Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 6/13/2024 8:13:18 PM
To: Doster, Brian [Doster.Brian@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)
Attachments: MOG_AmicusBrief.pdf

Ex. 5 AC/AWP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Thursday, June 13, 2024 2:50 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

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Here is MOG's amicus brief, btw.

Sarah

From: ecfnoticing@cadc.uscourts.gov <ecfnoticing@cadc.uscourts.gov>
Sent: Wednesday, June 12, 2024 12:02 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

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United States Court of Appeals for District of Columbia Circuit

Notice of Docket Activity

The following transaction was entered on 06/12/2024 at 12:01:48 PM Eastern Daylight Time and filed on 06/12/2024

Case Name:	Commonwealth of Kentucky, et al v. EPA, et al
Case Number:	24-1050

Document(s): Document(s)

Docket Text:
AMICUS FOR PETITIONER BRIEF [2059326] filed by Midwest Ozone Group [Service Date: 06/12/2024] Length of Brief: 3,946 words. [24-1050, 24-1051, 24-1052, 24-1073, 24-1091] (Beckett, Kathy)

Notice will be electronically mailed to:

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Christopher Gene King, Assistant Corporation Counsel: cking@law.nyc.gov
Mr. John DuVal Walke: jwalke@nrdc.org, edavis@nrdc.org, mavalos@nrdc.org
Mr. Christopher C. Horner, Attorney: chris@chornerlaw.com
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Seth L. Johnson: sjohnson@earthjustice.org, vhuggett@earthjustice.org, dolazabal@earthjustice.org, bkilkenny@earthjustice.org
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Kristina R. Van Bockern: trvanbockern@hollandhart.com, intaketeam@hollandhart.com
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Mrs. Kathy G. Beckett, Attorney: kathy.beckett@steptoe-johnson.com

Mrs. Elizabeth Anne Morrisseau, Assistant Attorney General: MorrisseauE@michigan.gov,

gibsonj16@michigan.gov (*daily summary*)
Sarah Utley, Assistant County Attorney: sarah.utley@cao.hctx.net (*daily summary*)

The following document(s) are associated with this transaction:
Document Description: Amicus for Appellant/Petitioner Brief Filed
Original Filename: FINAL PM2.5 Amicus(20951977.1 SJDOCS).pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1109186823 [Date=06/12/2024] [FileNumber=2059326-0]
[813e6c399af2f22587759f1f37324ed0a87309cdcf94b020f81c1b3438404a921133e8318507ad7272ee50352032
9fbc93b06e5e3d4cc8cb366becc1a50b1810]]

Message

From: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]
Sent: 6/13/2024 8:54:24 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
CC: Talbert, Stephanie [Talbert.Stephanie@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: ISO the as filed EPA brief in the 5th Circuit CM case
Attachments: Texas v EPA - 23-60616 - Fifth Circuit - EPAs Answering Brief.pdf

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No problem! As-filed version is attached.

Thanks,

Ben

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From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Thursday, June 13, 2024 4:39 PM
To: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Cc: Talbert, Stephanie <Talbert.Stephanie@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: [EXTERNAL] ISO the as filed EPA brief in the 5th Circuit CM case
Importance: High

CUI//PRIVILEGE

B:

Hey. Could you please shoot Stephanie and me a copy of the final brief.

We are having a listening meeting with another state tomorrow about similar CM issues and it would be good to have reviewed our brief in advance.

Thank you.

G

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Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 6/14/2024 11:49:46 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of American Free Enterprise Chamber of Commerce, et al v. EPA
Attachments: 24-1197.pdf

Happy Friday!

Alert attached for case 24-1197

Let me know if you need further assistance.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 6/14/2024 11:51:33 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of American Fuel & Petrochemical Manufacturers, et al v. EPA
Attachments: 24-1195_DocketEntry_06-13-2024_.pdf

Hello,

Alert attached for case 24-1195.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 6/14/2024 11:53:02 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of American Petroleum Institute, et al v. EPA, et al
Attachments: 24-1196_DocketEntry_06-13-2024_.pdf

Greetings,

Last one today: alert attached for case 24-1196.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: Lee, Michael (he/him/his) [lee.michaelg@epa.gov]
Sent: 6/14/2024 3:20:19 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
CC: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]
Subject: RE: ISO a consult on Title V implications
Attachments: for ML pirkey_response2014 (003) (004).pdf

G:

Ex. 5 AC/DP

I hope I'm following this correctly.

Mike

Michael G. Lee (he, him, his) | U.S. Environmental Protection Agency
Assistant General Counsel | Air and Radiation Law Office
Office of General Counsel | (202) 564-5486

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Friday, June 14, 2024 10:09 AM
To: Lee, Michael (he/him/his) <lee.michaelg@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Subject: RE: ISO a consult on Title V implications

M:

This one.

Ex. 5 AC/DP

Ex. 5 AC/DP

G

From: Lee, Michael (he/him/his) <lee.michaelg@epa.gov>
Sent: Friday, June 14, 2024 9:15 AM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Subject: RE: ISO a consult on Title V implications

G:

Ex. 5 AC/DP

Mike

Michael G. Lee (he, him, his) | U.S. Environmental Protection Agency
Assistant General Counsel | Air and Radiation Law Office
Office of General Counsel | (202) 564-5486

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Thursday, June 13, 2024 2:49 PM
To: Lee, Michael (he/him/his) <lee.michaelg@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Subject: ISO a consult on Title V implications

M:

We have a pending SIP action in R6 that is very complicated.

Ex. 5 AC/DP

G

Message

From: Lueders, Jesse (he/him/his) [Lueders.Jesse@epa.gov]
Sent: 6/14/2024 4:26:08 PM
To: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Christenson, Kara (she/her/hers) [Christenson.Kara@epa.gov]; Bushey, Douglas (he/him/his) [bushey.douglas@epa.gov]; Desai, Priyam [Desai.Priyam@epa.gov]
Subject: Update on San Diego RACT SIP from CBD CD
Attachments: 3-22-cv-3309 CBD v. Regan - Order Entering Consent Decree.pdf; _DocketEntry_01-23-2024_59 Order Denying Motion to Enforce and Motion to Intervene.pdf

Ex. 5 AC/AWP/DP

Thank you!

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lueders.jesse@epa.gov

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Message

From: Doster, Brian [Doster.Brian@epa.gov]
Sent: 6/14/2024 8:23:23 PM
To: Orlin, David [Orlin.David@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

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Sent: Thursday, June 13, 2024 4:13 PM
To: Doster, Brian <Doster.Brian@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

Ex. 5 AC/AWP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

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Sent: Thursday, June 13, 2024 2:50 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

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Here is MOG's amicus brief, btw.

Sarah

From: ecfnoticing@cadc.uscourts.gov <ecfnoticing@cadc.uscourts.gov>
Sent: Wednesday, June 12, 2024 12:02 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Amicus for Appellant/Petitioner Brief Filed" (EPA-89FR16202)

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United States Court of Appeals for District of Columbia Circuit

Notice of Docket Activity

The following transaction was entered on 06/12/2024 at 12:01:48 PM Eastern Daylight Time and filed on 06/12/2024

Case Name:	Commonwealth of Kentucky, et al v. EPA, et al
Case Number:	24-1050
Document(s):	Document(s)

Docket Text:
AMICUS FOR PETITIONER BRIEF [2059326] filed by Midwest Ozone Group [Service Date: 06/12/2024] Length of Brief: 3,946 words. [24-1050, 24-1051, 24-1052, 24-1073, 24-1091] (Beckett, Kathy)

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Nicholas C. Buttino, Assistant Attorney General: nicholas.buttino@ag.ny.gov
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Mrs. Elizabeth Anne Morrisseau, Assistant Attorney General: MorrisseauE@michigan.gov, gibsonj16@michigan.gov (*daily summary*)
Sarah Utley, Assistant County Attorney: sarah.utley@cao.hctx.net (*daily summary*)

The following document(s) are associated with this transaction:
Document Description: Amicus for Appellant/Petitioner Brief Filed
Original Filename: FINAL PM2.5 Amicus(20951977.1 SJDOCS).pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1109186823 [Date=06/12/2024] [FileNumber=2059326-0]
[813e6c399af2f22587759f1f37324ed0a87309cdcf94b020f81c1b3438404a921133e8318507ad7272ee50352032
9fbc93b06e5e3d4cc8cb366becc1a50b1810]]

Appointment

From: Spann, Jane [Spann.Jane@epa.gov]
Sent: 6/17/2024 11:02:28 AM
To: Walther, Katherine [Walther.Katherine@epa.gov]; Jarvis, Simone (she/her/hers) [Jarvis.Simone@epa.gov]; Freund, Weston (he/him/his) [Freund.Weston@epa.gov]; Lusky, Katy [Lusky.Kathleen@epa.gov]; Myers, Dianna (she/her/hers) [Myers.Dianna@epa.gov]; Triplett, Eric [Triplett.Eric@epa.gov]; Palmer, Darren [Palmer.Darren@epa.gov]; Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]; Patulski, Meg [patulski.meg@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Lingard, Robert (he/him/his) [Lingard.Robert@epa.gov]; Adams, Evan (he/him/his) [adams.evan@epa.gov]; Howard, Chris [Howard.Chris@epa.gov]; LaRocca, Sarah [Larocca.Sarah@epa.gov]; Svingen, Eric [Svingen.Eric@epa.gov]
CC: Gillam, Rick [Gillam.Rick@epa.gov]; Lowder, Erin (she/her/hers) [Lowder.Erin@epa.gov]; Winkelmann, Joe (Joseph) [winkelmann.joseph@epa.gov]; Letterly, Aaron [Letterly.Aaron@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]

Subject: NOI Regarding Louisville KY Ozone Area
Attachments: NOI Louisiville Redesignation FINAL.pdf
Location: Microsoft Teams Meeting

Start: 6/17/2024 1:00:00 PM
End: 6/17/2024 1:30:00 PM
Show Time As: Tentative

Required Attendees: Walther, Katherine; Jarvis, Simone (she/her/hers); Freund, Weston (he/him/his); Lusky, Katy; Myers, Dianna (she/her/hers); Triplett, Eric; Palmer, Darren; Mataway-Novak, Dylan (he/him/his); Patulski, Meg; Ting, Kaytrue; Lingard, Robert (he/him/his); Adams, Evan (he/him/his); Howard, Chris; LaRocca, Sarah; Svingen, Eric
Optional Attendees: Gillam, Rick; Lowder, Erin (she/her/hers); Winkelmann, Joe (Joseph); Letterly, Aaron; Vijayan, Abi; Perez Ortiz, Yasmin

Agenda

Introductions/Purpose of the Call
Background
NOI
Region 4's Current Position
1) Exceptional Events review.
2) Moderate and Serious NA SIPs

Please let me know if this time doesn't work for you.
Also, please forward to those in your respective offices that you would like to include.

Thank you.
Jane

Microsoft Teams Need help?

Join the meeting now

Ex. 6 Personal Privacy (PP)

Dial in by phone

Ex. 6 Personal Privacy (PP)

More info

For organizers: Meeting options | Reset dial-in PIN

This meeting may be recorded. If the meeting is recorded, it will be announced via a banner showing "this meeting is being recorded." Participation in a recorded meeting will be deemed as consent to be recorded. Meeting recordings may be official agency records subject to appropriate policy, rules and regulations.

Message

From: Boydston, Michael [Boydston.Michael@epa.gov]
Sent: 6/20/2024 3:10:24 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
CC: James, Corin [James.Corin01@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Talbert, Stephanie [Talbert.Stephanie@epa.gov]
Subject: RE: follow up on Scott's question

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Ex. 5 AC/DP

Michael Boydston
Senior Assistant Regional Counsel
EPA Region 8
303.312.7103
he / him

Controlled by U.S. Environmental Protection Agency

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, June 20, 2024 8:53 AM
To: Boydston, Michael <Boydston.Michael@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>
Subject: RE: follow up on Scott's question

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Ex. 5 AC/DP

Ex. 5 AC/DP

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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Controlled by U.S. Environmental Protection Agency

From: Boydston, Michael <Boydston.Michael@epa.gov>
Sent: Thursday, June 20, 2024 10:39 AM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>
Subject: RE: follow up on Scott's question

CUI//PRIVILEGE

Ex. 5 AC/DP

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Senior Assistant Regional Counsel
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Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Tuesday, June 18, 2024 9:44 AM
To: Boydston, Michael <Boydston.Michael@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: follow up on Scott's question

CUI//PRIVILEGE

M and SJT:

Ex. 5 AC/DP

G

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Message

From: Schramm, Daniel [Schramm.Daniel@epa.gov]
Sent: 6/24/2024 9:25:56 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
CC: James, Corin [James.Corin01@epa.gov]; Kaban, Rosemary [Kaban.Rosemary@epa.gov]
Subject: FW: Merits Brief(s) in PSD GHG Error Correction case (Texas v EPA No 10-1425 DC Cir)
Attachments: PSD GHG RTC (April 2011) EPA-HQ-OAR-2010-1033-0265_content.pdf; TX_error_correction_EPA_final_brief_08-17-12.pdf

Ex. 5 AC/AWP/DP

From: Schramm, Daniel
Sent: Monday, June 24, 2024 5:23 PM
To: Hoffman, Howard <hoffman.howard@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>
Subject: RE: Merits Brief(s) in PSD GHG Error Correction case (Texas v EPA No 10-1425 DC Cir)

Ex. 5 AC/AWP/DP

Will forward this email to Abi and Emily as a heads up that more edits are coming.

Thanks again Howard!

From: Hoffman, Howard <hoffman.howard@epa.gov>
Sent: Monday, June 24, 2024 2:41 PM
To: Schramm, Daniel <Schramm.Daniel@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>
Subject: FW: Merits Brief(s) in PSD GHG Error Correction case (Texas v EPA No 10-1425 DC Cir)

Ex. 5 AC/AWP/DP

From: Schramm, Daniel <Schramm.Daniel@epa.gov>
Sent: Monday, June 24, 2024 2:10 PM
To: Hoffman, Howard <hoffman.howard@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>
Subject: Merits Brief(s) in PSD GHG Error Correction case (Texas v EPA No 10-1425 DC Cir)

Ex. 5 AC/AWP/DP

I would have pulled the brief from OneDocket, but I did not see the merits briefs uploaded for this case (there were several other court filings in the OneDocket file, but not the merits briefs).

Thanks in advance for anything you might have on this. Emailing you since you are the listed on the case. Possibly Brian Doster might also be able to help if you don't have these files?

CC'g Corin as our error correction specialist.

Daniel Schramm | Team Leader, Interstate Transport

US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7507B | office: (202) 564-3377 | mobile: (202) 597-0257

Pronouns: he/him/his

Message

From: ecfnoticing@cadc.uscourts.gov [ecfnoticing@cadc.uscourts.gov]
Sent: 6/25/2024 2:35:10 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: 19-1140 American Lung Association, et al v. EPA, et al "Per Curiam Order Filed (Complex Panel)" (EPA-84FR32520)

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United States Court of Appeals for District of Columbia Circuit

Notice of Docket Activity

The following transaction was entered on 06/25/2024 at 10:34:28 AM Eastern Daylight Time and filed on 06/25/2024

Case Name:	American Lung Association, et al v. EPA, et al
Case Number:	19-1140
Document(s):	Document(s)

Docket Text:
PER CURIAM ORDER [2061450] filed granting petitioner's unopposed motion to govern future proceedings [2059997-2], Cases 19-1140, et al. held in abeyance pending further order of the court. Motions to govern future proceedings due 30 days of court's disposition of West Virginia v. EPA, No. 24-1120 (D.C. Cir. filed May 9, 2024) Before Judges: Millett, Pillard and Walker. [19-1140, 19-1165, 19-1166, 19-1173, 19-1175, 19-1176, 19-1177, 19-1179, 19-1185, 19-1186, 19-1187, 19-1188]

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f3a6e5369063212306880b10c7ada62dd79]]
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- Hannah Yindra
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- Mr. David Alexander Zonana, Deputy Attorney General

Message

From: Weatherall, Grace [Weatherall.Grace@epa.gov]
Sent: 6/25/2024 3:37:13 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]
Subject: RE: State Plan Approvals for section 129 rules - CISWI Federal Plan Language
Attachments: 1974_Framework_111(d)_NPR_39 FR 36101.pdf; Subpart Ba proposal_2022.pdf

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Ex. 5 AC/DP

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Tuesday, June 25, 2024 9:13 AM
To: Weatherall, Grace <Weatherall.Grace@epa.gov>; Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>
Subject: RE: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

CUI//PRIVILEGE

Hi Grace,

Ex. 5 AC/DP

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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From: Weatherall, Grace <Weatherall.Grace@epa.gov>
Sent: Thursday, June 20, 2024 2:01 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>
Subject: RE: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

CUI//PRIVILEGE

Good afternoon Abi and Stephanie,

Ex. 5 AC/DP

Apologies again for the chaos, and many thanks,

Grace

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From: Weatherall, Grace
Sent: Monday, June 17, 2024 5:04 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: FW: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

Abi!

Ex. 6 Personal Privacy (PP)

Ex. 5 AC/DP

Thanks so much,

Grace

From: Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>
Sent: Monday, June 17, 2024 4:32 PM
To: Weatherall, Grace <Weatherall.Grace@epa.gov>
Subject: RE: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

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Ex. 5 AC/DP

Stephanie L. Hogan | Assistant General Counsel for the New Source Performance Standards and Emission Guidelines Practice Group | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3244 | fax: (202) 564-5603

Pronouns: she/her/hers

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From: Weatherall, Grace <Weatherall.Grace@epa.gov>
Sent: Monday, June 17, 2024 3:59 PM

To: Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>
Subject: RE: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

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Thank you!

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From: Howard, Jodi <Howard.Jodi@epa.gov>
Sent: Monday, June 17, 2024 3:10 PM
To: Davis, Felica <Davis.Felica@epa.gov>; Weatherall, Grace <Weatherall.Grace@epa.gov>
Cc: Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>
Subject: State Plan Approvals for section 129 rules - CISWI Federal Plan Language

Felica/Grace.

Ex. 5 AC/DP

Thoughts?

Jodi Howard, Group Leader
Fuels and Incineration Group
Sector Policies and Program Division
U.S. EPA, OAQPS

Phone: 919.541.4607
Email: howard.jodi@epa.gov
Pronouns: she/her/hers

About the Sector Policies and Programs Division (SPPD) | US EPA

https://www.epa.gov/aboutepa/about-office-air-and-radiation-oar#oaqps

We are hiring! For more information, check out this link:
https://www.youtube.com/watch?v=TOp7LFukTjk

"We can apply our environmental engineering skills to the delivery of municipal services that are affordable and appropriate and will result in the improvement in their quality of life and physical environment." - *Lilia Abron, PhD,* First Black American woman to earn a PhD in chemical engineering (1972)

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 6/25/2024 9:21:16 PM
To: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: 5th Circuit cases
Attachments: Luminant Fifth Circuit.pdf; DENVER-#391867-v1-Texas_QF_Decision.pdf

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L and S:

Ex. 5 AC/DP

G

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From: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Sent: Wednesday, April 17, 2024 1:31 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Subject: RE: ISO a research assist

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From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, April 17, 2024 10:13 AM
To: Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Subject: ISO a research assist

J and L:

Ex. 5 AC/DP

Please advise.

G

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Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 6/26/2024 12:56:49 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; James, Corin [James.Corin01@epa.gov]
CC: Mills, Derek [Mills.Derek@epa.gov]
Subject: key CM court decisions
Attachments: 9th Circuit Bahr mootness case.pdf; 5th Circuit LEAN CM case.pdf; DC Circuit O3 Imp Rule CM case.pdf; 9th Cir AIR CM transparent case.pdf

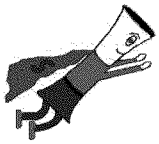
Gang:

Ex. 5 AC/DP

Ex. 5 AC/DP

Prohibition…

G



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From: Panos, Christos [Panos.Christos@epa.gov]
Sent: 6/26/2024 3:40:53 PM
To: Abrahamian, Tanya (she/her/hers) [abrahamian.tanya@epa.gov]; Becoat, Gregory [becoat.gregory@epa.gov]; Benjamin, Lynorae [benjamin.lynorae@epa.gov]; Chen, Eugene [Chen.Eugene@epa.gov]; Deese, William [deese.william@epa.gov]; Dobrahner, Jaslyn [Dobrahner.Jaslyn@epa.gov]; Dorantes, Michael (he/him/his) [Dorantes.Michael@epa.gov]; Fradkin, Kenneth [Fradkin.Kenneth@epa.gov]; Freund, Weston (he/him/his) [Freund.Weston@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Garcia, Ariel [Garcia.Ariel@epa.gov]; Gordon, Michael [Gordon.Mike@epa.gov]; Goudeau, Charlotte [Goudeau.Charlotte@epa.gov]; Hall, Jeremiah [hall.jeremiah@epa.gov]; Hall, Kristin [Hall.Kristin@epa.gov]; Hunt, Jeff [Hunt.Jeff@epa.gov]; Kelly, Johnj (he/him/his) [Kelly.Johnj@epa.gov]; LaRocca, Sarah [Larocca.Sarah@epa.gov]; Longo, Linda (she/her/hers) [Longo.Linda@epa.gov]; McDowell, Jaron [McDowell.Jaron@epa.gov]; McIntyre, Gerald [McIntyre.Gerald@epa.gov]; Mohr, Ashley [Mohr.Ashley@epa.gov]; Morgan, Ruthw [morgan.ruthw@epa.gov]; Neiswinter, Ian [Neiswinter.Ian@epa.gov]; Ogbodo, Ndubisi [Ogbodo.Ndubisi@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Paige, Carrie [Paige.Carrie@epa.gov]; Panos, Christos [Panos.Christos@epa.gov]; Parke, Nicolas [Parke.Nicolas@epa.gov]; Puplampu, William [puplampu.william@epa.gov]; Ruan-Lei, Karolina [ruan-lei.karolina@epa.gov]; Ruddick, Randall [ruddick.randall@epa.gov]; Schmitt, Ellen (she/her/hers) [Schmitt.Ellen@epa.gov]; Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Spann, Jane [Spann.Jane@epa.gov]; Spenillo, Justin [Spenillo.Justin@epa.gov]; Stevens, Arnold [stevens.arnold@epa.gov]; Sutton, Lisa [Sutton.Lisa@epa.gov]; Suzuki, Debra [Suzuki.Debra@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]; Vaupel, Claudia [Vaupel.Claudia@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Wang, Mae [Wang.Mae@epa.gov]; Wiley, Adina [Wiley.Adina@epa.gov]; Williams-Miles, Pearlene [WilliamsMiles.Pearlene@epa.gov]; Withey, Charlotte (she/her/hers) [Withey.Charlotte@epa.gov]; Wolkins, Jed (he/him/his) [wolkins.jed@epa.gov]; Yannayon, Laura [Yannayon.Laura@epa.gov]; Zull, Aaron [zull.aaron@epa.gov]
CC: National SIP Processing Workgroup [NatlSIPProcessingWG@epa.gov]; Arra, Sarah (she/her/hers) [Arra.Sarah@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Lowder, Erin (she/her/hers) [Lowder.Erin@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]; McQuilkin, Wendy [Mcquilkin.Wendy@epa.gov]; Morris, Stephanie [Morris.Stephanie@epa.gov]; Reddick, Lorraine [Reddick.Lorraine@epa.gov]; Saltman, Tamara [Saltman.Tamara@epa.gov]; South, Mia (she/her/hers) [South.Mia@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Washington, Stephanie [Washington.Stephanie@epa.gov]
Subject: RE: June Agenda - National SIP Processing Workgroup Conference Call
Attachments: 2024-06-27_Agenda.docx

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Draft Agenda National SIP Processing Workgroup Conference Call
Thursday, June 27, 2024 12:00 PM to 1:00 PM ET

Ex. 6 Personal Privacy (PP)

SIP Workgroup SharePoint site

Region 7 will take meeting minutes (action items – if needed).

Discussion Items

1. EJ Template / EJ in SIPs
2. Additional Questions/Comments from the Regions

Attached Files: (please do not share outside the Agency)

++++++++++++++++++++++++++
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Fourth Thursday of the Month.

		Start Time	*End Time*
January	01/25/2024	12:00 pm	01:00 pm
February	02/22/2024	12:00 pm	01:00 pm
March	03/28/2024	12:00 pm	01:00 pm
April	04/25/2024	12:00 pm	01:00 pm
May	05/23/2024	12:00 pm	01:00 pm
June	06/27/2024	12:00 pm	01:00 pm
July	07/25/2024	12:00 pm	01:00 pm
August	08/22/2024	12:00 pm	01:00 pm
September	09/26/2024	12:00 pm	01:00 pm
October	10/24/2024	12:00 pm	01:00 pm

Third Thursday of the Month.

		Start Time	*End Time*
November	11/21/2024	12:00 pm	01:00 pm
December	12/19/2024	12:00 pm	01:00 pm

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Message

From: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Sent: 6/26/2024 6:58:54 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: Texas Ch. 111 - 110(l) Analysis Draft Outline
Attachments: TX Ch. 111 SSM - 110(l) Analysis_static copy.docx

CUI//PRIVILEGE

Hi everyone,

Ex. 5 AC/DP

Thanks Geoff and Seth so much for all of your work on this! Truly a team effort.

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

Controlled by U.S. Environmental Protection Agency

From: Pettit, Elizabeth (Libby)
Sent: Tuesday, June 18, 2024 3:18 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: Texas Ch. 111 - 110(l) Analysis Draft Outline

Hi everyone,

Ex. 5 AC/DP

Thanks!

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

Message

From: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Sent: 6/26/2024 7:14:49 PM
To: Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Lawrence, Sydney [lawrence.sydney@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]
CC: Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Vetter, Cheryl [Vetter.Cheryl@epa.gov]
Subject: RE: Texas Chapter 111 follow up
Attachments: TX Ch. 111 SSM - 110(l) Analysis.docx

CUI//PRIVILEGE

Hi Guy,

Thanks for your patience while we put together this extensive 110(l) outline. Recognizing it might take some time to digest this, please let me know if/when it would be helpful to talk through. Happy to set something up.

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

Controlled by U.S. Environmental Protection Agency

From: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Sent: Monday, June 24, 2024 2:50 PM
To: Donaldson, Guy <Donaldson.Guy@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Lawrence, Sydney <lawrence.sydney@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>
Cc: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: RE: Texas Chapter 111 follow up

Thanks for the ping, Guy. I'm hoping we'll have something to you mid-week. We have a draft (thanks Libby!) and are iterating just a bit.

From: Donaldson, Guy <Donaldson.Guy@epa.gov>
Sent: Monday, June 24, 2024 2:49 PM
To: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Lawrence, Sydney <lawrence.sydney@epa.gov>; Feldman, Michael <Feldman.Michael@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>
Cc: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: Texas Chapter 111 follow up

Last week on our call OGC mentioned that it was putting together a paper that would discuss recommendations on how the 110(l) issue should be approached. We are hoping to see that soon as Region 6 continues to consider how to move forward.

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 6/26/2024 8:30:42 PM
To: Boydston, Michael [Boydston.Michael@epa.gov]; Volk, Everett [volk.everett@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; James, Corin [James.Corin01@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Subject: follow up on "invited error" theory
Attachments: 23-9503_DocketEntry_04-10-2024_.pdf; 23-9503_DocketEntry_05-10-2024_.pdf; 23-9503_DocketEntry_06-17-2024_.pdf

CUI//PRIVILEGE

M:

Ex. 5 AC/DP

G

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From: Boydston, Michael <Boydston.Michael@epa.gov>
Sent: Wednesday, June 26, 2024 2:21 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Volk, Everett <volk.everett@epa.gov>
Subject: CO brief

Ex. 5 AC/DP

Michael Boydston
Senior Assistant Regional Counsel
EPA Region 8
303.312.7103
he / him

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 6/28/2024 11:48:17 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Appalachian Region Independent Power Producers Ass v. EPA, et al
Attachments: 24_1222.pdf

Happy Friday,

Alert attached for case 24-1222.

Let me know if you need further assistance.

Regards,

Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 6/28/2024 11:52:55 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Midwest Ozone Group v. EPA, et al
Attachments: 24_1223.pdf

Hello,

Alert attached for case 24-1223.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
Sent: 6/28/2024 1:09:58 PM
To: Clark, Adam [Clark.Adam@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]
CC: Lawrence, Sydney [lawrence.sydney@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: HQ edits--Montana FIP revision
Attachments: Draft Billings Laurel FIP Revision PR_HQ only 2-20-24_HQ second review.docx

Hi Abby,

Please see HQ's consolidated edits to the Billings, Montana SO2 FIP revision in the attached document. Let me know if you have any questions.

Thanks,
Seth

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/1/2024 11:49:40 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket alert for the Case of Rainbow Energy Center, LLC v. EPA, et al
Attachments: 24-1226.pdf

Good morning,

Alert attached for case 24-1226.

Let me know if you need further assistance.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: Brashear, Angelina (she/her/hers) [Brashear.Angelina@epa.gov]
Sent: 7/1/2024 11:51:35 AM
To: Hawes, Todd [Hawes.Todd@epa.gov]; Tillerson, Clint [Tillerson.Clint@epa.gov]; Porter, Matthew [Porter.Matthew@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Smith, Isabella [Smith.Isabella@epa.gov]; Deabler, Gabrielle [Deabler.Gabrielle@epa.gov]; Leith, Andrew [Leith.Andrew@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Oggeri, Francis (he/him/his) [oggeri.francis@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]
Subject: SO2 catch up (week of 7/1/24)
Attachments: FOR YOUR REVIEW: Westmoreland/Cambria SO2 Redesignation; RE: HQ SIP Portal: Limited Approval/Limited Disapproval Attainment Plan for the Rusk and Panola Counties 2010 SO2 Nonattainment Area and Finding of Failure to Attain Due 2024-07-01; RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05; Hawes, Todd shared "TSD_TX Rusk-Panola Attainment Demo" with you

Good morning everyone,

Please see this week's SO_2 updates and let me know if there are any additional items to raise for the group!

Area Updates & Hot Topics

Ex. 5 AC/DP

Non-Portal Items for Review

- None

Upcoming Leave

- Matthew Porter on leave 7/1-7/5
- Stephen Senter on leave 7/8-7/12

- Mike Thrift on leave 7/9-7/31
- Alina Brashear on leave 7/22-7/26
- Stephen Senter on leave 7/22-7/26
- Todd Hawes on leave 7/25-7/31
- Clint Tillerson at conference 7/29-8/2

Please send anything I may have missed!

Kind regards,
Alina

Angelina Brashear
U.S. Environmental Protection Agency
State & Local Programs Group – Air Quality Planning Division
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Understanding Concentrated Animal Feeding Operations and Their Impact on Communities

ENVIRONMENTAL HEALTH



NALBOH
National Association of Local Boards of Health

FOIA No. 2025-EPA-09254 ED_020431_00001406-00001

Understanding Concentrated Animal Feeding Operations and Their Impact on Communities

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FOIA No. 2025-EPA-09254 ED_020431_00001406-00002

Foreword

The National Association of Local Boards of Health (NALBOH) is pleased to provide *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* to assist local boards of health who have concerns about concentrated animal feeding operations (CAFOs) or large industrial animal farms in their communities. The Environmental Health Services Branch of the Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH) encouraged the development of this product and provided technical oversight and financial support. This publication was supported by Cooperative Agreement Number 5U38HM000512. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the CDC.

The mission of NALBOH is to strengthen boards of health, enabling them to promote and protect the health of their communities, through education, technical assistance, and advocacy. Boards of health are responsible for fulfilling three public health core functions: assessment, policy development, and assurance. For a health agency, this includes overseeing and ensuring that there are sufficient resources, effective policies and procedures, partnerships with other organizations and agencies, and regular evaluation of an agency's services.

NALBOH is confident that *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* will help local board of health members understand their role in developing ways to mitigate potential problems associated with CAFOs. We trust that the information provided in this guide will enable board of health members to develop and sustain monitoring programs, investigate developing policy related to CAFOs, and create partnerships with other local and state agencies and officials to improve the health and well-being of communities everywhere.

A special thanks to Jeffrey Neistadt (NALBOH's Director – Education and Training), NALBOH's Environmental Health subcommittee, and any local board of health members and health department staff who were contacted during the development of this document for their contributions and support.

FOIA No. 2025-EPA-09254 ED_020431_00001406-00004

Notes

FOIA No. 2025-EPA-09254 ED_020431_00001406-00005

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Introduction

Livestock farming has undergone a significant transformation in the past few decades. Production has shifted from smaller, family-owned farms to large farms that often have corporate contracts. Most meat and dairy products now are produced on large farms with single species buildings or open-air pens (MacDonald & McBride, 2009). Modern farms have also become much more efficient. Since 1960, milk production has doubled, meat production has tripled, and egg production has quadrupled (Pew Commission on Industrial Animal Farm Production, 2009). Improvements to animal breeding, mechanical innovations, and the introduction of specially formulated feeds and animal pharmaceuticals have all increased the efficiency and productivity of animal agriculture. It also takes much less time to raise a fully grown animal. For example, in 1920, a chicken took approximately 16 weeks to reach 2.2 lbs., whereas now they can reach 5 lbs. in 7 weeks (Pew, 2009).

New technologies have allowed farmers to reduce costs, which mean bigger profits on less land and capital. The current agricultural system rewards larger farms with lower costs, which results in greater profit and more incentive to increase farm size.

AFO vs. CAFO

A CAFO is a specific type of large-scale industrial agricultural facility that raises animals, usually at high-density, for the consumption of meat, eggs, or milk. To be considered a CAFO, a farm must first be categorized as an animal feeding operation (AFO). An AFO is a lot or facility where animals are kept confined and fed or maintained for 45 or more days per year, and crops, vegetation, or forage growth are not sustained over a normal growing period (Environmental Protection Agency [EPA], 2009). CAFOs are classified by the type and number of animals they contain, and the way they discharge waste into the water supply. CAFOs are AFOs that contain at least a certain number of animals, or have a number of animals that fall within a range and have waste materials that come into contact with the water supply. This contact can either be through a pipe that carries manure or wastewater to surface water, or by animal contact with surface water that runs through their confined area. (See Appendix A)

History

AFOs were first identified as potential pollutants in the 1972 Clean Water Act. Section 502 identified "feedlots" as "point sources" for pollution along with other industries, such as fertilizer manufacturing. Consequently, a permit program entitled the National Pollutant Discharge Elimination System (NPDES) was created which set effluent limitation guidelines and standards (ELGs) for CAFOs. CAFOs have since been regulated by NPDES or a state equivalent since the mid-1970s. The definitions of what was considered an AFO or CAFO were created by the EPA for the NPDES process in 1976. These regulations remained in effect for more than 25 years, but increases and changes to farm size and production methods required an update to the permit system.

The regulations guiding CAFO permits and operations were revised in 2003. New inclusions in the 2003 regulations were that all CAFOs had to apply for a NPDES permit even if they only discharged in the event of a large storm. Large poultry operations were included in the regulations, regardless of their waste disposal system, and all CAFOs that held a NPDES permit were required to develop and implement a nutrient management plan. These plans had CAFOs identify ways to treat or process waste in a way that maintained nutrient levels at the appropriate amount.

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The 2003 CAFO rule was subsequently challenged in court. A Second Circuit Court of Appeals decision required alteration to the CAFO permitting system. In *Water Keeper et al. vs. the EPA*, the court directed the EPA to remove the requirement for all CAFOs to apply for NPDES. Instead, the court required that nutrient management plans be submitted with the permit application, reviewed by officials and the public, and the terms of the plan be incorporated into the permit.

As a result of this court decision, the CAFO rule was again updated. The current final CAFO rule, which was revised in 2008, requires that only CAFOs which discharge or propose to discharge waste apply for permits. The EPA has also provided clarification in the discussion surrounding the rule on how CAFOs should assess whether they discharge or propose to discharge. There is also the opportunity to receive a no discharge certification for CAFOs that do not discharge or propose to discharge. This certification demonstrates that the CAFO is not required to acquire a permit. And while CAFOs were required to create nutrient management plans under the 2003 rule, these plans were now included with permit applications, and had a built-in time period for public review and comment.

Benefits of CAFOs

When properly managed, located, and monitored, CAFOs can provide a low-cost source of meat, milk, and eggs, due to efficient feeding and housing of animals, increased facility size, and animal specialization. When CAFOs are proposed in a local area, it is usually argued that they will enhance the local economy and increase employment. The effects of using local materials, feed, and livestock are argued to ripple throughout the economy, and increased tax expenditures will lead to increase funds for schools and infrastructure.

Environmental Health Effects

The most pressing public health issue associated with CAFOs stems from the amount of manure they produce. CAFO manure contains a variety of potential contaminants. It can contain plant nutrients such as nitrogen and phosphorus, pathogens such as *E. coli*, growth hormones, antibiotics, chemicals used as additives to the manure or to clean equipment, animal blood, silage leachate from corn feed, or copper sulfate used in footbaths for cows.

Depending on the type and number of animals in the farm, manure production can range between 2,800 tons and 1.6 million tons a year (Government Accountability Office [GAO], 2008). Large farms can produce more waste than some U.S. cities—a feeding operation with 800,000 pigs could produce over 1.6 million tons of waste a year. That amount is one and a half times more than the annual sanitary waste produced by the city of Philadelphia, Pennsylvania (GAO, 2008). Annually, it is estimated that livestock animals in the U.S. produce each year somewhere between 3 and 20 times more manure than people in the U.S. produce, or as much as 1.2–1.37 billion tons of waste (EPA, 2005). Though sewage treatment plants are required for human waste, no such treatment facility exists for livestock waste.

