



May 8, 2024

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Michael Regan
Administrator
U.S. Environmental Protection Agency
Office of the Administrator
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

**Re: Notice of Intent to Sue Under the Clean Air Act Over Failure to Issue or Deny
Title V Permits After Failure of Colorado to Respond to Objection**

Dear Administrator Regan:

Pursuant to Section 304(a) and 304(b)(2) of the Clean Air Act, the Center for Biological Diversity hereby notifies you that it intends to file suit against you and the U.S. Environmental Protection Agency (“EPA”) over your failure to issue or deny the Clean Air Act Title V operating permits for Bonanza Creek Energy Operating Company (“Bonanza Creek”) to operate four oil and gas production facilities in Colorado after objecting pursuant to Section 505(b) of the Clean Air Act. The EPA objected to the issuance of the Title V permits on the basis that the permits failed to comply with the Clean Air Act and properly limit air pollution in order to protect public health and welfare.

We intend to bring a suit under Section 304(a)(2) of the federal Clean Air Act, 42 USC § 7604(a)(2), against you for your failure to perform a non-discretionary duty set forth at 42 USC § 7661d(c), with respect to the Bonanza Creek Title V permits. We also intend to bring a suit under section 304(a) of the federal Clean Air Act, 42 USC § 7604(a), against you for your unreasonable delay in carrying out a mandatory duty set forth at 42 USC § 7661d(c), with respect to the Bonanza Creek facilities.

The Center for Biological Diversity is a nonprofit, 501(c)(3) conservation organization. The Center’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us. The Center has more than 89,000 members, including over 3,100 members in Colorado. Our members are harmed by your failure to perform a mandatory duty under the Clean Air Act.

On January 30, 2024, the EPA granted a petition filed by the Center for Biological Diversity and others requesting the Administrator object to the issuance of Title V permits authorizing Bonanza Creek to operate four oil and gas production facilities in Weld County, Colorado.¹ *See In the Matter of Bonanza Creek Energy Operating Company, LLC*, Order on Petition VIII-2023-11 (January 30, 2024). The objection was based on the failure of the Colorado Air Pollution Control Division (“Division”) to ensure sufficient monitoring of flaring at the facilities and assure compliance with applicable limits on harmful volatile organic compound gases and other toxic air pollutants.

The Bonanza Creek facilities are located in the Denver Metro/North Front Range ozone nonattainment area, a nine-county region that has violated federal health limits on ground-level ozone for nearly two decades. Ozone, the key ingredient of smog, is a poisonous gas and respiratory irritant that forms when two key air pollutants—volatile organic compounds and nitrogen oxides—react with sunlight. Even at extremely low concentrations, ozone can trigger asthma attacks, worsen lung disease, scar the respiratory tract, and even lead to premature death. The Bonanza Creek facilities have the potential to release hundreds of tons of smog forming pollution and contribute to the ozone problem in the Denver Metro/North Front Range region. Without adequate pollution permits in place, there is no assurance that air pollution is being controlled in order to protect public health and welfare.

Under the Clean Air Act, the EPA must issue or deny a Title V permit if the permitting authority has not submitted a permit revised to meet an objection within 90 days. *See* 42 USC § 7661d(c). The law states:

If the permitting authority fails within 90 days after the date of an objection under [42 U.S.C. § 7661d(b)] to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of [Title V].

Id. The Administrator must “issue or deny the permit in accordance with the requirements of the Federal [Title V] program at [40 C.F.R. § 71].” 40 C.F.R. § 70.8(c)(4). Under EPA’s federal Title V rules at 40 C.F.R. § 71, if a state fails to resolve an objection within 90 days, the Administrator “will deny, terminate, revise, revoke or reissue a permit[.]” 40 C.F.R. § 71.4(e). The Administrator is required to take such action after providing 30 days’ notice to the permittee and providing an opportunity for comment and a hearing on the proposed action. 40 C.F.R. § 71.7(g)(5).

In response to the Administrator’s January 30, 2024 objection, the Division was required to issue Title V permits revised to meet the objection by April 29, 2024. That date has now passed. As of the date of this letter, the Division has yet to submit revised permits that resolves the Administrator’s objection. Thus, EPA now has a mandatory duty to issue or deny the Bonanza Creek Title V permits. EPA has neither issued nor denied the Title V permits by this date and/or by the date of this letter. EPA has therefore failed to perform a duty that is not discretionary under the Clean Air Act. Alternatively, the EPA has unreasonably delayed carrying out the mandatory duty set forth at 42 USC § 7661d(c).

¹ The four facilities include the: Antelope CPF 13-21 Production Facility, Title V Permit No. 20OPWE417; State Antelope O-1 Central Production Facility, Title V Permit No. 20OPWE4318; State North Platte 42-26 Central Production Facility, Title V Permit No. 20OPWE419; and the State Pronghorn 41-32 Central Production Facility, Title V Permit No. 20OPWE420.

Under the Clean Air Act, the Administrator must now issue or deny the Bonanza Creek Title V permits in accordance with 42 USC § 7661d(c) and applicable permitting requirements at 40 C.F.R. § 71. Under 40 CFR § 71.4(l)(2), the Division may thereafter issue a Title V permit in accordance with 40 CFR § 70, but such a state-issued permit will only replace any EPA-issued Title V permit upon expiration and only if EPA determines that such a state-issued permit has resolved the Administrator's January 30, 2024 objection.


In accordance with the Clean Air Act's citizen suit notice provisions, we intend to file suit in federal court after 60-days over your failure to perform a duty that is not discretionary and after 180-days over your unreasonable delay.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person providing this notice is:

Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202

If you wish to discuss this matter, please contact me at the information below.

Sincerely,



Jeremy Nichols
Senior Advocate
Center for Biological Diversity
(303) 437-7663
jnichols@biologicaldiversity.org

cc: Michael Ogletree, Air Pollution Control Division Director, Michael.ogletree@state.co.us
KC Becker, EPA Region 8 Administrator, becker.kc@epa.gov
EPA Title V Petition Oversight, titlevpetitions@epa.gov