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July 3, 2013

VIA CERTIFIED MAIL

Robert Perciasepe, Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: 60-Day Notice of Intent to Sue Under the Federal Clean Air Act For Failure to Designate Areas of Attainment or Non-Attainment for the Sulfur Dioxide National Ambient Air Quality Standard Under 42 U.S.C. § 7407(d)(1)(B)(i).

Dear Acting Administrator Perciasepe:

On behalf of the States of North Dakota, Nevada, South Dakota, and Texas (the "**States**") this letter serves as a 60-day notice of intent to sue the Administrator of the United States Environmental Protection Agency (the "**Administrator**" or "**EPA**") over your failure to perform certain nondiscretionary duties under section 107(d) of the Clean Air Act ("**CAA**"). Specifically, the Administrator has failed to meet the three-year statutory deadline for designating areas of the country as attaining or not attaining the revised primary sulfur dioxide ("**SO₂**") National Ambient Air Quality Standard ("**NAAQS**"), which EPA promulgated on June 22, 2010.

Background

The Administrator signed a notice of final rulemaking revising the primary SO₂ NAAQS on June 2, 2010, and she announced that action publicly on June 3, 2010.¹ The revised SO₂ NAAQS rule was published on June 22, 2010 (the "**Final Rule**"). See 75 Fed. Reg. 35,520 (June 22, 2010). The Final Rule sets the 1-hour SO₂ Standard at 75 parts per billion.

Following adoption of a new or revised NAAQS, CAA § 107(d) requires that each part of the country be designated as (1) attaining the new or revised NAAQS ("attainment" areas), (2) not attaining the NAAQS ("nonattainment" areas), or (3) "unclassifiable."

¹ While the final SO₂ NAAQS rule was signed by the Administrator on June 2, 2010, EPA did not publicly distribute the rule until June 3, 2010. See 77 Fed. Reg. 46,295, n.1 (August 3, 2012).

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Pursuant to CAA § 107(d)(1)(B)(i) the Administrator has a nondiscretionary duty to “promulgate the designations of all areas” for the SO₂ NAAQS no later than two years from the date of the promulgation of the SO₂ NAAQS. When there is “insufficient information to promulgate the designations,” the Administrator may extend the two-year period by one-year. *Id.*

In the preamble to the Final Rule, EPA requested that States submit their initial SO₂ designations to the agency no later than June 2, 2011. See 75 Fed. Reg. at 35,569. The States each complied with EPA’s June 2, 2011 submission date.² For example, on May 25, 2011, Governor Dalrymple submitted North Dakota’s SO₂ designations to EPA, and requested that the State be designated as complying with the 1-hour SO₂ NAAQS. The State did so in reliance on data from the “extensive network of ambient air quality monitoring sites located across the state” and monitoring data from “eight industry operated source specific air quality monitoring sites, and one air quality monitoring site operated by the National Park Service.” South Dakota’s attainment designation recommendation was similarly based on air quality monitoring data from sites operated by the State. Nevada and Texas also made carefully considered designation recommendations based on the most recent, relevant, and reliable information about their State’s SO₂ levels.³

On August 3, 2012, the Administrator announced that she would take an additional year to promulgate the SO₂ NAAQS designations, stating that “EPA is now required to complete initial designations for this NAAQS by June 3, 2013.” See 77 Fed. Reg. 46,295 (August 3, 2012). “[O]n or about February 7, 2013,” EPA sent responses to the States and Tribes on their “designation recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard.” 78 Fed. Reg. 17,915 (March 25, 2013). For example, EPA sent a response letter to Governor Dalrymple on February 6, 2013. In that letter, EPA acknowledged that “the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO₂ standard in any areas of North Dakota.” However, EPA then went on to say that it was “not yet prepared to propose designation action in North Dakota” and was, “therefore, deferring action to designate areas in North Dakota.”

EPA’s Failure to Act by the June 3, 2013 Deadline

Despite having sufficient information from the States to act on or before June 3, 2013, EPA has not – as of the date of this letter – promulgated final designations for North Dakota, Nevada, South Dakota, or Texas.

² Texas submitted a revised SO₂ designation letter on April 20, 2012.

³ Nevada recommended unclassifiable and Texas recommended a mix of attainment and unclassifiable.

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Because the Administrator failed to act to promulgate SO₂ NAAQS designations for the States within three years of promulgation of that NAAQS, the States intend to initiate a civil action against the Administrator and EPA to compel EPA to designate all areas in the States as attainment, nonattainment, or unclassifiable for the SO₂ NAAQS unless EPA takes action to do so within 60-days of the postmark date of this letter. As required by 40 C.F.R. §54.3, the persons giving notice of their intent to sue the Administrator and EPA are:

State of North Dakota
North Dakota Department of Health
Division of Air Quality
918 East Divide Ave.
Bismarck, N.D. 58501
Attn: Terry O'Clair, Director

Nevada Division of Environment Protection
Bureau of Air Pollution Control
901 South Stewart St, Suite 4001
Carson City, NV 89701
Attn.: Rob Bamford, Chief

South Dakota Department of Environment and Natural Resources
State of South Dakota
523 E. Capitol
Pierre, SD 57501
Attn: Steven M. Pirner, Secretary

Texas Commission on Environmental Quality
P.O. Box 13087
MC-173
Austin, Texas 78711-3087
Attn: John M. Minter

State of Texas
c/o Office of Attorney General
Environmental Protection Division
P.O. Box 12548
MC-066
Austin Texas 78711-2548
Attn: Nancy Olinger

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If you wish to discuss this matter, please contact the undersigned at the address provided below.

Sincerely,


WAYNE STENEHJEM
Attorney General

/s/ Rob Bamford
Chief, Bureau of Air Pollution Control
Nevada Division of Environmental Protection
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Carson City, NV 89701

/s/ Roxanne Giedd
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/s/ Nancy Elizabeth Olinger
GREGORY W. ABBOTT
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