



July 31, 2026

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

Sent via FedEx and delivered via email to: Zeldin.lee@epa.gov

Re: Notice of Intent to File Suit Under the Clean Air Act, Unreasonable Delay in Responding to Petition to Designate Permian Basin of New Mexico an Ozone Nonattainment Area, Find that New Mexico State Implementation Plan is Inadequate

Dear Administrator Zeldin:

The Center for Biological Diversity (“the Center”) hereby notifies you of its intent to file suit under the Clean Air Act against you and the Environmental Protection Agency (“EPA”) for your failure to meaningfully respond to our April 29, 2026 Clean Air Act petition requesting that you designate the Permian Basin of southeast New Mexico an ozone nonattainment area and find that the New Mexico State Implementation Plan (“SIP”) is substantially inadequate. This petition was submitted pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 551, *et seq.* and the Clean Air Act, 42 U.S.C. § 7401, *et seq.* We intend to bring a suit 180 days from the date of this letter, or shortly thereafter, under section 304 of the federal Clean Air Act, as Amended, 42 U.S.C. § 7604(a), against you for your unreasonable delay in acting upon our Petition.

On April 29, 2026, the Center submitted via FedEx mail and via e-mail a rulemaking petition requesting that the EPA designate the Permian Basin of southeast New Mexico an ozone nonattainment area and find that the New Mexico SIP is substantially inadequate under the Clean Air Act. Copies were sent to EPA Region 6, the New Mexico Environment Department, the New Mexico Energy, Minerals and Natural Resources Department, and the New Mexico State Land Office. On May 20, 2026, EPA Region 6 Section Supervisor Michael Feldman confirmed in an email sent to the Center that he had received our April 29, 2026 petition.

The petition was filed in light of ongoing violations of national ambient air quality standards (“NAAQS”) for ozone in southeast New Mexico. These ongoing violations of the ozone NAAQS in southeast New Mexico pose serious and urgent health risks to people living and working in the region.



EPA's failure to act on the Center's Petition is, in effect, condoning unhealthy and arguably illegal air quality in the Permian Basin of New Mexico. Under the Clean Air Act, New Mexico is required to provide for the "implementation, enforcement, and maintenance" of the NAAQS. 42 U.S.C. § 7410(a)(1). Because of ongoing violations of the ozone NAAQS, New Mexico is clearly failing to meet this bedrock requirement of federal clean air law, putting people and communities at risk in the Permian Basin.

The unreasonableness of EPA's delay is underscored by the dangerously mounting nature of the ozone problem in the Permian Basin of New Mexico. While the region is already violating the ozone NAAQS due to recorded exceedances between 2018 and 2025, ozone monitoring so far in 2026 indicates the frequency and severity of exceedances continue to require a nonattainment area designation. So far in 2026, the ozone NAAQS have been exceeded on 9 days at the three monitoring sites in the region recording a total of 15 exceedances. This high ozone was recorded in the towns of Carlsbad and Hobbs, as well as at Carlsbad Caverns National Park. Ozone levels far exceeded the NAAQS at all three locations, peaking as high as 0.078 parts per million in Carlsbad, far above the NAAQS of 0.070 parts per million.

**Number of Ozone NAAQS Exceedances at
Permian Basin, New Mexico Monitoring Sites¹**

Monitoring Site Location	County Location	Monitor ID	Number of Daily Exceedances Recorded so far in 2026	Maximum Exceedance (in parts per million)
Carlsbad	Eddy	350151005	6	0.078
Carlsbad Caverns National Park	Eddy	350150010	8	0.075
Hobbs	Lea	350250008	1	0.073

Under the EPA's own regulations, a violation of the ozone NAAQS occurs when the three-year average of the annual fourth highest daily maximum values exceeds 0.070 parts per million. 40 C.F.R. § 50.19(b). This three-year average is referred to as a "design value." Based on 2026 monitoring data to date, the design value at both monitors in Eddy County are above the NAAQS and the monitor in Lea County is edging closer to the NAAQS.

Ozone Design Values at Permian Basin, New Mexico Monitors

Monitoring Site Location	County Location	Monitor ID	2024 4 th Max.	2025 4 th Max.	2026 4 th Max.	2024-2026 Design Value
Carlsbad	Eddy	350151005	0.084 ppm	0.076 ppm	0.074 ppm	0.078 ppm
Carlsbad Caverns National Park	Eddy	350150010	0.082 ppm	0.079 ppm	0.071 ppm	0.077 ppm
Hobbs	Lea	350250008	0.072 ppm	0.062 ppm	0.065 ppm	0.066 ppm

¹ Monitoring data queried from EPA's AirData website, <https://www.epa.gov/outdoor-air-quality-data/download-daily-data>.



If EPA were to take action on the Center's Petition, the Agency would be compelled to designate the Permian Basin an ozone nonattainment area under the Clean Air Act. This designation would impose deadlines for the State of New Mexico to clean up the air, protect public health, and attain the NAAQS. This action would rein in unchecked air pollution in the Permian Basin and ensure that people and communities in the region receive the safeguards they are owed under the Clean Air Act.

The APA requires EPA to conclude matters raised in petitions within a reasonable time (*see* 5 U.S.C. § 555(b), "within a reasonable time, each agency shall proceed to conclude a matter presented to it") and the Clean Air Act explicitly contemplates that the Administrator will act within a reasonable time (*see* 42 U.S.C. § 7604(a), providing for judicial review of action unreasonably delayed).

In our Petition, we requested that the EPA Administrator:

1. Notify the Governor of New Mexico, within one month of receipt of this petition, that available information indicates the designation of Chaves, Eddy, Lea, and Roosevelt Counties must be revised from attainment to nonattainment; and
2. Notify the State of New Mexico, within one month of receipt of this petition, that its SIP is substantially inadequate and must be revised within three months of notification.

In its May 20, 2026 email, EPA acknowledged receipt of the Center's Petition by email on April 29, 2026. According to a certified receipt, the Administrator also received a hard copy of the Center's Petition on June 5, 2026. It has now been over three months since the Center submitted the Petition and the Center still has not received a substantive response to its request that EPA act upon empirical data and fulfill its foundational legal duties under the Clean Air Act. This failure to act constitutes unreasonable delay under the APA and the Clean Air Act.

The Clean Air Act provides that any citizen may file suit to compel action unreasonably delayed by the Administrator after providing 180 days' notice. *See* 42 U.S.C. § 7604(a).

Pursuant to the Clean Air Act, if the EPA has not taken the actions requested in our Petition, we will file suit to compel action after 180 days.

The full name and address of the organization giving notice is the Center for Biological Diversity, 1025 1/2 Lomas NW Albuquerque, NM 87102. Pursuant to Section 304(a) of the Clean Air Act, notice is also being provided to the State of New Mexico. If you wish to discuss this matter further, please contact us at the information indicated below:

Gail Evans
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Sincerely,

/s/ Gail Evans

Gail Evans

New Mexico Climate Director

The Center for Biological Diversity

cc via email:

Scott Mason, Regional Administrator, EPA Region 6

Michelle Lujan Grisham, Governor of the State of New Mexico

James Kenney, Secretary, New Mexico Environment Department

Stephanie Garcia Richard, Commissioner, New Mexico State Land Office

Erin Taylor, Acting Secretary, New Mexico Energy, Minerals and Natural Resources Department