While manure is valuable to the farming industry, in quantities this large it becomes problematic. Many farms no longer grow their own feed, so they cannot use all the manure they produce as fertilizer. CAFOs must find a way to manage the amount of manure produced by their animals. Ground application of untreated manure is one of the most common disposal methods due to its low cost. It has limitations, however, such as the inability to apply manure while the ground is frozen. There are also limits as to how many nutrients from manure a land area can handle. Over application of livestock wastes can overload

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soil with macronutrients like nitrogen and phosphorous and micronutrients that have been added to animal feed like heavy metals (Burkholder et al., 2007). Other manure management strategies include pumping liquefied manure onto spray fields, trucking it off-site, or storing it until it can be used or treated. Manure can be stored in deep pits under the buildings that hold animals, in clay or concrete pits, treatment lagoons, or holding ponds.

Animal feeding operations are developing in close proximity in some states, and fields where manure is applied have become clustered. When manure is applied too frequently or in too large a quantity to an area, nutrients overwhelm the absorptive capacity of the soil, and either run off or are leached into the groundwater. Storage units can break or become faulty, or rainwater can cause holding lagoons to overflow. While CAFOs are required to have permits that limit the levels of manure discharge, handling the large amounts of manure inevitably causes accidental releases which have the ability to potentially impact humans.

The increased clustering and growth of CAFOs has led to growing environmental problems in many communities. The excess production of manure and problems with storage or manure management can affect ground and surface water quality. Emissions from degrading manure and livestock digestive processes produce air pollutants that often affect ambient air quality in communities surrounding CAFOs. CAFOs can also be the source of greenhouse gases, which contribute to global climate change.

All of the environmental problems with CAFOs have direct impact on human health and welfare for communities that contain large industrial farms. As the following sections demonstrate, human health can suffer because of contaminated air and degraded water quality, or from diseases spread from farms. Quality of life can suffer because of odors or insect vectors surrounding farms, and property values can drop, affecting the financial stability of a community. One study found that 82.8% of those living near and 89.5% of those living far from CAFOs believed that their property values decreased, and 92.2% of those living near and 78.9% of those living far from CAFOs believed the odor from manure was a problem. The study found that real estate values had not dropped and odor infestations were not validated by local governmental staff in the areas. However, the concerns show that CAFOs remain contentious in communities (Schmalzried and Fallon, 2007). CAFOs are an excellent example of how environmental problems can directly impact human and community well-being.

Groundwater

Groundwater can be contaminated by CAFOs through runoff from land application of manure, leaching from manure that has been improperly spread on land, or through leaks or breaks in storage or containment units. The EPA's 2000 National Water Quality Inventory found that 29 states specifically identified animal feeding operations, not just concentrated animal feeding operations, as contributing to water quality impairment (Congressional Research Service, 2008). A study of private water wells in Idaho detected levels of veterinary antibiotics, as well as elevated levels of nitrates (Batt, Snow, & Alga, 2006). Groundwater is a major source of drinking water in the United States. The EPA estimates that 53% of the population relies on groundwater for drinking water, often at much higher rates in rural areas (EPA, 2004). Unlike surface water, groundwater contamination sources are more difficult to monitor. The extent and source of contamination are often harder to pinpoint in groundwater than surface water contamination. Regular testing of household water wells for total and fecal coliform bacteria is a crucial element in monitoring groundwater quality, and can be the first step in discovering contamination issues related to CAFO discharge. Groundwater contamination can also affect surface water (Spellman &

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Whiting, 2007). Contaminated groundwater can move laterally and eventually enter surface water, such as rivers or streams.

When groundwater is contaminated by pathogenic organisms, a serious threat to drinking water can occur. Pathogens survive longer in groundwater than surface water due to lower temperatures and protection from the sun. Even if the contamination appears to be a single episode, viruses could become attached to sediment near groundwater and continue to leach slowly into groundwater. One pollution event by a CAFO could become a lingering source of viral contamination for groundwater (EPA, 2005).

Groundwater can still be at risk for contamination after a CAFO has closed and its lagoons are empty. When given increased air exposure, ammonia in soil transforms into nitrates. Nitrates are highly mobile in soil, and will reach groundwater quicker than ammonia. It can be dangerous to ignore contaminated soil. The amount of pollution found in groundwater after contamination depends on the proximity of the aquifer to the CAFO, the size of the CAFO, whether storage units or pits are lined, the type of subsoil, and the depth of the groundwater.

If a CAFO has contaminated a water system, community members should be concerned about nitrates and nitrate poisoning. Elevated nitrates in drinking water can be especially harmful to infants, leading to blue baby syndrome and possible death. Nitrates oxidize iron in hemoglobin in red blood cells to methemoglobin. Most people convert methemoglobin back to hemoglobin fairly quickly, but infants do not convert back as fast. This hinders the ability of the infant's blood to carry oxygen, leading to a blue or purple appearance in affected infants. However, infants are not the only ones who can be affected by excess nitrates in water. Low blood oxygen in adults can lead to birth defects, miscarriages, and poor general health. Nitrates have also been speculated to be linked to higher rates of stomach and esophageal cancer (Bowman, Mueller, & Smith, 2000). In general, private water wells are at higher risk of nitrate contamination than public water supplies.

Surface Water

The agriculture sector, including CAFOs, is the leading contributor of pollutants to lakes, rivers, and reservoirs. It has been found that states with high concentrations of CAFOs experience on average 20 to 30 serious water quality problems per year as a result of manure management problems (EPA, 2001). This pollution can be caused by surface discharges or other types of discharges. Surface discharges can be caused by heavy storms or floods that cause storage lagoons to overfill, running off into nearby bodies of water. Pollutants can also travel over land or through surface drainage systems to nearby bodies of water, be discharged through manmade ditches or flushing systems found in CAFOs, or come into contact with surface water that passes directly through the farming area. Soil erosion can contribute to water pollution, as some pollutants can bond to eroded soil and travel to watersheds (EPA, 2001). Other types of discharges occur when pollutants travel to surface water through other mediums, such as groundwater or air.

Contamination in surface water can cause nitrates and other nutrients to build up. Ammonia is often found in surface waters surrounding CAFOs. Ammonia causes oxygen depletion from water, which itself can kill aquatic life. Ammonia also converts into nitrates, which can cause nutrient overloads in surface waters (EPA, 1998). Excessive nutrient concentrations, such as nitrogen or phosphorus, can lead to eutrophication and make water inhabitable to fish or indigenous aquatic life (Sierra Club Michigan Chapter, n.d.). Nutrient over-enrichment causes algal blooms, or a rapid increase of algae growth in an aquatic environment (Science Daily, n.d.). Algal blooms can cause a spiral of environmental problems to an aquatic system. Large groups of algae can block sunlight from underwater plant life, which are

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habitats for much aquatic life. When algae growth increases in surface water, it can also dominate other resources and cause plants to die. The dead plants provide fuel for bacteria to grow and increased bacteria use more of the water's oxygen supply. Oxygen depletion once again causes indigenous aquatic life to die. Some algal blooms can contain toxic algae and other microorganisms, including *Pfiesteria*, which has caused large fish kills in North Carolina, Maryland, and the Chesapeake Bay area (Spellman & Whiting, 2007). Eutrophication can cause serious problems in surface waters and disrupt the ecological balance.

Water tests have also uncovered hormones in surface waters around CAFOs (Burkholder et al., 2007). Studies show that these hormones alter the reproductive habits of aquatic species living in these waters, including a significant decrease in the fertility of female fish. CAFO runoff can also lead to the presence of fecal bacteria or pathogens in surface water. One study showed that protozoa such as *Cryptosporidium parvum* and *Giardia* were found in over 80% of surface water sites tested (Spellman & Whiting, 2007). Fecal bacteria pollution in water from manure land application is also responsible for many beach closures and shellfish restrictions.

Air Quality

In addition to polluting ground and surface water, CAFOs also contribute to the reduction of air quality in areas surrounding industrial farms. Animal feeding operations produce several types of air emissions, including gaseous and particulate substances, and CAFOs produce even more emissions due to their size. The primary cause of gaseous emissions is the decomposition of animal manure, while particulate substances are caused by the movement of animals. The type, amount, and rate of emissions created depends on what state the manure is in (solid, slurry, or liquid), and how it is treated or contained after it is excreted. Sometimes manure is "stabilized" in anaerobic lagoons, which reduces volatile solids and controls odor before land application.

The most typical pollutants found in air surrounding CAFOs are ammonia, hydrogen sulfide, methane, and particulate matter, all of which have varying human health risks. Table 1 on page 6 provides information on these pollutants.

Most manure produced by CAFOs is applied to land eventually and this land application can result in air emissions (Merkel, 2002). The primary cause of emission through land application is the volatilization of ammonia when the manure is applied to land. However, nitrous oxide is also created when nitrogen that has been applied to land undergoes nitrification and denitrification. Emissions caused by land application occur in two phases: one immediately following land application and one that occurs later and over a longer period as substances in the soil break down. Land application is not the only way CAFOs can emit harmful air emissions—ventilation systems in CAFO buildings can also release dangerous contaminants. A study by Iowa State University, which was a result of a lawsuit settlement between the Sierra Club and Tyson Chicken, found that two chicken houses in western Kentucky emitted over 10 tons of ammonia in the year they were monitored (Burns et al., 2007).

Most studies that examine the health effects of CAFO air emissions focus on farm workers, however some have studied the effect on area schools and children. While all community members are at risk from lowered air quality, children take in 20-50% more air than adults, making them more susceptible to lung disease and health effects (Kleinman, 2000). Researchers in North Carolina found that the closer children live to a CAFO, the greater the risk of asthma symptoms (Barrett, 2006). Of the 226 schools that were included in the study, 26% stated that there were noticeable odors from CAFOs outdoors, while 8% stated

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Table 1 Typical pollutants found in air surrounding CAFOs.

CAFO Emissions	Source	Traits	Health Risks
Ammonia	Formed when microbes decompose undigested organic nitrogen compounds in manure	Colorless, sharp pungent odor	Respiratory irritant, chemical burns to the respiratory tract, skin, and eyes, severe cough, chronic lung disease
Hydrogen Sulfide	Anaerobic bacterial decomposition of protein and other sulfur containing organic matter	Odor of rotten eggs	Inflammation of the moist membranes of eye and respiratory tract, olfactory neuron loss, death
Methane	Microbial degradation of organic matter under anaerobic conditions	Colorless, odorless, highly flammable	No health risks. Is a greenhouse gas and contributes to climate change.
Particulate Matter	Feed, bedding materials, dry manure, unpaved soil surfaces, animal dander, poultry feathers	Comprised of fecal matter, feed materials, pollen, bacteria, fungi, skin cells, silicates	Chronic bronchitis, chronic respiratory symptoms, declines in lung function, organic dust toxic syndrome

they experience odors from CAFOs inside the schools. Schools that were closer to CAFOs were often attended by students of lower socioeconomic status (Mirabelli, Wing, Marshall, & Wilcosky, 2006).

There is consistent evidence suggesting that factory farms increase asthma in neighboring communities, as indicated by children having higher rates of asthma (Sigurdarson & Kline, 2006; Mirabelli et al., 2006). CAFOs emit particulate matter and suspended dust, which is linked to asthma and bronchitis. Smaller particles can actually be absorbed by the body and can have systemic effects, including cardiac arrest. If people are exposed to particulate matter over a long time, it can lead to decreased lung function (Michigan Department of Environmental Quality [MDEQ] Toxics Steering Group [TSG], 2006). CAFOs also emit ammonia, which is rapidly absorbed by the upper airways in the body. This can cause severe coughing and mucous build-up, and if severe enough, scarring of the airways. Particulate matter may lead to more severe health consequences for those exposed by their occupation. Farm workers can develop acute and chronic bronchitis, chronic obstructive airways disease, and interstitial lung disease. Repeated exposure to CAFO emissions can increase the likelihood of respiratory diseases. Occupational asthma, acute and chronic bronchitis, and organic dust toxic syndrome can be as high as 30% in factory farm workers

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(Horrigan, Lawrence, & Walker, 2002). Other health effects of CAFO air emissions can be headaches, respiratory problems, eye irritation, nausea, weakness, and chest tightness.

There is evidence that CAFOs affect the ambient air quality of a community. There are three laws that potentially govern CAFO air emissions—the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as the Superfund Act), the Emergency Planning & Community Right to Know Act (EPCRA), and the Clean Air Act (CAA). However, the EPA passed a rule that exempts all CAFOs from reporting emissions under CERCLA. Only CAFOs that are classified as large are required to report any emission event of 100 pounds of ammonia or hydrogen sulfide or more during a 24-hour period locally or to the state under EPCRA (Michigan State University Extension, n.d.). The EPA has also instituted a voluntary Air Quality Compliance Agreement in which they will monitor some CAFO air emissions, and will not sue offenders but instead charge a small civil penalty. These changes have attracted criticism from environmental and community leaders who state that the EPA has yielded to influence from the livestock industry. The changes also leave ambiguity as to whether emission standards and air quality near CAFOs are being monitored.

Greenhouse Gas and Climate Change

Aside from the possibility of lowering air quality in the areas around them, CAFOs also emit greenhouse gases, and therefore contribute to climate change. Globally, livestock operations are responsible for approximately 18% of greenhouse gas production and over 7% of U.S. greenhouse gas emissions (Massey & Ulmer, 2008). While carbon dioxide is often considered the primary greenhouse gas of concern, manure emits methane and nitrous oxide which are 23 and 300 times more potent as greenhouse gases than carbon dioxide, respectively. The EPA attributes manure management as the fourth leading source of nitrous oxide emissions and the fifth leading source of methane emissions (EPA, 2009).

The type of manure storage system used contributes to the production of greenhouse gases. Many CAFOs store their excess manure in lagoons or pits, where they break down anaerobically (in the absence of oxygen), which exacerbates methane production. Manure that is applied to land or soil has more exposure to oxygen and therefore does not produce as much methane. Ruminant livestock, such as cows, sheep, or goats, also contribute to methane production through their digestive processes. These livestock have a special stomach called a rumen that allows them to digest tough grains or plants that would otherwise be unusable. It is during this process, called enteric fermentation, that methane is produced. The U.S. cattle industry is one of the primary methane producers. Livestock production and meat and dairy consumption has been increasing in the United States, so it can only be assumed that these greenhouse gas emissions will also rise and continue to contribute to climate change.

Odors

One of the most common complaints associated with CAFOs are the odors produced. The odors that CAFOs emit are a complex mixture of ammonia, hydrogen sulfide, and carbon dioxide, as well as volatile and semi-volatile organic compounds (Heederik et al., 2007). These odors are worse than smells formerly associated with smaller livestock farms. The anaerobic reaction that occurs when manure is stored in pits or lagoons for long amounts of time is the primary cause of the smells. Odors from waste are carried away from farm areas on dust and other air particles. Depending on things like weather conditions and farming techniques, CAFO odors can be smelled from as much as 5 or 6 miles away, although 3 miles is a more common distance (State Environmental Resource Center, 2004).

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Because CAFOs typically produce malodors, many communities want to monitor emissions and odors. Quantifying odor from industrial farming can be challenging because it is a mixture of free and particle-bound compounds, which can make it hard to identify what specifically is causing the odor. Collecting data on specific gases, such as hydrogen sulfide, can be used as a proxy for odor levels.

CAFO odors can cause severe lifestyle changes for individuals in the surrounding communities and can alter many daily activities. When odors are severe, people may choose to keep their windows closed, even in high temperatures when there is no air conditioning. People also may choose to not let their children play outside and may even keep them home from school. Mental health deterioration and an increased sensitization to smells can also result from living in close proximity to odors from CAFOs. Odor can cause negative mood states, such as tension, depression, or anger, and possibly neurophysciatric abnormalities, such as impaired balance or memory. People who live close to factory farms can develop CAFO-related post traumatic stress disorder, including anxiety about declining quality of life (Donham et al., 2007).

Ten states use direct regulations to control odors emitted by CAFOs. They prohibit odor emissions greater than a set standard. States with direct regulations use scentometers, which measure how many times an odor has to be doused with clean air before the smell is undetectable. An additional 34 states have indirect methods to reduce CAFO odors. These include: setbacks, which specify how far CAFO structures have to be from other buildings; permits, which are the most typical way of regulating CAFOs; public comment or involvement periods; and operator or manure placement training.

Insect Vectors

CAFOs and their waste can be breeding grounds for insect vectors. Houseflies, stable flies, and mosquitoes are the most common insects associated with CAFOs. Houseflies breed in manure, while stable and other flies breed in decaying organic material, such as livestock bedding. Mosquitoes breed in standing water, and water on the edges of manure lagoons can cause mosquito infestations to rise. Flies can change from eggs to adults in only 10 days, which means that substances in which flies breed need to be cleaned up regularly.

Flies are typically considered only nuisances, although insects can agitate livestock and decrease animal health. The John Hopkins Bloomberg School of Public Health found evidence that houseflies near poultry operations may contribute to the dispersion of drug-resistant bacteria (Center for Livable Future, 2009). Since flies are attracted to and eat human food, there is a potential for spreading bacteria or pathogens to humans, including microbes that can cause dysentery and diarrhea (Bowman et al., 2000). Mosquitoes spread zoonotic diseases, such as West Nile virus, St. Louis encephalitis, and equine encephalitis.

Residences closest to the feeding operations experience a much higher fly population than average homes. To lower the rates of insects and any accompanying disease threats, standing water should we cleaned or emptied weekly, and manure or decaying organic matter should be removed twice weekly (Purdue Extension, 2007). For more specific insect vector information, please refer to NALBOH's vector guide (*Vector Control Strategies for Local Boards of Health*).

Pathogens

Pathogens are parasites, bacterium, or viruses that are capable of causing disease or infection in animals or humans. The major source of pathogens from CAFOs is in animal manure. There are over 150 pathogens in manure that could impact human health. Many of these pathogens are concerning because

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they can cause severe diarrhea. Healthy people who are exposed to pathogens can generally recover quickly, but those who have weakened immune systems are at increased risk for severe illness or death. Those at higher risk include infants or young children, pregnant women, the elderly, and those who are immunosuppressed, HIV positive, or have had chemotherapy. This risk group now roughly compromises 20% of the U.S. population.

Table 2 Select pathogens found in animal manure.

Pathogen	Disease	Symptoms
Bacillus anthracis	Anthrax	Skin sores, headache, fever, chills, nausea, vomiting
Escherichia coli	Colibacilosis, Coliform mastitis-metris	Diarrhea, abdominal gas
Leptospira pomona	Leptospirosis	Abdominal pain, muscle pain, vomiting, fever
Listeria monocytogenes	Listerosis	Fever, fatigue, nausea, vomiting, diarrhea
Salmonella species	Salmonellosis	Abdominal pain, diarrhea, nausea, chills, fever, headache
Clostirdum tetani	Tetanus	Violent muscle spasms, lockjaw, difficulty breathing
Histoplasma capsulatum	Histoplasmosis	Fever, chills, muscle ache, cough rash, joint pain and stiffness
Microsporum and *Trichophyton*	Ringworm	Itching, rash
Giardia lamblia	Giardiasis	Diarrhea, abdominal pain, abdominal gas, nausea, vomiting, fever
Cryptosporidium species	Cryptosporidosis	Diarrhea, dehydration, weakness, abdominal cramping

Sources of infection from pathogens include fecal-oral transmission, inhalation, drinking water, or incidental water consumption during recreational water activities. The potential for transfer of pathogens among animals is higher in confinement, as there are more animals in a smaller amount of space. Healthy or asymptomatic animals may carry microbial agents that can infect humans, who can then spread that infection throughout a community, before the infection is discovered among animals.

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When water is contaminated by pathogens, it can lead to widespread outbreaks of illness. Salmonellosis, cryptosporidiosis, and giardiasis can cause nausea, vomiting, fever, diarrhea, muscle pain, and death, among other symptoms. *E.coli* is another serious pathogen, and can be life-threatening for the young, elderly, and immunocompromised. It can cause bloody diarrhea and kidney failure. Since many CAFO use sub-therapeutic antibiotics with their animals, there is also the possibility that disease-resistant bacteria can emerge in areas surrounding CAFOs. Bacteria that cannot be treated by antibiotics can have very serious effects on human health, potentially even causing death (Pew Charitable Trusts, n.d.).

There is also the possibility of novel (or new) viruses developing. These viruses generate through mutation or recombinant events that can result in more efficient human-to-human transmission. There has been some speculation that the novel H1N1 virus outbreak in 2009 originated in swine CAFOs in Mexico. However, that claim has never been substantiated. CAFOs are not required to test for novel viruses, since they are not on the list of mandatory reportable illness to the World Organization for Animal Health.

Antibiotics

Antibiotics are commonly administered in animal feed in the United States. Antibiotics are included at low levels in animal feed to reduce the chance for infection and to eliminate the need for animals to expend energy fighting off bacteria, with the assumption that saved energy will be translated into growth. The main purposes of using non-therapeutic doses of antimicrobials in animal feed is so that animals will grow faster, produce more meat, and avoid illnesses. Supporters of antibiotic use say that it allows animals to digest their food more efficiently, get the most benefit from it, and grow into strong and healthy animals.

The trend of using antibiotics in feed has increased with the greater numbers of animals held in confinement. The more animals that are kept in close quarters, the more likely it is that infection or bacteria can spread among the animals. Seventy percent of all antibiotics and related drugs used in the U.S. each year are given to beef cattle, hogs, and chickens as feed additives. Nearly half of the antibiotics used are nearly identical to ones given to humans (Kaufman, 2000).

There is strong evidence that the use of antibiotics in animal feed is contributing to an increase in antibiotic-resistant microbes and causing antibiotics to be less effective for humans (Kaufman, 2000). Resistant strains of pathogenic bacteria in animals, which can be transferred to humans thought the handling or eating of meat, have increased recently. This is a serious threat to human health because fewer options exist to help people overcome disease when infected with antibiotic-resistant pathogens. The antibiotics often are not fully metabolized by animals, and can be present in their manure. If manure pollutes a water supply, antibiotics can also leech into groundwater or surface water.

Because of this concern for human health, there is a growing movement to eliminate the non-therapeutic use of antibiotics with animals. In 2001, the American Medical Association approved a resolution to ban all low-level use of antibiotics. The USDA has developed guidelines to limit low-level use, and some major meat buyers (such as McDonald's) have stopped using meat that was given antibiotics that are also used for humans. The World Health Organization is also widely opposed to the use of antibiotics, calling for a cease of their low-level use in 2003. Some U.S. legislators are seeking to ban the routine use of antibiotics with livestock, and there has been legislation proposed to solidify a ban. The Preservation of Antibiotics for Medical Treatment Act (PAMTA), which was introduced in 2009, has the support of over 350 health,

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consumer, and environmental groups (H.R. 1549/S. 619). The act, if passed, would ban seven classes of antibiotics important to human health from being used in animals, and would restrict other antibiotics to therapeutic and some preventive uses.

Other Effects – Property Values

Most landowners fear that when CAFOs move into their community their property values will drop significantly. There is evidence that CAFOs do affect property values. The reasons for this are many: the fear of loss of amenities, the risk of air or water pollution, and the increased possibility of nuisances related to odors or insects. CAFOs are typically viewed as a negative externality that can't be solved or cured. There may be stigma that is attached to living by a CAFO.

The most certain fact regarding CAFOs and property values are that the closer a property is to a CAFO, the more likely it will be that the value of the property will drop. The exact impact of CAFOs fluctuates depending on location and local specifics. Studies have found differing results of rates of property value decrease. One study shows that property value declines can range from a decrease of 6.6% within a 3-mile radius of a CAFO to an 88% decrease within 1/10 of a mile from a CAFO (Dakota Rural Action, 2006). Another study found that property value decreases are negligible beyond 2 miles away from a CAFO (Purdue Extension, 2008). A third study found that negative effects are largest for properties that are downwind and closest to livestock (Herriges, Secchi, & Babcock, 2005). The size and type of the feeding operation can affect property value as well. Decreases in property values can also cause property tax rates to drop, which can place stress on local government budgets.

Considerations for Boards of Health

Right-to-Farm Laws

With all of the potential environmental and public health effects from CAFOs, community members and health officials often resort to taking legal action against these industrial animal farms. However, there are some protections for farms in place that can make lawsuits hard to navigate. Right-to-farm laws were created to address conflicts between farmers and non-farming neighbors. They seek to override common laws of nuisance, which forbid people to use their property in ways that are harmful to others, and protect farmers from unreasonable controls on farming.

All 50 states have some form of right-to-farm laws, but most only offer legal protections to farms if they meet certain specifications. Generally, they must be in compliance with all environmental regulations, be properly run, and be present in a region first before suburban developments, often a year before the plaintiff moves to that area. These right-to-farm laws were originally created in the late 1970s and early 1980s to protect family farms from suburban sprawl, at a time when large industrial farms were not the norm. As industrial farms grew in size and number, the agribusiness industry lobbied for and achieved the passage of stricter laws in the 1990s, many of which are now being challenged in court by homeowners and small family farmers. Opponents to these laws argue that they deprive them of their use of property and therefore violate the Fifth Amendment to the Constitution.

Some state courts have overturned their strict right-to-farm laws, such as Iowa, Michigan, Minnesota, and Kansas. Others such as Vermont have rewritten their laws. Vermont's updated right-to-farm bill

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protects established farm practices as long as there is not a substantial adverse effect on health, safety, or welfare.

Boards of health need to be aware of what legal protection their state offers farms. Right-to-farm laws can hinder nuisance complaints brought about by community members. State laws can prevent local government or health officials from regulating industrial farms.

Board of Health Involvement with CAFOs

Boards of health are responsible for fulfilling the three public health core functions: assessment, policy development, and assurance. Boards of health can fulfill these functions through addressing problems stemming from CAFOs in their communities. Specific public health services that can tackled regarding CAFOs include monitoring health status, investigating health problems, developing policies, enforcing regulations, informing and educating people about CAFOs, and mobilizing community partnerships to spread awareness about environmental health issues related to CAFOs.

Assessment: Board of health members should ensure that there is an effective method in place for collecting and tracking public complaints about CAFOs and large animal farms. Since environmental health specialists at local health departments are often responsible for investigating complaints, the board of health must take measures to ensure that they are properly trained and educated about CAFOs. It is possible that the board of health may be responsible or choose to do some investigations itself. Schmalzried and Fallon (2008) advocate that local health districts adopt a proactive approach for addressing public concerns about CAFOs, stating that health districts can offer some services that may help ease public frustration with CAFOs. A fly trapping program can establish a baseline for the average number of flies present prior to the start-up of CAFOs or large animal farms, which can then establish if a fly nuisance exists in the area. Testing for water quality and quantity can provide evidence if CAFOs are suspected of affecting private water supplies. Boards of health can also monitor exposure incidences that occur in emergency rooms to determine if migrant or farm workers are developing any adverse health conditions as a result of their work environments. Establishing these programs benefit both members of the community and provide information to future animal farm operators, and local boards of health should recommend them if they've been receiving complaints about CAFOs.

Policy Development: Boards of health in many states can adopt health-based regulations about CAFOs, however, they may be met with some resistance. Humbolt County, Iowa, adopted four health-based ordinances concerning CAFOs that became models for regulations in other states, but the Iowa Supreme Court ruled the ordinances were irreconcilable with state laws. Boards of health that choose to regulate CAFOs can also be subject to pressure from outside forces, including possible lawsuits or withdrawal of funding. Boards of health should also consider working with other local officials to institute regulations on CAFOs, such as zoning ordinances.

Assurance: Boards of health can execute the assurance function by advocating for or educating about better environmental practices with CAFOs. Board members may receive complaints from the public about CAFOs, and boards can hold public meetings to receive complaints and hear public testimony about farms. If boards of health are not capable of regulating industrial farms in their communities, they can still try to collaborate with other local agencies that have jurisdiction. Board of health members can educate other local agencies and public officials about CAFOs and spread awareness about the environmental and health hazards. They can request a public hearing with the permitting agency of the

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CAFO to express their concerns about the potential health effects. They can also work with agricultural and farm representatives to teach better environmental practices and pollution reduction techniques.

In many states, boards of health are empowered to adopt more stringent rules than the state law if it is necessary to protect public health. Board of health members should examine their state laws before they take any action regarding CAFOs to determine the most appropriate course of action. Any process should include an investigative period to gather evidence, public hearings, and a time for public review of draft policies.

Board of Health Case Studies

Tewksbury Board of Health, Massachusetts

Locals have complained about Krochmal Farms, a pig farm, for many years, but complaints have increased recently. The addition of a hog finishing facility to the farm coincided with the time that community member complaints grew. Most complaints are centered on the odor coming from the farm. The complaints were originally just logged when phone calls were received; however, the health department added a data tracking system as the number of complaints increased. After a complaint is received, the sanitarian or health director does a site visit to investigate.

The health director in Tewksbury filed an order of prohibition against the farm, which is allowed under Massachusetts law 111, section 143, for anything that threatens public health. The order of prohibition was appealed and the matter was taken to the board of health for a grievance hearing. The board of health hearing included months of testimony about the pig farm. The board of health is also doing a site assignment, which determines if a location is appropriate for treating, storing, or disposing of waste, including agricultural waste. The site assignment process includes both the Department of Environmental Protection (DEP) and the local board of health. The board of health holds a public hearing process, while the DEP reviews the site assignment application. The board of health grants the site assignment only if it is concurrently approved by the DEP.

The health director in Tewksbury points out that the only laws the board of health is able to regulate the farm under are nuisance laws. There have been efforts by the community to do a home rule petition to address the air quality and pest management complaints. The home rule petition is currently working its way through the Massachusetts state house. The status of the petition is unknown.

The board of health has tried to work directly with the pig farm to manage complaints. The farm contains manure composting facilities and the health district has requested advance notice to warn the community before manure is treated or applied to the soil. The farm has adopted a new manure management system. This system uses Rapp technology to control odors and reduce ammonia and hydrogen sulfide levels. However, questions still remain as to whether this addition will fully solve the odor issue. Typically, systems using Rapp technology include an oil cap that floats on manure holding pools and helps seal odors inside. These techniques have been researched and proven to reduce odors. However, the Tewksbury farm did not install the oil cap, and it is unknown whether the exclusion of the cap will hinder the technology's ability to reduce odors.

The complaints about the farm primarily concern the odor that emanates from the farm. The complaints do include mention of health side effects, including nausea and burning eyes. The health director has also heard concerns about potential environmental effects from the pig manure. Community members are

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worried the manure runoff is entering and contaminating Sutton Brook, since there has been flooding in that area. There has been no confirmation of this occurring. The board of health is aware that the farm has a nutrient management plan, but they are not allowed to request and find out what is incorporated in that plan.

The Tewksbury piggery is technically not classified as a CAFO, though it is believed to be the largest pig farm in the commonwealth of Massachusetts. The area around it has become densely populated and the community members state that they just want to live peacefully with the farm. The board of health has submitted multiple grant applications to study the health effects associated with the farm. After the site assignment process is complete, the board of health will decide how it will regulate the farm. At the beginning of 2010, the board of health was still working on drafting regulations for the pig farms.

Wood County Board of Health, Ohio

Wood County, Ohio, contains two existing large dairy farms, both of which were proposed in 2001 to be expanded to over 1500 cows each. It is also the site for three other proposed dairy farms. There is a large community effort that supports restricting the operation and expansion of these farms, mainly represented by the community group Wood County Citizens Opposed to Factory Farms. The Wood County Board of Health became involved in investigating these dairy farms through this community group and other local officials. The Trustees of Liberty Township requested assistance from the Wood County Board of Health in supporting a moratorium on factory farm operations until local regulations were in effect. The trustees believed that manure runoff from the farms could contaminate local waterways, lower the ground water table, increase the presence of insect vectors, and devalue local properties.

The Wood County Health Director, in cooperation with the board of health, contacted nearby counties to determine what actions they had taken against farms in their communities. While the health director and board of health investigated action in the form of a nuisance regulation against the farms, they were advised that nuisance lawsuits filed against farms in Ohio were held to a tough standard, and they would be forced to demonstrate with scientific proof that the farms have a substantial adverse effect on health. They found that no other board of health in Ohio had opted to regulate farming operations and relied on the enforcement of existing state laws.

The board of health held a public forum to hear public opinion regarding the industrial farms. Ultimately, the Wood County Board of Health took actions other than regulations to help protect the health and environment of its community. They helped community members protect the safety of their water wells by offering free and low cost water well testing and inspections. They tested area ditch and water ways for fecal coliform bacteria, phosphorous, and nitrates to monitor the impact of farm runoff. They also purchased fly traps to monitor and count fly types to determine if the farms have caused an increase in insect vectors. Board of health members also met with state officials from the Ohio EPA in an effort to facilitate cooperation regarding the factory farms. While the Wood County Board of Health and Health Department chose not to institute any local regulations, they continue to monitor the situation and respond to community complaints.

Cerro Gordo County Board of Health, Iowa

Officials in Cerro Gordo County, Iowa, began looking into regulating animal feeding operations after the number of hog farms in Iowa started to grow. Floods in North Carolina and new regulations in Colorado meant that many hog farms began relocating to Iowa. Many citizens had concerns over the effects of

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CAFOs, and the Iowa State Association of Counties wanted to review air quality issues. Officials in Cerro Gordo County originally began working on a regulation that required inspections and was based on public health concerns, since farms were already exempt from any regulations related to zoning. However, Iowa state senators soon introduced legislation that passed and prevented any animal feeding operations from being regulated from a public health angle as well.

As Iowans were now prevented from regulating animal feeding operations in terms of zoning or public health, officials in Cerro Gordo County decided to place a moratorium on the construction of new animal feeding operations in that county. They wanted to temporarily stop the growth of animal feeding operations until they could get better science about their effects. Cerro Gordo County Ordinance #40, the "Animal Confinement Moratorium Ordinance," went into effect on May 14, 2002. Since the moratorium did not address public health or zoning, officials were able to get around the rules and still have a way to temporarily control animal feeding operation growth in their county. The ordinance placed "a 1-year moratorium on any new construction, expansion, or activity occurring on land used for the production, care, feeding, or housing of animals." The ordinance also afforded "local public health officials adequate time to appropriately assess health and environmental concerns that may be related to confined animal feeding operations and concentration of animals; establish objective measurable standards of enforcement; exercise the Board of Health's responsibility to protect and improve the health of the public; refrain from impacting farm operators unfairly; and provide penalties for violations of the provisions hereof pursuant to Chapter 137, Code of Iowa" (Cerro Gordo County, 2002).

The moratorium was first adopted by the Cerro Gordo County Board of Health. It was then presented to the county board of supervisors by the health director on behalf of the board of health. Before the board of health adopted the moratorium, they held an investigative meeting in which representatives from the Iowa Farm Bureau and other industry spokespeople exchanged opinions on the issue of animal feeding operations. The moratorium was created through a collaboration between local and county officials—health department staff, the board of health, and the board of supervisors. The moratorium did not receive any help or backing from state officials, who were concerned about the political nature of the ordinance. However it did receive backing from a *Globe Gazette* editorial.

The moratorium was immediately met with resistance from state officials. The Cerro Gordo County Board of Supervisors was contacted by a local legislator, and the Iowa Farm Bureau stated they would challenge the county budget. The Iowa Farm Bureau threatened to take the county to court. There were concerns over the cost of a court trial, which was estimated to be as high as $60,000. The county attorney doubted the legality of the moratorium and ultimately recommended removing it. The moratorium was in effect until June of 2005, when it was repealed by the county board of supervisors.

Since the moratorium was repealed there have been a few hog farms built in Cerro Gordo County, but the decline in pork prices has prevented any large growth of hog farms. Health officials believe that if the county had not implemented the animal confinement moratorium, there would have been many more farms built in their county, since many hog farms were built in counties south of Cerro Gordo County. There is now a process for siting new animal confinement operations in Iowa that uses a Master Matrix scoring system. The Cerro Gordo County Board of Supervisors tracks the Master Matrix system, but so far no animal feeding operations in Iowa who have applied using this system have been denied the right to build.

FOIA No. 2025-EPA-09254 ED_020431_00001406-00022

Conclusion

Concentrated animal feeding operations or large industrial animal farms can cause a myriad of environmental and public health problems. While they can be maintained and operated properly, it is important to ensure that they are routinely monitored to avoid harm to the surrounding community. While states have differing abilities to regulate CAFOs, there are still actions that boards of health can and should take. These actions can be as complex as passing ordinances or regulations directed at CAFOs or can be simply increasing water and air quality testing in the areas surrounding CAFOs. Since CAFOs have such an impact locally, boards of health are an appropriate means for action. Boards of health should take an active role with CAFOs, including collaboration with other state and local agencies, to mitigate the impact that CAFOs or large industrial farms have on the public health of their communities.

