



ENVIRONMENTAL  
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July 18, 2023

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Michael S. Regan, Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 1101A)  
Washington, D.C. 20460

Re: Notice of Intent to Sue Pursuant to Section 304(b)(2) of the Clean Air Act for Failure of the Administrator to Act on Clean Air Act State Implementation Plan Submissions from Arizona, Colorado, New Mexico, and Utah.

Dear Administrator Regan:

I am writing on behalf of Our Children's Earth Foundation ("OCE") to notify you of ongoing violations of the federal Clean Air Act by you, as Administrator of the Environmental Protection Agency ("EPA"), for your failure to timely act, as required by Section 110(k)(2) of the Clean Air Act, 42 U.S.C. § 7410(k)(2), on numerous state implementation plan ("SIP") revisions submitted by the States of Arizona, Colorado, New Mexico, and Utah. OCE intends to file a lawsuit seeking to address your failure to perform these nondiscretionary duties set forth in 42 U.S.C. § 7410(k)(2) 60 days from the date of this letter under Section 304 of the Clean Air Act, 42 U.S.C. § 7604. The SIP submissions that you have failed to timely address include those listed in the attached spreadsheet.

**A. Failure To Perform Nondiscretionary Duties**

Under the Clean Air Act, states are required to submit SIP submissions to the EPA to implement, maintain, and enforce National Ambient Air Quality Standards ("NAAQS"). *See* 42 U.S.C. § 7410(a). The Clean Air Act further requires the Administrator to fully or partially approve or

disapprove a SIP submission within twelve (12) months after such submission has been deemed complete, either by the Administrator or as a matter of law. *See* 42 U.S.C. § 7410(k)(2). If the EPA does not make a completeness finding, SIP submissions are deemed complete by operation of law six (6) months after submission. *See* 42 U.S.C. § 7410(k)(1)(B). Therefore, at most, EPA had eighteen (18) months within which to take final action to approve, disapprove, or partially approve or disapprove the aforementioned SIP submissions from the States of Arizona, Colorado, New Mexico, and Utah. As of the date of this letter, EPA has failed to fully or partially approve or disapprove the aforementioned SIP submissions listed in the attachment. Because EPA has failed to take action on the above SIP submissions by the statutory deadline, EPA is now in violation of Clean Air Act Section 110(k)(2), 42 U.S.C. § 7410(k)(2).

#### **B. Notice of Intent to Sue**

After the expiration of sixty (60) days from the date of this notice of intent to sue, OCE intends to file suit against you in federal court for your failure to act in accordance with, or fulfill, the duties described in Section A of this letter.

#### **C. Identity of Persons Giving Notice and Their Counsel**

As required by 40 C.F.R. § 54.3, the name and address of OCE, the noticing party, is as follows:

Our Children's Earth Foundation  
1625 Trancas St. #2218  
Napa, CA 94558-9998  
Tel: (510) 910-4535  
E-mail: [annie@ocefoundation.org](mailto:annie@ocefoundation.org)

OCE is a non-profit public benefit corporation with members throughout the United States, including many members in Arizona, Colorado, New Mexico, Utah, and surrounding states affected by air pollution originating in those states, dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit. Part of OCE's mission is to participate in environmental decisionmaking, enforce federal and state environmental laws (including via citizen suits), to reduce pollution, and to educate the public concerning environmental laws and their enforcement.

OCE has retained the following legal counsel to represent it in this matter:

Stuart Wilcox, Esq.  
Environmental Advocates  
5135 Anza Street  
San Francisco, CA 94121  
Tel: (720) 331-0385  
Fax: (415) 358-5695  
E-mail: [wilcox@enviroadvocates.com](mailto:wilcox@enviroadvocates.com)

**D. Offer to Negotiate**

During the sixty (60) day notice period, OCE is willing to discuss effective measures to correct your failure to comply with your nondiscretionary duties and to discuss any information bearing upon this notice. If you wish to pursue such discussions prior to litigation, we request that you expeditiously initiate them so that these discussions may be completed before the end of the sixty (60) day notice period. OCE does not intend to delay the filing of a complaint in federal court if the discussions fail to resolve these matters within the sixty (60) day notice period, and it intends to seek all appropriate relief, including injunctive relief and all costs of litigation, including, but not limited to, attorneys' fees, expert witness fees, and other costs.

We believe this notice provides information sufficient for you to determine the mandatory duty we allege you have failed to perform. If, however, you have any questions, please feel free to contact us for clarification.

We look forward to hearing from you.

