

Administrator A. Wheeler
August 20, 2019

**ENVIRONMENTAL ADVOCATES
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August 20, 2019

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 Review and Revise NESHAPs and NSPS

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 the U.S. Environmental Protection Agency ("EPA") and OCE's intention to file a citizen suit against EPA pursuant to Clean Air Act Section 304(a)(2), 42 U.S.C. § 7604(a)(2), to address your failure to perform your nondiscretionary duty of reviewing and revising certain National Emission Standards for Hazardous Air Pollutants ("NESHAP") and New Source Performance Standards ("NSPS") every eight years.

A. Failure To Perform Nondiscretionary Duties

1. Failure To Review NSPS

Clean Air Act Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), instructs the Administrator to promulgate and to periodically review and revise each NSPS. Prior to 1990, the Administrator was required to review and revise NSPS requirements every four years. After the passage of the 1990 Clean Air Act amendments EPA's "review and revise" period was expanded to eight years.

Clean Air Act Section 111(b)(1)(B) provides in relevant part:

The Administrator *shall*, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the

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previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

42 U.S.C. § 7411(b)(l)(B) (emphasis added).

The Administrator has failed, in a timely manner, either to (a) review and, if appropriate, revise, or (b) determine that such review is not appropriate in light of readily available information on the efficacy of NSPS for Industrial Surface Coating; Surface Coating of Plastic Parts for Business Machines set forth at 40 C.F.R. Part 60, Subpart TTT; NSPS for Automobile and Light Duty Truck Surface Coating Operations set forth in 40 C.F.R. Part 60, Subpart MM; NSPS for Lead-Acid Battery Manufacturing Plants set forth in 40 C.F.R. Part 60, Subpart KK; and NSPS for Secondary Lead Smelters set forth in 40 C.F.R. Part 60, Subpart L.

EPA's last review of NSPS for Industrial Surface Coating; Surface Coating of Plastic Parts for Business Machines set forth at 40 C.F.R. Part 60, Subpart TTT was completed over 31 years ago, in January 1988. 53 Fed. Reg. 2676 (Jan. 29, 1988). EPA's last review of NSPS for Automobile and Light Duty Truck Surface Coating Operations set forth in 40 C.F.R. Part 60, Subpart MM was completed almost 25 years ago, in October 1994. 59 Fed. Reg. 25,066 (Oct. 11, 1994). EPA's last review of NSPS for Lead-Acid Battery Manufacturing Plants set forth in 40 C.F.R. Part 60, Subpart KK was completed over 37 years ago, in April 1982. 47 Fed. Reg. 16,564 (April 16, 1982). EPA's last review of NSPS for Secondary Lead Smelters set forth in 40 C.F.R. Part 60, Subpart L was completed nearly 44 years ago, in October 1975. 40 Fed. Reg. 46,250 (October 6, 1975). Because EPA has failed to review and revise these NSPS in the last eight years, it is in violation of Clean Air Act Section 111(b)(l)(B), 42 U.S.C. § 7411(b)(l)(B).

2. Failure to Review NESHAP

Clean Air Act Section 112(d)(6) provides that:

The Administrator *shall* review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section [112] no less often than every 8 years.

42 U.S.C. § 7412(d)(6) (emphasis added).

More than eight years has passed since EPA reviewed or revised the following NESHAPs: NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources set forth at 40 C.F.R. Part 63, Subpart HHHHHH; NESHAP for Lead Acid Battery Manufacturing

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Area Sources set forth at 40 C.F.R. Part 63, Subpart PPPPPP; and NESHAP for Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards set forth at 40 C.F.R. Part 63, Subpart M.

EPA's last review of the NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources set forth at 40 C.F.R. Part 63, Subpart HHHHH was over 11 years ago, in January 2008. 73 Fed. Reg. 1738 (Jan. 9, 2008). EPA's last review of the NESHAP for Lead Acid Battery Manufacturing Area Sources set forth at 40 C.F.R. Part 63, Subpart PPPPPP was over 11 years ago, in March 2008. 73 Fed. Reg. 15,923 (March 26, 2008). EPA's last review of the NESHAP for Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards set forth at 40 C.F.R. Part 63; Subpart M was over 13 years ago, in July 2006. 71 Fed. Reg. 42,724 (July 27, 2006).

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 in Section A of this letter.

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
E-mail: annie.beaman@gmail.com

OCE is a non-profit public benefit corporation with members throughout the United 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:

Christopher A. Sproul, Esq.
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121
Tel: (415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

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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,

Christopher a. sproul

Christopher Sproul
Environmental Advocates
Counsel for Our Children's Earth Foundation