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Appendix A: Regulatory Definitions of Large CAFOs, Medium CAFOs, and Small CAFOs

Animal Sector	Size Thresholds (number of animals)		
	Large CAFOs	Medium CAFOs[1]	Small CAFOs[2]
Cattle or cow/calf pairs	1,000 or more	300-999	Less than 300
Mature dairy cattle	700 or more	200-699	Less than 200
Veal calves	1,000 or more	300-999	Less than 300
Swine (over 55 pounds)	2,500 or more	750-2,500	Less than 750
Swine (under 55 pounds)	10,000 or more	3,000-9,999	Less than 3,000
Horses	500 or more	150-499	Less than 150
Sheep or lambs	10,000 or more	3,000-9,999	Less than 3,000
Turkeys	55,000 or more	16,500-54,999	Less than 16,500
Laying hens or broilers[3]	30,000 or more	9,000-29,999	Less than 9,000
Chickens other than laying hens[4]	125,000 or more	37.500-124,999	Less than 37,500
Laying hens[4]	82,000 or more	25,000-81,999	Less than 25,000
Ducks[4]	30,000 or more	10,000-29,999	Less than 10,000
Ducks[3]	5,000 or more	1,500-4,999	Less than 1,500

Data: Environmental Protection Agency

1 Must also meet one of two "method of discharge" criteria to be defined as a CAFO or must be designated.

2 Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

3 Liquid manure handling system

4 Other than a liquid manure handling system

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Appendix B: Additional Resources

American Public Health Association. *Precautionary moratorium on new concentrated animal feed operations*. http://www.apha.org/advocacy/policy/policysearch/default.htm?id=1243

Center for a Livable Future. http://www.livablefutureblog.com/

Environmental Health Sciences Research Center. *Iowa concentrated animal feeding operation air quality study*. http://www.public-health.uiowa.edu/ehsrc/CAFOstudy.htm

Environmental Protection Agency. *Animal feeding operations*. http://cfpub.epa.gov/npdes/home.cfm?program_id=7

Food and Water Watch. http://www.foodandwaterwatch.org/

Impacts of CAFOs on Rural Communities. http://web.missouri.edu/ikerdj/papers/Indiana%20--%20CAFOs%20%20Communities.htm#_ftn1

Land Stewardship Project. http://www.landstewardshipproject.org/index.html

Midwest Environmental Advocates. http://www.midwestadvocates.org/

National Agriculture Law Center. *Animal feeding operations reading room*. http://www.nationalaglawcenter.org/readingrooms/afos

National Association of Local Boards of Health. *Vector control strategies for local boards of health*. http://www.nalboh.org/publications.htm

Pew Charitable Trusts. *Human health and industrial farming*. http://www.saveantibiotics.org/index.html

Pew Commission on Industrial Animal Farm Production. http://www.ncifap.org/

Purdue Extension. *Concentrated animal feeding operations*. http://www.ansc.purdue.edu/CAFO/

State Environmental Resource Center. http://serconline.org

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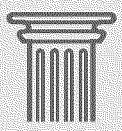
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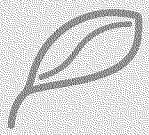
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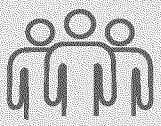
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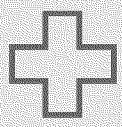
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Message

From: Rosen, Perry (ENRD) [Perry.Rosen@usdoj.gov]
Sent: 7/1/2024 9:23:48 PM
To: Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Thrift, Mike [thrift.mike@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]
Subject: RE: Texas v. EPA (SO2)
Attachments: ENV_DEFENSE-#1223694-v1-Texas_v__EPA_(SO2)_Pet__28(j)_Ltr__re_Loper_&_Ohio_7_1_24.PDF

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Hali,

Enclosed is a Rule 28(j) letter to the 5th Circuit that cites (and attaches) two Supreme Court decisions issued in the last week. Ex. 5 AC/AWP

Ex. 5 AC/AWP

Perry

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Monday, April 15, 2024 5:26 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

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Thanks so much, Perry! We will stay tuned.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, April 15, 2024 3:47 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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All,

Enclosed is a copy of our filed response to the En Banc petition. Thanks for all your thoughtful and organized assistance on this. I will send along any additional responses from the other parties when received.

Perry

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Friday, April 12, 2024 2:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Draft Brief

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Hi Perry,

Ex. 5 AC/AWP

Thanks again!

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 6:25 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Draft Brief

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Hali,

Ex. 5 AC/AWP

This is the version that is being sent to our AAG for his final review. I will be around if there is anything you want to discuss, including the ordering of the two main arguments.

Perry

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Thursday, April 11, 2024 12:37 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Draft Brief

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Hi Perry,

Attached please find our managements' edits and some additional edits (often spurred by mgmt input) from staff. We recognize there are a lot of edits here.

Given the new version you just sent, your revisions may have mooted a many of our comments. This may be wishful thinking, but we sincerely hope it will not be too difficult for you to reconcile the two versions. And if you have any questions about whether our comments/concerns are still relevant, please do not hesitate to reach out. We all want this to be the best brief it can be!

Thank you, Perry!

Hali

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:43 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Sure, I will send you the revised version after I address your next set of comments.

Perry

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, April 11, 2024 10:37 AM

To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Perry,

Hali and Mike are correctly listed, no need to add me, thanks! Our front office actually just pinged us again asking if EPA can see the next version – I am going to send them the draft you just sent noting that it reflects the DAAG's review, but can we please (even if briefly) see the next version you turn around after receiving our comments?

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:01 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
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Hi Abi,

Enclosed is the revised draft, which incorporates most of the comments of the DAAG. It may not be fully polished, as I just incorporated them this morning, but it should be close. Once I get your Management's comments and address them, I will then send it to the AAG for one last review, so staying on the schedule of receiving your comments later today will be very helpful.

Question: I put Hali on the pleading along with Mike. Is that correct and would you also like to be included?

Perry

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Sent: Thursday, April 11, 2024 9:24 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

We are preparing to send you our comments today per the schedule, but have a quick question in the interim. Our front office has expressed interest in seeing the next version incorporating feedback from this round. Would it be possible for them to take a look while the DAAG is reviewing? I understand the timeline is short between now and the filing deadline on Monday, so appreciate that it would have to be an extremely quick look. Please let us know, thanks!

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 4, 2024 5:22 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

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Hi All,

Enclosed is the revised draft brief, which reflects your collective comments as well as those of my Assistant and Deputy Chiefs. Our Chief is going to take a look at it and we will then send it to the DAAG for his review.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
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Environmental Defense Section
P.O. Box 7611
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perry.rosen@usdoj.gov

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Environment Defense Section
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Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 11:52 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Okay great. How does this look for a proposed internal review schedule:

- April 1: DOJ first draft to EPA
- April 3: EPA comments back to DOJ
- April 5 (or before April 8): DOJ second draft to EPA and DOJ management
- April 8-11: management review
- April 15: file

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Tuesday, March 26, 2024 11:49 AM

To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Hali,

I am working to try and get you a draft by the end of this week, although it may leak over to early next week.

Perry

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Suite 2.900
Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 9:52 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

Just checking in on this because management has asked. I hope the oral argument went as well as it could have. Let us know what you're thinking on schedule.

Thanks!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Kerr, Hali (she/her/hers)
Sent: Wednesday, March 20, 2024 11:02 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

Extremely reasonable. Good luck tomorrow!!!

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Wednesday, March 20, 2024 5:39 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Hali,

I have an argument tomorrow in the D.C. Circuit so I have been a bit swamped with that (and other deadlines). I will try and get back to you next week regarding a schedule.

Perry

Perry M. Rosen
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Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Wednesday, March 20, 2024 5:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

The team over here has marked up Ps' petition for rehearing en banc pretty significantly. I am attaching that for your reference. I will also forward you a helpful email exchange with some of our technical folks.

We are starting to get questions from our management on the plan here. Do you have a sense of the internal timeline, and when we, and specifically our management, may be able to review a draft response?

Please let me know what else we can do to help.

Many thanks,
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/2/2024 11:36:30 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Montana-Dakota Utilities Co. v. EPA, et al
Attachments: 24_1227.pdf

Hello,

Alert attached for case 24-1227.

Let me know if you need further assistance.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/2/2024 11:38:26 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of State of Louisiana, et al v. EPA, et al
Attachments: 24_1228.pdf

Hello,

Alert attached for case 24-1228.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: Rosen, Perry (ENRD) [Perry.Rosen@usdoj.gov]
Sent: 7/5/2024 11:38:28 AM
To: Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Thrift, Mike [thrift.mike@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]
Subject: RE: Texas v. EPA (SO2)
Attachments: ENV_DEFENSE-#1223943-v1-Texas_v__EPA_(SO2)_Response_to_28(j)_Ltr_.DOCX

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Enclosed is the draft response to Petitioners' letter regarding the recent Supreme Court cases. It is right at the 350-word limit. We would like to file as soon as possible so if I can get your comments by the end of the day today or Monday, if today does not work, it would be greatly appreciated. As previously outlined Ex. 5 AC/AWP Ex. 5 AC/AWP Thanks.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, July 2, 2024 11:55 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>

Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

CUI//PRIVILEGE

Okay, very helpful to know, thanks. We will rally the reviewers over here whenever we need to and defer to DOJ expertise in how to address the SCOTUS cases. I think sadly, given all going on, some of us will be working all week regardless.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Tuesday, July 2, 2024 11:52 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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Hali,

Ex. 5 AC/AWP

Perry

Perry M. Rosen
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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, July 2, 2024 11:44 AM
To: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

CUI//PRIVILEGE

Yes, thank you Perry. When will our response be due?

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Sent: Monday, July 1, 2024 6:50 PM
To: 'Rosen, Perry (ENRD)' <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2)

CUI//PRIVILEGE

Hi Perry,

Thanks for sharing this. We will start thinking about ideas for the response in the region.

Ex. 5 AC/AWP

Thank you,

Brooke Villegas

Multimedia Counseling
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
Call me on Teams

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, July 1, 2024 4:24 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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Hali,

Enclosed is a Rule 28(j) letter to the 5th Circuit that cites (and attaches) two Supreme Court decisions issued in the last week. Ex. 5 AC/AWP

Ex. 5 AC/AWP

Perry

Perry M. Rosen
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Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Monday, April 15, 2024 5:26 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

CUI//PRIVILEGE

Thanks so much, Perry! We will stay tuned.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, April 15, 2024 3:47 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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All,

Enclosed is a copy of our filed response to the En Banc petition. Thanks for all your thoughtful and organized assistance on this. I will send along any additional responses from the other parties when received.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Friday, April 12, 2024 2:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Draft Brief

CUI//PRIVILEGE

Hi Perry,

Ex. 5 AC/AWP

Thanks again!

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 6:25 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>

Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Draft Brief

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Hali,

Ex. 5 AC/AWP

This is the version that is being sent to our AAG for his final review. I will be around if there is anything you want to discuss, including the ordering of the two main arguments.

Perry

Perry M. Rosen
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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Thursday, April 11, 2024 12:37 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Draft Brief

CUI//PRIVILEGE

Hi Perry,

Attached please find our managements' edits and some additional edits (often spurred by mgmt input) from staff. We recognize there are a lot of edits here.

Given the new version you just sent, your revisions may have mooted a many of our comments. This may be wishful thinking, but we sincerely hope it will not be too difficult for you to reconcile the two versions. And if you have any questions about whether our comments/concerns are still relevant, please do not hesitate to reach out. We all want this to be the best brief it can be!

Thank you, Perry!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:43 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Sure, I will send you the revised version after I address your next set of comments.

Perry

Perry M. Rosen
Senior Attorney
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Washington, DC 20002

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, April 11, 2024 10:37 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

Hali and Mike are correctly listed, no need to add me, thanks! Our front office actually just pinged us again asking if EPA can see the next version – I am going to send them the draft you just sent noting that it reflects the DAAG's review, but can we please (even if briefly) see the next version you turn around after receiving our comments?

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:01 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Abi,

Enclosed is the revised draft, which incorporates most of the comments of the DAAG. It may not be fully polished, as I just incorporated them this morning, but it should be close. Once I get your Management's comments and address them, I will then send it to the AAG for one last review, so staying on the schedule of receiving your comments later today will be very helpful.

Question: I put Hali on the pleading along with Mike. Is that correct and would you also like to be included?

Perry

Perry M. Rosen
Senior Attorney
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perry.rosen@usdoj.gov

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Washington, DC 20002

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, April 11, 2024 9:24 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

We are preparing to send you our comments today per the schedule, but have a quick question in the interim. Our front office has expressed interest in seeing the next version incorporating feedback from this round. Would it be possible for them to take a look while the DAAG is reviewing? I understand the timeline is short between now and the filing deadline on Monday, so appreciate that it would have to be an extremely quick look. Please let us know, thanks!

Controlled by U.S. Environmental Protection Agency

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 4, 2024 5:22 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi All,

Enclosed is the revised draft brief, which reflects your collective comments as well as those of my Assistant and Deputy Chiefs. Our Chief is going to take a look at it and we will then send it to the DAAG for his review.

Perry

Perry M. Rosen
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perry.rosen@usdoj.gov

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Environment Defense Section
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Suite 2.900
Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 11:52 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Okay great. How does this look for a proposed internal review schedule:

- April 1: DOJ first draft to EPA
- April 3: EPA comments back to DOJ
- April 5 (or before April 8): DOJ second draft to EPA and DOJ management
- April 8-11: management review

- April 15: file

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Tuesday, March 26, 2024 11:49 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Hali,

I am working to try and get you a draft by the end of this week, although it may leak over to early next week.

Perry

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 9:52 AM

To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

Just checking in on this because management has asked. I hope the oral argument went as well as it could have. Let us know what you're thinking on schedule.

Thanks!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Kerr, Hali (she/her/hers)
Sent: Wednesday, March 20, 2024 11:02 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

Extremely reasonable. Good luck tomorrow!!!

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Wednesday, March 20, 2024 5:39 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Hali,

I have an argument tomorrow in the D.C. Circuit so I have been a bit swamped with that (and other deadlines). I will try and get back to you next week regarding a schedule.

Perry

Perry M. Rosen

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Wednesday, March 20, 2024 5:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

The team over here has marked up Ps' petition for rehearing en banc pretty significantly. I am attaching that for your reference. I will also forward you a helpful email exchange with some of our technical folks.

We are starting to get questions from our management on the plan here. Do you have a sense of the internal timeline, and when we, and specifically our management, may be able to review a draft response?

Please let me know what else we can do to help.

Many thanks,
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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Message

From: Bushey, Douglas (he/him/his) [bushey.douglas@epa.gov]
Sent: 7/5/2024 9:59:08 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilson, Adam [wilson.adam@epa.gov]
Subject: FW: guidance re CAA section 110(a)(2)(E) and Title VI of the Civil Rights Act
Attachments: 2024.07,03 letter to Goffman re Title VI and CAA 110(a)(2)(E).pdf

FYI

Douglas Bushey (he/him)
Attorney Adviser
U.S. EPA Region 9
75 Hawthorne Street, 12th Floor
San Francisco, CA 94105
Phone: 415 972-3566
bushey.douglas@epa.gov

From: Lee, Anita (she/her/hers) <Lee.Anita@epa.gov>
Sent: Friday, July 5, 2024 2:50 PM
To: Garnett, Desean <Garnett.Desean@epa.gov>; Bushey, Douglas (he/him/his) <bushey.douglas@epa.gov>
Subject: FW: guidance re CAA section 110(a)(2)(E) and Title VI of the Civil Rights Act

Just passing this on as an FYI.

From: Guzman, Martha <Guzman.Martha@epa.gov>
Sent: Friday, July 5, 2024 12:55 PM
To: Gong, Kevin (he/him/his) <Gong.Kevin@epa.gov>; Lakin, Matt (he/him/his) <Lakin.Matthew@epa.gov>; Lee, Anita (she/her/hers) <Lee.Anita@epa.gov>; Lee, Lily <LEE.LILY@EPA.GOV>
Cc: Angelich, Michelle <Angelich.Michelle@epa.gov>
Subject: FW: guidance re CAA section 110(a)(2)(E) and Title VI of the Civil Rights Act

I have not reviewed

From: Brent Newell <brentjnewell@outlook.com>
Sent: Wednesday, July 3, 2024 3:47 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Guzman, Martha <Guzman.Martha@epa.gov>; Lakin, Matt (he/him/his) <Lakin.Matthew@epa.gov>; Engelman-Lado, Marianne (she/her/hers) <EngelmanLado.Marianne@epa.gov>; Segovia, Theresa <Segovia.Theresa@epa.gov>; Ebbert, Laura (she/her/hers) <Ebbert.Laura@epa.gov>; Kristin.Clarke@usdoj.gov; Jennifer.Mathis@usdoj.gov; Chrisine.Stoneman@usdoj.gov; daria.neal@usdoj.gov; catherine@calcleanair.org; Cynthia Pinto-Cabrera <cynthia@calcleanair.org>; nayamin.martinez <nayamin.martinez@ccejn.org>
Subject: guidance re CAA section 110(a)(2)(E) and Title VI of the Civil Rights Act

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Mr. Goffman,

Good afternoon. Please see the attached letter from the Central Valley Air Quality Coalition and the Central California Environmental Justice Network regarding urgently needed EPA guidance on Clean Air Act section 110(a)(2)(E) and Title VI of the Civil Rights Act. We look forward to your prompt response.

Regards,

Brent Newell
Law Office of Brent J. Newell
245 Kentucky Street, Suite A4
Petaluma, CA 94952
(661) 586-3724

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Message

From: Thrift, Mike [thrift.mike@epa.gov]
Sent: 7/5/2024 11:07:27 PM
To: Rosen, Perry (ENRD) [Perry.Rosen@usdoj.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Vargas, Aaron [Vargas.Aaron@epa.gov]
Subject: RE: Texas v. EPA (SO2)
Attachments: ENV_DEFENSE-#1223943-v1-Texas_v__EPA_(SO2)_Response_to_28(j)_Ltr_+OGC.docx

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Perry—
Here's a version with ARLO's few comments so far. Given that it's Friday after the 4th and many people are out, it may be there are more on Monday from others who haven't had a chance to look yet. We will get those to you promptly. Thanks!
--Mike

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Friday, July 5, 2024 4:38 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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Ex. 5 AC/AWP

Perry

Perry M. Rosen
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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, July 2, 2024 11:55 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

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Okay, very helpful to know, thanks. We will rally the reviewers over here whenever we need to and defer to DOJ expertise in how to address the SCOTUS cases. I think sadly, given all going on, some of us will be working all week regardless.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Tuesday, July 2, 2024 11:52 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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Hali,

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, July 2, 2024 11:44 AM
To: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

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Yes, thank you Perry. When will our response be due?

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Sent: Monday, July 1, 2024 6:50 PM
To: 'Rosen, Perry (ENRD)' <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>

Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2)

CUI//PRIVILEGE

Hi Perry,

Thanks for sharing this. We will start thinking about ideas for the response in the region.

Ex. 5 AC/AWP

Thank you,

Brooke Villegas
Multimedia Counseling
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
Call me on Teams

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, July 1, 2024 4:24 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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Hali,

Enclosed is a Rule 28(j) letter to the 5th Circuit that cites (and attaches) two Supreme Court decisions issued in the last week. **Ex. 5 AC/AWP**

Ex. 5 AC/AWP

Perry

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Monday, April 15, 2024 5:26 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2)

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Thanks so much, Perry! We will stay tuned.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, April 15, 2024 3:47 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2)

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All,

Enclosed is a copy of our filed response to the En Banc petition. Thanks for all your thoughtful and organized assistance on this. I will send along any additional responses from the other parties when received.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Friday, April 12, 2024 2:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Draft Brief

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Hi Perry,

Ex. 5 AC/AWP

Thanks again!

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 6:25 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Draft Brief

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Hali,

Ex. 5 AC/AWP

This is the version that is being sent to our AAG for his final review. I will be around if there is anything you want to discuss, including the ordering of the two main arguments.

Perry

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Sent: Thursday, April 11, 2024 12:37 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Draft Brief

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Hi Perry,

Attached please find our managements' edits and some additional edits (often spurred by mgmt input) from staff. We recognize there are a lot of edits here.

Given the new version you just sent, your revisions may have mooted a many of our comments. This may be wishful thinking, but we sincerely hope it will not be too difficult for you to reconcile the two versions. And if you have any questions about whether our comments/concerns are still relevant, please do not hesitate to reach out. We all want this to be the best brief it can be!

Thank you, Perry!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:43 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Sure, I will send you the revised version after I address your next set of comments.

Perry

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To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Perry,

Hali and Mike are correctly listed, no need to add me, thanks! Our front office actually just pinged us again asking if EPA can see the next version – I am going to send them the draft you just sent noting that it reflects the DAAG's review, but can we please (even if briefly) see the next version you turn around after receiving our comments?

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 11, 2024 10:01 AM

To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Abi,

Enclosed is the revised draft, which incorporates most of the comments of the DAAG. It may not be fully polished, as I just incorporated them this morning, but it should be close. Once I get your Management's comments and address them, I will then send it to the AAG for one last review, so staying on the schedule of receiving your comments later today will be very helpful.

Question: I put Hali on the pleading along with Mike. Is that correct and would you also like to be included?

Perry

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, April 11, 2024 9:24 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Hi Perry,

We are preparing to send you our comments today per the schedule, but have a quick question in the interim. Our front office has expressed interest in seeing the next version incorporating feedback from this round. Would it be possible for them to take a look while the DAAG is reviewing? I understand the timeline is short between now and the filing deadline on Monday, so appreciate that it would have to be an extremely quick look. Please let us know, thanks!

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, April 4, 2024 5:22 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE



Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi All,

Enclosed is the revised draft brief, which reflects your collective comments as well as those of my Assistant and Deputy Chiefs. Our Chief is going to take a look at it and we will then send it to the DAAG for his review.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

Address for Overnight Mail
U.S. Department of Justice
Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900

Washington, DC 20002

Controlled by U.S. Environmental Protection Agency

From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 11:52 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Okay great. How does this look for a proposed internal review schedule:

- April 1: DOJ first draft to EPA
- April 3: EPA comments back to DOJ
- April 5 (or before April 8): DOJ second draft to EPA and DOJ management
- April 8-11: management review
- April 15: file

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

Controlled by U.S. Environmental Protection Agency

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Tuesday, March 26, 2024 11:49 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

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Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Hali,

I am working to try and get you a draft by the end of this week, although it may leak over to early next week.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section

P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

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U.S. Department of Justice
Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

Controlled by U.S. Environmental Protection Agency

From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, March 26, 2024 9:52 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: [EXTERNAL] RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

Just checking in on this because management has asked. I hope the oral argument went as well as it could have. Let us know what you're thinking on schedule.

Thanks!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Kerr, Hali (she/her/hers)
Sent: Wednesday, March 20, 2024 11:02 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

Extremely reasonable. Good luck tomorrow!!!

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Wednesday, March 20, 2024 5:39 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE



Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi Hali,

I have an argument tomorrow in the D.C. Circuit so I have been a bit swamped with that (and other deadlines). I will try and get back to you next week regarding a schedule.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

Address for Overnight Mail
U.S. Department of Justice
Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

Controlled by U.S. Environmental Protection Agency

From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Wednesday, March 20, 2024 5:09 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>
Subject: [EXTERNAL] Texas v. EPA (SO2) - Annotated Petition for Rehearing En Banc

CUI//PRIVILEGE

Hi Perry,

The team over here has marked up Ps' petition for rehearing en banc pretty significantly. I am attaching that for your reference. I will also forward you a helpful email exchange with some of our technical folks.

We are starting to get questions from our management on the plan here. Do you have a sense of the internal timeline, and when we, and specifically our management, may be able to review a draft response?

Please let me know what else we can do to help.

Many thanks,
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

Controlled by U.S. Environmental Protection Agency

Message

From: Brashear, Angelina (she/her/hers) [Brashear.Angelina@epa.gov]
Sent: 7/8/2024 6:45:36 PM
To: Bradley, Twunjala [Bradley.Twunjala@epa.gov]; Spann, Jane [Spann.Jane@epa.gov]; Huey, Joel [Huey.Joel@epa.gov]; Walther, Katherine [Walther.Katherine@epa.gov]; Ortiz Borrero, Josue [OrtizBorrero.Josue@epa.gov]; Sawyer, Bonnie (she/her/hers) [Sawyer.Bonnie@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Oggeri, Francis (he/him/his) [oggeri.francis@epa.gov]; Hawes, Todd [Hawes.Todd@epa.gov]; Tillerson, Clint [Tillerson.Clint@epa.gov]; Porter, Matthew [Porter.Matthew@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Smith, Isabella [Smith.Isabella@epa.gov]
Subject: RESPONSE RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05
Attachments: Pre-draft_Comments 6.21.2024_HQ.docx

Hi all,

Attached is HQ's comments/edits to R4's preliminary comments to TN. Thank you for giving us an extension on the review. We were working with some CD deadlines.

Please let us know if you have any questions or concerns.

Kindest regards,
Alina

From: Bradley, Twunjala <Bradley.Twunjala@epa.gov>
Sent: Tuesday, June 25, 2024 8:31 AM
To: Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>
Cc: Spann, Jane <Spann.Jane@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>; Walther, Katherine <Walther.Katherine@epa.gov>; Ortiz Borrero, Josue <OrtizBorrero.Josue@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Hi Alina,
We're fine with the July 8th review deadline.
Thanks,
Twunjala

Twunjala Bradley
Environmental Engineer
USEPA - Region 4
ARD | APIB
Multi-Air Pollutant Coordination Section
(404) 562-9352
bradley.twunjala@epa.gov
http://www.epa.gov/region4

From: Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>
Sent: Tuesday, June 25, 2024 7:32 AM

To: Bradley, Twunjala <Bradley.Twunjala@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Thanks Twunjala – the reason for the delay is another portal review which has a CD deadline and requires an expedited review.

From: Bradley, Twunjala <Bradley.Twunjala@epa.gov>
Sent: Monday, June 24, 2024 7:25 PM
To: Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Hi Alina,
We're waiting on feedback from management. We'll follow-up on Tuesday.
Twunjala

Twunjala Bradley
Environmental Engineer
USEPA - Region 4
ARD | APIB
Multi-Air Pollutant Coordination Section
(404) 562-9352
bradley.twunjala@epa.gov
http://www.epa.gov/region4

From: Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>
Sent: Monday, June 24, 2024 2:43 PM
To: Bradley, Twunjala <Bradley.Twunjala@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Hi Twunjala,

Can you let me know if this date works for R4?

Thank you,
Alina

From: Brashear, Angelina (she/her/hers)
Sent: Monday, June 24, 2024 10:07 AM
To: Bradley, Twunjala <Bradley.Twunjala@epa.gov>; Sawyer, Bonnie (she/her/hers) <Sawyer.Bonnie@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>; Spann, Jane <Spann.Jane@epa.gov>; Walther, Katherine <Walther.Katherine@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Hi all,

We are requesting 7/8 as the review deadline for these comments. If we can review earlier then we will be sure to provide a response back earlier. Please let me know if this works for you all.

Kind regards,

Alina

From: Brashear, Angelina (she/her/hers)
Sent: Friday, June 21, 2024 12:21 PM
To: Bradley, Twunjala <Bradley.Twunjala@epa.gov>; Sawyer, Bonnie (she/her/hers) <Sawyer.Bonnie@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>; Spann, Jane <Spann.Jane@epa.gov>; Walther, Katherine <Walther.Katherine@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Hi folks,

Just wanting to acknowledge that your portal submission was received. I'll follow-up on Monday when I'm able to confirm review deadline.

Thank you,
Alina

From: Microsoft Power Apps and Power Automate <microsoft@powerapps.com>
Sent: Friday, June 21, 2024 12:15 PM
To: Senter, Stephen <Senter.Stephen@epa.gov>; Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>; Oggeri, Francis (he/him/his) <oggeri.francis@epa.gov>; Millar, Emily <Millar.Emily@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: HQ SIP Portal: Pre-draft Redesignation Request for Sullivan County, Tennessee Due 2024-07-05

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

A new item titled "Pre-draft Redesignation Request for Sullivan County, Tennessee" has been submitted by Region 04 to the HQ SIP Portal. Please visit the link below to view the item:

Ex. 6 Personal Privacy (PP)

Title: Pre-draft Redesignation Request for Sullivan County, Tennessee
State: TN
Region: 04
Standard: SO2 (2010)
Area: Sullivan County, Tennessee
Document Category: AP/MP
Date Submitted to HQ: 2024-06-21
HQ Due Date: 2024-07-05
Reason for Review: National Consistency
Requested Review Office: OAQPS & OGC

Ex. 5 AC/DP

Regional Manager(s): Huey, Joel; Spann, Jane;
Regional Staff Lead(s): Bradley, Twunjala;

ORC Staff Lead(s): Sawyer, Bonnie (she/her/hers);
OAQPS Staff Involved: Senter, Stephen; Hawes, Todd; Brashear, Angelina (she/her/hers); Mataway-Novak, Dylan (he/him/his);
OGC Staff Involved: Ting, Kaytrue; Thrift, Mike;
ORC Reviewed Before Submission to HQ: Yes
Link to Files:

Ex. 6 Personal Privacy (PP)

If you want to unsubscribe from these emails, please use this form.

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/9/2024 11:44:59 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket alert for the case of Westmoreland Mining Holdings LLC, et al v. EPA, et al
Attachments: 24_1233.pdf

Greetings,

Alert attached for case 24-1233.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/10/2024 12:22:43 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of International Liquid Terminals Association v. EPA, et al
Attachments: 24-1234.pdf

Hello,

Alert attached for case 24-1234.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/16/2024 11:47:31 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of State of Texas v. EPA, et al
Attachments: 24-1246.pdf

Hello,

Alert attached for case 24-1246.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/16/2024 11:49:53 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Independent Petroleum Association of America, et al v. EPA, et al
Attachments: 24-1242.pdf

Good morning,

Alert attached for case 24-1242.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/16/2024 11:55:01 AM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of San Carlos Apache Tribe, et al v. EPA, et al
Attachments: 24-1241.pdf

Salutations,

Alert attached for case 24-1241.

Let me know if you need further assistance.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/17/2024 12:01:33 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Freeport-McMoRan Miami Inc. v. EPA, et al
Attachments: 24-1245.pdf

Good morning,

Alert attached for case 24-1245.

Let me know if you need further assistance.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/17/2024 12:03:44 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Concerned Citizens of St. John, et al v. EPA, et al
Attachments: 24-1251.pdf

Hello,

Alert attached for case 24-1251.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/17/2024 12:09:51 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Huntsman Petrochemical LLC v. EPA
Attachments: 24-1252.pdf

Greetings,

Alert attached for case 24-1252.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/17/2024 12:12:13 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case of Vinyl Institute, Inc. v. EPA
Attachments: 24-1249.pdf

Salutations,

Alert attached for case 24-1249.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 7/17/2024 12:16:15 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for the Case oi American Chemistry Council, et al v. EPA
Attachments: 24-1250.pdf

Hello,

Alert attached for case 24-1250.

Regards,
Kate McAloon
OGC Librarian, Contractor – **ADS** Agile Decision Sciences
US Environmental Protection Agency, Wash., D.C.
202-564-3971

Appointment

From: Svingen, Eric [Svingen.Eric@epa.gov]
Sent: 7/17/2024 3:45:48 PM
To: Wickersham, Lindsay (she/her/hers) [wickersham.lindsay@epa.gov]; Ahuja, Anupa [ahuja.anupa@epa.gov]; Deabler, Gabrielle [Deabler.Gabrielle@epa.gov]; Devkota, Om [devkota.om@epa.gov]; Letterly, Aaron [Letterly.Aaron@epa.gov]; Nguyen, Khoi (she/her/hers) [Nguyen.Khoi@epa.gov]; Shahin, Emad [Shahin.Emad@epa.gov]; Lewis, Adam [Lewis.Adam@epa.gov]; Schluter, Catherine (she/her/hers) [Schluter.Catherine@epa.gov]; Taveras, Fausto (he/him/his) [Taveras.Fausto@epa.gov]; Aburano, Douglas (he/him/his) [aburano.douglas@epa.gov]; Adams, Evan (he/him/his) [adams.evan@epa.gov]; Akers, Brad (he/him/his) [Akers.Brad@epa.gov]; Arra, Sarah (she/her/hers) [Arra.Sarah@epa.gov]; Bean, Clayton (he/him/his) [bean.clayton@epa.gov]; Becoat, Gregory [becoat.gregory@epa.gov]; Belk, Ellen [Belk.Ellen@epa.gov]; Bell, Tiereny [Bell.Tiereny@epa.gov]; Benjamin, Lynorae [benjamin.lynorae@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Bigioni, Neil (he/him/his) [bigioni.neil@epa.gov]; Biton, Leiran (he/him/his) [biton.leiran@epa.gov]; Bonifacino, Gina [Bonifacino.Gina@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Bradley, Twunjala [Bradley.Twunjala@epa.gov]; Brimmer, Amanda (she/her/hers) [Brimmer.Amanda@epa.gov]; Bunte, Laura [Bunte.Laura@epa.gov]; Calcinore, Sara [calcinore.sara@epa.gov]; Chen, Alexander [Chen.Alex@epa.gov]; Childers, Pat (he/him/his) [Childers.Pat@epa.gov]; Chow, Alice [chow.alice@epa.gov]; Coryell, Mark [coryell.mark@epa.gov]; Crispell, Emily [crispell.emily@epa.gov]; D'Agostino, Kathleen [dagostino.kathleen@epa.gov]; Damberg, Rich [Damberg.Rich@epa.gov]; Davidson, Olivia (she/her/hers) [Davidson.Olivia@epa.gov]; Dickinson, David [Dickinson.David@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Fernandez, Cristina (she/her/hers) [Fernandez.Cristina@epa.gov]; Ferreira, Nicholas (he/him/his) [ferreira.nicholas@epa.gov]; Frizzell, Gretchen (she/her/hers) [Frizzell.Gretchen@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]; Garcia, Ariel [Garcia.Ariel@epa.gov]; Garver, Daniel [Garver.Daniel@epa.gov]; Garwood, Ben [Garwood.Ben@epa.gov]; Gong, Kevin (he/him/his) [Gong.Kevin@epa.gov]; Graham, AshleyR (she/her/hers) [Graham.AshleyR@epa.gov]; Hemby, James [Hemby.James@epa.gov]; Hong, Jeanhee [Hong.Jeanhee@epa.gov]; Hou, James [Hou.James@epa.gov]; Hunt, Jeff [Hunt.Jeff@epa.gov]; Jackson, Scott (he/him/his) [Jackson.Scott@epa.gov]; Jay, Michael [Jay.Michael@epa.gov]; Johnson, Terry [Johnson.Terry@epa.gov]; Kapichak, Rudolph [kapichak.rudolph@epa.gov]; Keas, Ashley [keas.ashley@epa.gov]; Kelly, Johnj (he/him/his) [Kelly.Johnj@epa.gov]; Kelly, ThomasP [Kelly.ThomasP@epa.gov]; Kemp, Lachala [Kemp.Lachala@epa.gov]; Krabbe, Stephen (he/him/his) [Krabbe.Stephen@epa.gov]; Laurita, Matthew [Laurita.Matthew@epa.gov]; Law, Nicole [Law.Nicole@epa.gov]; Lawrence, Laura (she/her/hers) [Lawrence.Laura@epa.gov]; Lee, Andrew [Lee.Andrew.C@epa.gov]; Lee, Anita (she/her/hers) [Lee.Anita@epa.gov]; Leers, Ben (he/him/his) [Leers.Ben@epa.gov]; Leslie, Michael (he/him/his) [leslie.michael@epa.gov]; Ling, Michael [Ling.Michael@epa.gov]; Lingard, Robert (he/him/his) [Lingard.Robert@epa.gov]; Lo, Doris [Lo.Doris@epa.gov]; Longo, Linda (she/her/hers) [Longo.Linda@epa.gov]; Loutan, Reema (she/her/hers) [Loutan.Reema@epa.gov]; Andrews, Suzanne (she/her/hers) [Andrews.Suzanne@epa.gov]; Mackintosh, David [Mackintosh.David@epa.gov]; Maietta, Anthony (he/him/his) [maietta.anthony@epa.gov]; McConnell, Robert [mcconnell.robert@epa.gov]; McHale, Mary [McHale.Mary@epa.gov]; McKinley, Gobeail [McKinley.Gobeail@epa.gov]; McWilliams, Anne K. [mcwilliams.anne@epa.gov]; Medina, Dayana [Medina.Dayana@epa.gov]; Millar, Emily [Millar.Emily@epa.gov]; Mills, Derek [Mills.Derek@epa.gov]; Morton, Michael [Morton.Michael@epa.gov]; Moser, Mallory (she/her/hers) [Moser.Mallory@epa.gov]; Mullen, Kathleen (she/her/hers) [Mullen.Kathleen@epa.gov]; Murray, Beth [Murray.Beth@epa.gov]; Oconnor, Karina (she/her/hers) [OConnor.Karina@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Paige, Carrie [Paige.Carrie@epa.gov]; Patulski, Meg [patulski.meg@epa.gov]; Pepple, Karl [Pepple.Karl@epa.gov]; Pitre, Randy [Pitre.Randy@epa.gov]; Possiel, Norm (he/him/his) [Possiel.Norm@epa.gov]; Prentice, Amanda [Prentice.Amanda@epa.gov]; Puplampu, William [puplampu.william@epa.gov]; Rackauskas, Eric [rackauskas.eric@epa.gov]; Rehn, Brian [rehn.brian@epa.gov]; Riha, Kristin [Riha.Kristin@epa.gov]; Riley, Jeffrey [Riley.Jeffrey@epa.gov]; Rogan, John (he/him/his) [Rogan.John@epa.gov]; Ruvo, Richard (he/him/his) [Ruvo.Richard@epa.gov]; Salem, Nevine [Salem.Nevine@epa.gov]; Schulingkamp, Joseph [Schulingkamp.Joseph@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Shar, Alan [shar.alan@epa.gov]; Simcox, Alison [simcox.alison@epa.gov]; Simon, Heather [Simon.Heather@epa.gov]; Singh, Amrita [singh.amrita@epa.gov]; Snyder, Doug [Snyder.Doug@epa.gov]; Snyder, Erik [snyder.erik@epa.gov]; South, Mia (she/her/hers) [South.Mia@epa.gov]; Spann, Jane [Spann.Jane@epa.gov]; Spenillo, Justin [Spenillo.Justin@epa.gov]; Sutton, Lisa [Sutton.Lisa@epa.gov]; Svendsgaard, Dave [Svendsgaard.Dave@epa.gov]; Talley, David [Talley.David@epa.gov]; Timin, Brian [Timin.Brian@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Tonnesen, Gail [Tonnesen.Gail@epa.gov]; Travia, Donna [Travia.Donna@epa.gov]; Vagenas, Ginger [Vagenas.Ginger@epa.gov]; Vaupel, Claudia [Vaupel.Claudia@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Viswanathan, Krishna [Viswanathan.Krishna@epa.gov]; Wells, Benjamin

