

Administrator A. Wheeler
July 6, 2020

ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

5135 ANZA STREET
SAN FRANCISCO, CA 94121
(415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

July 6, 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 from New York

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 submitted by the State of New York. OCE intends to file a lawsuit seeking to address your failure to perform these nondiscretionary duties set forth in 42 U.S.C. § 7410(k)(2) 60 days from the date of this letter under Section 304 of the Clean Air Act, 42 U.S.C. § 7604.

The SIP submissions that you have failed to timely address include the following:

SIP Submission/Description	Date Submitted	Date Action was Due
Proposed 2008 Ozone Transport SIP Supplement	September 25, 2018	March 25, 2020
Proposed 2015 Ozone Infrastructure SIP	September 25, 2018	March 25, 2020
Part 220, Portland Cement Plants and Glass Plants - Reasonably Available Control Technology ("RACT") Determinations	December 18, 2013	June 18, 2015
Part 230: Gasoline Dispensing sites	January 31, 2011	July 31, 2012

Administrator A. Wheeler
July 6, 2020

and Transportation Vehicles - RACT Variances		
Single-Source State Implementation Plan Revisions, RACT Determinations (2010)	August 30, 2010	February 29, 2012
Single-Source State Implementation Plan Revisions, RACT Determinations (2008)	September 16, 2008	March 16, 2010
SIP Revisions Incorporating 6NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines	December 12, 2017	June 12, 2019
Proposed Revision to State Plan for Large Municipal Waste Combustors	July 12, 2013	January 12, 2015

A. Failure To Perform Nondiscretionary Duties

Under the Clean Air Act, states are required to submit SIPs to the EPA to implement, maintain, and enforce National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C. § 7410(a). The Clean Air Act further 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 the aforementioned SIPs from the States of New York. As of the date of this letter, EPA has failed to fully or partially approve or disapprove the aforementioned SIP submissions. Because EPA has failed to take action on the above 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).

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
E-mail: annie.beaman@gmail.com

Administrator A. Wheeler
July 6, 2020

OCE is a non-profit public benefit corporation with members throughout the United States, including many members in New York, 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

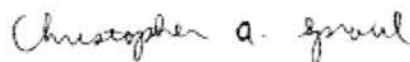
D. Offer to Negotiate

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 Sproul
Environmental Advocates
Counsel for Our Children's Earth Foundation

RECEIVED JUL 4

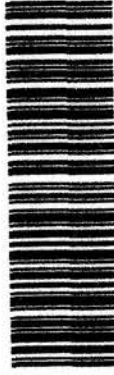
USPS CERTIFIED MAIL™

Stuart Wilcox
1224 CLINTON ST
AURORA CO 80010-3113

US POSTAGE AND FEES PAID
FIRST-CLASS
Jul 07 2020
Mailed from ZIP 80010
1 oz First-Class Mail Letter

11923275

USPS CERTIFIED MAIL



9414 8118 9876 5825 8496 54

U.S. Environmental Protection Agency
Administrator Andrew Wheeler
1200 PENNSYLVANIA AVE NW
MAIL CODE 1101A
WASHINGTON DC 20460-0003



062S0012913542

stamps
endicia

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
00

062S0012913542