

Administrator A. Wheeler  
September 16, 2020

**ENVIRONMENTAL ADVOCATES**  
ATTORNEYS AT LAW

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September 16, 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 Timely Assemble, Publish, and Publish Notice of Comprehensive State Implementation Plan Documents for Each of the 50 States.

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 assemble, publish, and publish notice of, as required by Section 110(h)(1) of the Clean Air Act, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the relevant state implementation plans ("SIP") for each of the 50 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(h)(1) 60 days from the date of this letter under Section 304 of the Clean Air Act, 42 U.S.C. § 7604.

**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 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 months after submission. *See* 42 U.S.C. § 7410(k)(1)(B). The Clean Air Act then requires that any SIP submission that is approved, or portion thereof that is approved, be included in the comprehensive SIP for each state that EPA must compile, publish, and publish notice of in the

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Federal Register “[n]ot later than 5 years after the date of the enactment of the Clean Air Act Amendments of 1990 [enacted Nov. 15, 1990], and every 3 years thereafter...” 42 U.S.C. § 7410(h)(1).

As of the date of this letter, the published “comprehensive” SIP documents for each of the 50 states are incomplete and EPA has not published notice of the availability of comprehensive SIPs for each of the 50 states since November 29, 2013. *See* 78 Fed. Reg. 71,508 (Nov. 29, 2013). EPA has thus failed to compile, publish, and publish notice of the availability of a comprehensive SIP document for each of the 50 states. Because EPA has failed to take these actions by the statutory deadline, EPA is now in violation of Clean Air Act Section 110(h)(1), 42 U.S.C. § 7410(h)(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 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@ocefoundation.org](mailto:annie@ocefoundation.org)

OCE is a non-profit public benefit corporation with members throughout the United States, including many members in California, 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](mailto:wilcox@enviroadvocates.com)

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**D. Offer to Negotiate**

During the sixty-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-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-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*

Stuart Wilcox  
1224 CLINTON ST  
AURORA CO 80010-3113

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**USPS CERTIFIED MAIL**



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