



State of Utah

SPENCER J. COX  
Governor

DEIDRE HENDERSON  
Lieutenant Governor

Department of  
Environmental Quality

Kimberly D. Shelley  
Executive Director

DIVISION OF AIR QUALITY  
Bryce C. Bird  
Director

DAQ-068-23

September 11, 2023

**VIA CERTIFIED MAIL 70112970000188367314 and EMAIL**

Honorable Michael S. Regan  
Administrator  
United States Environmental Protection Agency  
Mail Code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Regan.Michael@epa.gov

**Re: Notice of Intent to Sue for Failure to Take Nondiscretionary Action on Utah's  
Regional Haze State Implementation Plan for the Second Planning Period**

Dear Administrator Regan,

This letter is the State of Utah's (Utah) notice of intent to sue the United States Environmental Protection Agency (EPA) as authorized by 42 U.S.C. § 7604(a)(2)<sup>1</sup> and 40 C.F.R. § 54.3(a) for failure to act on Utah's Regional Haze State Implementation Plan for the second planning period (RH SIP). Utah submitted this plan to EPA for review on August 2, 2022. As required by 42 U.S.C. § 7410(k)(1)(B), on August 23, 2022, EPA issued a letter of completeness to Utah finding that the RH SIP met completeness criteria in 40 C.F.R. part 51, Appendix V.1. EPA specified that the letter of completeness was not a finding on the merits and that EPA was reviewing RH SIP's approvability.<sup>2</sup>

EPA must next review the plan's merits within 12 months of the determination of completeness. See 42 U.S.C. § 7410(k)(2). This duty is nondiscretionary, and, with Utah's RH SIP, should have been performed no later than August 23, 2023. The Administrator has several options to comply with this nondiscretionary duty. The Administrator can fully or partially approve or disapprove,

<sup>1</sup> State is a "person" for purposes of 42 U.S.C. § 7604 as defined in 42 U.S.C. § 7602(e).

<sup>2</sup> EPA's completeness determination letter (Ref: 8ORA-IO) is attached to this notice.

*id.* § 7410(k)(3), conditionally approve, *id.* § 7410(k)(4) or require revisions to the plan, *id.* § 7410(k)(5). If a plan complies with the legal requirements, it must be approved. *See id.* § 7410(k)(3) (“the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter”). If the plan is inadequate, “the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.” *See id.* § 7410(k)(5).

EPA has not exercised any of these options with respect to Utah’s RH SIP and thus has not complied with its nondiscretionary duty under 42 U.S.C. § 7410(k). This triggered Utah’s right to send this notice of intent to sue under 42 U.S.C. § 7604(a)(2) for “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.” If the Administrator still fails to act on Utah’s RH SIP within 60 days of this notice of intent to sue, Utah reserves the right to sue for relief under 42 U.S.C. § 7604(a)(2). Utah will seek to compel EPA to take the appropriate action and any other equitable relief under 5 U.S.C. § 706(1) and other applicable laws and power of the court.

Please, direct any questions about this notice to Marina Thomas at (385) 414-0801 or [marinathomas@agutah.gov](mailto:marinathomas@agutah.gov).

Sincerely,



Bryce C. Bird, Director  
Utah Division of Air Quality  
Utah Department of Environmental Quality  
195 North 1950 West  
P.O. Box 144820  
Salt Lake City, UT 84114-4820

cc: Kathleen Becker, EPA Regional Administrator

Enclosure: Notice of Completeness



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 8**

1595 Wynkoop Street  
Denver, CO 80202-1129  
Phone 800-227-8917  
[www.epa.gov/region8](http://www.epa.gov/region8)

Ref: 8ORA-IO


Honorable Spencer J. Cox  
Office of the Governor  
Utah State Capital, Suite 200  
P.O. Box 14220  
Salt Lake City, Utah 84114-2220  
[gordonlarsen@utah.gov](mailto:gordonlarsen@utah.gov)

Dear Governor Cox:

On August 2, 2022, the Environmental Protection Agency (EPA) received revisions to Utah's Regional Haze State Implementation Plan (SIP). The SIP revision was submitted to meet the Clean Air Act and Regional Haze Rule requirements for the regional haze program's second planning period.

EPA finds that Utah's SIP revision meets the completeness criteria outlined in 40 CFR part 51, Appendix V. While EPA has determined that the SIP revision is complete, we are currently reviewing the SIP revision to determine its approvability. Please note that a completeness determination does not constitute a finding on the merits of the submission or whether it meets the relevant criteria for SIP approval.

If you or your staff have any questions regarding this letter, please feel free to contact me at (303) 312-6170 [Becker.KC@epa.gov](mailto:Becker.KC@epa.gov) or your staff may contact Clayton Bean at (303) 312-6143 or at [Bean.Clayton@epa.gov](mailto:Bean.Clayton@epa.gov).

Sincerely,  
**KATHLEEN  
BECKER**  Digitally signed by  
KATHLEEN BECKER  
Date: 2022.08.23  
13:26:49 -06'00'  
KC Becker  
Regional Administrator

cc: Bryce Bird, Director, Utah Division of Air Quality  
Becky Close, Environmental Program Manager, Utah Division of Air Quality  
Chelsea Cancino, Utah Division of Air Quality