Sincerely,

/s/ Stuart Wilcox

Stuart Wilcox

Environmental Advocates

*Counsel for Our Children's Earth Foundation*

<b>Arizona Overdue SIP Submissions</b>		
<b>SPECS Review Page</b>	<b>State Submittal Date</b>	<b>SPECS Review Page ID</b>
Hayden PM10 Plan	10/16/1989	13874
Pima NSR Program	8/31/1994	20502
Special rule for non-operating sources of sulfur dioxide in sulfur dioxide nonattainment areas	11/27/1995	20200
Special rule for ozone nonattainment areas classified as serious and severe	11/27/1995	20202
Hayden 1971 SO2 RRMP	6/27/2002	14745
AZ/Yuma AgBMP AAC R18-2-612 and 613	8/16/2006	19936
Yuma PM10 - 2006 RRMP	8/17/2006	12077
ADEQ AAC Title 18, Permits	10/29/2012	20602
AZ 2012 PM2.5 ISIP	12/11/2015	14316
Major Source Definition	12/23/2015	20512
Maricopa County Rulebook Recodification Project	9/13/2017	16129
AZ 2015 Ozone ISIP (non-transport provisions only)	9/24/2018	25809
Maricopa County Rule 230 General Permits	12/20/2019	205003
Maricopa County Rule 350 Storage and Transfer of Organic Liquids (Non-Gasoline) at an Organic Liquid Distribution (OLD) Facility	12/3/2020	230613
Maricopa County Rule 351 Storage and Loading of Gasoline at Bulk Gasoline Plants and at Bulk Gasoline Terminals	12/3/2020	230928
Maricopa County Rule 352 Gasoline Cargo Tank Testing and Use	12/3/2020	230931
Maricopa County Rule 353 Storage and Loading of Gasoline at a Gasoline Dispensing Facility	12/3/2020	230934
Yuma 2015 Ozone - Marginal EI	12/22/2020	232640
Arizona Department of Environmental Quality - Area A - CBG Program Update and Removal of the GSAP	6/17/2021	240562
Maricopa County AQD Rule RACT Certification for Aerospace CTG and Major Source NOx	6/30/2021	240851
Maricopa County AQD Rule 336 Surface Coating Operations	9/17/2021	244509
Maricopa County AQD Rule 600 Emergency Episodes	12/17/2021	248370

<b>Colorado Overdue SIP Submissions</b>
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<b>SPeCS Review Page</b>	<b>State Submittal Date</b>	<b>SPeCS Review Page ID</b>
Common Provisions - SSM Revisions to amend excess emission provisions. Common Provisions - Sections II.E. and II.J.	11/21/2016	198883
Reg 7 Major Source RACT: Turbines and Glass Melt Furnaces	5/31/2017	213929
Reg 7 Major Source RACT/ Combustion Sources, Glass Melting Furnaces	5/8/2019	224654
Remaining Pieces of Reg 7 Major Source RACT/ Combustion Sources	5/8/2019	224650
Regulation Number 21 VOC Content Measures for Architectural Coatings and Consumer Products	5/13/2020	211919
2015 Ozone Marginal Area Certification	7/27/2020	215070
2015 Ozone Marginal Area Certification (Base year inventory and Emission Statement)	7/27/2020	239782
CO Reg 7 RACT RICE Turbine and Foam	5/18/2021	239495

**Attachment 1 to Clean Air Act Citizen Suit Notice Letter**

<b>New Mexico Overdue SIP Submissions</b>		
<b>SPeCS Review Page</b>	<b>State Submittal Date</b>	<b>SPeCS Review Page ID</b>
NM NMED 2015 8-Hour Ozone Standard Interstate Transport SIP (Prongs 1 and 2)	7/30/2021	242171
NM Alb 2015 8-Hour Ozone Standard Interstate Transport SIP (Prongs 1 and 2)	8/3/2021	242627
Nitrogen Dioxide (2010 Standard) Infrastructure SIP 'State of New Mexico NO2 Transport SIP Certification Submittal'	8/10/2021	243245

<b>Utah Overdue SIP Submissions</b>		
<b>SPeCS Review Page</b>	<b>State Submittal Date</b>	<b>SPeCS Review Page ID</b>
Provo PM2.5 Redesignation Part H RACM RACT	12/23/2014	13981
Salt Lake City PM2.5 Redesignation Part H RACM RACT	12/23/2014	24235
PM2.5 Part H SIP Revisions for Moderate SIPs	1/19/2017	9330

BACM Requirements Associated with PM2.5 Serious Classification	4/19/2018	11981
Provo BACT PM2.5 Requirements	1/14/2019	200281
UT Serious SIP Sec.IX, Part H Control Measures for Area and Point Sources, Emission Limits_Part A.31 Fine Particulate Matter (SLC)	2/15/2019	86952
Provo PM2.5 Redesignation Requests and Maintenance Plans	1/13/2020	205410
Salt Lake City PM2.5 Redesignation Requests and Maintenance Plans	1/13/2020	205413
UT Interstate Transport for 2008 Ozone - Prong 2	1/29/2020	231157
R307-208 Outdoor Wood Boilers and R307-230. Water Heaters	7/21/2020	214773
Part H Removal of SSM for Kennecott Power Plant Parallel Processing	12/17/2020	232136