



Environmental and Animal Defense

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June 13, 2025

**BY PRIORITY CERTIFIED MAIL—RETURN RECEIPT REQUESTED**

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

**Re: Clean Air Act Notice of Intent to Sue Pursuant to 42 U.S.C. §§  
7604(b)(2) and 7661(b)(2) Over Failure to Respond to Clean Air  
Act Title V Petition Over Caerus Piceance, Hunter Mesa Water  
Treatment Facility, Garfield County, CO, Title V Permit No.  
03OPGA267**

Administrator Zeldin:

Please be advised that we represent The Center for Biological Diversity, which intends to sue you and the Environmental Protection Agency (“EPA”) for your failure “to perform any act or duty under this chapter which is not discretionary. . .” 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. § 7661d(b)(2), EPA has a non-discretionary duty to “grant or deny” petitions to object to Title V permits “within 60 days after the petition is filed.” EPA failed to respond to the Center’s Title V Petition to Object (“Petition”) to Title V Permit No. 03OPGA267 issued by the Colorado Department of Public Health and Environment (“CDPHE”) to Caerus Piceance for its Hunter Mesa Water Treatment Facility within 60 days of the Center filing the Petition on March 27, 2025.

We intend to bring a lawsuit against you 60 days from the postmark date of this letter, or shortly thereafter, under Section 304(a)(2) of the Clean Air Act, 42



**501 S. Cherry Street, Suite 1100  
Denver, CO 80246**

U.S.C. § 7604(a)(2), 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 93,000 members, many of whom are harmed by your failure to perform a mandatory duty under the Clean Air Act.

CDPHE is the agency responsible for issuing Title V operating permits in Colorado. The Center submitted comments on the draft Hunter Mesa Water Treatment Facility Title V Permit on October 23, 2024. CDPHE responded to the Center's comments on December 11, 2024. The proposed permit was thereafter submitted to EPA for the agency's 45-day review. EPA did not object to the proposed permit. CDPHE issued a Title V permit to Caerus Piceance for the Hunter Mesa Water Treatment Facility on February 1, 2025.

The Center submitted its Petition to EPA within 60 days of the close of EPA's 45-day review period, on March 27, 2025, as required by 42 U.S.C. § 7661d(b)(2). The Center's Petition raises issues regarding the failure to assure compliance with provisions of the Colorado SIP requiring the use of reasonably available control technology ("RACT") to control VOC emissions.

The Clean Air Act provides: "The administrator shall grant or deny such [Title V] petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2). Responding to Title V petitions within 60 days pursuant to 42 U.S.C. § 7661d(b)(2) is a non-discretionary duty under the Clean Air Act. The Center submitted the Petition for the Hunter Mesa Water Treatment Facility on March 27, 2025 via the email address [titlevpetitions@epa.gov](mailto:titlevpetitions@epa.gov), per EPA instruction.<sup>1</sup> EPA therefore had until May 26, 2025 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. Therefore, EPA is in violation of 42 U.S.C. § 7661d(b)(2) by failing to perform its non-discretionary duty. "Any person" may commence a civil action against the Administrator for failing to perform a non-discretionary duty under the Act. 42 U.S.C. § 7604(a)(2).

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<sup>1</sup> Normally petitions are submitted via the EPA's Central Document Exchange Platform, but due to technical difficulties, the EPA has directed people to submit petitions to the email address, [titlevpetitions@epa.gov](mailto:titlevpetitions@epa.gov).

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As required by 40 C.F.R. § 54.3, 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

However, please direct all correspondence and communications regarding this matter to the undersigned counsel using the contact information below.

Please contact the undersigned if you would like to discuss this matter. If we do not hear from you within 60 days, we will be forced to assume that you are not interested in settling this matter and will file our complaint.

Sincerely,

s/ Alexa McKay

Alexa McKay  
Environmental and Animal Defense  
501 S. Cherry St. Suite 1100  
Denver, CO 80246  
720-722-0336  
[amckay@eadefense.org](mailto:amckay@eadefense.org)

s/ Jeremy McKay

Jeremy McKay  
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*Counsel for Center for Biological Diversity*

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