[Wells.Benjamin@epa.gov]; Wieber, Kirk [Wieber.Kirk@epa.gov]; Winkelmann, Joe (Joseph) [winkelmann.joseph@epa.gov]; Withey, Charlotte (she/her/hers) [Withey.Charlotte@epa.gov]; Wong, Richard [Wong.Richard@epa.gov]; Yoshimura, Gwen (she/her/hers) [Yoshimura.Gwen@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Lang, Matthew [Lang.Matthew@epa.gov]; Chen, Eugene [Chen.Eugene@epa.gov]; Naber, Nicole [Naber.Nicole@epa.gov]

CC: Leo, Julia [Leo.Julia@epa.gov]; Ledezma, Andrew (he/him/his) [Ledezma.Andrew@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Kosin, Michele [Kosin.Michele@epa.gov]; Dorantes, Michael (he/him/his) [Dorantes.Michael@epa.gov]; Castro, Marina (she/her/hers) [Castro.Marina@epa.gov]; Pagan-Incle, Keila [pagan-incle.keila@epa.gov]; Wortman, Eric (he/him/his) [Wortman.Eric@epa.gov]; Leffert, Kaitlyn (she/her/hers) [Leffert.Kaitlyn@epa.gov]; Lin, Stephanie [Lin.Stephanie@epa.gov]; Magee, Melanie [Magee.Melanie@epa.gov]; Goold, Megan (she/her/hers) [Goold.Megan@epa.gov]; O'Kelly, Jeremy [OKelly.Jeremy@epa.gov]; Kay, Rynda (she/her/hers) [Kay.Rynda@epa.gov]; LaRocca, Sarah [Larocca.Sarah@epa.gov]; Freund, Weston (he/him/his) [Freund.Weston@epa.gov]; James, Corin [James.Corin01@epa.gov]; Perez, Idalia (she/her/hers) [Perez.Idalia@epa.gov]; Rutherford, Robert [Rutherford.Robert@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]; Lillis, Patrick [Lillis.Patrick@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Oggeri, Francis (he/him/his) [oggeri.francis@epa.gov]; Lowder, Erin (she/her/hers) [Lowder.Erin@epa.gov]; McGuire, Philip (he/him/his) [McGuire.Philip@epa.gov]; Neiswinter, Ian [Neiswinter.Ian@epa.gov]; Williams, Jennifer [Williams.Jennifer@epa.gov]; HertzWu, Sara [HertzWu.Sara@epa.gov]; Hillis, Berkley (she/her/hers) [Hillis.Berkley@epa.gov]

Subject: Ozone Implementation Workgroup Monthly Call
Attachments: July 2024 ozone implementation workgroup agenda.docx
Location: Microsoft Teams Meeting

Start: 7/17/2024 5:00:00 PM
End: 7/17/2024 6:00:00 PM
Show Time As: Tentative

Recurrence: Monthly
the third Wednesday of every 1 month(s) from 12:00 PM to 1:00 PM

Required Attendees: Wickersham, Lindsay (she/her/hers); Ahuja, Anupa; Deabler, Gabrielle; Devkota, Om; Letterly, Aaron; Nguyen, Khoi (she/her/hers); Shahin, Emad; Lewis, Adam; Schluter, Catherine (she/her/hers); Taveras, Fausto (he/him/his); Aburano, Douglas (he/him/his); Adams, Evan (he/him/his); Akers, Brad; Arra, Sarah (she/her/hers); Bean, Clayton (he/him/his); Becoat, Gregory; Belk, Ellen; Bell, Tiereny; Benjamin, Lynorae; Bianco, Karen; Bigioni, Neil (he/him/his); Biton, Leiran (he/him/his); Bonifacino, Gina; Brachtl, Megan; Bradley, Twunjala; Brimmer, Amanda (she/her/hers); Bunte, Laura; Calcinore, Sara; Chen, Alexander; Childers, Pat (he/him/his); Chow, Alice; Coryell, Mark; Crispell, Emily; D'Agostino, Kathleen; Damberg, Rich; Davidson, Olivia (she/her/hers); Dickinson, David; Donaldson, Guy; Feldman, Michael; Fernandez, Cristina; Ferreira, Nicholas (he/him/his); Frizzell, Gretchen (she/her/hers); Fulton, Abby; Garcia, Ariel; Garver, Daniel; Garwood, Ben; Gong, Kevin (he/him/his); Graham, AshleyR (she/her/hers); Hemby, James; Hong, Jeanhee; Hou, James; Hunt, Jeff; Jackson, Scott; Jay, Michael; Johnson, Terry; Kapichak, Rudolph; Keas, Ashley; Kelly, Johnj (he/him/his); Kelly, ThomasP; Kemp, Lachala; Krabbe, Stephen (he/him/his); Laurita, Matthew; Law, Nicole; Lawrence, Laura (she/her/hers); Lee, Andrew; Lee, Anita (she/her/hers); Leers, Ben (he/him/his); Leslie, Michael (he/him/his); Ling, Michael; Lingard, Robert (he/him/his); Lo, Doris; Longo, Linda (she/her/hers); Loutan, Reema (she/her/hers); Andrews, Suzanne; Mackintosh, David; Maietta, Anthony (he/him/his); McConnell, Robert; McHale, Mary; McKinley, Gobeail; McWilliams, Anne K.; Medina, Dayana; Millar, Emily; Mills, Derek; Morton, Michael; Moser, Mallory (she/her/hers); Mullen, Kathleen (she/her/hers); Murray, Beth; Oconnor, Karina (she/her/hers); Olszewski, Joshua; Paige, Carrie; Patulski, Meg; Pepple, Karl; Pitre, Randy; Possiel, Norm (he/him/his); Prentice, Amanda; Puplampu, William; Rackauskas, Eric; Rehn, Brian; Riha, Kristin; Riley, Jeffrey; Rogan, John (he/him/his); Ruvo, Richard (he/him/his); Salem, Nevine; Schulingkamp, Joseph; Senter, Stephen; Shar, Alan; Simcox, Alison; Simon, Heather; Singh, Amrita; Snyder, Doug; Snyder, Erik; South, Mia (she/her/hers); Spann, Jane; Spenillo, Justin; Sutton, Lisa; Svendsgaard, Dave; Talley, David; Timin, Brian; Ting, Kaytrue; Tonnesen, Gail; Travia, Donna; Vagenas, Ginger; Vaupel, Claudia; Vijayan, Abi; Viswanathan, Krishna; Wells, Benjamin; Wieber, Kirk; Winkelmann, Joe (Joseph); Withey, Charlotte (she/her/hers); Wong, Richard; Yoshimura, Gwen (she/her/hers); Pettit, Elizabeth (Libby); Lang, Matthew; Chen, Eugene; Naber, Nicole

Optional Attendees: Leo, Julia; Ledezma, Andrew (he/him/his); Williams, Melina; Kosin, Michele; Dorantes, Michael; Castro, Marina (she/her/hers); Pagan-Incle, Keila; Wortman, Eric (he/him/his); Leffert, Kaitlyn (she/her/hers); Lin, Stephanie; Magee, Melanie; Goold, Megan (she/her/hers); O'Kelly, Jeremy; Kay, Rynda (she/her/hers); LaRocca, Sarah; Freund,

Weston (he/him/his); James, Corin; Perez, Idalia (she/her/hers); Rutherford, Robert; McEathron, Kimberly (she/her/hers); Lillis, Patrick; Gallegos, Jacob; Oggeri, Francis (he/him/his); Lowder, Erin (she/her/hers); McGuire, Philip (he/him/his); Neiswinter, Ian; Williams, Jennifer; HertzWu, Sara; Hillis, Berkley (she/her/hers)

Microsoft Teams meeting

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Message

From: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Sent: 7/17/2024 6:52:25 PM
To: Bianco, Karen [Bianco.Karen@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]
Subject: RE: Exceptional Events Rule - Non-Exceedance Days APM Call

CUI//PRIVILEGE

Thanks so much, Karen! Really appreciate it.

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From: Bianco, Karen <Bianco.Karen@epa.gov>
Sent: Wednesday, July 17, 2024 2:51 PM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>
Subject: RE: Exceptional Events Rule - Non-Exceedance Days APM Call

CUI//PRIVILEGE

I'll get myself invited to the APM call and then loop you in – the beauty of being an acting pretend PGL is I don't care too much if they're all mad at me 😊

Otherwise, we'll just see where it goes and we can elevate quickly if we need to. If you want to talk anything through at any point, I'm around and my outlook calendar is up to date.

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From: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Sent: Wednesday, July 17, 2024 2:49 PM
To: Bianco, Karen <Bianco.Karen@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>
Subject: RE: Exceptional Events Rule - Non-Exceedance Days APM Call

CUI//PRIVILEGE

Ex. 5 AC/DP

Ex. 5 AC/DP

I'm not included on the APM call invite. Do you have thoughts on how I/we should go about getting included?

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From: Bianco, Karen <Bianco.Karen@epa.gov>
Sent: Wednesday, July 17, 2024 2:44 PM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>
Subject: RE: Exceptional Events Rule - Non-Exceedance Days APM Call

CUI//PRIVILEGE

Thanks for the heads up! My immediate question is whether you need me to intervene immediately with anyone on your behalf. Will you be able to provide feedback today or do you need additional review time? If you provide feedback today, maybe cc me on what you send forward so I can engage on the blowback.

Looking ahead, are you included on the invite for the APM call? Seems like we will need to be there under many scenarios of how this will play out.

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From: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Sent: Wednesday, July 17, 2024 2:40 PM
To: Bianco, Karen <Bianco.Karen@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>
Subject: Exceptional Events Rule - Non-Exceedance Days APM Call

CUI//PRIVILEGE

Hi Karen,

Ex. 5 AC/DP

Ex. 5 AC/DP

Thanks,

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

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From: Pettit, Elizabeth (Libby)
Sent: Friday, April 26, 2024 12:54 PM
To: Palma, Elizabeth <Palma.Elizabeth@epa.gov>; McKinley, Gobeail <McKinley.Gobeail@epa.gov>
Cc: Deabler, Gabrielle <Deabler.Gabrielle@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Maryland EE Question (cont.)

Hi Gobeail and Beth,

Ex. 5 AC/DP

Ex. 5 AC/DP

Ex. 5 AC/DP

If it would be helpful to set up a meeting to discuss further, please let me know.

Thanks!

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

From: Palma, Elizabeth <Palma.Elizabeth@epa.gov>
Sent: Friday, April 19, 2024 4:10 PM
To: McKinley, Gobeail <McKinley.Gobeail@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Cc: Deabler, Gabrielle <Deabler.Gabrielle@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>
Subject: RE: Maryland EE Question (cont.)

CUI//PRIVILEGE

Ex. 5 AC/DP

Beth

Beth W. Palma
Geographic Strategies Group
USEPA Office of Air Quality Planning and Standards
109 TW Alexander Drive (C539-04)
Research Triangle Park, NC 27711
palma.elizabeth@epa.gov
919.541.5432 (work)
984.209.2717 (EPA cell)

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From: McKinley, Gobeail <McKinley.Gobeail@epa.gov>
Sent: Thursday, April 18, 2024 3:27 PM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Cc: Deabler, Gabrielle <Deabler.Gabrielle@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Palma, Elizabeth <Palma.Elizabeth@epa.gov>
Subject: RE: Maryland EE Question (cont.)

CUI//PRIVILEGE

Hi Libby,

Ex. 5 AC/DP

Beth or Gabrielle – Please add any information that I may have missed or may not be aware of.

Thanks,
Gobeail McKinley
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Air Quality Policy Division | Geographic Strategies Group | RTP, NC 27709
(919) 541-5246 | mckinley.gobeail@epa.gov
AFGE Local 3347 Vice President OAQPS

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From: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Sent: Tuesday, April 16, 2024 2:11 PM
To: McKinley, Gobeail <McKinley.Gobeail@epa.gov>
Subject: Maryland EE Question (cont.)

CUI//PRIVILEGE

Hey Gobeail,

Thought I'd continue our conversation here to mark it as legal privilege.

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Ex. 5 AC/DP

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

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Message

From: Gange, Heather (ENRD) [Heather.Gange@usdoj.gov]
Sent: 7/19/2024 5:02:58 PM
To: Svingen, Eric [Svingen.Eric@epa.gov]; Weiler, Eaton [weiler.eaton@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]
CC: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; St. Romain, Alexandra (ENRD) [Alexandra.St.Romain@usdoj.gov]
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright
Attachments: ENV_DEFENSE-#1225125-v1-Detroit__Petitioner_28(j)_Letter.PDF; ENV_DEFENSE-#1225174-v1-Detroit__EPA_Final_Response_Brief_with_JA_Cites.PDF; ENV_DEFENSE-#1225167-v1-Detroit__US_28(j)_Letter.DOC

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Hello everyone,

Ex. 5 AC/AWP

We realize that a number of you are out on leave, as I will be for the next two weeks starting on Monday the 22nd. In my absence, Alex St. Romain has graciously offered to work with Eric.

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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From: Svingen, Eric <Svingen.Eric@epa.gov>
Sent: Friday, July 19, 2024 7:08 AM
To: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth

(Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi Heather – Thank you for always keeping us updated. Hope you have a nice Friday and weekend.

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From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Thursday, July 18, 2024 6:56 PM
To: Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Svingen, Eric <Svingen.Eric@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hello everyone,

Ex. 5 AC/AWP

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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Message

From: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Sent: 7/22/2024 5:04:53 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]
CC: Talty, Mark [Talty.Mark@epa.gov]; Frank, Carin (she/her/hers) [Frank.Carin@epa.gov]; Kataoka, Mark [Kataoka.Mark@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright
Attachments: ENV_DEFENSE-#1225125-v1-Detroit__Petitioner_28(j)_Letter.PDF; ENV_DEFENSE-#1225174-v1-Detroit__EPA_Final_Response_Brief_with_JA_Cites.PDF

CUI//PRIVILEGE

Hi everyone,

Ex. 5 AC/AWP

Really appreciate your help.

Thanks,

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

Controlled by U.S. Environmental Protection Agency

From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Friday, July 19, 2024 1:03 PM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hello everyone,

Ex. 5 AC/AWP

We realize that a number of you are out on leave, as I will be for the next two weeks starting on Monday the 22nd. In my absence, Alex St. Romain has graciously offered to work with Eric.

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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From: Svingen, Eric <Svingen.Eric@epa.gov>
Sent: Friday, July 19, 2024 7:08 AM
To: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi Heather – Thank you for always keeping us updated. Hope you have a nice Friday and weekend.

Controlled by U.S. Environmental Protection Agency

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Sent: Thursday, July 18, 2024 6:56 PM
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<perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Svingen, Eric <Svingen.Eric@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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(202) 532-3157 (cell)
She/her/hers

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Message

From: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]
Sent: 7/23/2024 1:15:05 PM
To: Svingen, Eric [Svingen.Eric@epa.gov]; Weiler, Eaton [weiler.eaton@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]
CC: St. Romain, Alexandra (ENRD) [Alexandra.St.Romain@usdoj.gov]; Gange, Heather (ENRD) [Heather.Gange@usdoj.gov]
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright
Attachments: ENV_DEFENSE-#1225125-v1-Detroit__Petitioner_28(j)_Letter.PDF; Detroi 28(j) Letter July 22.DOC

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Hi folks,

Ex. 5 AC/AWP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Controlled by U.S. Environmental Protection Agency

From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Friday, July 19, 2024 1:03 PM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

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Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

From: Svingen, Eric <Svingen.Eric@epa.gov>
Sent: Friday, July 19, 2024 7:08 AM
To: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi Heather – Thank you for always keeping us updated. Hope you have a nice Friday and weekend.

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Sent: Thursday, July 18, 2024 6:56 PM
To: Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Svingen, Eric <Svingen.Eric@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hello everyone,

Ex. 5 AC/AWP

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

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Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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Message

From: Muellerleile, Caryn [Muellerleile.Caryn@epa.gov]
Sent: 7/23/2024 4:37:23 PM
To: O'Shea, Michael [OShea.Michael@epa.gov]; Gordon, Michael [Gordon.Mike@epa.gov]; Bigioni, Neil (he/him/his) [bigioni.neil@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Greenglass, Nora [Greenglass.Nora@epa.gov]; Panos, Christos [Panos.Christos@epa.gov]; Abrahamian, Tanya (she/her/hers) [abrahamian.tanya@epa.gov]; Meyer, Jonathan [Meyer.Jonathan@epa.gov]
CC: Seidman, Emily [seidman.emily@epa.gov]; Koman, Trish (she/her/hers) [Koman.Trish@epa.gov]; Baker, Sarah [baker.sarah@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: SIP management sublead - template EJ language
Attachments: SIP EJ EO template - final - 2023-02-07-july-2024.docx

Greetings all,

Ex. 5 AC/DP

If there are no serious objections, I am happy to clean this up and ask Chris to re-post and re-distribute to the respective regional SIP contacts?

Many thanks,
Caryn

Caryn Muellerleile, Director
Regulatory Management Division
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
(202) 564-2855

From: O'Shea, Michael <OShea.Michael@epa.gov>
Sent: Monday, January 23, 2023 4:02 PM
To: Gordon, Michael <Gordon.Mike@epa.gov>; Bigioni, Neil <bigioni.neil@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Greenglass, Nora <Greenglass.Nora@epa.gov>; Panos, Christos <Panos.Christos@epa.gov>; Abrahamian, Tanya <abrahamian.tanya@epa.gov>; Meyer, Jonathan <Meyer.Jonathan@epa.gov>
Cc: Seidman, Emily <seidman.emily@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Koman, Patricia <Koman.Patricia@epa.gov>; Baker, Sarah <baker.sarah@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: SIP management sublead - template EJ language

Hi All,

Please see the message and attachments from Betsy and Tomas. Please look through the feedback provided – I will follow up shortly with a SharePoint version for us to use to respond to comments. Thanks!

Mike

Hi Cristina and team,

Ex. 5 AC/DP

Thanks and sorry again for the delay,

Betsy

Michael O'Shea, PhD.
Pl anning and Implementation Branch
Ai ivision
U: c Region
Pl 64
Email OShea.Michael@epa.gov

-----Original Appointment-----
From: O'Shea, Michael
Sent: Monday, January 23, 2023 12:41 PM
To: Gordon, Michael; Bigioni, Neil; Kornylak, Vera S.; Greenglass, Nora; Panos, Christos; Abrahamian, Tanya; Meyer, Jonathan; Ndoh, Tina
Cc: Seidman, Emily; Muellerleile, Caryn; Koman, Patricia; Baker, Sarah; Vijayan, Abi
Subject: Canceled: SIP management sublead - template EJ language
When: Monday, January 23, 2023 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where:
Importance: High

Hi All,

We are cancelling this one as we await the next step in the chain (OAR IO feedback + concurrence). We will be in touch with details as soon as we hear back from them.

Thank you!

Mike

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Message

From: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Sent: 7/24/2024 12:27:07 AM
To: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Svingen, Eric [Svingen.Eric@epa.gov]; Weiler, Eaton [weiler.eaton@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]
CC: St. Romain, Alexandra (ENRD) [Alexandra.St.Romain@usdoj.gov]; Gange, Heather (ENRD) [Heather.Gange@usdoj.gov]
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright
Attachments: ENV_DEFENSE-#1225167-v1-Detroit__US_28(j)_Letter_EPA Edits.docx

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Hi Eric,

Ex. 5 AC/AWP

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

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From: Pettit, Elizabeth (Libby)
Sent: Tuesday, July 23, 2024 10:23 AM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

Thanks for sharing this update, Eric. We're reviewing internally and will get back to you soon.

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Tuesday, July 23, 2024 9:15 AM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi folks,

Ex. 5 AC/AWP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Friday, July 19, 2024 1:03 PM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
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Best regards,

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Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)

She/her/hers

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Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hello everyone,

Ex. 5 AC/AWP

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.

Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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Message

From: Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]
Sent: 7/24/2024 1:48:10 AM
To: Smith, Isabella [Smith.Isabella@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]
Subject: RE: Kentucky wrinkle in upcoming SO2 FFS

CUI//PRIVILEGE

Agree with Bella: AGH.

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

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From: Smith, Isabella <Smith.Isabella@epa.gov>
Sent: Tuesday, July 23, 2024 5:28 PM
To: Thrift, Mike <thrift.mike@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: RE: Kentucky wrinkle in upcoming SO2 FFS

CUI//PRIVILEGE

Agh. Not ideal. Thanks for the update Mike.

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From: Thrift, Mike <thrift.mike@epa.gov>
Sent: Tuesday, July 23, 2024 4:57 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>
Subject: Kentucky wrinkle in upcoming SO2 FFS

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Ex. 5 AC/DP

Ex. 5 AC/DP

Mike Thrift
USEPA OGC
202-564-8852
Thrift.mike@epa.gov

Controlled by U.S. Environmental Protection Agency

July 23, 2024

By email

Michael Regan, Administrator
Office of the Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Regan.Michael@epa.gov

Joseph Goffman, Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Mail Code 6103A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Goffman.Joseph@epa.gov

David Garcia, Director
Air & Radiation Division
U.S. Environmental Protection Agency Region 6
Air & Radiation Division
1201 Elm Street, Suite 500
Dallas, TX 75270
Garcia.David@epa.gov

Re: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act and the terms incorporated into New Mexico's state implementation plan and Title V permitting program for the Albuquerque-Bernalillo County Air Quality Control Board

Dear Administrator Regan, Assistant Administrator Goffman, and Director Garcia:

Los Jardines Institute ("Los Jardines") and the Natural Resources Defense Council (NRDC) submit this petition for action to urge EPA to (1) review a local ordinance enacted by the Albuquerque City Council ("City Council") that attempts to strip the region's rulemaking body, the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board"), of regulatory authority and (2) find that the ordinance's implementation would violate the requirements for local control under the Clean Air

FOIA No. 2025-EPA-09254 ED_020431_00001494-00001

Act (CAA or "the Act") and the terms upon which EPA approved New Mexico's state implementation plan (SIP) and Title V permitting program.

The City Council enacted Albuquerque Ordinance O-2023-29 ("the Ordinance") because the Air Board deigned to consider a regulation, brought via petition by a community coalition, that would require the region's permitting authority, the Albuquerque Environmental Health Department (EHD), to consider cumulative impacts in its air pollution permitting decisions. The cumulative impacts rule's opponents on the City Council retaliated by attempting to render the Air Board wholly dependent on the petition process for regulation while also erecting barriers to the general public's ability to petition. Although the Air Board promulgated a cumulative impacts rule, the rule's opponents—including EHD—have challenged the rule in state court and that litigation is still pending.

Congress did not intend for state and local air pollution control programs to be on paper only. If granted control over air quality, states and local governments must still assure EPA that they "have adequate personnel, funding, and authority under State (and, as appropriate, local) law" to implement their plans to meet air quality standards and have mechanisms for updating their plans based on changing national standards and technology. 42 U.S.C. § 7410(a)(2)(E), (H)(i), (I), (J); *see also id.* § 7661a(b)(5)(A) (state and local permitting authorities must "have adequate authority to. . . assure compliance by all sources required to have a permit under [Title V of the Act] with each applicable standard, regulation or requirement under this chapter"). If implemented, the City Council's changes to the Air Board would ossify air pollution control in a county with an "F" grade in all air quality metrics evaluated by the American Lung Association,[1] and where a cumulative impacts rule is needed to ensure compliance with federal civil rights law.[2]

---

[1] Am. Lung Ass'n, *New Mexico: Bernalillo* (last visited July 23, 2024), https://www.lung.org/research/sota/city-rankings/states/new-mexico/bernalillo.

[2] On May 30, 2024, Los Jardines and NRDC filed a Title VI civil rights complaint with EPA's Office of External Civil Rights Compliance against EHD and the City of Albuquerque based on the continuing concentration of air pollution in communities of color and evidence of intentional discrimination during the Air Board hearing on the cumulative impacts rule. Part of the relief Los Jardines and NRDC seek is a finding by EPA that EHD must implement a cumulative impacts rule to meet its Title VI obligations. A copy of that complaint is attached as Exhibit A.

FOIA No. 2025-EPA-09254 ED_020431_00001494-00002

Los Jardines and NRDC therefore urge EPA to assert its oversight authority to review Ordinance O-2023-29 now. Although the Air Board is currently able to operate pursuant to a preliminary injunction while a state trial court reviews the Ordinance's consistency with state law, any period under which the Air Board is unable to regulate maintains a status quo that is unacceptable for Albuquerque's communities of color. EPA can opine (and communicate to Albuquerque) now that the Ordinance would violate the Act's requirements were it to take effect—thus ensuring it does not. And if Albuquerque does not course-correct and implements the Ordinance, making such a finding now allows EPA to swiftly begin the process to impose sanctions and/or revoke local control so that Albuquerque and Bernalillo County have CAA-complaint air pollution regulatory programs with all necessary authorities. Albuquerque's overburdened communities cannot continue to wait.

I. Petitioners

The petitioners are Los Jardines and NRDC.

Los Jardines is a multicultural, multigenerational grassroots organization that focuses on environmental, economic, and food justice. Los Jardines is based in Albuquerque's South Valley and promotes multi-generational learning through projects, organizing, policy work, and partnering with other local, state, and national organizations. Among other affiliations, Los Jardines is a member of the Environmental Justice Health Alliance for Chemical Policy Reform, a national network of grassroots environmental and economic justice organizations that works to eliminate the disproportionate impacts of toxic chemical exposure in communities of color and low-income communities. Since its founding in 2008, Los Jardines has worked to strengthen other community organizations and leaders in Albuquerque, including through collaborations with the Santa Barbara Martineztown Neighborhood Association, the Greater Gardner Neighborhood Association, the Health Equity Council in the International District, the San Jose Community, the Mountain View Neighborhood Association, and the Friends of Valle de Oro National Wildlife National Refuge (also located in Mountain View). Los Jardines has also been working with YES Housing Inc. on constructing affordable housing in the Mountain View community.

NRDC is an environmental and public health nonprofit advocacy organization. It is committed to protecting communities from health threats and works to reduce the disproportionate burdens borne by communities of color and low-income communities from environmental contamination, including air pollution. One of NRDC's priorities is to ensure that regulatory authorities consider cumulative impacts when making decisions that affect communities already overburdened with pollution.

FOIA No. 2025-EPA-09254 ED_020431_00001494-00003

II. Legal Framework

A. The Clean Air Act

1. State Implementation Plans

Under the Act, states can formulate their own plans (called State Implementation Plans or SIPs) to meet national ambient air quality standards. *See* 42 U.S.C. § 7410(a)(1). Although states have broad latitude to formulate their SIPs, the Act requires that all SIPs meet certain substantive and structural requirements. *See id.* § 7410(a)(2). To ensure compliance, states submit their air quality laws and regulations to EPA for review. If EPA approves the submission, the laws and regulations become part of the state's SIP. *See id.* § 7410(k).

Most SIP laws and regulations that EPA reviews relate to requirements for air pollutants and sources. *See* 42 U.S.C. § 7410(a)(2)(A)-(D). But the Act also requires states to have "basic air quality management program components in place."[3] States must provide EPA with "necessary assurances" that they "have adequate personnel, funding, and authority under State . . . law" to carry out their implementation plans. *Id.* § 7410(a)(2)(E)(i). These structural components are important because air quality and its control are not stagnant: federal regulations, pollution control technology, and on-the-ground conditions can change. Thus, the Act requires that SIPs have mechanisms for amendment to account for changes including EPA's revisions "to national primary or secondary ambient air quality standard[s]," "improved or more expeditious methods of attaining such standard[s]," EPA designating an area as in non-attainment, or EPA requiring a visibility protection plan. *Id.* § 7410(a)(2)(H)-(J).

A state may rely on a local or regional government to implement its SIP in a particular geographic area. *See id.* § 7410(a)(2)(E). When a state delegates part of its air pollution control to a locality, EPA will undertake the same review and approval process of local laws to ensure compliance with the Act. *See id.* Like a state, a local agency must assure EPA that it has adequate authority to implement its plan and account for changing conditions. *See id.* § 7410(a)(2)(E)(i) (including local governments and local laws as part of adequate authorities requirement).

If a state (and any local government to which the state delegates authorities) submits a SIP to EPA that fails to meet the Act's requirements, EPA must disapprove it and promulgate a federal implementation plan. *See id.* § 7410(c)(1)(B), (k)(1)(C), (k)(3).

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[3] EPA, Process of Working with Areas to Attain and Maintain NAAQs (last updated Nov. 30, 2023), https://www.epa.gov/criteria-air-pollutants/process-working-areas-attain-and-maintain-naaqs-implementation-process.

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To prevent states from submitting compliant programs but not implementing them, the Act prohibits unilateral changes to any terms incorporated into a SIP (and thus formed the basis of EPA's approval). Amendments that a state makes to laws incorporated into a SIP must also be submitted to EPA for approval. *See id.* § 7410(l); 40 C.F.R. § 51.104(b) (requiring states submit any SIP revisions within 60 days of adoption). Unless and until a state submits state law amendments to EPA *and* EPA approves those amendments through a federal rulemaking subject to public notice and comment, the prior federally approved SIP continues to operate and remain enforceable as a matter of federal law. *See* 42 U.S.C. § 7410(l); 40 C.F.R. § 51.105.[4] EPA may withdraw its approval of a SIP if it determines the approval was an error. *See* 42 U.S.C. § 7410 (k)(6). EPA may also impose sanctions if it finds any part of an approved SIP is not being implemented. *See id.* §§ 7410(m), 7509(a)(4).[5]

2. Title V Permitting

To help achieve national air quality standards and assure compliance with all applicable requirements embedded in the Act, the Act requires air pollution sources to obtain permits. One such permit is an "operating permit" required by Title V of the Act, which applies to all "major" sources of air pollution and certain types of smaller sources. *See* 42 U.S.C. § 7661a(a).

Title V places structural requirements on states if they seek to administer an operating permitting program in lieu of EPA. *See* 42 U.S.C. § 7661a(b) (directing EPA to promulgate regulations "establishing the minimum elements of a permit program"). To have Title V permitting authority, states must assure EPA that they have "adequate personnel and funding" to "develop, administer, and enforce" the program. 40 C.F.R. § 70.4(b)(8). Such submissions must include descriptions of the "scope, structure, coverage, and processes of the State program" and descriptions of the "organization and structure of the agency or agencies that will be responsible for administering the program" with delineations of each agency's responsibilities. 40 C.F.R. § 70.4(b)(8)(i)-(ii). Local agencies may implement Title V permitting if they meet the same requirements. *See* 40 C.F.R. § 70.4(c)(1)-(2).

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[4] *See also Safe Air for Everyone v. U.S. EPA*, 488 F.3d 1088, 1097 (9th Cir. 2007) ("[T]he SIP became *federal* law, not *state* law, once EPA approved it, and could not be changed unless and until EPA approved any change.").

[5] *See also* Marcia Spink, EPA Region Three, *Sanctions, Federal Implementation Plans (FIPs), and SIP Calls Under the Clean Air Act* 3, 15 (2009), https://perma.cc/E7PF-GSE7 (explaining that the CAA mandates sanctions for failure to implement SIPs in nonattainment areas, and allows sanctions for violations of "any 'plan or plan item required under this chapter,' i.e., the CAA").

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Changes to the permitting program that affect a state's ability to comply with Title V must be submitted and approved by EPA before they may be recognized and effective as a matter of federal law. *See id.* §§ 70.4(i)(2) (procedures for amendment), 70.10(b) (A permitting program "shall at all times be conducted in accordance with" the terms submitted to EPA.). EPA may issue deficiency notices to states whose Title V programs do not comply with the Act and ultimately withdraw approval if the deficiency is not corrected. *See* 40 C.F.R. § 70.10(b)(2)(i), (iii) (authorizing EPA to withdraw approval and promulgate a federal program 90 days after Title V deficiency notice).

B. Air pollution regulation in Bernalillo County & Albuquerque

New Mexico's Air Quality Control Act divides air pollution authority between a "department" that makes initial permitting decisions, N.M. Stat. Ann. §§ 74-2-2(C), -5.1, -7(B), and an oversight "board" that hears permitting appeals and promulgates "rules and standards" to "attain and maintain national ambient air quality standards and prevent or abate air pollution," *id.* §§ 74-2-3, -5(B), -7(H). At the state level, these agencies are the New Mexico Environment Department and Environmental Improvement Board, respectively. *See id.* §§ 74-2-2(C), -2-5.

A New Mexico county or a municipality may set its own air pollution standards if it enacts an ordinance that creates a local board that can perform "those functions delegated to the [state] environmental improvement board." *Id.* § 74-2-4(A)(1). New Mexico's SIP includes the statute authorizing local boards. *See* 40 C.F.R. § 52.1620(e); 83 Fed. Reg. 12,493 (Mar. 22, 2018). This means that for New Mexico to comply with the CAA, both the state's board *and* any local board it authorizes must meet CAA requirements. *See* 80 Fed. Reg. 63,431, 63,432 (Oct. 20, 2015). Similarly, New Mexico law authorizes local agencies to enforce air pollution regulations and administer permitting in lieu of the state Environment Department. *See* N.M. Stat. Ann. § 74-2-4(A)(2). Currently, the state government administers New Mexico's air program except for the area within the boundaries of the City of Albuquerque and Bernalillo County. *See* 40 C.F.R. pt. 52, subpt. GG (New Mexico's plan showing New Mexico laws and City and County ordinances).

The governments of Albuquerque and Bernalillo County share authority over a joint air pollution program that covers the entire county, including Albuquerque. Albuquerque and Bernalillo County each have ordinances delegating authority to the Air Board and EHD to control air pollution, which—until the City Council's unilateral action in December 2023, *see infra* pp. 11-13—substantially paralleled each other.

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Compare Albuquerque, N.M. Ord. ("City Ord.") ch. 9, art. 5, pt. 1,[6] *with* Bernalillo County, N.M. Ord. ("Cnty. Ord.") ch. 30, art. II.

Under the joint air pollution program, EHD is the local permitting authority. *See* City Ord. § 9-5-1-5, -7; Cnty. Ord. § 30-34, -36; *see also* N.M. Admin. Code § 20.11.1.7 (defining EHD as the agency "responsible for the administration and enforcement" of the area's air regulations). Although run by the City of Albuquerque, EHD's permitting and enforcement authority covers both the City and the County—i.e., any entity that needs a CAA permit in Bernalillo County must submit an application to EHD even if it is not within Albuquerque's city boundaries. *See* City Ord. § 9-5-1-5(A); Cnty. Ord. § 30-34(a).

The Air Board is the local regulatory and appellate authority. It promulgates regulations that cover air quality standards that EHD must incorporate into its permitting decisions. *See* City Ord. §§ 9-5-1-3(A); -5-1-4(B); Cnty. Ord. § 30-33(b), (c). Any member of the public may file a petition with the Air Board to promulgate a rule. *See* City Ord. § 9-5-1-6(A); Cnty. Ord. § 30-35(a). EHD also routinely files rulemaking petitions with the Air Board.[7] The Air Board cannot promulgate a regulation without a public hearing. *See* City Ord. § 9-5-1-6(B); Cnty. Ord. § 30-35(b). Additionally, any person who wishes to challenge EHD's permitting decisions may file an appeal with the Air Board. *See* City Ord. § 9-5-1-7(H); Cnty. Ord. § 30-36(h).

Like EHD, the Air Board's authority applies to both the City and County. *See* City Ord. § 9-5-1-3(A); Cnty. Ord. § 30-32(a). Unlike EHD, however, the Air Board has specific structural requirements to ensure diversity in viewpoints and limit industry capture as required by federal law. *See* City Ord. § 9-5-1-3(B)(4)(a), (E); Cnty. Ord. § 30-32(b)(4)(A), (e); *see also* 42 U.S.C. § 7428 (income and conflicts of interest requirements for boards). The City appoints four members to the Air Board while the County appoints three. *See* City Ord. § 9-5-1-3(B)(2); Cnty. Ord. § 30-32(b)(2). Each board

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[6] Unless otherwise noted, citations to the Albuquerque Code of Ordinances refers to the version linked on the City's website as of July 23, 2024—which does *not* reflect the City Council's December 2023 changes to the Air Board. This complaint cites to the Ordinance O-2023-29 when referring to City Council's changes. Copies of the Code of Ordinances for the City of Albuquerque and Bernalillo County are included as Exhibits B and C.

[7] *See* Air Board, *Rulemaking Process Guidebook* 5 (2023), https://www.cabq.gov/airquality/air-quality-control-board/documents/2023-05-01_approved-aqcb-rulemaking-guidebook.pdf (stating EHD typically proposes new and amended rules).

