DC 20460
Regan.michael@epa.gov

Re: Notice of Intent to File Suit Under the Clean Air Act, Failure to Act on Colorado State Implementation Plan Submission

Dear Administrator Regan:

This letter is to inform you that WildEarth Guardians intends to sue you and the Environmental Protection Agency (EPA) over your failure to take action on a State Implementation Plan (SIP) submission as required by Section 110(k)(2) of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2).

At issue is a Colorado SIP submission purporting to demonstrate attainment of the 2008 ozone national ambient air quality standards (NAAQS) in the Denver Metro-North Front Range serious nonattainment area. This submission was received by the EPA in early 2021, yet the agency has yet to take action to approve, disapprove, or partially approve and disapprove the SIP submission pursuant to a nondiscretionary 12-month deadline under the Clean Air Act. We intend to bring a suit 60 days from the date of this letter, or shortly thereafter, under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, against you and the EPA for your failure to perform a nondiscretionary duty set forth in 42 U.S.C. § 7410(k)(2).

BACKGROUND

For years, the Denver Metro-North Front Range region of Colorado has struggled to comply with national ambient air quality standards for ground-level ozone, the key ingredient of smog. The region, which includes all of Adams, Arapahoe, Boulder, Broomfield, Denver Douglas, and Jefferson Counties, as well as portions of Larimer and Weld Counties, has been

designated a “nonattainment” area since 2007 due to this serious ongoing air quality problem. See 40 C.F.R. § 81.306.

In 2019, the EPA reclassified the Denver Metro-North Front Range region from a “moderate” to a “serious” ozone nonattainment area due to ongoing violations of NAAQS that were first adopted in 2008. 84 Fed. Reg. 70,897 (Dec. 26, 2019). This reclassification imposed more stringent air quality regulatory requirements and established a deadline of August 3, 2020 for Colorado to submit a plan to demonstrate compliance, or attainment, with the 2008 ozone NAAQS according to “serious” nonattainment planning requirements under section 182(c) of the Clean Air Act. See 42 U.S.C. § 7511a(c).

On March 22, 2021, the State of Colorado finally made a SIP submission to the EPA purporting to address Clean Air Act section 182(c) requirements for the Denver Metro-North Front Range serious ozone nonattainment area. On June 2, 2021, the EPA deemed Colorado’s submission complete.

Under the Clean Air Act, the EPA must fully or partially approve or disapprove a SIP submission within 12 months after such submission has been deemed complete. See 42 U.S.C. §§ 7410(k)(2) and 7410(k)(3). This is a mandatory duty under the Clean Air Act. Accordingly, EPA was required to fully or partially approve or disapprove of Colorado’s SIP submission by June 2, 2022.

As of the date of this letter, the EPA has yet to fully or partially approve or disapprove of Colorado’s submission purporting to comply with Clean Air Act section 182(c) requirements for the Denver Metro-North Front Range serious ozone nonattainment area.

NOTICE OF INTENT TO FILE SUIT

Pursuant to the Clean Air Act, the Administrator was required to take action on Colorado’s SIP submission within 12 months after June 2, 2021, the date the EPA determined the submission was complete. The Administrator was therefore required to fully or partially approve or disapprove of Colorado’s SIP submission by June 2, 2022. To date, the EPA has yet to take any action on Colorado’s SIP submission.

Under the Clean Air Act, any person may bring suit against the Administrator and the EPA over the failure to perform any act or duty that is not discretionary. 42 U.S.C. § 7604(a)(2). Prior to bringing such suit, a person must first provide 60-day notice to the Administrator. 42 U.S.C. § 7604(b)(2).

WildEarth Guardians therefore provides notice of its intent to bring a suit 60 days from the date of this letter against you and the EPA for your failure to fully or partially approve or disapprove of Colorado’s SIP submission by June 2, 2022, a nondiscretionary duty required by the Clean Air Act, 42 U.S.C. § 7410(k)(2).

In keeping with the requirements of federal regulations at 40 C.F.R. § 54.3(a), you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 301 N. Guadalupe, Suite 201, Santa Fe, NM 87501. For purposes of discussing this matter, please contact us at the information below. Thank you.

Sincerely,



Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
(303) 437-7663
jnichols@wildearthguardians.org

cc (by e-mail):

KC Becker, Administrator, EPA Region 8, becker.kc@epa.gov
Michael Ogletree, Director, Air Pollution Control Division, Michael.ogletree@state.co.us

