

Administrator A. Wheeler
October 3, 2020

ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

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October 3, 2020

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Andrew Wheeler, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 1101A)
Washington, D.C. 20460

Re: Notice of Intent to Sue Pursuant to Section 304(b)(2) of the Clean Air Act for Failure of the Administrator to Act on Clean Air Act State Implementation Plan Submissions and/or to Promulgate Federal Implementation Plans Addressing the Infrastructure Requirements of the 2015 Ozone National Ambient Air Quality Standards for New York, Connecticut, Pennsylvania, New Jersey, Maryland, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Oklahoma, Arkansas, Kansas, Missouri, Iowa, Illinois, Indiana, Ohio, Wisconsin, and Michigan.

Dear Administrator Wheeler:

I am writing on behalf of Our Children's Earth Foundation ("OCE") to notify you of ongoing violations of the federal Clean Air Act by you, as Administrator of the Environmental Protection Agency ("EPA"), for your failure to timely act, as required by Section 110(k)(2) of the Clean Air Act, 42 U.S.C. § 7410(k)(2), on numerous state implementation plan ("SIP") revisions and/or to promulgate, as required by Section 110(c)(1) of the Clean Air Act, 42 U.S.C. § 7410(c)(1), federal implementation plans ("FIPs"). These failures relate to the states of New York, Connecticut, Pennsylvania, New Jersey, Maryland, Virginia, West Virginia, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Oklahoma, Arkansas, Kansas, Missouri, Iowa, Illinois, Indiana, Ohio, Wisconsin, and Michigan ("Noticed States"). OCE intends to file a lawsuit seeking to address your failure to perform these nondiscretionary duties set forth in 42 U.S.C. § 7410(c)(1), (k)(2) 60 days from the date of this letter under Section 304 of the Clean Air Act, 42 U.S.C. § 7604.

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A. Failure To Perform Nondiscretionary Duties

Under the Clean Air Act, states are required to submit SIPs to EPA to implement, maintain, and enforce National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C. § 7410(a). These “infrastructure SIPs” must be submitted within three years after promulgation of a new or revised NAAQS – in this case, by October 1, 2018 for the 2015 Ozone NAAQS, which was promulgated on October 1, 2015. Several of the Relevant States submitted infrastructure SIPs addressing the 2015 Ozone NAAQS.

The Clean Air Act requires the Administrator to fully or partially approve or disapprove a SIP submission within twelve (12) months after such submission has been deemed complete, either by the Administrator or as a matter of law. *See* 42 U.S.C. § 7410(k)(2). If the EPA does not make a completeness finding, SIP submissions are deemed complete by operation of law six (6) months after submission. *See* 42 U.S.C. § 7410(k)(1)(B). Therefore, at most, EPA had eighteen (18) months within which to take final action to approve, disapprove, or partially approve or disapprove submitted SIP submissions from the Relevant States addressing the infrastructure requirements of the 2015 Ozone NAAQS. As of the date of this letter, EPA has failed to fully or partially approve or disapprove these SIP submissions. Because EPA has failed to take action on these SIP submissions by the statutory deadline, EPA is now in violation of Clean Air Act Section 110(k)(2), 42 U.S.C. § 7410(k)(2).

The Clean Air Act also requires the Administrator to issue a federal implementation plan (“FIP”) within two years if a state fails to meet its deadline to submit a SIP or if EPA disapproves a state’s SIP submission. *See* 42 U.S.C. § 7410(c)(1). As discussed above, the infrastructure SIPs addressing the 2015 Ozone NAAQS for the Relevant States were due on or before October 1, 2018. However, several of the Relevant States did not timely submit SIPs and/or had their SIP submissions rejected. As a result, EPA was required to promulgate a FIP for those states on or before October 1, 2020. As of the date of this letter, EPA has failed to promulgate FIPs for any of the Relevant States. Because EPA has failed to take action to promulgate FIPs by the statutory deadline, EPA is now in violation of Clean Air Act Section 110(c)(1), 42 U.S.C. § 7410(c)(1).

B. Notice of Intent to Sue

After the expiration of sixty (60) days from the date of this notice of intent to sue, OCE intends to file suit against you in federal court for your failure to act in accordance with, or fulfill, the duties described above.

C. Identity of Persons Giving Notice and Their Counsel

As required by 40 C.F.R. § 54.3, the name and address of OCE, the noticing party, is as follows:

Our Children’s Earth Foundation
1625 Trancas St. #2218
Napa, CA 94558-9998
Tel: (510) 910-4535

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E-mail: annie@ocefoundation.org

OCE is a non-profit public benefit corporation with members throughout the United States, including many members in the Relevant States, dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit. Part of OCE's mission is to participate in environmental decisionmaking, enforce federal and state environmental laws (including via citizen suits), to reduce pollution, and to educate the public concerning environmental laws and their enforcement.

OCE has retained the following legal counsel to represent it in this matter:

Stuart Wilcox, Esq.
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
Tel: (720) 331-0385
Fax: (415) 358-5695
E-mail: wilcox@enviroadvocates.com

D. Offer to Negotiate

During the sixty (60) day notice period, OCE is willing to discuss effective measures to correct your failure to comply with your nondiscretionary duties and to discuss any information bearing upon this notice. If you wish to pursue such discussions prior to litigation, we request that you expeditiously initiate them so that these discussions may be completed before the end of the sixty (60) day notice period. OCE does not intend to delay the filing of a complaint in federal court if the discussions fail to resolve these matters within the sixty (60) day notice period, and it intends to seek all appropriate relief, including injunctive relief and all costs of litigation, including, but not limited to, attorneys' fees, expert witness fees, and other costs.

We believe this notice provides information sufficient for you to determine the mandatory duty we allege you have failed to perform. If, however, you have any questions, please feel free to contact us for clarification.

We look forward to hearing from you.

Sincerely,

/s/ Stuart Wilcox

Stuart Wilcox
Environmental Advocates
Counsel for Our Children's Earth Foundation

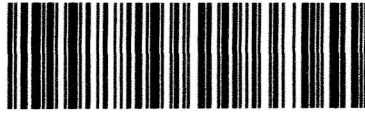
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