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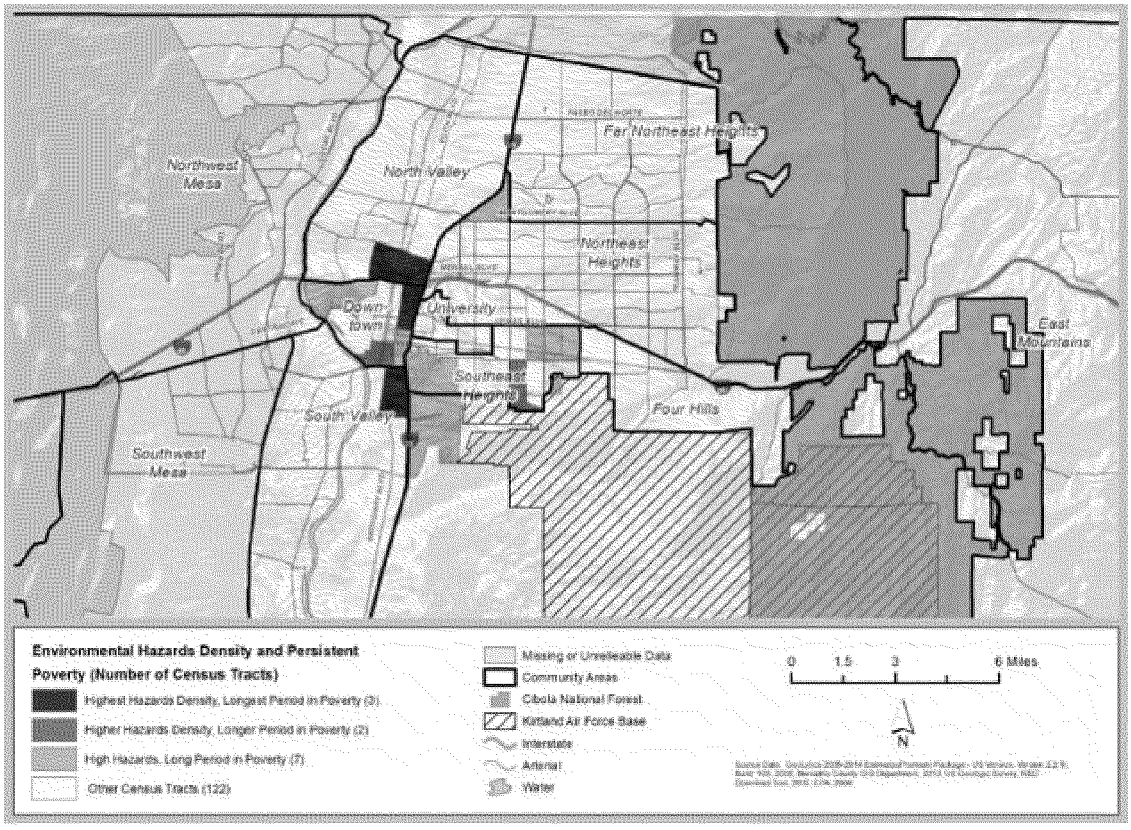
member has a three-year term and appointments are staggered such that in a single year, no more than two City appointees' terms expire and no more than one County appointee's term expires. *See* City Ord. § 9-5-1-3(B)(3); Cnty. Ord. § 30-32(b)(3). As a structural matter, the Air Board oversees the smaller, City-controlled EHD through its regulatory and appellate powers.

III. Factual Background

A. A community coalition invokes the Air Board's petition procedures to propose a rule that would redress the concentration of air pollution in communities of color

As explained in more detail in the Title VI complaint filed with U.S. EPA by Los Jardines and NRDC on May 30, 2024, Bernalillo County and Albuquerque have a long history of concentrating air pollution in low-income, predominantly Latino communities and communities of color.[8]



Note: Values for hazards density: highest = 38.95 - 54.65; higher = 26.00 - 33.01; high = 13.89 - 20.17.
Values for period in poverty: longest = 5 decades; longer = 3 – 4 decades; long = 2 decades.

[8] *See* Ex. A at 7-10.

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Map 1: Regions of elevated environmental risk & persistent poverty by census tract, Bernalillo County (1970-2009)[9]

Map 1 shows these neighborhoods are concentrated near downtown and Albuquerque's southwest, such as Martineztown, San Jose, and Mountainview, but also include Greater Gardner in the northwest and the International District in the southeast. These neighborhoods suffer worse health outcomes on a myriad of metrics including being in the 79th percentile or higher for the state in asthma incidence.[10]

For over a decade, community members and organizations have called on the Air Board to use its rulemaking authority to promulgate a cumulative impacts regulation that would require EHD to account for existing pollution and health vulnerabilities in its permitting decisions. When community members and organizations first filed a petition with the Air Board, the Board summarily denied the petition without a hearing in 2014.[11] This led the Southwest Organizing Project, a nonprofit community organization based in Albuquerque, to file in the same year a Title VI complaint against the Air Board and EHD.[12] EPA ultimately accepted the complaint for investigation.[13]

EHD never petitioned the Air Board to promulgate a cumulative impacts regulation that would bring it into compliance with Title VI of the Civil Rights Act.

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[9] Joint Ctr. For Pol. & Econ. Studies, *Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All* 16 map 11 (2012), https://www.nationalcollaborative.org/wp-content/uploads/2016/02/PLACE-MATTERS-for-Health-in-Bernalillo-County.pdf. As explained later in the study, the map reflects hazards per square mile based on hazardous and pollutant data from Bernalillo County at point level. *Id.* at 17.

[10] *See* Ex. A at 25 tbl.2.

[11] *See* Compl. 7, *Sw. Org. Project v. Albuquerque Air Quality Division*, EPA File No. 13R-14-R6 (Sep. 16, 2014). Documents relating to the 2014 Complaint are available on EPA's External Civil Rights docket tracker. *See* EPA, External Civil Rights Docket, 2014-Present, https://www.epa.gov/external-civil-rights/external-civil-rights-docket-2014-present (last updated July 19, 2024).

[12] *See* Compl., *supra* note 11.

[13] Letter from Lilian S. Dorka, Acting Dir., EPA Off. of Civ. Rts., to Kelsey Curran, Chairperson, Albuquerque-Bernalillo Cnty. Air Quality Control Bd., and Mary Lou Leonard, Envt. Health Dir., Albuquerque Air Quality Div. (July 19, 2016) ("2016 Acceptance Letter").

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After eight years of inaction, a community coalition[14] took matters into its own hands, and in March 2022, petitioned the Air Board to promulgate a rule requiring EHD to account for cumulative impacts on overburdened communities in its permitting decisions.[15] EPA itself acknowledged such a mechanism was necessary: an undated informal resolution agreement ("Draft Agreement") between EPA, the Air Board, and EHD contemplated that the Air Board and EHD would agree that as part of EHD's permitting process, EHD would (1) adopt a routine method for screening environmental justice and civil rights concerns, and (2) engage in a multi-factor analysis of environmental justice issues raised in the initial screening.[16]

B. To prevent a hearing on the cumulative impacts rule, the Albuquerque City Council attempts to strip the Air Board of most of its regulatory authority

The Air Board did not summarily dismiss the March 2022 cumulative impacts rule petition—much to the chagrin of EHD, industry, and ultimately the Albuquerque City Council. EHD objected to the petition from the start. Its initial response criticized the proposed rule for not going through the same consultation procedures EHD used

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[14] The initial petitioners included the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro. Pro se parties Sofia Martinez (Co-coordinator for Los Jardines), Manuel Criollo, and Elaine Cimino, representing other political districts in Bernalillo County, later joined them.

[15] Pet. to Amend Title 20, Chapter 11 of the N.M. Admin. Code to Require Review and Consideration of Health, Environment, and Equity Impacts (Nov. 21, 2022), Doc. 1. The cumulative impacts rulemaking docket is available on the Air Board's Dropbox website. *See* Dropbox, *AQCB Docket No. 2022-3 (20.11.72 NMAC)*, https://www.dropbox.com/scl/fo/fttzpfvuwnpmwu7vg492o/AJVv1VSwOybEfxPMg5duhgY?rlkey=mk8ox5s9vihwhzt668d7s8xy0&e=1&dl=0 (last visited July 23, 2024).

Unless otherwise noted, any other citations to a docket going forward are to the Air Board's rulemaking docket in the form [Document Name] [page number] ([date filed]), Doc [#].

[16] Although discussions between EPA, the Air Board, and EHD were not public, other groups served EHD with public records requests that revealed a copy of the Draft Agreement. *See* Draft Informal Resolution Agreement 8-9 ("Draft Agreement"), EPA Compl. No. 13R-14-R6 (undated), *attached to* Notice of Filing Air Board/USEPA Negotiations Which Invalidate the Rulemaking Process and Suppl. Mot. to Disqualify ("Suppl. Mot. to Disqualify") (Mar. 29, 2023), Doc. 23.

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for drafting rules and for not including feedback from EPA Region 6.[17] Industry groups entered appearances in the rulemaking to attack the proposed rule for reasons other than its merits.[18]

Despite the urgent need for a cumulative impacts regulation, the community coalition meaningfully engaged in the Air Board's prehearing procedures that involved both EHD and industry members.[19] Community members moved to extend the rulemaking schedule to "give the [Air] Board the best, most informed blueprint" and to "allow the Board to adopt the most legally and scientifically sound" rule.[20] In September 2023, the Air Board rescheduled the hearing from October 23 to December 4 to give the public time to consider the changes before preparing their testimony.[21] Unsatisfied with simply letting the Air Board consider the merits of their arguments, however, opponents of the cumulative impacts rule in the City Council sought to stop the rule—and the Air Board—outright.

On October 16, 2024, the City Council introduced a two-pronged attack on the cumulative impacts rule and Air Board.[22] One prong, a resolution, placed a

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[17] EHD's Response to the Petition ¶¶ 3, 12 (Dec. 13, 2022), Doc. 3.

[18] For example, one industry group argued that the entire Air Board should recuse itself from hearing the rule simply because the Air Board was engaging in good faith discussions with EPA to resolve the Title VI complaint. *See, e.g.*, Suppl. Mot. to Disqualify, *supra* note 16, at 5.

[19] *See* Pets.' Memo. in Support of Joint Mot. to Extend Hearing Date 2, 5-6 (Sept. 7, 2023), Doc. 126. (requesting extension of hearing date because there were "fruitful discussions" about amendments during "required" prehearing meetings); Notice of Filing Am. Ex. A, Version 4 to Pet. (Oct. 6, 2023), Doc. 140. The Air Board's procedures build prehearing meetings into the normal petition process. *See Rulemaking Process Guidebook*, *supra* note 7, at 8. EHD admits it did not meaningfully engage with the community until these meetings. *See* Vol. 5 Transcript of Proceedings 1876:16-24, 1877:5-11, No. 2022-3, (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 11, 2023) (attached as Exhibit G).

[20] Pets.' Memo. in Support of Joint Mot. to Extend Hearing Date 6 (Sept. 7, 2023), Doc. 126.

[21] *See* Order Appointing Replacement Hearing Officer 2 (Sept. 15, 2023), Doc. 134.

[22] City of Albuquerque, *Legislation Details O-23-88* (last visited July 23, 2024), https://cabq.legistar.com/LegislationDetail.aspx?ID=6383471&GUID=A3C990D7-9746-40CA-B316-BA589E05C921&Options=ID%7CText%7C&Search=O-23-88; City of Albuquerque, *Legislation Details R-23-176* (last visited July 23, 2024),

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moratorium on the Air Board from considering any "quality of life" regulations, and prejudged the community petition's cumulative impacts rule as one such regulation. Albuquerque, N.M. Resolution R-2023-097 1:9-19, § 1.[23] The other prong was a larger assault on the Air Board to change its composition and strip it of power so it could never consider—let alone promulgate—anything like a cumulative impacts rule again. Ordinance O-2023-29[24] proposed making several structural changes to restrict the Air Board's authority, including:

- **Forbidding the Air Board from taking any actions besides approving or disapproving regulations presented to it by outside parties while also increasing the barriers for public proposals.** The Ordinance specified that the Air Board had no authority to "[d]raft and present to itself regulations" and could not "consider alternative proposals" at a hearing on a regulation. Ordinance O-2023-29 15:27-30, 24:28-29. The Air Board could consider only modifications that "simply delete[ed], clarif[ied] or elaborate[d] on elements of [an] already-submitted proposal without adding or changing substantive new obligations or requirements." *Id.* at 15:27-30. Further, the ordinance limited the public's ability to propose regulations by requiring petitioners to bear the transcript costs for hearings, with no mentions of hardship exceptions or alternative arrangements, and stating that soliciting insufficient feedback from other "interested persons" could be a basis for denying a hearing. *Id.* at 15:3-4, 16:5-6.[25] In addition to limiting public participation, the ordinance cut off the Air Board's ability to raise any regulatory issues with EHD by forbidding it from "[r]ecommend[ing]" any "policies for air quality matters, needs, improvements and programs" or "[a]dvis[ing]"on any "air quality matters, needs and programs" to EHD, the City government, or the County government. *See id.* at 24:33-25:7.

- **Rendering the current Air Board's composition invalid by creating new criteria for four of the seven seats.** *See id.* at 6:21-7:7. The new criteria required one member

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https://cabq.legistar.com/LegislationDetail.aspx?ID=6383569&GUID=BBA92D00-9CF5-47E5-9E94-0A159A9BDF3B&Options=ID%7cText%7c&Search=R-23-176.

[23] A copy of Resolution R-2023-097 as enacted is attached as Exhibit D.

[24] A copy of the Ordinance as enacted is attached as Exhibit E.

[25] The Air Board's rulemaking guidebook previously stated that petitioners typically bore the costs of transcripts for themselves and the Board, which could cost "several hundred to thousands of dollars," but that petitioners could contact the hearing officer if they were "unable to pay" to discuss "potential alternative arrangements." *Rulemaking Process Guidebook*, *supra* note 7, at 6-7.

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to be a licensed engineer, one a physician, one a person involved at an institute of higher learning, and one from a "City industry" in a "private manufacturing concern." *Id.* If EHD unilaterally determined that the Air Board did not meet these composition requirements, the Air Board could not hear any petitions or permit appeals or make regulatory changes until both the City Council and County Commission agreed that the Board could act "consistent with applicable law." *Id.* at 8:2-16.

- **Forbidding the Air Board from promulgating any "quality of life" regulations similar to those described in Resolution R-2023-097.** *See id.* at 24:18-21.

The drastic nature of the City Council's actions drew an official response. After the City Council passed the resolution and ordinance on November 8, 2023, [26] Albuquerque Mayor Timothy Keller vetoed both, stating the ordinance "disregard[ed] our obligations under state and federal law" and that the City Council's hasty action could "ultimately lead to the City and County losing control of [their] air quality."[27]

Instead of heeding the Mayor's cautionary message, the City Council accused him of siding with "environmental extremists" and overrode his veto on the day the Air Board began the cumulative impacts rule hearing—December 4, 2023.[28] The City Council thus enacted legislation changing the City's ordinances but did not—and could not—change the County's parallel code that reflected the two governments' previously agreed-to Air Board terms. Nonetheless, based on its resolution, the City Council sent the Air Board a cease-and-desist letter the next day, threatening to withhold resources the Air Board would need to continue the hearing.[29]

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[26] Legislation Details O-23-88 & R-23-176, *supra* note 22.

[27] Memorandum from Timothy M. Keller, Mayor of Albuquerque, to City Council re: Veto of R-23-176 (Nov. 22, 2023) (filed in rulemaking docket as Doc. 229.1) ("Mayor Veto Statement").

[28] *See* City of Albuquerque, Off. of City Councilor Dan Lewis, Dist. 5, *City Council Overrides Mayor's Vetoes* (Dec. 4, 2023), https://www.cabq.gov/council/find-your-councilor/district-5/news/city-council-overrides-mayor2019s-vetoes.

[29] Letter from Louie Sanchez et al., Albuquerque City Council, to Air Quality Control Board Members (Dec. 5, 2023), Doc. 222; *see also* City Ord. § 9-5-1-5(A) (stating the City would provide the Air Board with staff).

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C. The Albuquerque City Council's actions have sown chaos

After the Air Board filed a request for a temporary restraining order in state court, it received resources for space, security,[30] technology, and services for the hearing through December 11, 2023.[31] The Air Board was ultimately able to issue a final cumulative impacts rule, titled the Health, Environment, and Equity Impacts Rule ("HEEI Rule"), on December 19, 2023.[32]

Using its rulemaking authority, the Air Board tried to balance the different concerns raised during the hearing. As promulgated, the HEEI Rule requires EHD to create a map of "overburdened areas" to determine the degree of harm a new or modified air permit would have on the surrounding community based on a dozen different health, environmental, and socioeconomic factors listed in the rule. N.M. Admin. Code § 20.11.72.7, .8(A).[33] To reduce the harms of additional pollution, the HEEI Rule mandates that any new or modified permit for a stationary source apply best available control technology if it is located or proposed to be located in or within a one-mile radius of an overburdened area. *See id.* § 20.11.72.8(C). The HEEI Rule also requires any new or modified stationary source emitting hazardous air pollutants (as defined by the regulation) to apply best available control technology regardless of its location. *Id.* § 20.11.72.8(D).

Notwithstanding the HEEI Rule's salutary and essential requirements, the Air Board gave EHD and industry significant concessions. It opted to require best available

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[30] The Air Board hearing required security in part due to threats of violence to individual Air Board members and their families. *See, e.g.*, Vol. 2 Transcript of Proceedings 718:10-14, No. 2022-3 (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 5, 2023) (attached as Exhibit F) (testimony of Vice Chair Richards) ("I am very, very deeply disturbed by how [one of the City Council members] divided our community. . . . I fear for my family. I fear for my own life, and it was absolutely unnecessary.").

[31] *See* Final Order & Statement of Reasons for Adopting Reg. Concerning Health Envt. & Equity Impacts 3-4 ("Final Rule Order") (Dec. 19, 2023), Doc. 241. The Air Board withdrew its temporary restraining order application after the hearing's completion. *See id.* at 4.

[32] N.M. Admin. Code Transmittal Form for N.M. Admin. Code § 20.11.72: Health Environment Equity Impacts (Dec. 28, 2023), Doc. 242.

[33] The text of the new rule is taken from the rule as transmitted to the New Mexico State Records Center and Archives found in note 32 at 22-23.

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control technology in overburdened communities (as defined by the rule) rather than requiring EHD to deny permits as community members had requested in their revised petition.[34] The HEEI Rule also does not require EHD to determine whether there is a substantial justification for additional pollution in an overburdened community or consider a less discriminatory alternative as described in the Draft Agreement.[35]

Although the Air Board was able to promulgate the HEEI Rule, its ability to operate—let alone promulgate any new regulations—remains in a state of flux. The Air Board is pursuing its lawsuit against the City of Albuquerque challenging the legality of the Ordinance under state law, supported by the Bernalillo County Commission which joined the lawsuit as a co-plaintiff.[36] The Air Board is currently operating, but only pursuant to a preliminary injunction granted by a New Mexico trial court that is valid through a merits ruling.[37] To date, the SIP for New Mexico and Bernalillo County continue to reflect the Air Board's old structure and authorities. *See* 40 C.F.R. pt. 52, subpt. GG.

On May 30, 2024, Los Jardines and NRDC filed a Title VI civil rights complaint with U.S. EPA against EHD and the City based on concerns that EHD would not implement the HEEI Rule given the agency's consistent opposition to the rule and the challenges to the rule in court by EHD and industry groups.[38] One of the remedies

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[34] *Compare id.* N.M. Admin Code § 20.11.72.8(C) (requiring best available control technology), *with* Notice of Filing Am. Ex. A, Version 4, *supra* note 19, at 17-19 (version community members submitted for hearing setting forth criteria for permit denials or requiring specific mitigation measures).

[35] *Compare* N.M. Admin. Code § 20.11.72.8, *supra* note 32, *with* Draft Agreement, *supra* note 16, at 9-10

[36] *See* Docket Sheet, *Albuquerque-Bernalillo Cnty. Air Quality Control Bd. v. City of Albuquerque*, No. D-202-CV-202309295 (N.M. Distr. Ct. filed Dec. 5, 2023). Information on all state court cases mentioned was found by searching by case number on New Mexico Case Lookup, https://caselookup.nmcourts.gov/caselookup/app, and is current through July 23, 2024.

[37] *See* Order Granting Preliminary Injunctive Relief, Albuquerque Bernalillo County Air Quality Control Board v. City of Albuquerque, No. D-202-CV-2023-09295 (N.M. Distr. Ct. Feb. 1, 2024). A copy of the order is attached as Exhibit H.

[38] *See* Ex. A. Three petitions for review of the rule are in the state court of appeals. *See* Docket Sheet, *ABQ Asphalt, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41673 (N.M. Ct. App. filed Jan. 26, 2024); Docket Sheet, *Nat'l Tech. & Eng'r Solutions Sandia, LLC v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-

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requested by the complaint is that EPA find that to comply with Title VI, EHD must implement a cumulative impacts rule and apply it in air permitting decisions.[39] Absent federal pressure, EHD can otherwise thwart the HEEI Rule—or any other rule it dislikes for that matter—through inaction, due to the chilling of community petitions, and the questions surrounding the Air Board's authority to promulgate any new regulations.

IV. If implemented, the City Council's changes to the Air Board would deprive the Board of authority previously approved by EPA as necessary to meet Clean Air Act requirements

Congress viewed public-minded, uncaptured boards as so critical to effective air pollution control that it required them for every state. *See* 42 U.S.C. § 7428. This structure worked as intended when the Air Board agreed to hear community members' petition and consider limiting air pollution despite strong industry opposition. The Air Board's opponents, however, responded by pushing through the Albuquerque City Council changes that would strip from the Air Board much of the rulemaking authority it had when EPA approved New Mexico's SIP and Title V permitting program. The Ordinance would impede the Air Board's regulatory authority to such a degree that it would lack "adequate . . . authority" under local law to carry out plan implementation or "adequately administer[]" the Title V operating permit program. 42 U.S.C. §§ 7410(a)(2)(E)(i), 7661a(i)(1).

Regulatory delay maintains a status quo that harms already overburdened communities. Thus, EPA should review Ordinance O-2023-29 now and alert Albuquerque to the Ordinance's incompatibility with the Clean Air Act to ensure it is not implemented. Review now would also ensure that if the Ordinance took effect, EPA would be ready to initiate the process for deficiency findings and corrective action. Delay would only further the anti-regulatory goals of the Air Board's opponents.

1-CA-41666 (N.M. Ct. App. filed Jan. 25, 2024); Docket Sheet, *Albuquerque Envt. Health Dep't v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41669 (N.M. Ct. App. filed Jan. 26, 2024). There is also a pending trial court case against the Air Board. *See* Docket Sheet, *GCC Rio Grande, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. D-202-CV-202309435 (N.M. Dist. Ct. filed Dec. 11, 2023).

[39] Ex. A at 35.

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A. The Ordinance would deprive the Air Board of adequate authority to meet air quality standards or administer Title V permitting

The Ordinance's hamstringing of the Air Board would violate the Act's substantive requirements for SIPs and Title V programs because both require a functional rulemaking authority. Most relevant here, the Act requires a SIP to:

1. Contain necessary assurances that a state or local agency will have "adequate personnel, funding, and authority" under the applicable law to carry out the SIP's substantive requirements, 42 U.S.C. § 7410(a)(2)(E)(i); and
2. Provide methods of amending the SIP to "take account of revisions" to national primary or secondary ambient air quality standards or improved methods to attain a standard. *Id.* § 7410(a)(2)(H)(i). Additionally, a SIP would need to be revised if an area fell into nonattainment or if the federal government required a new visibility plan for an area. *See id.* § 7410(a)(2)(I), (J).

Similarly, an entity administering a Title V program must have "adequate personnel and funding" to "develop, administer, and enforce" the permitting program. 40 C.F.R. § 70.4(b)(8). Those authorities must include the ability to incorporate federal and state regulatory changes. *See id.* § 70.4(i); *see also id.* § 70.10(c)(1)(i)(A) (listing the failure of a permitting authority to "promulgate or enact new authorities when necessary" as a basis for EPA withdrawing approval of a Title V program).

If the Ordinance takes effect, the Air Board would lack adequate authority to revise regulations as needed to reflect changes in national standards, technology, or attainment status. The Ordinance makes the Air Board entirely dependent on petitioners for regulations—the Air Board can neither draft its own regulations, nor amend the regulations presented to it, nor even recommend to EHD that EHD propose regulations that it views as legally mandated. *See* Ordinance O-2023-29 at 15:27-30, 24:28-25:5.

Regulation via petition is insufficient if the Air Board cannot bring its knowledge and judgment to promote the public interest, including when it is required to comply with changes in federal standards, technology, or air quality levels. The Ordinance forbids the Air Board from "consider[ing] alternative proposals" at a hearing on a regulation and allows it to make modifications that only "delete[], clarif[y] or elaborate[] on elements of the already-submitted proposal without adding or changing substantive new obligations or requirements." *Id.* at 15:27-30. As demonstrated by the

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cumulative impacts rulemaking, the Air Board hears from a myriad of viewpoints both before and during a hearing. So long as parties have fair notice of the options available, it is part of the normal, functioning governmental process for an agency to synthesize the views it hears and reach compromise.[40]

The City Council's legislation creates the perverse incentive for a rule's opponents to withhold moderating amendments during the petition process. Opponents could simply state their strenuous opposition to a petition to try to force the Air Board to deny it and challenge any regulation as *ultra vires* if the Air Board made any change to account for the opponents' concerns. The CAA does not countenance this heckler's veto to thwart the attainment and maintenance of national ambient air quality standards. By hamstringing the Air Board, the Ordinance all but ensures that effective air pollution regulation will not occur. That is the City Council's intent.

Having restricted the Air Board's authority to marginally edit petitions submitted by the public or EHD, the City Council then significantly diminished the likelihood of the Air Board receiving the petitions it needs to ensure compliance with federal law. Making petitioners bear all transcription costs without any hardship exceptions chills public participation. Ordinance O-2023-29 at 16:5-6. As the Air Board acknowledges, transcripts can cost several hundred to thousands of dollars per proceeding and petitioners will also need legal counsel.[41] Low-income communities, where air pollution is most concentrated and regulation is most needed, will be least able to seek regulatory changes under this regime. This is both unfair and unjust, and will diminish the prospect for adoption of improved air quality standards or improved technology as the Act and EPA envision. *See* 42 U.S.C. § 7410(a)(2)(H)(i); 40 C.F.R. § 70.10(c)(1)(i)(A). The Clean Air Act guarantees all Americans the right to safe, healthy air, requiring national ambient air quality standards to be attained and maintained everywhere, 42 U.S.C. § 7409, yet the City Council actions single out for further discrimination low-income communities and communities of color already experiencing unhealthy air quality.

Simply put, the Ordinance keeps communities seeking protective regulation from petitioning the Air Board while prohibiting the Air Board from playing the

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[40] *Cf. Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (cleaned up) (explaining that federal rules promulgated under the Administrative Procedure Act need only be a "logical outgrowth" of a proposed rule to comply notice and comment requirements).

[41] *See Rulemaking Process Guidebook*, *supra* note 7, at 6-7, 14.

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customary, flexible role of a regulator to consider disparate points of view and formulate workable rules. Stripped of meaningful regulatory power, the Air Board does not have adequate authority to implement its SIP commitments or administer the Title V permitting program.

B. The Ordinance contravenes federally-approved SIP and Title V Program terms

The reality that the Air Board has more than cursory levels of rulemaking authority was part of EPA's approval of local control for Bernalillo County under New Mexico's SIP. EPA incorporated into New Mexico's SIP the state's statutes delineating agency responsibilities and authorizing local control as well as City and County ordinances governing the Air Board. *See* 40 C.F.R. pt. 52, subpt. GG.; *see also* 82 Fed. Reg. 60,933, 60,936-37 (Dec. 26, 2017) (acknowledging that the Air Board has authority to "adopt regulations to abate, control, and prohibit air pollution" throughout Bernalillo County as part of EPA's finding that New Mexico had entities with adequate authority to implement and revise SIP for fine particulate matter); 84 Fed. Reg. 42,819, 42,820 (Aug. 19, 2019) (stating local control statute is part of SIP); 80 Fed. Reg. 63,431, 63,433 (Oct. 20, 2015) (incorporating City Ordinance 9-5-1-3 as part of SIP). EPA has approved numerous regulations promulgated by the Air Board as part of New Mexico's SIP, showing that the SIP is premised on the region having a robust regulator. *See* 40 C.F.R. pt. 52, subpt. GG.

A functional Air Board with rulemaking authority was also part of EPA's approval for local control over Title V permitting. EPA has approved the Air Board and EHD as the administrators of Title V permitting for Albuquerque and Bernalillo County. *See* 61 Fed. Reg. 60,032, 60,033 (Nov. 26, 1996); *see also* 60 Fed. Reg. 2527, 2528 (Jan. 10, 1995) (describing Air Board's role in promulgating regulations as part of interim approval).

If the Ordinance took effect, it would contravene the terms under which EPA approved New Mexico's SIP and Title V program, both of which include Albuquerque having a local rulemaking agency with adequate authority for implementation and administration. Unless and until EPA approves amendments to the SIP through federal notice and comment rulemaking, the prior federally approved SIP remains operational and enforceable as a matter of federal law.[42] For the Title V permitting program, even

[42] *See Safe Air*, 488 F.3d at 1097 (9th Cir. 2007) ("[T]he SIP became *federal* law, not *state* law, once EPA approved it, and could not be changed unless and until EPA approved any change.").

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"proposed modifications . . . to basic statutory or regulatory authorities" must be shared with EPA. *See* 40 C.F.R. § 70.4(i). Only after submittal, notice and comment rulemaking, and approval by EPA can changes become effective. *See id.* § 70.4(i)(2)(i)-(iv); *see also id.* § 70.10(b) (states must operate their Title V programs "at all times . . . in accordance with" the terms they submitted).

As explained above, *see supra* pp. 17-18, Albuquerque could not have received approval from EPA as having adequate authority to meet air quality standards and implement Title V permitting had its initial submissions contained such limited regulatory authority. It would thwart the Act's detailed requirements and EPA's close initial review if state and local governments unilaterally stopped implementing terms previously approved in a SIP or Title V submission. If the reduction in the Air Board's regulatory authority takes effect, EPA has the authority (and responsibility) to issue deficiency notices for both the SIP and Title V operating permit programs. *See* 42 U.S.C. § 7410(k)(6) (allowing EPA, if it finds its approval of a SIP was in error, to make corrections following the same procedures as the original approval); 40 C.F.R. § 70.10(b)(1) (deficiency notices for Title V permitting). Indeed, EPA (including Region 6) has issued proposed findings and notices of deficiencies against states when subsequent legal actions overrode the structural assurances provided in their SIPs and Title V submissions.[43]

If the deficiency we are highlighting is left uncorrected, Albuquerque cannot maintain local control. *See* 42 U.S.C. § 7410(c)(1) (mandating federal implementation within two years after state fails to make required submissions or EPA disapproves a submission); 40 C.F.R. § 70.10(b)(2)(i), (iii) (authorizing EPA to withdraw approval and promulgate a federal program 90 days after Title V deficiency notice). Given that the City Council's action goes to dismantling the linchpin agency for setting air quality standards, discretionary sanctions are appropriate. *See* 42 U.S.C. § 7410(m) (authorizing sanctions if EPA makes one of the findings described in § 7509(a)(1)-(4) "in relation to any plan . . . required under this chapter"); *id.* § 7509(a)(4) (sanctions triggered by

[43] *See, e.g.*, 67 Fed. Reg. 49,895, 49,895 (Aug. 1, 2002) (Region 6 proposing to make a SIP non-implementation finding that Texas did not have "adequate funding" as required by CAA Section 110(a)(2)(E) after a court struck down the funding law incorporated into the SIP); 63 Fed. Reg. 65,783, 65,783-84 (Nov. 30, 1998) (issuing deficiency finding for Oregon's Title V program after court restricted judicial review for permits to less than what EPA required); 46 Fed. Reg. 58,593, 58,593-94 (Dec. 2, 1981) (issuing deficiency finding after Pennsylvania legislature overrode funding source incorporated into SIP).

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finding that "any requirement of an approved plan (or approved part of a plan) is not being implemented").[44]

* * *

The City Council's actions would put Albuquerque and Bernalillo County in violation of the Act if allowed to take effect. Both the Mayor of Albuquerque and the Bernalillo County Commission have expressed alarm that the City Council's action would take their local program out of compliance. Mayor Keller characterized the ordinance as "disregard[ing] our obligations under state and federal law" and expressed concern about losing local control.[45] The Bernalillo County Commission joined the Air Board's lawsuit against the City as a co-plaintiff because it believed the absence of a functioning Air Board could "jeopardize air quality and [the County's] relationship with state and federal agencies, including [EPA]."[46]

Although Ordinance O-2023-29 is not currently being implemented, it is not premature for EPA to determine now that the Ordinance violates the Act and governing federal regulations. Changes to provisions incorporated into prior SIPs and Title V program approvals cannot take effect without EPA approval: EPA should say as much to ensure it never happens. Moreover, the corrective actions available to EPA take time. Reviewing the Ordinance now would allow EPA to make the requisite finding as soon the Ordinance takes effect. Delay has real-life consequences for communities in Albuquerque that have suffered disproportionate air pollution burdens for too long.

V. Conclusion

Pursuant to the Clean Air Act, Congress requires states to provide assurances that their air pollution programs will not only comply with the law on paper but also be adequately staffed, funded, and authorized so that they can incorporate improving standards and technology and address deteriorating air quality. By reviewing and responding to changes to state and local air pollution programs, EPA performs a federal

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[44] *See generally* Jessica Ranucci, *Reviving the Clean Air Act's Requirement that States Adequately Fund and Staff Clean Air Programs*, 40 Harv. Envtl. L. Rev. 351, 356, 371-72, 380 (2016) (describing enforcement actions EPA could take if states violate structural requirements post-SIP approval).

[45] Mayor Veto Statement, *supra* note 27, at 2.

[46] Bernalillo County, *Bernalillo County Joins as Necessary Party to Case Filed by Joint Quality Air Board* (Dec. 19, 2023), https://www.bernco.gov/blog/2023/12/19/bernalillo-county-joins-as-a-necessary-party-to-case-filed-by-joint-air-quality-control-board/.

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oversight function and serves as a backstop against state and local governments reneging on commitments previously made to EPA and the public. If implemented, Albuquerque Ordinance O-2023-29 would render the Air Board at odds with EPA's prior approvals and strip the local Air Board of authority to carry out necessary Clean Air Act functions and requirements. For the foregoing reasons, Los Jardines and NRDC request that EPA:

1. Find and notify Albuquerque that Ordinance O-2023-29 would deprive the Air Board of authority required under the Act and contradict the federally-approved terms of New Mexico's SIP and Title V permitting program;
2. If Albuquerque Ordinance O-2023-29 takes effect:
    a. Issue SIP and Title V program deficiency notices;
    b. Put in place a federal implementation plan and federal Title V program if Albuquerque fails to take corrective action; and
    c. Impose sanctions.

Sincerely,

/s/ Sofia Martinez

/s/ Richard Moore

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Patricia Welton, Acting Regional Counsel, Region 6

Alejandra Nunez, Principal Deputy Assistant Administrator, Office of Air and Radiation

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Exhibit List

Exhibit A: Title VI Complaint[1]

Exhibit B: City of Albuquerque Code of Ordinances, Chapter 9, Part 1: Air Quality Control Board

Exhibit C: Bernalillo County Code of Ordinances Article II, Section 30

Exhibit D: Albuquerque, N.M. Resolution R-2023-097

Exhibit E: Albuquerque, N.M. Ordinance O-2023-29

Exhibit F: Excerpt of Vol. 2 Transcript of Proceedings, No. 2022-3 (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 5, 2023)

Exhibit G: Excerpt of Vol. 5 Transcript of Proceedings, No. 2022-3, (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 11, 2023)

Exhibit H: Order Granting Preliminary Injunctive Relief, *Albuquerque Bernalillo County Air Quality Control Board v. City of Albuquerque*, No. D-202-CV-2023-09295 (N.M. Distr. Ct. Feb. 1, 2024)

[1] All exhibits and sources to the Title VI complaint can be found at https://nrdc1-my.sharepoint.com/:f:/g/personal/jiwata_nrdc_org/Evv2YxxV9gNCk51pxGDm41gBv3m6cLLrEal1tOFaVD9Q3w.

Exhibit A



Los Jardines Institute * 803 La Vega Dr. SW * Albuquerque, New Mexico 87105

May 30, 2024

By email

Kurt Temple, Acting Director
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United States Environmental Protection Agency
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Temple.Kurt@epa.gov
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Re: Complaint under Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's implementing regulations regarding discrimination by the Albuquerque Environmental Health Department and the City of Albuquerque in the administration of the Albuquerque-Bernalillo County Air Quality Program

Dear Acting Director Temple:

Los Jardines Institute ("Los Jardines") and the Natural Resources Defense Council (NRDC) submit this complaint to urge EPA to impose concrete, enforceable measures on a local government agency that is failing the most vulnerable residents of Bernalillo County, New Mexico. The County, in which the City of Albuquerque sits, is home to a number of lower-income Latino communities and communities of color whose residents suffer disproportionate health burdens from air pollution. Within a county that earns an "F" grade in all air quality metrics evaluated by the American Lung Association,[1] pollution levels are appreciably worse in communities of color: in many of these neighborhoods, diesel particulate matter pollution levels and EPA's respiratory hazard index are in the state's 90th percentile.[2]

Ten years ago, the Southwest Organizing Project alerted EPA to the region's inequities by filing a Title VI complaint. That complaint alleged disparate impact

[1] Am. Lung Ass'n, *New Mexico: Bernalillo* (last visited May 24, 2024), https://www.lung.org/research/sota/city-rankings/states/new-mexico/bernalillo.

