



November 13, 2024

**BY CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

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

**Re: Notice of Intent to Sue Over Failure to Respond to Clean Air Act Title V Petition Over South32 Hermosa Inc.'s Hermosa Mine, Santa Cruz County, Arizona**

Dear Administrator Regan:

The Center for Biological Diversity and the Patagonia Area Resource Alliance intend to sue you and the Environmental Protection Agency ("EPA") for your failure to respond within 60 days to the petition to object to the Clean Air Act Title V Operating Permit issued by the Arizona Department of Environmental Quality ("ADEQ") authorizing South32 Hermosa Inc. to construct and operate the Hermosa Mine, a large heavy metals mine that would be dug into the biologically sensitive Patagonia Mountains of southern Arizona.

We intend to bring a suit 60 days from the date of this letter, or shortly thereafter, under section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), against you for your failure to perform a non-discretionary duty outlined in 42 U.S.C. § 7661d(b)(2).

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. The Center has more than 89,000 members, many of whom are harmed by your failure to perform a mandatory duty under the Clean Air Act.

Patagonia Area Resource Alliance is a grassroots, community-drive nonprofit dedicated to the preservation and protection of local mountains, wildlife, and watersheds in and around Patagonia, Arizona. The Alliance is a citizen watchdog organization that monitors the activities of mining companies and government agencies to ensure any actions take in or near Patagonia ultimately benefit public lands, water,

wildlife, and the community. Its members are harmed by your failure to perform a mandatory duty under the Clean Air Act.

The Hermosa Mine is expected to be a massive heavy metals mining operation in the Patagonia Mountains of southern Arizona in Santa Cruz County. The mine would develop two underground ore deposits, the Taylor sulfide deposit, from which zinc, lead, and silver would be extracted, and the Clark oxide deposit, from which zinc, manganese, and silver would be extracted. The mine is expected to irreversibly alter the nature and character of this region of the Patagonia Mountains, an exceptionally biodiverse region of southern Arizona.



**The Hermosa Mine in the Patagonia Mountains of southern Arizona. Current operations include remediation and exploration. The Title V Permit will authorize full build-out of mining operations as proposed by South32. Photo by Patagonia Area Resource Alliance.**

Development of the mine will require the construction and operation of an extensive system of pollutant emitting activities. This will include a significant underground mining operation that will entail blasting, hauling, crushing, and conveying, as well as surface support facilities, including mine shaft ventilation, cooling, power generation from dozens of internal combustion engines, crushing and concentrating, materials handling, tailings management, heavy equipment operations and vehicle traffic, fuel storage, wastewater treatment, and laboratory operations. In its permit application, South32 identified nearly 200 discrete emission units that will be associated with the Hermosa Mine.

The mine will have the potential to release hundreds of tons of air pollutants known to endanger public health and welfare. In addition to releasing a number of harmful criteria air pollutants for which national ambient air quality standards have been established, the mine will also release a number of hazardous air pollutants. Hazardous air pollutants are a group of especially toxic substances regulated under Section 112 of the Clean Air Act that pose disproportionately harmful impacts to public health and the environment. Among the hazardous air pollutants that will be released by mining

operations: heavy metals including lead, arsenic, manganese, nickel, and selenium; benzene, a known carcinogen; and other toxic organic compounds including acetaldehyde, acrolein, formaldehyde, xylene, and toluene, hexane, and methanol. The mine will also release more than one million tons of greenhouse gases annually. The table below details the Hermosa Mine's potential to emit for key pollutants.

ADEQ is the agency responsible for issuing Title V operating permits in Arizona. ADEQ issued a draft Title V operating permit for South32's Hermosa Mine and granted the public thirty days to comment on the draft permit. The Center, Patagonia Area Resource Alliance, and others submitted objections to the ADEQ on the draft permit. Pursuant to 42 U.S.C. § 7661d(b)(2), the Center for Biological Diversity, Patagonia Area Resource Alliance, and others submitted a petition to the Administrator of the EPA to object to the Hermosa Mine Title V Permit on September 13, 2024. The petition raised a number of issues related to whether the permit complied with the Clean Air Act and whether the Hermosa Mine would construct and operate in compliance with applicable state and federal requirements.

The Clean Air Act, at 42 U.S.C. § 7661d(b)(2), provides that "the administrator shall grant or deny such [Title V] petition within 60 days after the petition is filed." Responding to Title V petitions pursuant to 42 U.S.C. § 7661d(b)(2) is a non-discretionary duty under the Clean Air Act. The Hermosa Mine Title V petition was filed September 13, 2024, via the EPA's Central Document Exchange website.<sup>1</sup> You therefore had until November 12, 2024, to grant or deny the Title V petition. EPA neither granted nor denied the Title V petition by this date and/or by the date of this letter and therefore EPA is in violation of 42 U.S.C. § 7661d(b)(2). You are responsible for the violation of this non-discretionary duty by not responding to the Center for Biological Diversity and Patagonia Area Resource Alliance's petition within 60 days.

In keeping with the requirements of federal regulations, you are hereby notified that the full names and addresses of the persons providing this notice are:

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

Patagonia Area Resource Alliance  
PO Box 1044  
Patagonia, AZ 85624

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

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<sup>1</sup> The petition and exhibits were subsequently emailed to EPA staff due to technical troubles with the Central Document Exchange platform.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Nichols', is positioned above the printed name.

Jeremy Nichols  
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