[2] See EJScreen Reports described infra at pages 24-25.

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discrimination by the permitting authority for Albuquerque and Bernalillo County, the Albuquerque Environmental Health Department (EHD), and the appellate and regulatory agency, the Albuquerque-Bernalillo County Air Quality Control Board ("Air Board"). Despite accepting the complaint and drafting a proposed informal resolution agreement, EPA has not imposed any requirements on EHD or the Air Board to prevent discrimination. Although the Air Board accepted EPA's proposed terms as necessary to comply with Title VI, EHD balked at the draft agreement's modest requirements.[3]

Given institutional inaction and worsening air quality, community members petitioned the Air Board in 2022 to promulgate a cumulative impacts regulation that would require EHD to map overburdened communities and limit their exposure to additional air pollution. But in late 2023, just before the Air Board began public hearings on the cumulative impacts rule, the Albuquerque City Council ("City Council")—without any resistance from, and perhaps in partnership with, EHD—tried to dismantle the Air Board and prevent it from issuing any regulation at all. EHD is not merely failing to comply with Title VI; it is *actively opposing* the Air Board's attempt to ensure EHD complies with the dictates of law.

The City Council's and EHD's brazen attempt to frustrate the realization of a fundamental goal of environmental justice—to recognize and reverse the deleterious effects of disproportionate and dangerous air pollution—cries out for federal intervention now. The current compliance situation is in a state of chaos. The Air Board's cumulative impacts regulation is in limbo as various entities—including EHD—challenge it in New Mexico's backlogged courts. The City Council's intimidation and attempted dismantling of the Air Board chills future action. History demonstrates that, if left on its own, EHD will continue to permit industrial activity that will shower ever more pollution on communities that already have too much, in stark disregard of the Civil Rights Act and EPA policy.

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[3] Letter from Lauren Meiklejohn, Chair, Air Board, to Lilian S. Dorka, Deputy Assistant Adm'r, EPA, re EPA File No. 13R-14-R6, at 2 (Jan. 12, 2023) ("Air Board Letter"), *attached to* Notice of Filing Air Board/USEPA Negotiations Which Invalidate the Rulemaking Process and Suppl. Mot. to Disqualify ("Suppl. Mot. to Disqualify"), No. 2022-3 (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Mar. 29, 2023), Doc. 23.

Unless otherwise noted, any other citations to a docket going forward are to the Air Board's rulemaking docket in the form [Document Name] [page number] ([date filed]), Doc [#].

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We urge EPA to accept our complaint or, in the alternative, conduct a searching compliance review of EHD, to achieve the same essential goal: the prompt adoption and enforcement of a cumulative impacts regime in Bernalillo County that will map overburdened lower-income communities of color and reverse the long history of over-polluting those communities to the severe detriment of the people who reside in them.

I. Parties

The complainants are Los Jardines and NRDC.

Los Jardines is a multicultural, multigenerational grassroots organization that focuses on environmental, economic, and food justice. Los Jardines is based in Albuquerque's South Valley and promotes multi-generational learning through projects, organizing, policy work, and partnering with other local, state, and national organizations. Among other affiliations, Los Jardines is a member of the Environmental Justice Health Alliance for Chemical Policy Reform, a national network of grassroots environmental and economic justice organizations that works to eliminate the disproportionate impacts of toxic chemical exposure in communities of color and low-income communities. Since its founding in 2008, Los Jardines has worked to strengthen other community organizations and leaders in Albuquerque, including through collaborations with the Santa Barbara Martineztown Neighborhood Association, the Greater Gardner Neighborhood Association, the Health Equity Council in the International District, the San Jose Community, the Mountain View Neighborhood Association, and the Friends of Valle de Oro National Wildlife National Refuge (also located in Mountain View). Los Jardines has also been working with YES Housing Inc. on constructing affordable housing in the Mountain View community.

NRDC is an environmental and public health nonprofit advocacy organization. It is committed to protecting communities from health threats and works to reduce the disproportionate burdens borne by communities of color and low-income communities from environmental contamination, including air pollution. One of NRDC's priorities is to ensure that regulatory authorities consider cumulative impacts when making decisions that affect communities already overburdened with pollution.

The recipients are EHD and the City of Albuquerque. EHD reviews and grants air permit applications for the City of Albuquerque and Bernalillo County, New Mexico. EHD is part of the City of Albuquerque's government.[4] The City of

[4] *See* City of Albuquerque, *About the Air Quality Program* (last visited May 30, 2024), https://www.cabq.gov/airquality/albuquerque-bernalillo-county-air-quality-program

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Albuquerque, alongside Bernalillo County, sets the Air Board's structure and powers through local ordinances. *See infra* pp. 5-7.

II. Jurisdiction

EPA will accept a complaint for investigation under Title VI if the complaint (1) is in writing; (2) alleges discriminatory acts that, if true, may violate EPA's Title VI regulations; (3) identifies a recipient of EPA assistance that committed the alleged discriminatory acts; and (4) is either filed within 180 days of the alleged discriminatory acts or asserts a continuing discriminatory policy or practice. 42 U.S.C. § 2000d; 40 C.F.R. § 7.120(b).[5]

This complaint meets each of these requirements. It is in writing; it cites discriminatory conduct that may violate Title VI; and it identifies EHD and the City of Albuquerque, which receive EPA financial assistance,[6] as the entities committing the unlawful discriminatory acts. The complaint alleges continuing unlawful discrimination by EHD in its administration of air pollution permitting: EHD has not eliminated its policies that discriminate against communities of color, nearly eight years after EPA accepted the Title VI complaint against EHD and the Air Board in July 2016.[7]

("The Albuquerque-Bernalillo County Air Quality Program, administered by the City of Albuquerque Environmental Health Department, is authorized to implement and enforce clean air regulations to protect public health within the boundaries of the City of Albuquerque and Bernalillo County.").

[5] *See also* U.S. EPA, External Civ. Rts. Compliance Off., *Case Resolution Manual* 5, 7-8 (Jan. 2021).

[6] *See, e.g.*, USASpending, *Project Grant 02F33101*, https://www.usaspending.gov/award/ASST_NON_02F33101_6800 (last visited May 24, 2024) (Grant to City of Albuquerque for air pollution mapping); USASpending, *Formula Grant 00615822*, https://www.usaspending.gov/award/ASST_NON_00615822_6800 (Grant to City of Albuquerque to assist with implementation of air pollution control programs); USASpending, *Spending by Prime Award*, https://www.usaspending.gov/search/?hash=ad4e3aa79463f10a8dfdde700219ea46 (last visited May 24, 2024) (filter of grants from EPA to City of Albuquerque from FY 2008 to FY 2024); *see also* Draft Informal Resolution Agreement 1 ("Draft Agreement"), EPA Compl. No. 13R-14-R6 (undated), *attached to* Suppl. Mot. to Disqualify, *supra* n.3 (acknowledging EHD's receipt of EPA funds).

[7] Letter from Lilian S. Dorka, Acting Dir., EPA Off. of Civ. Rts., to Kelsey Curran, Chairperson, Albuquerque-Bernalillo Cnyt. Air Quality Control Bd., and Mary Lou

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The complaint also is filed within 180 days of the City Council's December 4, 2023 enactments to block the Air Board's attempt to remedy the unlawful discrimination.[8]

In the alternative, even if EPA concludes that a prima facie case of disparate impact or intentional race discrimination has not been made, it may still conduct a compliance review to ensure recipients of federal funds are not engaging in discriminatory conduct. *See* 40 C.F.R. § 7.115(a); 28 C.F.R. § 42.407(c). EPA has issued public guidance on the criteria it uses to prioritize compliance reviews, and our request meets the applicable criteria.

III. Legal Framework

A. Air pollution regulation for Albuquerque & Bernalillo County under the Clean Air Act

Under the Clean Air Act (CAA), states can formulate their own plans to meet national ambient air quality standards. *See* 42 U.S.C. § 7410(a)(1). While states have broad latitude, EPA must review and approve a state's plan to ensure it meets certain substantive and infrastructure requirements. *See id.*; *see also* 40 C.F.R. § 51.104(b) (requiring states to submit any revisions to their plans within 60 days of adoption). A state may rely on a local or regional government or agency to implement its plan in a particular geographic area. *See* 42 U.S.C. § 7410(a)(2)(E). Failure by either the state or local agency to meet CAA requirements results in EPA taking over the state's air pollution program unless the state fixes the problem. *See id.* § 7410(c)(1)(A).

New Mexico's Air Quality Control Act divides air pollution authority between a "department" that makes initial permitting decisions, N.M. Stat. Ann. §§ 74-2-2(C), -5.1, -7(B), and an oversight "board" that issues regulations and hears permitting appeals, *id.* §§ 74-2-3, -5(B), -7(H). Currently, the state government administers all parts of New Mexico's air program except for the area within the boundaries of the City of Albuquerque and Bernalillo County. *See* 40 C.F.R. pt. 52, subpt. GG (New Mexico's plan showing New Mexico laws and City and County ordinances).

The governments of Albuquerque and Bernalillo County share authority over a single air pollution program that covers the entire county, including Albuquerque. This means Albuquerque and Bernalillo County each have ordinances delegating authority

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Leonard, Envt. Health Dir., Albuquerque Air Quality Div. (July 19, 2016) ("2016 Acceptance Letter").

[8] *See* Albuquerque, N.M. Ordinance O-2023-29 (Dec. 4, 2023) & Resolution R-2023-097 (Dec. 4, 2023); *see infra* pp. 15-17 (describing effects of ordinance and resolution).

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to the Air Board and EHD to control air pollution, which—until the City Council's unilateral action in December 2023, *see infra* pp. 16-17—substantially paralleled each other. *Compare* Albuquerque, N.M. Ord. ("City Ord.") Ch. 9, art. 5, pt. 1,[9] *with* Bernalillo County, N.M. Ord. ("Cnty. Ord.") Ch. 30, art. II.

Under the joint air pollution program, EHD is the local permitting authority. *See* City Ord. § 9-5-1-5, -7; Cnty. Ord. § 30-34, -36; *see also* N.M. Admin. Code § 20.11.1.7 (defining EHD as the agency "responsible for the administration and enforcement" of the area's air regulations). Although run by the City of Albuquerque, EHD's permitting and enforcement authority covers both the City and the County—i.e., any entity that needs a CAA permit in Bernalillo County must submit an application to EHD even if it is not within Albuquerque's city boundaries. *See* City Ord. § 9-5-1-5(A); Cnty. Ord. § 30-34(a).

The Air Board is the local regulatory and appellate authority. It promulgates regulations that cover air quality standards that EHD must incorporate into its permitting decisions. *See* City Ord. §§ 9-5-1-3(A); -5-1-4(B); Cnty. Ord. § 30-33(b), (c). Any member of the public may file a petition with the Air Board to promulgate a rule. *See* City Ord. § 9-5-1-6(A); Cnty. Ord. § 30-35(a). EHD also routinely files rulemaking petitions with the Air Board.[10] The Air Board cannot promulgate a regulation without a public hearing. *See* City Ord. § 9-5-1-6(B); Cnty. Ord. § 30-35(b). Additionally, any person who wishes to challenge EHD's permitting decisions may file an appeal with the Air Board. *See* City Ord. § 9-5-1-7(H); Cnty. Ord. § 30-36(h).

Like EHD, the Air Board's authority applies to both the City and County. *See* City Ord. § 9-5-1-3(A); Cnty. Ord. § 30-32(a). Unlike EHD, however, the Air Board has specific structural requirements to ensure diversity in viewpoints and limit industry capture as required by federal law. *See* City Ord. § 9-5-1-3(B)(4)(a), (E); Cnty. Ord. § 30-32(b)(4)(A), (e); *see also* 42 U.S.C. § 7428 (income and conflicts of interest requirements

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[9] Unless otherwise noted, citations to the Albuquerque Code of Ordinances refers to the version linked on the City's website as of May 28, 2024—which does *not* reflect the City Council's December 2023 changes to the Air Board. This complaint cites to the Ordinance O-2023-29 when referring to City Council's changes. A copy of the Code of Ordinances as it appeared on May 28, 2024, is available in the sources folder.

[10] *See* Air Board, *Rulemaking Process Guidebook* 5 (2023), https://www.cabq.gov/airquality/air-quality-control-board/documents/2023-05-01_approved-aqcb-rulemaking-guidebook.pdf (stating EHD typically proposes new and amended rules).

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for boards). The City appoints four members to the Air Board while the County appoints three. *See* City Ord. § 9-5-1-3(B)(2); Cnty. Ord. § 30-32(b)(2). Each board member has a three-year term and appointments are staggered such that in a single year, no more than two city appointees' terms expire and no more than one county appointee's term expires. *See* City Ord. § 9-5-1-3(B)(3); Cnty. Ord. § 30-32(b)(3). As a structural matter the Air Board oversees the smaller, city-controlled EHD through its regulatory and appellate powers.

B. Title VI & EPA's Title VI Regulations

Title VI prohibits recipients of federal funding from discriminating based on race. 42 U.S.C. § 2000d. A recipient of federal funds must practice non-discrimination in all its activities. *Id.* §§ 2000d, 2000d-4a.

Congress directed federal agencies to publish rules to effectuate Title VI. *Id.* § 2000d-1. Under EPA's regulations, "[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race." 40 C.F.R. § 7.30. This extends beyond intentional discrimination to practices that cause disparate harm: "A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race." *Id.* § 7.35(b).

IV. Factual Background

A. Albuquerque and Bernalillo County have a history of concentrating pollution in communities of color

Racial segregation has a long legacy in Albuquerque and Bernalillo County. The city expanded during the period when racial covenants, a tool to enforce residential segregation by preventing property sales to people of color, were in their prime. Racial covenants surged following the Supreme Court's decision upholding the practice in 1926.[11] Although the Court overturned its racist precedent in 1948,[12] Congress did not outlaw discriminatory housing practices until the Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81. Albuquerque's population boomed following World War II—

[11] *Corrigan v. Buckley*, 271 U.S. 323 (1926); *see also* Larry Barker, *Albuquerque's Dirty Little Secret*, KRQE (Nov. 10, 2020), https://www.krqe.com/news/larry-barker/albuquerques-dirty-little-secret/.

[12] *See Shelley v. Kraemer*, 334 U.S. 1 (1948).

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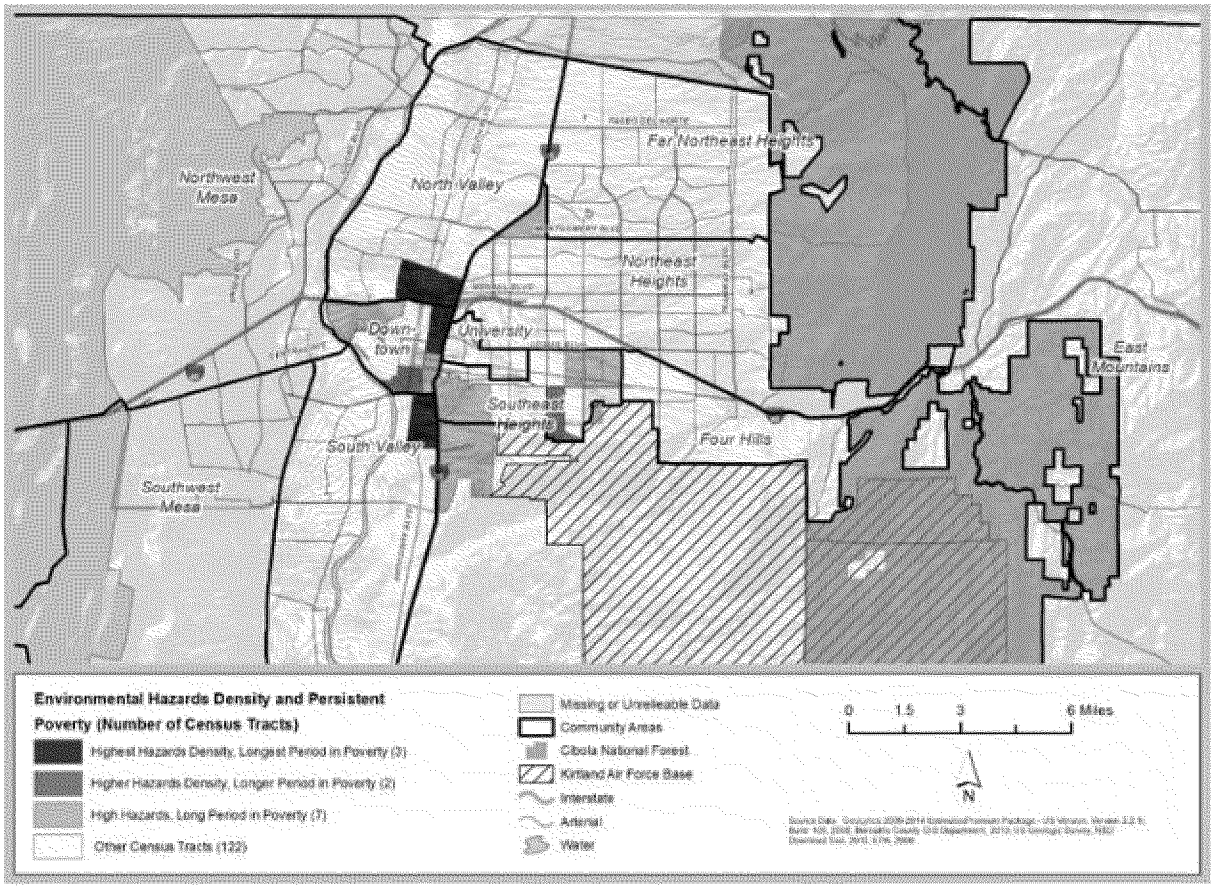
between 1940 and 1950 alone, the city's population tripled.[13] Concentrated housing construction during this period allowed developers to create planned neighborhoods that were white only.[14] Albuquerque's zoning laws also contributed to segregation with areas with better air quality "claim[ed] . . . for larger/more expensive homes."[15]



Note: Values for hazards density: highest = 38.95 - 54.65; higher = 26.00 - 33.01; high = 13.89 - 20.17.
Values for period in poverty: longest = 5 decades; longer = 3 – 4 decades; long = 2 decades.

Map 1: Regions of elevated environmental risk & persistent poverty by census tract, Bernalillo County (1970-2009)

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[13] *See* Barker, *supra* n.11.

[14] *See id.* (highlighting homesites sold by real estate developers during the 1920s and 1940s that contained racial covenants in the Monte Vista Addition and Skyline Heights neighborhood).

[15] *See* City of Albuquerque & MASS Design Group, *Housing and Entrepreneurship Part 1: Needs Assessment Report* 45 (Oct. 11, 2022), https://www.cabq.gov/office-of-equity-inclusion/documents/221107_abq-housing_needs-assessment_final.pdf.

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As Map 1 shows, downtown and southwest Albuquerque have historically had both persistent poverty levels and a high density of environmental hazards, including areas around the Martineztown, San Jose, and Mountain View neighborhoods in southwestern Albuquerque.[16] Other parts of Albuquerque with this pernicious combination include the parts encompassing Greater Gardner in the northwest and the International District in the southeast.

Indeed, segregation and its harms persist today.[17] The populations of Albuquerque, Bernalillo County, and New Mexico are majority Hispanic or Latino—each around 50% according to Census data—but several Albuquerque neighborhoods have significantly higher percentages.[18] As Table 1 shows, predominantly Hispanic or Latino (60% or more of the population) neighborhoods are in the city's southwest, including San Jose, Mountain View, and Martineztown. Greater Gardner also has a large Hispanic or Latino population at 58%. Other neighborhoods are disproportionately people of color compared to the city, county, and state populations. For example, while the populations of Albuquerque, Bernalillo County, and New Mexico are each around 60% people of color, the International District is 74%, Martineztown 80%, and San Jose 94%.

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[16] Joint Ctr. For Pol. & Econ. Studies, *Place Matters for Health in Bernalillo County: Ensuring Opportunities for Good Health for All* 16 map 11 (2012), https://www.nationalcollaborative.org/wp-content/uploads/2016/02/PLACE-MATTERS-for-Health-in-Bernalillo-County.pdf. As explained later in the study, the map reflects hazards per square mile based on hazardous and pollutant data from Bernalillo County at point level. *Id.* at 17.

[17] *See, e.g.*, Crescendo Consulting, *Draft City of Albuquerque Affirmatively Furthering Fair Housing Report*, 38 (2022), https://www.cabq.gov/health-housing-homelessness/documents/city-of-albuquerque-affirmatively-furthering-fair-housing-report-draft-for-public-comment-12082022.pdf (draft assessment prepared for Albuquerque as part of its Department of Housing and Urban Development grant receipt obligations recognizing that "residential segregation . . . remains"); ABC Our America, *Albuquerque: Housing & Wealth*, https://ouramericaabc.com/equity-report/albuquerque/wealth (last visited May 23, 2024) (noting that Albuquerque has a neighborhood segregation index of 32, with "[e]xperts studying the issue consider[ing] an index 30 or above to represent segregation").

[18] Numbers are from Table B03002 "Hispanic or Latino Origin by Race" by the U.S. Census's 2022 American Community Survey (ACS) based on five-year estimates. Copies of the data tables downloaded are included as Exhibits A-G.

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	San Jose	Mountain View	Greater Gardner	Martineztown	International District
% People of Color	94	71	65	80	74
% Hispanic or Latino	84	69	58	62	N/A

Table 1: Demographic information based on 2022 American Community Survey five-year estimates tables B03002 & EPA EJScreen Reports[19]

Air permitting data for Bernalillo County underscore that polluting facilities continue to be concentrated in predominantly Latino neighborhoods. EPA's Enforcement and Compliance History Online (ECHO) database shows that 36% of active air permits in Bernalillo County are in the four zip codes covering San Jose, Mountain View, Greater Gardner, Martineztown, and the International District despite those zip codes accounting for only 21% of the county's population.[20] Other types of pollution are also concentrated in these zip codes. According to ECHO, which tracks drinking water, wastewater, and hazardous waste facilities, 34% of the county's facilities are in the four zip codes of interest.[21]

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[19] San Jose is defined as Census blocks 350010013004 and 350010013001; Mountain View is census blocks 350010040011, 350010040012, and 350010040013; Martineztown is census blocks 350010020001 and 350010020002; and Greater Gardner is census blocks 350010032011, 350010032024, 350010032023, and 350010032021. Copies of the data tables downloaded for each neighborhood are included as part of the complaint's exhibits. The International District's population is from EPA's EJScreen using boundaries defined using the "draw tool" because it encompasses more census blocks than the EJScreen tool allows users to aggregate. EPA's EJScreen does not show racial or ethnic breakdowns, so data on the International District's Hispanic or Latino population is not available. The International District's demographic information is available as Exhibit K.

[20] EPA, *Facility Search – Enforcement and Compliance Data* https://echo.epa.gov/facilities/facility-search (last visited May 29, 2024) (running search after selecting from Media Program menu "Air (CAA)" and from "Geographic Location" menu "New Mexico" as state and "Bernalillo County" as county). A copy of the data downloaded is available as Exhibit P. Zip code populations are from Table S0101 "Age and Sex" by the U.S. Census's 2022 American Community Survey (ACS) based on 5-year estimates and is included in Exhibit Q. County population is taken from the information referenced in note 1818.

[21] EPA, *Facility Search – Enforcement and Compliance Data* https://echo.epa.gov/facilities/facility-search (last visited May 29, 2024) (running

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B. EPA has an ongoing Title VI investigation of the Albuquerque-Bernalillo County Air Quality Control Program

On September 15, 2014, the Southwest Organizing Project filed a Title VI complaint ("2014 Complaint") with EPA against the Air Board and EHD.[22] The 2014 Complaint alleged that several predominantly Latino communities in Bernalillo County—Mountain View, San Jose, and Greater Gardner—had concentrations of air pollutants higher than national EPA standards (as measured by air quality monitoring data) and higher levels of numerous diseases (including leukemia, lung, bladder, brain, and thyroid cancer) and child hospitalization rates for asthma compared to the rest of the county.[23] The 2014 Complaint also noted that the Air Board refused to hold a hearing—a prerequisite for promulgating any regulation—on the complainant's petition filed earlier that year for a rule requiring EHD to consider cumulative impacts in its air permitting decisions.[24]

The 2014 Complaint requested, among other actions, that EPA investigate the Air Board and EHD for discriminatory implementation of their air pollution programs; mandate the use of air quality monitoring data in permitting decisions; and require the Air Board to adopt a cumulative impacts regulation.[25]

Two years later, EPA accepted the complaint and stated it would investigate two issues: (1) whether the Air Board and EHD discriminated against residents on the basis of race or national origin in their permitting and appellate decisions; and (2) whether the Air Board discriminated against residents on the basis of race or national origin by refusing to conduct a hearing on the cumulative impacts rule proposed earlier that year.[26]

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search after selecting from Media Program menu "All Media Programs" and from "Geographic Location" menu "New Mexico" as state and "Bernalillo County" as county). A copy of the data downloaded is available as Exhibit O.

[22] Compl., *Sw. Org. Project v. Albuquerque Air Quality Division*, EPA File No. 13R-14-R6 (Sep. 16, 2014).

[23] *Id.* at 13-14.

[24] *Id.* at 7.

[25] *Id.* at 16-17.

[26] 2016 Acceptance Letter, *supra* n.7.

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Although discussions between EPA, the Air Board, and EHD were not public, other groups served EHD with public records requests[27] that revealed a copy of a draft informal resolution agreement ("Draft Agreement"). The undated Draft Agreement referenced data from August 16, 2022, suggesting that EPA had drafted the agreement around (and certainly no earlier than) that date.[28] Neither the Air Board nor EHD admitted in the Draft Agreement that they had violated Title VI. Nonetheless, the Draft Agreement's background section included information probative of discrimination, including that the San Jose, Mountain View, and Greater Gardner neighborhoods were over 70% Hispanic or Latino and were in the 80th percentile or higher for the state in the Respiratory Hazard Index based on EPA's 2017 Air Toxics Update.[29]

The Draft Agreement contemplated that the Air Board would follow its established procedures if presented with a proposed cumulative impacts regulation.[30] Additionally, the Air Board and EHD would agree that as part of EHD's permitting process (1) EHD would adopt a routine method for screening environmental justice and civil rights concerns; and (2) EHD would engage in a multi-factor analysis of environmental justice issues raised in the initial screening.[31] The screening analysis would require EHD to consider several factors including:

- Whether a community was particularly vulnerable to the adverse effects of the proposed permitting action;
- Whether the community already disproportionately bore public health or environmental burdens; and
- Whether the affected area had residents who could be disproportionately harmed by adverse health or environmental impacts based on race, color, or national origin (including limited English proficiency).[32]

If triggered by the screening factors, the disparate impacts analysis would require EHD to consider the cumulative impacts of the proposed permit on the

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[27] *See* Albuquerque-Bernalillo Cnty. Joint Air Quality Program's Notice Regarding Inspection of Public Records Act Release, (Apr. 14, 2023), Doc. 39.

[28] *See* Draft Agreement, *supra* n.6, at 4.

[29] *Id.* at 2-4. EPA used 2019 ACS data in the Draft Agreement.

[30] *Id.* at 5-6.

[31] *Id.* at 8-9.

[32] *Id.* at 8.

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surrounding community based on exposure to chemical and non-chemical stressors.[33] EHD would then need to evaluate whether the adverse impacts fell disproportionately on a race, color, or national origin group based on comparing the composition of the affected population against the composition of unaffected populations.[34] If that evaluation revealed a disproportionate impact, EHD would need to evaluate whether there was a "substantial legitimate justification" for the additional pollution proposed and whether there was a less discriminatory alternative.[35]

C. Community members petition the Air Board with a cumulative impacts rule to redress the concentration of air pollution in communities of color

In March 2022, several community members[36] joined forces to petition the Air Board to promulgate a rule requiring EHD to account for cumulative impacts on overburdened communities in its permitting decisions.[37] In response, EHD initiated a targeted plan to obstruct the Air Board's jurisdiction, in further disregard of the Draft Agreement's clear message that the agency lacked a mechanism to consider and address the surrounding community's existing burdens and vulnerability.

EHD resisted community members' efforts from the start. It objected to the petition in part because it came from community-based groups, and criticized the proposed rule for not going through the same consultation procedures the department used for drafting rules and for not including feedback from EPA Region 6.[38] Eventually, in July 2023, EHD filed its own "Environmental Justice Concepts" proposal in the Air Board docket which would have had applicants file their own "environmental justice assessment" reports with EHD but would not obligate EHD to change any permitting decisions beyond a conclusory statement that EHD should deny a permit if issuing it

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[33] *Id.* at 9.

[34] *Id.*

[35] *Id.* at 9-10.

[36] The initial petitioners included the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro. Pro se parties Sofia Martinez (co-coordinator for Los Jardines), Manuel Criollo, and Elaine Cimino, representing other political districts in Bernalillo County, later joined them.

[37] Pet. to Amend Title 20, Chapter 11 of the N.M. Admin. Code to Require Review and Consideration of Health, Environment, and Equity Impacts (Nov. 21, 2022), Doc. 1.

[38] EHD's Response to the Petition ¶¶ 3, 12 (Dec. 13, 2022), Doc. 3.

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would violate Title VI.[39] As the Air Board described in a January 2023 letter to EPA regarding the community-proposed rule, "EHD has not offered to work with the community group to ensure the [proposed] rule is effective and workable."[40] Moreover, the Air Board noted EHD's view that EPA should dismiss the complaint even without measures to detect disparate impact discrimination in place, a position with which the Air Board disagreed.[41]

Industry players also opposed the rulemaking. These included members of the construction, concrete, and mining industries.[42] In addition, some public entities opposed the rulemaking. These included components of the federal government such as the National Nuclear Security Administration, Kirtland Air Force Base, the Air Force, and Sandia National Laboratories[43] (Sandia).[44] The University of New Mexico Board of Regents also opposed the rule.[45]

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[39] EHD's Notice of Envt. Justice Concepts & Ex. A (July 18, 2023), Doc. Nos. 96 & 96.1 (see proposed concepts at 20.11.72.15 and 20.11.72.19(A)).

[40] Air Board Letter, *supra* n.3, at 2.

[41] *See id.*

[42] *See* Entry of Appearance for Albuquerque Asphalt et al. (Jan. 25, 2023), Doc. 7; Entry of Appearance on Behalf of GCC Rio Grande, Inc. et al. (Feb. 13, 2023), Doc. 15; Entry of Appearance on Behalf of N.M. Mining Ass'n & N.M. Chamber of Commerce (May 8. 2023), Doc. 48.

[43] Sandia is a federally funded research development center owned by the National Nuclear Security Administration within the Department of Energy. *See* Dep't of Energy Nat'l Sec. and Mil. Applications of Nuclear Energy Authorization Act, Pub. L. No. 96-164 § 212, 93 Stat. 1259 (1979) (making Sandia a national laboratory). The Department of Energy does not operate Sandia. Instead, it contracts with private entities to run the lab's work. The current contractor is Honeywell International, Inc. *See* Sandia, *About Sandia*, https://www.sandia.gov/about (last visited May 29, 2024).

[44] *See, e.g.*, The Federal Parties' Notice of Intent & Ex. 5 (Nov. 17, 2023), Docs. 185 & 185.7 (list of testifying experts for the national security agencies including the Department of Defense's comments); Notice of Intent to Present Technical Testimony (Nov. 17, 2023), Doc. 173.

[45] Entry of Appearance for Board of Regents of the University of N.M. (July 17, 2023), Doc. 92.

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D. EHD and the City Council obstruct the Air Board's efforts to address the concentration of air pollution in communities of color

Despite the urgent need for a cumulative impacts regulation, community members sought to extend the rulemaking schedule to "give the [Air] Board the best, most informed blueprint" and to "allow the Board to adopt the most legally and scientifically sound" rule.[46] The proposed rule's language was amended several times, including after pre-hearing discussions that included EHD and industry members.[47] In September 2023, the Air Board rescheduled the hearing from October 23 to December 4 to give the public time to consider the changes before preparing their testimony.[48] Unsatisfied with simply letting the Air Board consider the merits of their arguments, however, opponents of the cumulative impacts rule in the City Council sought to stop the rule—and the Air Board— outright.

1. The City Council attempts to intimidate and dismantle the Air Board

On October 16, 2024, the City Council introduced a two-pronged assault on the cumulative impacts rule.[49] One prong, a resolution, placed a moratorium on the Air Board from considering any "quality of life" regulations. Specifically, from the

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[46] Pets.' Memo. in Support of Joint Mot. to Extend Hearing Date 6 (Sept. 7, 2023), Doc. 126.

[47] *See id.* at 2, 5-6 (requesting extension of hearing date because there were "fruitful discussions" about amendments during "required" prehearing meetings); Notice of Filing Am. Ex. A, Version 4 to Pet. (Oct. 6, 2023), Doc. 140; *see also* Vol. 5 Transcript of Proceedings 1873:3-6, No. 2022-3, (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 11, 2023) (stating EHD provided feedback on versions 2 and 3 of the petition during prehearing meetings). The Air Board's procedures build prehearing meetings into the normal petition process. *See Rulemaking Process Guidebook*, *supra* n.10, at 8. EHD admits it did not meaningfully engage with the community until these meetings. *See infra* p. 18.

[48] *See* Order Appointing Replacement Hearing Officer 2 (Sept. 15, 2023), Doc. 134.

[49] City of Albuquerque, *Legislation Details O-23-88* (last visited May 29, 2024), https://cabq.legistar.com/LegislationDetail.aspx?ID=6383471&GUID=A3C990D7-9746-40CA-B316-BA589E05C921&Options=ID%7CText%7C&Search=O-23-88; City of Albuquerque, *Legislation Details R-23-176* (last visited May 29, 2024), https://cabq.legistar.com/LegislationDetail.aspx?ID=6383569&GUID=BBA92D00-9CF5-47E5-9E94-0A159A9BDF3B&Options=ID%7cText%7c&Search=R-23-176.

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resolution's enactment date until February 1, 2024, the Air Board could not consider any regulation that:

> address[ed] quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, cause injury; or adopt or amend a standard or regulation whereby the impact on industrial development is by design and not a consequence of preventing or abating air pollution . . . .

Albuquerque, N.M. Resolution R-2023-097 § 1. The resolution's preamble prejudged the petition's cumulative impacts rule as one such regulation—it declared that the petition "addresse[d] quality of life impacts" without a nexus to air pollution and had an "impact on industrial development by design and not as a consequence of preventing orabating air pollution"—despite the fact that the hearing would be an opportunity for the rule's proponents to present scientific and other evidence in support of the rule and explain the rule's origin and purpose. *Id.* at 1:9-19.

Not content to merely attack the ongoing proceedings, the City Council launched a broader assault on the Air Board to change its composition and strip it of power so it could never consider—let alone promulgate—anything like a cumulative impacts rule again. An amendment to the City's laws governing the Air Board proposed making several structural changes, including:

- **Rendering the current Air Board's composition invalid by creating new criteria for four of the seven seats.** *See* Albuquerque, N.M. Ordinance O-2023-029 § 2, at 6:21-7:7. The new criteria required one member to be a licensed engineer, one a physician, one a person involved at an institute of higher learning, and one from a "City industry" in a "private manufacturing concern." *Id.* If EHD unilaterally determined that the Air Board did not meet these composition requirements, the Air Board could not hear any petitions, permits, or appeals or make regulatory changes until both the City Council and County Commission agreed that the Board could act "consistent with applicable law." *Id.* § 2, at 8:2-16.
- **Forbidding the Air Board from taking any actions besides approving or disapproving regulations presented to it by outside parties while also increasing the barriers for public proposals.** Specifically, the Air Board could not "consider alternative proposals" at a hearing on a regulation and could make modifications that only "delete[], clarif[y] or elaborate[] on elements of the already-submitted proposal without adding or changing substantive new obligations or requirements." *Id.* § 2, at 15:27-30. At the same time, petitioners were required to bear the transcript

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costs for hearings, and their soliciting insufficient feedback from other "interested persons" could be a basis for denying a hearing. *Id.* § 2, 15:3-4, 16:5-6. In addition, the Air Board could not "[r]ecommend" or "[a]dvise" EHD, the City Government, or the County government on air quality policy. *See id.* § 2, at 24:33-25:7.

- **Forbidding the Air Board from promulgating any "quality of life" regulations similar to those described in Resolution R-2023-097.** *See id.* § 2, at 24:18-24.

The City Council passed the resolution and ordinance on November 8, 2023, but Albuquerque Mayor Timothy Keller vetoed both.[50] The Mayor's veto statement characterized the ordinance as "disregard[ing] our obligations under state and federal law."[51]

Instead of heeding the Mayor's cautionary message, the City Council accused him of siding with "environmental extremists" and overrode his veto on the day the cumulative impacts rule hearings began—December 4, 2023.[52] The City Council thus enacted legislation changing the City's ordinances but did not—and could not—change the County's parallel code that reflected the two governments' previously agreed-to Air Board terms. Nonetheless, based on its resolution, the City Council sent the Air Board a cease and desist letter the next day, threatening to withhold resources the Air Board would need to continue the hearing.[53]

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[50] Legislation Details O-23-88 & R-23-176, *supra* n.49.

[51] Memorandum from Timothy M. Keller, Mayor of Albuquerque, to City Council re: Veto of R-23-176 (Nov. 22, 2023) (filed in rulemaking docket as Doc. 229.1) ("Mayor Veto Statement").

[52] *See* City of Albuquerque, Off. of City Councilor Dan Lewis, Dist. 5, *City Council Overrides Mayor's Vetoes* (Dec. 4, 2023), https://www.cabq.gov/council/find-your-councilor/district-5/news/city-council-overrides-mayor2019s-vetoes.

[53] Letter from Louie Sanchez et al., Albuquerque City Council, to Air Quality Control Board Members (Dec. 5, 2023), Doc. 222; *see also* City Ord. § 9-5-1-5(A) (stating the City would provide the Air Board with staff).

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2. EHD opposes the cumulative impacts rule despite acknowledging some communities experienced disproportionate air pollution burdens and that it had no current procedures to evaluate or prevent disparate impact discrimination

After the Air Board filed a request for a temporary restraining order in state court, it received resources for space, security,[54] technology, and services for the hearing through December 11, 2023.[55] At the hearing, EHD's representative, Deputy Director of Air Quality Programs Christopher Albrecht, testified that the agency opposed the rule.[56] The Deputy Director acknowledged that EHD should have provided petitioners with feedback on the proposal earlier than the formal pre-hearing process.[57] He also admitted that EHD lacked procedures to analyze—let alone prevent—discriminatory impacts. When asked by one of the community member's lawyers on cross examination whether EHD had "any method of analyzing whether there was a discriminatory impact from its permitting processes," Deputy Director Albrecht admitted EHD lacked "formal procedures at this time."[58] And when asked whether EHD "ha[d] any . . . regulatory mechanism in place that would prevent discriminatory impact in air pollution permitting," Deputy Director Albrecht, in a moment of concise candor, said "no."[59]

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[54] The Air Board hearing required security in part due to threats of violence to individual Air Board members and their families. *See, e.g.*, Vol. 2 Transcript of Proceedings 718:10-14, No. 2022-3 (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 5, 2023) (testimony of Vice Chair Richards) ("I am very, very deeply disturbed by how [one of the City Council members] divided our community. . . . I fear for my family. I fear for my own life, and it was absolutely unnecessary.").

[55] *See* Final Order & Statement of Reasons for Adopting Reg. Concerning Health Envt. & Equity Impacts 3-4 ("Final Rule Order") (Dec. 19, 2023), Doc. 241. The Air Board withdrew its temporary restraining order application after the hearing's completion. *See id.* at 4.

[56] *See* EHD's Notice of Intent to Present Technical Testimony 1-2 (Nov. 17, 2023), Doc. 175.

[57] Vol. 5 Transcript of Proceedings, *supra* n.47, at 1876:16-24, 1877:5-11.

[58] Vol. 6 Transcript of Proceedings, at 1906:6-13, No. 2022-3, (Albuquerque-Bernalillo Cnty. Air Quality Control Bd. Dec. 11, 2023).

[59] *Id.* at 1906:15-19.

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After the hearing's conclusion, EHD submitted a memorandum acknowledging that the petitioners "experienced a disproportionate burden from environmental stressors and that this burden needs to be addressed," but still opposing the community members' rule.[60] EHD claimed the rule did not represent an "inclusive path" for addressing these harms and—joining industry arguments—that the Air Board lacked legal authority to promulgate the rule because it was not "limited to the abatement of air pollution."[61]

EHD also claimed that EPA may need to approve the rule as part of the CAA review process and—without acknowledging EPA's ongoing Title VI investigation—raised the prospect of EPA disapproval as another reason to reject the rule.[62] Instead, EHD proposed that the Air Board adopt its July 2023 "concepts" that lacked meaningful triggers for mitigation or permit denials.[63]

E. The final Health, Environment, and Equity Impacts Rule

The Air Board issued a final cumulative impacts rule, titled the Health, Environment, and Equity Impacts Rule ("HEEI Rule"), on December 19, 2023.[64] The final HEEI Rule, if effectuated, provides a community-endorsed mechanism for EHD to consider unequal pollution burdens as part of its permitting decisions, as envisioned by the Draft Agreement.

The HEEI Rule requires EHD to create a map of "overburdened areas" to determine the degree of harm a new air permit or modification would have on the surrounding community. N.M. Admin. Code § 20.11.72.8.[65] The rule defines an "overburdened area" as the 20% census block groups that "experience the highest cumulative environmental and public health stressors" considering over a dozen different health, environmental, and socioeconomic factors. *Id.* § 20.11.72.7.D. These

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[60] *See* EHD's Legal Memo. 2, (Dec. 2, 2023), Doc. 229.

[61] *Id.*

[62] *Id.* at 3.

[63] *Id.* at 4; *see supra* pp. 13-14 (discussing concepts).

[64] N.M. Admin. Code Transmittal Form for N.M. Admin. Code § 20.11.72: Health Environment Equity Impacts (Dec. 28, 2023), Doc. 242.

[65] The text of the new rule is taken from the rule as transmitted to the New Mexico State Records Center and Archives. *See id.* at 22-23.

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factors include indicators previously identified in the Draft Agreement as part of the screening analysis for air permitting decisions:

Draft Agreement Term[66]	**HEEI Rule Factors**
"[W]hether the community may be particularly vulnerable to any adverse effects of the proposed permitting action"	Adult asthma prevalence, pediatric asthma prevalence, Chronic Obstructive Pulmonary Disease prevalence in adults 18 years of age and older, cardiovascular disease prevalence among adults 18 years of age and older, age-adjusted cancer incidence per 100,000 population, persons with disabilities, and life expectancy.
"[W]hether the community is already disproportionately bearing public health or environmental burdens"	Annual average PM 2.5 levels, average top ten daily maximum 8-hour ozone concentrations, diesel particulate matter, annual toxic release in pounds, and traffic proximity and volume based on average daily traffic at major roads within 500 meters divided by distance in meters.
"[W]hether there are residents of the affected community who could be disproportionately subjected to adverse health, environmental and/or quality of life impacts on the basis of race, color, or national origin (including [limited English proficiency] status)"	Non-high school attainment at 25 years of age, total household income less than two-hundred percent of the federal poverty level, the percent of population over the age of five that speak a language other than English at home and who speak English less than "very well," and the percent of non-white residents including those who list their ethnicity as Hispanic or Latino.

The rule requires EHD to publish a map of overburdened areas by January 1, 2025. *Id.* § 20.11.72.8. EHD may adjust the map based on public comment before using it in permitting decisions starting July 1, 2025. *Id.*

To reduce the harms of additional pollution, the HEEI Rule mandates that any new or modified permit for a stationary source apply best available control technology

[66] *See* Draft Agreement, *supra* n.6, at 8.

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if it is located or proposed to be located in or within a one-mile radius of an overburdened area. *See id.* § 20.11.72.8(C). The Air Board found this requirement would help "ensure that current pollution levels in Overburdened Areas are not exceeded and instead will promote a decline in pollution levels in Overburdened Areas over time."[67] The HEEI Rule also requires any source emitting hazardous air pollutants (as defined by the regulation) to apply best available control technology regardless of its location. *Id.* § 20.11.72.8(D).

Additionally, the HEEI Rule imposes new notice requirements on EHD. When EHD receives a permit application or modification for a stationary source in or within a one-mile radius of an overburdened area, it must provide notice to all individuals, neighborhood associations, and organizations who opt in and reside in or represent people in the area. *See id.* § 20.11.72.9(A).

Notwithstanding its salutary and essential requirements, the HEEI Rule is just a single commonsense step—the acknowledgment and incorporation of cumulative impacts into permitting decisions—on the path towards bringing Bernalillo County and Albuquerque into compliance with the law. The Air Board gave EHD and industry significant concessions. It opted to require best available control technology in overburdened communities rather than requiring EHD to deny permits as community members had requested in their revised petition.[68] The HEEI Rule also does not require EHD to determine whether there is a substantial justification for additional pollution in an overburdened community or consider a less discriminatory alternative as described in the Draft Agreement.[69] The Rule simply requires EHD to employ a data-based mechanism for incorporating cumulative impacts into permitting deliberation and decisions. This is a necessary step, but insufficient on its own to address the discriminatory concentrations of pollution in communities of color.

Despite the Air Board's concessions, there are serious concerns about whether EHD will provide meaningful relief for the overburdened communities that the Rule is meant to benefit. The Air Board and the Rule are in a state of flux. The Air Board is

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[67] N.M. Admin. Code Transmittal Form, *supra* n.64, at 6-7.

[68] *Compare id.* N.M. Admin Code § 20.11.72.8(C) (requiring best available control technology), *with* Notice of Filing Am. Ex. A, Version 4, *supra* n.47, at 17-19 (version community members submitted for hearing setting forth criteria for permit denials or requiring specific mitigation measures).

[69] *Compare* N.M. Admin. Code § 20.11.72.8, *supra* n.64, *with* Draft Agreement, *supra* n.6, at 9-10

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seeking to vindicate its authority and challenge the City Council's unilateral actions.[70] Although on January 26, 2024, the trial court granted the Air Board a preliminary injunction to continue operations until a ruling on the merits, that action is still pending.[71] Sandia and other industry plaintiffs have filed petitions for review of the HEEI Rule in the New Mexico Court of Appeals.[72]

EHD has filed its own challenge to the HEEI Rule.[73] Although EHD missed its deadline to file a statement of issues, EHD does not need to actively thwart implementation of the Rule if others challenge it and there are no meaningful consequences from inaction. Meanwhile, communities on the ground continue to suffer under the status quo with little local recourse.

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[70] Docket Sheet, *Albuquerque-Bernalillo Cnty. Air Quality Control Bd. v. City of Albuquerque*, No. D-202-CV-202309295 (N.M. Distr. Ct. filed Dec. 5, 2023), *available at* https://caselookup.nmcourts.gov/caselookup/app (last visited May 29, 2024 by searching case number). Information on all other state court cases mentioned were also found looking at the Docket Sheets on New Mexico Case Lookup, which are also included as exhibits.

[71] *See* Order Granting Preliminary Injunctive Relief, Albuquerque Bernalillo County Air Quality Control Board v. City of Albuquerque, No. D-202-CV-2023-09295 (N.M. Distr. Ct. Feb. 1, 2024).

[72] Docket Sheet, *ABQ Asphalt, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41673 (N.M. Ct. App. filed Jan. 26, 2024); Docket Sheet, *Nat'l Tech. & Eng'r Solutions Sandia, LLC v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41666 (N.M. Ct. App. filed Jan. 25, 2024). Industry also has a pending trial court case against the Air Board which also lacks a stay motion. *See* Docket Sheet, *GCC Rio Grande, Inc. v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. D-202-CV-202309435 (N.M. Dist. Ct. filed Dec. 11, 2023).

[73] *See* Docket Sheet, *Albuquerque Envt. Health Dep't v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, No. A-1-CA-41669 (N.M. Ct. App. filed Jan. 26, 2024). Although an EHD employee has told the Air Board about potential mapping plans, *see* Air Board, *Apr. 10, 2024 Meeting Minutes* 2 (approved May 9, 2024), https://www.cabq.gov/airquality/air-quality-control-board/documents/2024-04-10-aqcb-minutes-signed.pdf, EHD's actions undermine those statements; moreover, those statements do not guarantee that EHD will implement the mapping in a timely or methodologically sound way.

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V. EHD's failure to provide a mechanism for detecting disparate impacts in its permitting decisions violates Title VI, especially in light of existing concentrations of pollution in communities of color

Nearly a decade has lapsed since EPA received the Title VI complaint regarding Albuquerque's air pollution control program. EHD still has not ensured it is not discriminating against communities of color through its permitting decisions. The disparate air pollution harm continues. The Air Board, the Mayor of Albuquerque, and EHD itself have acknowledged in the last year that the region's industrial air pollution remains concentrated in neighborhoods of color, limited English proficiency, or low income.[74] As the Mayor explained when he vetoed the City Council's assault on the Air Board, any rule considered by the Air Board must reduce the

> decades-long institutional practice of consolidating air quality-detracting industries in certain sections of the metro area, particularly in the South Valley. It is imperative that cumulative effects of pollution be considered and that any discrimination against the same low-income historic neighborhoods of color be reversed.[75]

Despite being on notice of this problem for at least a decade, EHD admits it still has no processes in place to ensure its permitting decisions do not cause or exacerbate disparate impact discrimination.[76] EHD purports that it can incorporate "equity and environmental justice concerns" into its decision-making separate from the Air Board, [77] yet it has done little to advance the non-binding measures it claims to prefer.[78] Instead, at every turn, EHD has resisted reforms that would prevent or diminish disparate

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[74] *See, e.g.*, EHD's Legal Memo., *supra* n.60, at 2 (acknowledging petitioners' communities "experienced a disproportionate burden from environmental stressors and that this burden needs to be addressed"); N.M. Admin. Code Transmittal Form, *supra* n.64, at 8 ("The technical evidence and public comment was clear that some communities are more burdened than others and that the communities in the South Valley, including Petitioners are overburdened.").

[75] Mayor Veto Statement, *supra*, n.51, at 3.

[76] *See* Vol. 6 Transcript of Proceedings, *supra* n.58, at 1906:6-19.

[77] *See* Excerpt of Letter from Off. of Albuquerque City Attorney to Lilian S. Dorka, Deputy Assistant Admin'r, EPA (Nov. 21, 2022), *attached to* Reply in Support of Supp. Mot. to Disqualify (Apr. 12, 2023), Doc. 37; *see also* Air Board Letter, *supra* n.3, at 2.

[78] *See* EHD's Notice of Envt. Justice Concepts Ex. A, *supra* n.39.

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environmental and health impacts, from asking EPA to dismiss the 2014 Complaint[79] to opposing a separate community-led effort to promulgate a cumulative impacts rule[80]. Given these circumstances, it is unsurprising that the Air Board told EPA that "enforceable policy changes" are needed.[81]

The time for enforceable policy changes is now. Community members tried to advocate for themselves without EPA by proposing the cumulative impacts rule. Opponents (including the Albuquerque City Council) responded by trying to change the rules midstream, erect barriers to rulemaking petitions, and punish the Air Board for deigning to consider the petition. EHD appears to have been an active participant in the extraordinary and procedurally irregular blockade against a cumulative impacts rule. These facts raise the real and troubling possibility that EHD and the City Council have committed acts of intentional race discrimination. EPA must bring its power to bear to compel these recipients of federal funds to comply with federal law.

A. Communities of color in Albuquerque & Bernalillo County continue to suffer disproportionately from air pollution while EHD lacks a cumulative impacts rule

EHD's derelictions have real consequences on the ground. The relevant publicly available data show continuing disproportionate air pollution burdens and associated adverse health impacts in Albuquerque's communities of color. Comparing the 2022 numbers that EPA included in the Draft Agreement with data available on EPA's EJScreen as of May 28, 2024, the San Jose, Mountain View, and Greater Gardner neighborhoods—all of which have larger Hispanic or Latino and people of color populations compared to the rest of Bernalillo County, *see supra*, pp. 9-10—remain in the 74th percentile or higher for New Mexico in exposure to diesel particulate matter and asthma indices, with some measurements becoming worse. The situation in other communities of color is equally dire. Martineztown and the International District are both in the 90th percentile or higher in several measures of air pollution exposure and respiratory health problems.

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[79] *See* Air Board Letter, *supra* n.3, at 2.

[80] EHD's Response to the Petition, *supra* n.38, at ¶¶ 3, 12; EHD Legal Memo., *supra* n.60, at 2-4.

[81] Air Board Letter, *supra* n.3, at 2.

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	San Jose	Mt. View	Greater Gardner	Martineztown	Int'l District
Percentile Diesel Particulate Matter in NM	93rd	74th	98th	98th	92nd
Percentile Air Toxics Cancer Risk in NM	87th	34th	87th	87th	87th
Percentile Respiratory Hazard Index in NM	90th	69th	90th	90th	90th
Ozone percentile in NM	63rd	63rd	66th	65th	70th
Asthma percentile in NM	79th	81st	79th	86th	90th
Low life expectancy percentile	91st	54th	81st	66th	96th

Table 2: Data from EPA's EJScreen of relevant air pollution and health indicators[82]

	San Jose & Mt. View	Greater Gardner	Martineztown	International District
All races/ethnicities	472.0	444.1	543.2	564.9
Hispanic or Latino	504.0	495.9	536.8	524.0
Black	460.4	460.9	922.5	733.6
Native American	248.3	452.6	632.9	296.1
White	377.8	368.0	508.8	626.1

Table 3: Death rate per 100,000 people by ethnicity from the New Mexico Center for Disease Control.[83]

Indeed, state-collected health data shows continuing poor health outcomes in communities of color and for specific populations in those communities. The New

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[82] EPA, *EJScreen, EPA's Environmental Justice Screening and Mapping Tool (Version 2.2)*, https://ejscreen.epa.gov/mapper (last visited May 22, 2024) (reports generated by using the draw tool or "Select Multiple" and using census block numbers described in note 18for each neighborhood). Copies of the EJScreen Community Reports generated are available as Exhibits H-N.

[83] The New Mexico Center for Disease Control uses "small areas" instead of census block groups for its data analysis. Numbers for San Jose and Mountain View came from small area 7; Greater Gardner small area 19; Martineztown small area 8; and International District small area 1. N.M. Ctr. for Disease Control, *II-5 Chronic Disease Deaths, 2017 – BCCHC*, https://www.arcgis.com/home/item.html?id=a730afb44786482882df08c801e8ee57 (last visited May 24, 2024). Copies of the mortality rate data for each neighborhood are available in Exhibits R-U. This map was prepared by the Bernalillo Community Health

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Mexico Center for Disease Control estimates that based on 2008-2017 data, the state's death rate from chronic disease is 416 per 100,000. By comparison, as shown below in Table 3, the mortality rates for Hispanic or Latino residents in San Jose, Mountain View, Greater Gardner, Martineztown, and the International District all exceed 495. In Martineztown and the International District, the mortality rate for Black residents exceeds 700.

Testimony at the rulemaking hearing further confirms the health harms experienced by residents of overburdened communities. For example, per the petitioners' expert witness, Bernalillo County's average ozone level is 65.64 parts per billion (ppb), which is above the exposure level (60 ppb) EPA says can decrease lung function.[84] Similarly, EPA recognized that cardiovascular mortality risks increase at concentrations of small particulate matter as low as 4.1 ppb—well below Bernalillo County's average of 5.94 ppb.[85] As petitioners' expert explained, "[r]eleases of toxic air contaminants or hazardous air pollutants are directly proportional to the health risks for a surrounding community."[86] Because overburdened communities in Bernalillo County face higher than County-average pollutant levels, they face greater health risks as well. It is disturbing, if unsurprising, that these neighborhoods are nearly all above average—and in many instances in the 80th percent or higher—for the state in cancer risk, respiratory health risk, and prevalence of respiratory illnesses like asthma. *See supra tbl.* 2.

B. Implementation of a cumulative impacts rule, including mapping overburdened communities, is necessary to bring EHD into compliance with Title VI, and to the extent the City of Albuquerque's law prohibits the implementation of such a rule, the City also violates Title VI

The Air Board's HEEI Rule is the sole measure promulgated by the Air Board that mandates concrete action by EHD to prevent disparate impact discrimination in its air permitting decisions. Specifically, it mandates the creation of an overburdened-communities map that would identify for the agency (and the public) the communities that suffer disproportionate environmental and health burdens. Then it would require

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Council. *See* Bernalillo Cmty. Health Council, *2019 Bernalillo County Community Health Profile* 7 (2020).

[84] Rebuttal Testimony of Dr. James Clark 26-28, Pets.' Rebuttal Testimony Ex. 1 (Dec. 1, 2023), Doc. 205. Per the testimony, this data came from EPA's 2019 AirToxScreen.

[85] *Id.* at 27, 29-30.

[86] *Id.* at 28.

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permittees to install best available control technology if their project is situated in or near an overburdened community. These are common sense measures necessary to bring EHD into Title VI compliance, and yet the agency rejects them. Although EPA cannot adjudicate the validity of the Air Board's cumulative impacts rule, it can find that EHD is in violation of Title VI and that the agency must make binding, enforceable changes to its permitting program. Los Jardines and NRDC therefore request that EPA take the following three actions to bring EHD into compliance with Title VI:

1. EPA should find that EHD must implement a cumulative impacts rule. As described above, relying on EHD to self-correct has not led to meaningful changes in the agency's discriminatory practices. Nor has it abated air pollution in Bernalillo County's overburdened communities of color. Thus, EPA must go beyond the Draft Agreement's proposal of merely requiring that the Air Board *consider* a cumulative impacts resolution under its normal procedures—after all, the Air Board attempted to comply with this request, and polluters (with an all-too-willing City Council and EHD) responded by attempting to stop the rulemaking process and render the Air Board nearly powerless.

Only a finding by EPA that mandatory, systemic reforms—i.e., a regulation like the HEEI Rule—are necessary will make EHD, the City of Albuquerque, industry, and other federal agencies take seriously the obligation to stop polluting disproportionately in Bernalillo County's communities of color. An EPA finding that a regulation is necessary could break the current impasse. EHD might finally be motivated—and have the political cover—to petition the Air Board itself if it is concerned about the HEEI Rule but does not want to find itself in violation of Title VI.

A finding by EPA would also make clear that the City Council's changes to the Air Board's structure cannot stand if they prevent any rule from ever addressing cumulative impacts and disparate impact discrimination.

2. Even if EPA concludes that it lacks authority to require funding recipients to promulgate a particular regulation, it can—and should—require EHD to complete the overburdened-area map by January 1, 2025, and use the map in its decision-making process. This is similar to other concrete measures that EPA wanted EHD to undertake as part of the Draft Agreement. It neither imposes any obligations on permittees nor dictates the outcome of any permitting decision. An overburdened-area map would alert EHD to where pollution is concentrated and if certain neighborhoods have other characteristics that exacerbate the harmful effects of air pollution.

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An overburdened-communities map whose underlying methodology EHD accepts would be valuable even without the HEEI Rule's best available control technology requirements. The map would make it harder for EHD to continue burying its head in the sand and force the agency to grapple with the full consequences of its permitting decisions. The map would also give overburdened communities an organizing tool that aligns with EPA's environmental justice goals: "A fundamental element of achieving . . . equity and justice is ensuring communities have the capacity they need to meaningfully engage government programs."[87] Communities could use the map to engage with EHD in its permitting decisions and advocate against additional pollution in their neighborhoods. This is consistent with the purposes of Title VI.

3. EPA should investigate whether EHD was complicit in the City Council's attempt to scuttle the cumulative impacts rule, and whether the City Council and/or EHD committed acts of intentional discrimination. Los Jardines and NRDC are not privy to communications between the City Council and EHD concerning their opposition to the HEEI Rule. The surrounding facts suggest that the two entities may have colluded to upend the proposed rule, in stark violation of their obligations under Title VI. While EPA's disparate impact regulations provide ample basis for EPA to impose each of the specific remedies described above, it is possible that unlawful intent to discriminate is also at play given the significant departures from regular procedures surrounding the HEEI Rule's promulgation. The City Council acted unilaterally without consulting Bernalillo County, whose ordinances previously paralleled the City's. *See supra* pp. 5-7. It also attempted to remove mid-rulemaking Air Board members it had previously approved.[88] Moreover, EHD departed from normal procedures by declining to offer direct testimony before the hearing.[89] EPA is in a unique position to investigate

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[87] EPA, *FY 2022-2026 EPA Strategic Plan* 30 (Mar. 2022), https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf.

[88] *See* Mayor Veto Statement, *supra* n.51, at 2 (noting the City's Air Board members "were all confirmed by this Council" and "are qualified in law and spirit"); *see also* City Ord. § 9-5-1-3(B)(2) (authorizing the City's Air Board members to be appointed by the Mayor with City Council's "advice and consent").

[89] *Compare* EHD Notice, *supra* n. 56, at 2-3 (explaining EHD would provide Deputy Director Albrecht for cross-examination in lieu of submitting written direct testimony), *with* Rulemaking Process Guidance, *supra* n.10, at 8 (describing procedures for technical testimony at an Air Board hearing including providing a "copy of the direct testimony of each technical witness").

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the real possibility of intentional discrimination and to respond appropriately to the facts it finds.

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In seeking this relief, complainants recognize some complexity as EPA proceeds. Two sister federal agencies with development interests of their own opposed the HEEI Rule. The HEEI Rule itself is under challenge in New Mexico state court. The 2014 Complaint remains pending. And the legality of EPA's disparate impacts regulations under Title VI is under attack in federal court. None of these factors should keep EPA from acting promptly here.

If a disproportionate amount of harmful air pollution is spewing into lower-income communities of color around Bernalillo County, for Title VI purposes it should not matter whether the polluter is a private industry or a federal agency. The discriminatory impact on the already overburdened community is the same. Nor should the state court challenges to the HEEI Rule impede EPA. Los Jardines and NRDC are not asking EPA to order EHD to implement the HEEI Rule or any specific regulation. Rather, we seek a requirement to map overburdened communities, detect disparate impacts, and then factor such impacts into air permitting decisions. Los Jardines and NRDC believe this is what federal law requires. This result can (and must) be achieved whether the HEEI Rule is sustained or nullified in state court. Notably, state court appeals in New Mexico often take years to be resolved.[90] It is unfair to make these communities wait longer than they already have for a remedy to a manifest injustice.

The pendency of the 2014 Complaint is not a reason to delay; to the contrary, it adds to this complaint's urgency. Harmful and disproportionate air pollution has existed for a long time in Bernalillo County. It started with acts of intentional discrimination in housing. It continues to this day, with pollution and attendant health harms not improving, and by some measures deteriorating since 2014. Ten years is long enough for these communities to wait. If it would be duplicative or unhelpful to

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[90] *See* Ike Swetlitz, *New Mexico Court of Appeals is swamped with backlogged cases, leaving hundreds in limbo*, Las Cruces Sun News (Feb. 22, 2020), https://www.lcsun-news.com/story/news/2020/02/23/full-court-pressed-new-mexico-court-appeals-severely-backlogged/4835723002/ (showing the average time it took to calendar a case was 142 days).

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consider our complaint separately from the 2014 Complaint, EPA may consolidate them and resolve them together.

Finally, the recent Title VI court decision in Louisiana does not apply here.[91] Los Jardines and NRDC understand EPA to have agreed not to pursue Title VI disparate impact claims against Louisiana environmental authorities but otherwise to stand by its existing regulations. Those regulations remain the law in New Mexico.

As a suite of federal agencies, including EPA's Office of External Civil Rights Compliance, reaffirmed earlier this month, "Environmental justice is a public health issue, and our civil rights laws should ensure that all communities—no matter your race or zip code—are safe and free from environmental hazards. . . . . [C]ommunities of color have historically been subject to environmental injustice and deserve the full attention of the federal government through the enforcement of our laws to be free from discrimination."[92] We agree.

VI. As an alternative to a formal Title VI remedy, EPA should conduct a compliance review of EHD

Separate from investigating Title VI Complaints, EPA's External Civil Rights Compliance Office periodically conducts its own "compliance reviews" of EPA grant recipients. *See* 40 C.F.R § 7.115(a). EPA's 2022-2026 Strategic Plans set a goal of completing 45 compliance reviews.[93] Absent formal actions pursuant to Title VI, we urge EPA to conduct such a review of the Albuquerque EHD.

EPA has published criteria for prioritizing and selecting award recipients for affirmative compliance reviews. These criteria include trends in the recipient's noncompliance; the strategic significance of the issue to EPA's priorities; recipient and

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[91] *Louisiana v. U.S. EPA*, No. 2:23-CV-00692, 2024 WL 250798 (W.D. La. Jan. 23, 2024).

[92] U.S. Dep't of Just., *Five Federal Departments Join Justice Department in Reaffirming Shared Commitment to Uphold Civil Rights Laws and Advance Environmental Justice* (May 6, 2024), https://www.justice.gov/opa/pr/five-federal-departments-join-justice-department-reaffirming-shared-commitment-uphold-civil#:~:text=The%20Justice%20Department's%20Civil%20Rights,Civil%20Rights%20Compliance;%20Department%20of.

[93] EPA has also set a target of conducting 55% of its annual inspections at facilities that affect communities with potential environmental justice concerns (objective 3.2). EPA, *FY 2022-2026 EPA Strategic Plan*, *supra* n.87, at 37, 44.

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community characteristics; opportunity for EPA collaboration; and the recipient's history.[94] These criteria favor EPA conducting a compliance review of EHD.

A. Albuquerque and Bernalillo County's size, pollution levels, demographics, and history favor a compliance review

Several factors that EPA considers when determining whether to conduct a compliance review go to the likelihood of discrimination and the number of people affected. The likelihood of discrimination is high in Bernalillo County, where there are "current land use patterns with a nexus to prior discriminatory practices that have not been fully ameliorated—including, but not limited to, redlining and other forms of segregation."[95] As described in Section IV.A, Albuquerque has a deep-seated history of racial segregation whose impacts are still felt today.

EPA also looks at the demographic makeup of the recipient's jurisdiction, including whether it includes "communities of color."[96] Compared to the United States as a whole, Albuquerque and Bernalillo County both have proportionately large percentages of people of color (63% for both, compared to 39% for the United States).[97] As EPA's prioritization document acknowledges, communities of color often experience disproportionate adverse impacts from pollution.[98] By having a large population of people of color, Bernalillo County also has a large number of people who may be particularly vulnerable to air pollution.

Bernalillo County also meets the "high levels of pollution"[99] criterion. EPA's EJScreen shows that Bernalillo County is overburdened when compared to the rest of New Mexico.[100] Moreover, the American Lung Association currently grades Bernalillo

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[94] EPA External Civ. Rts. Compliance Off., *Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews* 3-5 (Jan. 6, 2022), https://www.epa.gov/system/files/documents/2022-01/01-06-20-ecrco-process-for-prioritizing-and-selecting-affirmative-compliance-reviews.pdf.

[95] *Id.* at 4.

[96] *Id.*

[97] *See* EPA, EJScreen Community Reports for Albuquerque and Bernalillo County (downloaded Apr. 30, 2024). Copies of these reports are available as Exhibits H and I.

[98] *See Process and Criteria*, *supra* n.94, at 4.

[99] *Id.*

[100] *See* Clark Rebuttal Testimony, *supra* n.84, at 4-5; EPA, Bernalillo County EJScreen Report, *supra* n.77 (generated using "Select County" function) (showing Bernalillo

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County as an "F" in all three categories it evaluates: ground level ozone, 24-hour concentrations of fine particulate matter (i.e., the number of days fine particulate matter concentrations are unhealthy), and annual average fine particulate concentrations.[101] Only 30 counties nationwide (out of 3,143 evaluated) failed in all three categories.[102] Not only is Bernalillo County failing, its annual average number of high ozone and particulate matter days has trended upward the past six years after improvements during the early 2010s.[103] These characteristics of the area EHD regulates favor a compliance review.

B. EHD has a history of failing to comply with civil rights laws

EPA also considers the nature and number of past and pending civil rights complaints against the recipient; whether there are findings and recommendations from prior reviews and investigations that are not resolved or implemented; and preexisting disadvantages from prior discriminatory practices that have not been fully ameliorated.[104] These factors all weigh heavily in favor of review.

EHD's history of failing to comply with Title VI is well documented. *See supra* pp. 11-13. During the ten-year period since the initial Title VI complaint, EHD has not implemented any systemic measures to detect, let alone prevent, disparate impact discrimination.[105] Although EHD addressed a few of EPA's recommendations from the Draft Agreement, as the Air Board noted, some of these initiatives "were not spearheaded by EHD,"[106] and EPA's principal recommendation—the screening mechanism for disparate impacts—remains in a state of flux due to the chaos around, and EHD's opposition to, the HEEI Rule.

C. Providing EHD with tools to comply with Title VI, including means of evaluating cumulative impacts, aligns with EPA's strategic priorities

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County is above the 70th percentile in the state for particulate matter, diesel particulate matter, toxic release to air, and traffic proximity).

[101] Am. Lung Ass'n, *supra* n.1.

[102] Am. Lung Ass'n, *State of the Air 2024,* at 25 (2024), https://www.lung.org/getmedia/dabac59e-963b-4e9b-bf0f-73615b07bfd8/State-of-the-Air-2024.pdf.

[103] Am. Lung Ass'n, *supra* n.1.

[104] *Process and Criteria*, *supra* n.94 at 4-5.

[105] *See* Vol. 6 Transcript of Proceedings, *supra* n.58, at 1906:6-19.

[106] Air Board Letter, *supra* n.3, at 2.

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A compliance review of EHD would provide EPA with an opportunity to create a model for other permitting authorities to incorporate cumulative impacts into their decisions. When deciding whether to conduct a compliance review, EPA considers the "[o]pportunity for EPA to collaborate with recipients to ensure that new state or local environmental initiatives comply with Title VI" and the "[o]pportunity for collaboration because a recipient is taking an action related to an emerging issue . . . that is part of a national trend likely to be followed by other jurisdictions."[107] Both of these factors are present here.

EPA has ample opportunity to collaborate with EHD because, simply put, EHD has no program currently in place to account for disparate impact discrimination from air pollution.[108] EPA therefore can assist EHD to build a program from the ground up to comply with Title VI. This could include, as described above, providing technical assistance to help EHD map overburdened areas by census block group based on environmental, public health, and demographic data by January 1, 2025.

EPA has already highlighted the consideration of cumulative impacts as an important legal tool for advancing its environmental justice goals—thus, ensuring EHD implements a cumulative impacts rule that is "related to an emerging issue" and is "likely to be followed by other jurisdictions."[109] In January 2023, EPA's Office of General Counsel published an Addendum to its Environmental Justice Legal Tools focused specifically on its "legal authority to address cumulative impacts affecting communities with environmental justice concerns."[110] Although EPA's addendum is focused on actions EPA itself can take, much of the CAA is implemented by states.[111] By showing states how they can incorporate cumulative impacts into their programs, EPA will advance its own environmental justice goals. Much of the state and local government work on cumulative impacts has occurred in the last decade.[112] Even then,

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[107] *Process and Criteria*, *supra* n.94 at 4.

[108] *See* Vol. 6 Transcript of Proceedings, *supra* n.58, at 1906:6-19.

[109] *Process and Criteria*, *supra* n.94 at 4.

[110] EPA Off. of Gen. Counsel, *Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum* 1 (Jan. 2023), https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf.

[111] *See supra* p. 5.

[112] Tishman Env't. & Design Ctr., *Understanding the Evolution of Cumulative Impacts: Definitions and Policies in the U.S.* 5 (May 24, 2022),

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these tools tend to be purely informational while "the application of these tools to environmental decision-making, such as permitting, has been less prevalent."[113] A successful intervention in Bernalillo County by EPA could provide a template for the next crucial step in environmental justice by ensuring regulators not only have good information on cumulative impacts but use that information in their permitting decisions to benefit communities on the ground.

Finally, intervening in Bernalillo County and Albuquerque would provide EPA with an opportunity to defend its definition of "cumulative impacts." The City Council seems to think that because the HEEI Rule considers factors besides air pollution in defining overburdened communities, the rule "address[es] quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, *cause injury*." *See* Albuquerque, N.M. Resolution R-2023-097 § 1 (emphasis added); *see also* Albuquerque, N.M. Ordinance O-2023-029 § 2, at 24:18-24. But EPA has recognized demographic factors such as preexisting health conditions and diseases, access to health care, and socioeconomic status can compound over time and affect the probability additional pollutants will "cause injury" to someone.[114] By defending the Air Board's cumulative impacts rule (or prompting adoption of another similar measure), EPA will also be defending regulators' authority to use a definition of "cumulative impacts" to produce the public good that lies at the root of both the CAA and Title VI.

We urge EPA to conduct a searching review of EHD's compliance with Title VI, including but not limited to its role in the City Council's efforts to dismember the Air Board and obstruct enactment of a cumulative impacts rule.

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https://static1.squarespace.com/static/5d14dab43967cc000179f3d2/t/630637a79481bf24cac9f19e/1661351847644/CumulativeImpacts_REPORT_FINAL_Aug2022.pdf.

[113] *Id.*

[114] *See, e.g.*, EPA, *Cumulative Impacts Research: Recommendations for EPA's Office of Research And Development* 4-5 (2022), https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf (defining "cumulative impacts" as "the totality of exposures to combinations of chemical *and non-chemical stressors* and their effects on health, well-being, and quality of life outcomes" and noting "[c]umulative impacts characterize the potential state of vulnerability or resilience of a community") (emphasis added)).

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VII. Conclusion

These are the essential facts: Within Bernalillo County, communities of color suffer disproportionate air pollution and adverse health impacts, traceable to a long history of discriminatory housing and air permitting. At present, ten years after a Title VI complaint to remedy this problem was filed, EHD has no mechanism to detect or determine whether an air permitting decision it makes will exacerbate or reduce that disparate impact. This is both unlawful and unjust. Six months ago, the City Council and EHD actively opposed the Air Board's attempt to remedy the injustice and comply with federal law. The long and pernicious history of air permitting in Bernalillo County suggests that there will be no remedy without EPA's intervention. That is what we seek in this complaint.

For the reasons set forth above, Los Jardines Institute and NRDC respectfully request that EPA accept this complaint, consider it on its own or consolidate it with the pending 2014 Complaint, and investigate EHD and the City Council for violations of Title VI. Specifically, we ask that EPA:

- Find that EHD is in violation of Title VI for failing in its air permitting program to prevent disparate impacts based on race;
- Find that to comply with Title VI, EHD must implement a cumulative impacts rule and apply it in its air permitting decisions;
- Require EHD to complete a data-based overburdened-areas map by January 1, 2025; and
- Investigate whether the City Council and EHD have committed acts of intentional race discrimination.

In the alternative, toward similar ends, we request that EPA conduct a compliance review of EHD.

We would be happy to meet with you to discuss the substance of this complaint.

Respectfully submitted,

/s/ Sofia Martinez

/s/ Richard Moore

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Exhibit B

PART 1: AIR QUALITY CONTROL BOARD

§ 9-5-1-1 SHORT TITLE.

Sections 9-5-1-1 et seq. may be cited as the "Joint Air Quality Control Board Ordinance."

('74 Code, § 6-16-1) (Ord. 13-1975; Am. Ord. 65-1993)

§ 9-5-1-2 DEFINITIONS.

As provided in the New Mexico Air Quality Control Act, Sections 74-2-1 through 74-2-17 NMSA 1978 (hereinafter referred to as the "Air Quality Control Act"), the following definitions shall apply to terms used in §§ 9-5-1-1 et seq.

AIR CONTAMINANT. Any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any decay or reaction product thereof.

AIR POLLUTION. The emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

BOARD. The Albuquerque-Bernalillo County Air Quality Control Board created by §§ 9-5-1-1 et seq.

DEPARTMENT. The administrative agency of the Albuquerque-Bernalillo County Air Quality Control Board.

DIRECTOR. The administrative head of the Department or his or her authorized representative.

EMISSION LIMITATION and ***EMISSION STANDARD.*** A requirement established by the Board, the Department, or pursuant to the federal Act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

ENVIRONMENT DEPARTMENT. The Environment Department of the state.

FEDERAL ACT. The Federal Clean Air Act, 42 U.S.C. 7401 through 7642, its subsequent amendments and successor provisions.

FEDERAL STANDARD OF PERFORMANCE. Any standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412.

HAZARDOUS AIR POLLUTANT. An air contaminant that has been classified as a hazardous air pollutant pursuant to the Federal Act.

MANDATORY CLASS I AREA. Any of the following areas in the state of New Mexico that were in existence on August 7, 1977:

(1) National wilderness areas that exceed 5,000 acres in size; and

(2) National parks that exceed 6,000 acres in size.

MAYOR. The Mayor or his or her authorized representative.

MODIFICATION. Any physical change in, or change in the method of operation of a source that results in an increase in the Potential Emission Rate of any Regulated Air Contaminant emitted by the source or that results in the emission of any Regulated Air Contaminant not previously emitted, but does not include:

(1) A change in ownership of the source;

(2) Routine maintenance, repair or replacement;

(3) Installation of air pollution control equipment and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the Federal Act; or

(4) Unless previously limited by enforceable permit conditions:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) An increase in the hours of operation; or

(c) Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

NONATTAINMENT AREA. For any air contaminant, an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the Federal Act.

PERSON. An individual, partnership, corporation, association, the state or political subdivision of the state or any agency, department, or instrumentality of the United States and any of their officers, agents or employees.

PLAN. Any and all parts of the state implementation plant that pertain to the county that are adopted by the Board for

submittal by the Governor of the state to the federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.

POTENTIAL EMISSION RATE. The emission rate of a source at its maximum capacity in the absence of air pollution control equipment that is not vital to production of the normal product of the source or to its normal operation; also defined by Board regulations as "pre-controlled" emissions.

REGULATED AIR CONTAMINANT. Any air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the Federal Act.

SIGNIFICANT DETERIORATION. Any increase in the ambient concentrations of any air contaminant above the levels allowed by the Federal Act or Federal regulations for that air contaminant in the area within which the increase occurs.

SOURCE. Any structure, building, equipment, facility, installation or operation that emits or may emit any air contaminant.

STANDARD OF PERFORMANCE. A requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction.

STATE IMPLEMENTATION PLAN. Any plan submitted by the Governor of the state of New Mexico to the federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.

('74 Code, § 6-16-2) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-3 JOINT AIR QUALITY CONTROL BOARD.

(A) In accordance with the New Mexico Air Quality Control Act, a joint air quality control board known as the Albuquerque-Bernalillo County Air Quality Control Board is created. The Board shall serve as a joint local authority acting on behalf of both the city and the county. Within the exterior boundaries of the county, the Board shall have authority and jurisdiction to exercise the same functions pertaining to air quality as the functions that have been delegated by the Air Quality Control Act to the New Mexico Environmental Improvement Board except any functions reserved exclusively for the Environmental Improvement Board.

(B) The membership and organization of the Board shall be as described in this section.

(1) Members of the Board previously appointed and serving at the time §§9-5-1-1 et seq. are enacted shall continue serving their terms on the Board. The length and termination date of their terms of office shall not be affected by the passage of §§ 9-5-1-1 et seq.

(2) The Board shall consist of seven members, four of whom shall be appointed by the Mayor with the advice and consent of the City Council and three of whom shall be appointed by the County Commission.

(3) Members shall be appointed for three-year terms. No member shall serve more than two consecutive terms at a time. The positions on the Board shall be staggered appointments so no more than two city appointee's terms expire in any single year. Vacant positions shall be filled by individuals appointed by the same authority that appointed the outgoing member.

(4) Nominations and appointments to the Board shall be made as follows:

(a) At least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set forth in the New Mexico Air Quality Control Act, as amended, and the federal Clean Air Act, 42 U.S.C.A. Section 7401, et seq., as amended. Further, to the extent that the requirement does not conflict with this division (a), Board members will be selected for their concerns about, and commitment to, the local ambient air quality. Therefore, selections may be made from a broad range of persons representing the public interest and who are experienced or trained in disciplines including natural sciences, humanities, social studies, finance, medicine and health, engineering or physics, law, law enforcement, education, business and industry.

(b) No person employed on a full time basis by either the city or the county shall be a member of the Board. No elected city or county official, and no member of the immediate family of any elected city or county official shall be appointed to the Board.

(c) City-appointed members shall be residents of the city and county-appointed members shall be residents of the county.

(d) A Board member may be removed from office by the appointing authority if the member has missed three consecutive meetings or has been absent from more than 50% of the meetings during any 12 consecutive meetings.

(e) At least two months before a Board member's term expires, the Department shall solicit a recommended list of qualified members for the city vacancy as suggested by the City Council and the Department for consideration by the Mayor. The County Commission will appoint its representatives to the Board. The list shall include a brief biography describing the qualifications of each candidate. From the list, as modified or enlarged by the appointing authority, appointments to the Board will be made. Candidates appointed shall be notified in writing, and the candidate must accept or reject the appointment in writing. Unless a member retires or is removed, each member shall serve until a successor has been appointed.

(f) If a vacancy occurs for reasons other than expiration of a term, the Department shall promptly utilize the procedure described in division (e) above. Each vacancy shall be filled by the authority that appointed the departing member. The

replacement member shall serve for the remainder of the unexpired term.

(5) Four members present shall constitute a quorum. A quorum shall be present for all matters decided by a vote of the Board.

(6) Any action, order or decision of the Board requires a simple majority vote of the members present, except for adoption, amendment or repeal of a Board regulation, in which case the concurrence of four members shall be required.

(7) All officers of the Board shall be elected annually by the Board for one-year terms. No officer shall serve in the same position for more than two consecutive years at a time.

(8) The Board may adopt rules to govern its proceedings.

(C) The Board shall meet in public facilities with public seating available. The Board shall meet monthly if a quorum is available unless a meeting is unnecessary or delayed for good reason. The Board shall hold a minimum of six monthly meetings a year. Special additional meetings may be held as needed. Notice of time, place and agenda of meetings shall be published according to the requirements of law. Meetings, work sessions and hearings shall be open to the public.

(D) The Director of the Department shall record all transactions and proceedings of the Board and shall perform the duties required by the Air Quality Control Act. The Director is the custodian of all files and records of the Board, and shall meet with the Board but does not have a vote.

(E) Any member of the Board who has a conflict of interest regarding a matter before the Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly any monetary or other material benefit to the Board member or the member's spouse or minor child.

(F) The City Environmental Planning Commission (EPC) and the County Planning Commission (CPC) may appoint a member of the EPC and of the CPC, respectively, to be liaisons to the Air Quality Control Board. The EPC and CPC liaisons may attend Board meetings and may participate in Board discussions, but will not be members of the Board and will not vote. The respective liaisons may communicate with the Board and their respective planning commissions regarding air quality issues.

('74 Code, § 6-16-3) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-4 DUTIES AND POWERS OF BOARD.

(A) The Board, in accordance with the Air Quality Control Act, shall prevent or abate Air Pollution within the city and county.

(B) The Board shall:

(1) Adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act and §§9-5-1-1 et seq. to attain and maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within the geographic area of the Board's jurisdiction, or any part thereof; and

(2) Adopt a plan for the regulation, control, prevention or abatement of Air Pollution, recognizing the differences, needs, requirements and conditions within the county or any part thereof.

(C) Regulations adopted by the Board may:

(1) Include regulations to protect visibility in Mandatory Class I Areas, to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas, provided that such regulations:

(a) shall be no more stringent than but at least as stringent as required by the Federal Act and federal regulations pertaining to visibility protection in Mandatory Class I Areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

(b) Shall be applicable only to sources subject to such regulation pursuant to the Federal Act;

(2) Prescribe standards of performance for Sources and Emission Standards for Hazardous Air Pollutants that, except as provided in division (3) below:

(a) Shall be no more stringent than but at least as stringent as required by federal standards of performance; and

(b) Shall be applicable only to sources subject to such federal standards of performance;

(3) Include regulations governing emissions from solid waste incinerators that shall be as least as stringent as, and may be more stringent than, any applicable federal emission limitations;

(4) Require notice to the Department of the intent to introduce or allow the introduction of an air contaminant into the air within the geographical area of the Board's jurisdiction; and

(5) Require any person emitting any air contaminant to:

(a) Install, use and maintain emission monitoring devices;

(b) Sample emissions in accordance with methods and at locations and intervals as may be prescribed by the Board;

(c) Establish and maintain records of the nature and amount of emissions;

(d) Submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

(e) Provide any other reasonable information relating to the emission of air contaminants.

(D) Any regulation adopted under this section shall be consistent with federal law, if any, relating to control of motor vehicle emission.

(E) In making its regulations, the Board shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

(1) Character and degree of injury to or interference with health, welfare, visibility and property;

(2) The public interest, including the social and economic value of the Sources and subjects of air contaminants; and

(3) Technical practicability and economic reasonableness of reducing or eliminating air contaminants from the Sources involved and previous experience with equipment and methods available to control the air contaminants involved.

('74 Code, § 6-16-4) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-5 DUTIES AND POWERS OF THE DEPARTMENT.

The Department shall:

(A) Administer and enforce the provisions of the Air Quality Control Act, §§9-5-1-1 et seq. and any regulations adopted pursuant thereto and any other laws relating to Air Pollution applicable within the city and the county. The staff for the Board shall be provided by the city. The Department shall perform, within the boundaries of the county, all functions delegated to the New Mexico Environment Department under the Act, except for the duties and powers reserved exclusively for the Environment Department.

(B) Develop facts and make investigations and studies consistent with the Air Quality Control Act and §§9-5-1-1 et seq., and in connection therewith, enter at all reasonable times in or upon any private or public property, except private residences, that the Department has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any enforcement action is contemplated, and a copy thereof shall be furnished to the owner or occupant of the premises before the action is filed.

(C) Institute legal proceedings to compel compliance with the Air Quality Control Act, §§9-5-1-1 et seq., or any regulation of the Board.

(D) Encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity.

(E) Consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system, or mechanism or the air pollution problem that may be related to the source, device, system or mechanism, provided that consultation shall not relieve any Person from compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., regulations in force, pursuant thereto, or any other provision of law.

(F) Establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of Section 507 of the Federal Act.

(G) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government or from any person.

(H) Classify and record air contaminant sources that in its judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics that relate to air pollution, provided that classifications may be for application to the county as a whole or to any designated area of the city or county, and shall be made with special reference to the effects on health, economic and social factors and physical effects on property.

(I) Develop and present to the Board a Plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the Department's responsibility as established by §§ 9-5-1-1 et seq.

('74 Code, § 6-16-5) (Ord. 65-1993)

§ 9-5-1-6 ADOPTION OF REGULATIONS; NOTICE AND HEARING.

(A) Any person may recommend or propose regulations to the Board for adoption. The Board shall determine whether to hold a hearing within 60 days of submission of a proposed regulation.

(B) No regulation or emission control requirement shall be adopted until after a public hearing by the Board. As used in this section, ***REGULATION*** includes any amendment or repeal thereof.

(C) Notice of hearing shall be given at least 30 days prior to the hearing date and shall state the subject, the time and the

place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or air quality standard. The notice shall be published in a newspaper of general circulation in the city and county. Reasonable effort shall be made to give notice to all persons who have made a written request to the Board for advance notice of its hearings.

(D) At the hearing, the Board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the Board.

(E) The Board may designate a hearing officer to take evidence in the hearing.

(F) No regulation or emission control requirement adopted by the Board shall become effective until 30 days after its filing under the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.

(G) A copy of adopted air quality control regulations shall be on file in the office of the City Clerk and shall be available for inspection by the public during regular business hours. Copies of the regulations shall be available to any person upon request and payment of a reasonable charge set by the Mayor.

('74 Code, § 6-16-6) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-7 PERMITS; APPEALS; FEES.

(A) By regulation, the Board shall require:

(1) Any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the Department prior to such construction or modification; and

(2) Any person intending to operate any source for which an operating permit is required pursuant to the 1990 amendments to the Federal Act, except as otherwise specifically provided by regulation, to obtain an operating permit from the Department.

(B) Regulations adopted by the Board shall include at least the following provisions:

(1) Requirements for the submission of relevant information, including but not limited to information the Department deems necessary to ensure that regulations and standards under §§ 9-5-1-1 et seq., the Air Quality Control Act or the Federal Act will not be violated.

(2) Specification of the deadlines for processing permit applications; provided, the deadline for a final decision by the Department on a construction permit application may not exceed:

(a) One hundred and eighty days after the application is determined to be complete, if the application is not affected by requirements for prevention of significant deterioration; or

(b) Two hundred and forty days after the application is determined to be complete, if the application is affected by requirements for prevention of significant deterioration;

(3) Specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit, provided the permit regulations adopted include provisions requiring that notice be given to the New Mexico Environment Department of all applications by any source that emits, or has a Potential Emission Rate of 100 tons per year or more of any Regulated Air Contaminant, including any source of fugitive emissions of any Regulated Air Contaminant, at least 60 days prior to the date on which construction or major modification is to commence;

(4) A schedule of construction permit fees sufficient to cover:

(a) The reasonable costs of reviewing and acting upon any application for such permit; and

(b) The reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court or other costs associated with an enforcement action.

(5) A schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the Federal Act;

(6) Specification of the maximum length of time for which a permit shall be valid, provided that for an operating permit, such period may not exceed five years; and

(7) For an operating permit only:

(a) Provisions, consistent with Sections 502(b) and 505(b) of the Federal Act, that require:

1. Notice to and review and comment by the United States Environmental Protection Agency (EPA); and

2. If the Department receives notice of objection from the United States Environmental Protection Agency before the operating permit is issued, the Department shall not issue the permit unless the permit is revised and issued pursuant to Section 505(c) of the Federal Act;

(b) Provisions governing renewal of the operating permit; and

(c) Specification of the conditions under which the operating permit may be terminated, modified or revoked and

reissued prior to the expiration of the term of the operating permit.

(C) The Department may deny any application for:

(1) A construction permit if it appears that the construction or modification will not meet applicable requirements of §§9-5-1-1 et seq., the Air Quality Control Act, the federal Act or any regulation adopted pursuant thereto or

(2) An operating permit if:

(a) The source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the Board;

(b) It appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national, state or applicable local ambient air quality standard; or

(c) Any other provision of §§9-5-1-1 et seq. and the Air Quality Control Act or the Federal Act will be violated.

(D) The Department may specify conditions to any permit granted under this section, including:

(1) For a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of §§ 9-5-1-1 et seq., the Air Quality Control Act, the Federal Act or any regulations promulgated pursuant thereto; and

(2) For an operating permit:

(a) Imposition of, individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the Federal Act or the emission rate specified in the operating permit application, whichever is most stringent;

(b) Compliance with applicable federal standards of performance;

(c) Imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) Any combination of the conditions listed above.

(E) This section does not authorize the Department to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, regulations of the Board and permit conditions may be met by machinery, devices or equipment otherwise available.

(F) The issuance of a construction or operating permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. or any applicable regulations of the Board. Any conditions placed upon a permit by the Department shall be enforceable to the same extent as a regulation of the Board.

(G) Any person who participated in a permitting action before the Department shall be notified by the Department of the action taken by the Department and the reasons for the action. Notification of the applicant shall be by certified mail.

(H) Any person who participated in a permitting action before the Department and who is adversely affected by such permitting action may file a petition for hearing before the Board. The petition shall be made in writing to the Board within 30 days from the date notice is given of the Department's action. Unless a timely request for hearing is made, the decision of the Department shall be final.

(I) If a timely petition for hearing is made, the Board shall hold a hearing within 90 days after receipt of the petition. The Board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the Board to substantially affect the public interest, the Board shall ensure that the, public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or, in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

(J) The Board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

(K) The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department.

(L) Notwithstanding any other provision of law, and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the Department, the Board or the court of appeals that a new source will or will not meet applicable local, state and federal air pollution standards and regulations shall be conclusive and is binding on every city, county and state agency, and as an issue before any such agency shall be deemed resolved in accordance with that final decision.

(M) Fees collected pursuant to this section shall be deposited in a fund created pursuant, to Section 74-2-16 NMSA 1978 if collected pursuant to a permit regulation adopted by the Board pursuant to this section.

('74 Code, § 6-16-7) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-8 VARIANCES.

(A) The Board may grant an individual variance from the limitations prescribed under the Air Quality Control Act, §§9-5-1-1 et seq., any regulation of the Board, or any permit condition imposed by the Department whenever it is found, upon presentation of adequate proof:

(1) That compliance with any part of the Air Quality Control Act, §§9-5-1-1 et seq., any regulation of the Board, or any permit condition will:

(a) Result in an arbitrary and unreasonable taking of property; or

(b) Impose an undue economic burden upon any lawful business, occupation or activity; and

(2) That the granting of the variance will not:

(a) Result in a condition injurious to health or safety; or

(b) Cause or contribute to an air contaminant level in excess of any primary national ambient air quality standard.

(B) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

(C) Any variance or renewal thereof shall be granted within the requirements of Subsection A of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available;

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures that, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this division (2) shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in divisions (1) and (2) of this division (C), it shall be for not more than one year.

(D) Any person seeking a variance shall do so by filing a petition for variance with the Director. The Director shall promptly investigate the petition and make a recommendation to the Board as to the disposition of the petition.

(E) Upon receiving the recommendation of the Director on the variance, the Board shall:

(1) If the recommendation of the Director favors a variance, hold a public hearing prior to the granting of any variance; and

(2) If the Director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

(F) In the hearing, the burden on proof shall be upon the petitioner.

('74 Code, § 6-16-8) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-9 JUDICIAL REVIEW; ADMINISTRATIVE ACTIONS.

(A) Any person adversely affected by an administrative action taken by the Board or the Director may appeal to the Court of Appeals. All appeals shall be upon the record made at the hearing and shall be taken to the Court of Appeals within 30 days following the date of the action being appealed.

(B) For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the Board pursuant to the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.

(C) Upon appeal, the Court of Appeals shall set aside the action only if found to be:

(1) Arbitrary, capricious or an abuse of discretion;

(2) Not supported by substantial evidence in the record; or

(3) Otherwise not in accordance with law.

(D) After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

(1) By the Board or the Director, whichever took the action being appealed; or

(2) By the Court of Appeals if the Board or the Director denies a stay or fails to act upon an application for a stay within 60 days after receipt of the application.

('74 Code, § 6-16-9) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-10 EMERGENCY POWERS OF THE DIRECTOR.

(A) Notwithstanding any other provision of the Air Quality Control Act, §§9-5-1-1 et seq., or any regulation of the Board, if the Director of the Department determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, the Director may bring suit in the District Court for the county to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

(B) If it is not practicable to assure prompt protection of the public health or welfare or the environment by commencement of a civil action, the Director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than 24 hours, unless the Director brings a civil action before the expiration of the 24 hours. If the Director brings an action within that time, the order shall be effective thereafter for 48 hours or for such longer period as may be authorized by the court pending litigation.

('74 Code, § 6-16-10) (Ord. 13-1975; Am Ord. 65-1993)

§ 9-5-1-11 CONFIDENTIAL INFORMATION.

(A) Any records, reports or information obtained under the Air Quality Control Act or §§9-5-1-1 et seq. by the Board or the Department shall be available to the public, except that upon a satisfactory showing by any person to the Director or the Board that records, reports or information, except emission data, or particular parts thereof, to which the Director or the Board has access under the Air Quality Control Act, if made public would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the Director or the Board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that such record, report or other information may be disclosed:

(1) To other officers, employees or authorized representatives of the Department or the Board concerned with carrying out the Air Quality Control Act;

(2) To officers, employees or authorized representatives of the United States Environmental Protection Agency concerned with carrying out the Federal Act; or

(3) When relevant, in any proceeding under the Air Quality Control Act or the Federal Act.

(B) The Board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.

('74 Code, § 6-16-11) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-12 LIMITATIONS ON REGULATIONS.

Sections 9-5-1-1 et seq. do not:

(A) Authorize the Board to make any regulation with respect to any condition or quality of the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries.

(B) Grant to the Board any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of air quality; or

(C) Supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

('74 Code, § 6-16-12) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-13 LOCAL AIR QUALITY PERMIT FUND ESTABLISHED.

(A) Pursuant to Section 74-2-16 NMSA 1978 and §§9-5-1-1 et seq., an Environmental Health Department air quality permit fund is established.

(B) All fees collected by the Department shall be deposited in the fund created in division (A) above, and shall be used by the city only for the purpose of paying the reasonable costs of funding the department's performance of the following permitting functions required by the Federal Clean Air Act Amendments of 1990 as follows:

(1) Reviewing and acting upon any application for a permit;

(2) If the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis and demonstration; and

(6) Preparing inventories and tracking emissions.

('74 Code, § 6-16-18) (Ord. 65-1993)

§ 9-5-1-14 INSPECTION.

The Director or an authorized representative, upon presentation of Departmental credentials:

(A) Shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located; and

(B) May at reasonable times:

(1) Have access to and copy any records required to be established and maintained by regulations of the Board or any permit condition; and

(2) Inspect any monitoring equipment and method required by regulations of the Board or by any permit condition; and

(3) Sample any emissions that are required to be sampled pursuant to regulation of the Board or any permit condition.

(C) If premises described in divisions (A) or (B) above are unoccupied, a Department employee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and demand entry.

(D) If entry is refused, the Mayor shall proceed to obtain a search warrant by filing the documents and following the procedures required by the Metropolitan Court or District Court. The sworn statement filed in conjunction with the application for the search warrant or order shall:

(1) Set forth the particular premises, or portion thereof, sought to be inspected;

(2) State that the owner or occupant of the premises or portion thereof, has refused entry;

(3) State that inspection of the premises or portion thereof is necessary to determine whether it complies with the requirements of §§ 9-5-1-1 et seq.;

(4) Set forth the particular provisions of §§9-5-1-1 et seq. sought to be enforced;

(5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion thereof, which constitutes a violation of §§ 9-5-1-1 et seq.; and

(6) State that the Mayor or the Mayor's designated representative is authorized by the city to make the inspection.

('74 Code, § 6-16-15) (Ord. 13-1975; Am. Ord. 15-1983; Am. Ord. 65-1993)

§ 9-5-1-15 REPRESENTATION OF THE DEPARTMENT, THE CITY AND THE COUNTY.

In any court action to enforce the provisions of the Air Quality Control Act, §§9-5-1-1 et seq. or any regulation, permit condition or emergency order adopted, imposed or issued pursuant thereto:

(A) The city and the Department shall be represented by the City Attorney; and

(B) The County or City Attorney shall be represented by the District Attorney.

('74 Code, § 6-16-14B) (Ord. 65-1993)

§ 9-5-1-98 VIOLATIONS; COMPLIANCE ORDERS; FIELD CITATIONS.

(A) Whenever, on the basis of any information, the Mayor determines that any person has violated or is violating any requirement, or prohibition of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation promulgated pursuant to §§9-5-1-1 et seq., or any condition of a permit issued pursuant thereto, the Mayor may:

(1) Issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) Commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

(B) Any order issued pursuant to division (A) above may include a suspension or revocation of any permit, or portion thereof, issued by the Mayor. Any penalty assessed in the order shall not exceed $15,000 per day of noncompliance for each violation.

(C) Any order issued pursuant to division (A) above shall become final unless, no later than 30 days after the order is served, the person named therein submits a written request to the Director for a public hearing. Upon such request, the Director shall promptly conduct a public hearing. The Director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the Director, who shall make the final decision.

(D) The Board may adopt a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $1,000 per day of violation may be issued by officers or employees of the Department as designated by the Mayor. The program will be implemented by the Department.

(E) Any person to whom a field citation is issued pursuant to division (D) above may, within a reasonable time as prescribed by regulation by the Board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

(F) Payment of a civil penalty required by a field citation issued pursuant to division (D) above shall not be a defense to further enforcement by the Department to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act or §§ 9-5-1-1 et seq. if the violation continues.

(G) In determining the amount of any penalty to be assessed pursuant to this section, the Director or the individual issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

(H) In connection with any proceeding under this section, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

(I) Penalties collected pursuant to an administrative order or a field citation shall be deposited in the city or the county general fund, as applicable.

('74 Code, § 6-16-13) (Ord. 65-1993)

§ 9-5-1-99 PENALTY.

(A) *Civil Penalty.* Any person who violates any provision of the Air Quality Control Act, §§9-5-1-1 et seq., any regulation of the Board or any permit condition or emergency order adopted or issued pursuant to the Air Quality Control Act or §§ 9-5-1-1 et seq. may be assessed a civil penalty not to exceed $15,000 for each day during any portion of which a violation occurs.

(B) *Criminal Penalties.*

(1) Any person who knowingly commits any violation of §§9-5-1-1 et seq. or a regulation of the Board which is not described as a felony in Section 74-2-14.C or 74-2-14.D NMSA 1978 is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

(2) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method to be maintained under the Air Quality Control Act or §§ 9-5-1-1 et seq. or regulation adopted pursuant thereto is guilty of a petty misdemeanor and shall, upon conviction, be punished by a fine of not more than $10,000, per day for each violation, or by imprisonment for not more than six months, or by both.

('74 Code, §§ 6-16-14A; 6-16-17) (Ord. 65-1993; Am. Ord. 23-1996)

Exhibit C

ARTICLE II. AIR POLLUTION[1]

Sec. 30-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air contaminant means any substance including, but not limited to, any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any decay or reaction product thereof.

Air pollution means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health, or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

Board means the Albuquerque-Bernalillo County Air Quality Control Board created by this article.

Department means the administrative agency of the Albuquerque-Bernalillo County Air Quality Control Board.

Director means the administrative head of the department or his authorized representative.

Emission limitation and *emission standard* means a requirement established by the board, the department, or pursuant to the federal act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to ensure continuous reduction.

Environmental department means the environmental department of the state.

Federal act means the federal Clean Air Act, its subsequent amendments and successor provisions.

Federal standard of performance means any standard of performance, emission limitation or emission standard adopted pursuant to 42 USC 7411 or 7412.

Hazardous air pollutant means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

Mandatory class I area means any of the following areas in the state that were in existence on August 7, 1977:

(1) National wilderness areas that exceed 5,000 acres in size; and

(2) National parks that exceed 6,000 acres in size.

Modification means any physical change in, or change in the method of operation of, a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that results in the emission of any regulated air contaminant not previously emitted, but does not include:

(1) A change in ownership of the source;

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[1]State law reference(s)—Air Quality Control Act, NMSA 1978, § 74-2-1 et seq.

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(2) Routine maintenance, repair or replacement;

(3) Installation of air pollution control equipment and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the federal act; or

(4) Unless previously limited by enforceable permit conditions:

a. An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

b. An increase in the hours of operation; or

c. Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

Nonattainment area means, for any air contaminant, an area that is designated "nonattainment" with respect to that contaminant within the meaning of section 107(d) of the federal act.

Plan means any and all parts of the state implementation plan that pertain to the county that are adopted by the board for submittal by the governor of the state to the federal environmental protection agency pursuant to 42 USC 7410.

Potential emission rate means the emission rate of a source at its maximum capacity in the absence of air pollution control equipment that is not vital to production of the normal product of the source or to its normal operation, also defined by board regulations as precontrolled emissions.

Regulated air contaminant means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act.

Significant deterioration means any increase in the ambient concentrations of any air contaminant above the levels allowed by the federal act or federal regulations for that air contaminant in the area within which the increase occurs.

Source means any structure, building, equipment, facility, installation or operation that emits or may emit any air contaminant.

Standard of performance means a requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to ensure continuous emission reduction.

State implementation plan means any plan submitted by the governor of the state to the federal Environmental Protection Agency pursuant to 42 USC 7410.

Toxic air pollutant means any air contaminant, except a hazardous air pollutant, classified by the board as a toxic air pollutant.

(Ord. No. 94-5, § 2, 2-2-94)

Cross reference(s)—Definitions generally, § 1-2.

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-2.

Sec. 30-32. Joint air quality control board.

(a) In accordance with the New Mexico Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), a joint air quality control board known as the Albuquerque-Bernalillo County Air Quality Control Board is hereby created. The board shall serve as a joint local authority acting on behalf of both the county and the City of Albuquerque. Within the exterior boundaries of the county, the board shall have authority and jurisdiction to exercise the

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same functions pertaining to air quality as the functions that have been delegated by the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) to the state environmental improvement board except any functions reserved exclusively for the environmental improvement board.

(b) The membership and organization of the board shall be as described below:

(1) Members of the board previously appointed and serving on February 2, 1994, shall continue serving their terms on the board. The length and termination date of their terms of office shall not be affected by the passage of this article.

(2) The board shall consist of seven members, three of whom shall be appointed by the board of county commissioners, and four of whom shall be appointed by the city.

(3) Members shall be appointed for three-year terms. No member shall serve more than two consecutive terms at a time. The positions on the board shall be staggered appointments so that no more than two city-appointee's terms expire in any single year, and no more than one county-appointee's term expires in any single year. Vacant positions shall be filled by individuals appointed by the same authority that appointed the outgoing member.

(4) Nominations and appointments to the board shall be made as follows:

a. At least a majority of the membership of the board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set forth in the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), as amended, and the federal Clean Air Act, 42 USC 7401 et seq., as amended. Further, to the extent that the requirement does not conflict with this subsection (b)(4)a of this section, board members will be selected for their concerns about, and commitment to, the local ambient air quality. Therefore, selections may be made from a broad range of persons representing the public interest and who are experienced or trained in disciplines including natural sciences, humanities, social studies, finance, medicine and health, engineering or physics, law, law enforcement, education, business and industry.

b. No person employed by either the county or the City of Albuquerque shall be a member of the board. No elected county or city official, and no member of the immediate family of any elected county or city official shall be appointed to the board.

c. County-appointed members shall be residents of the county.

d. A board member may be removed from office by the appointing authority if the member has missed three consecutive meetings or has been absent from more than 50 percent of the meetings during any 12 consecutive meetings.

e. If a vacancy occurs for reasons other than expiration of a term, the department shall promptly utilize the procedure described in subsection (b)(4)c of this section. Each vacancy shall be filled by the authority that appointed the departing member. The replacement member shall serve for the remainder of the unexpired term.

(5) Four members present shall constitute a quorum. A quorum shall be present for all matters decided by a vote of the board.

(6) Any action, order or decision of the board requires a simple majority vote of the members present, except for adoption, amendment or repeal of a board regulation, in which case the concurrence of four members shall be required.

(7) All officers of the board shall be elected annually by the board for one-year terms. No officer shall serve in the same position for more than two consecutive years.

(8) The board may adopt rules to govern its proceedings.

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(c) The board shall meet in public facilities with public seating available. The board shall meet monthly if a quorum is available, unless a meeting is unnecessary or delayed for good reason. The board shall hold a minimum of six monthly meetings a year. Special additional meetings may be held as needed. Notice of time, place and agenda of meetings shall be published according to the requirements of law. Meetings, work sessions and hearings of the board shall be open to the public.

(d) The director of the department shall record all transactions and proceedings of the board and shall perform the duties required by the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.). The director is the custodian of all files and records of the board, and shall meet with the board but does not have a vote.

(e) Any member of the board who has a conflict of interest regarding a matter before the board shall disqualify himself from the discussion and shall abstain from the vote on such matter. A conflict of interest means any interest which may yield, directly or indirectly, any monetary or other material benefit to the board member or the member's spouse or minor child.

(f) The county planning commission (CPC) and the city environmental planning commission (EPC) may appoint a member of the CPC and of the EPC, respectively, to be liaisons to the air quality control board. The CPC and EPC liaisons may attend board meetings and may participate in board discussions, but will not be members of the board and will not have a vote. The respective liaisons may communicate with the board and their respective planning commissions regarding air quality issues.

(Ord. No. 94-5, § 3, 2-2-94)

Cross reference(s)—Boards and commissions, § 2-431 et seq.

State law reference(s)—Local board, NMSA 1978, § 74-2-4.

Sec. 30-33. Duties and powers of the board.

(a) The board, in accordance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), shall prevent or abate air pollution within the county and the City of Albuquerque.

(b) The board shall:

(1) Adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and this article to attain and maintain national ambient air quality standards, and prevent or abate air pollution, including regulations prescribing air standards within the geographic area of the board's jurisdiction, or any part thereof; and

(2) Adopt a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions within the county or any part of the county.

(c) Regulations adopted by the board may:

(1) Include regulations to protect visibility in mandatory class I areas, to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas, provided that such regulations:

a. Shall be no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

b. Shall be applicable only to sources subject to such regulation pursuant to the federal act.

(2) Prescribe standards of performance for sources and emission standards for hazardous air pollutants that, except as provided in subsection (c)(3) of this section:

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a. Shall be no more stringent than but at least as stringent as required by federal standards of performance; and

b. Shall be applicable only to sources subject to such federal standards of performance.

(3) Include regulations governing emissions from solid waste incinerators that shall be at least as stringent as, and may be more stringent than, any applicable federal emissions limitations.

(4) Require notice to the department of the intent to introduce or allow the introduction of an air contaminant into the air within the geographical area of the board's jurisdiction.

(5) Require any person emitting any air contaminant to:

a. Install, use and maintain emission monitoring devices;

b. Sample emissions in accordance with methods and at locations and intervals as may be prescribed by the board;

c. Establish and maintain records of the nature and amount of emissions;

d. Submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

e. Provide any other reasonable information relating to the emission of air contaminants.

(d) Any regulation adopted under this section shall be consistent with federal law, if any, relating to control of motor vehicle emission.

(e) In making its regulations, the board shall give the weight it deems appropriate to all facts and circumstances, including but not limited to:

(1) Character and degree of injury to or interference with health, welfare, visibility and property;

(2) The public interest, including the social and economic value of the sources and subjects of air contaminants; and

(3) Technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

(Ord. No. 94-5, § 4, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-5.

Sec. 30-34. Duties and powers of the department.

(a) The department shall administer and enforce the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article and any regulations adopted pursuant thereto and any other laws relating to air pollution applicable within the county and the City of Albuquerque. The staff for the board shall be provided by the City of Albuquerque. The department shall perform, within the boundaries of the county, all functions delegated to the state environment department under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), except for the duties and powers reserved exclusively for the state environment department.

(b) The department shall develop facts and make investigations and studies consistent with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and this article and, as required for enforcement of such act and this article, enter at all reasonable times in or upon any private or public property, except private residences, that the department or the local agency has reasonable cause to believe is or will become a source contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any

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enforcement action is contemplated, and a copy shall be furnished to the owner or occupants of the premises before the action is filed.

(c) The department shall institute legal proceedings to compel compliance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any regulation of the board.

(d) The department shall encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity.

(e) The department shall consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system or mechanism or the air pollution problem that may be related to the source, device, system or mechanism, provided that consultation shall not relieve any person from compliance with the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, regulations in force pursuant thereto, and any other provision of law.

(f) The department shall establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of section 507 and of the federal act.

(g) The department shall accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government or from any person.

(h) The department shall classify and record air contaminant sources that, in its judgment, may cause or contribute to air pollution according to levels and types of emissions and other characteristics that relate to air pollution, provided that classifications may be for application to the county as a whole or to any designated area of the county and city, and shall be made with special reference to effects on health, economic and social factors and physical effects on property.

(i) The department shall develop and present to the board a plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the department's responsibility as established by this article.

(Ord. No. 94-5, § 5, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-5.1.

Sec. 30-35. Adoption of regulations; notice and hearings.

(a) Any person may recommend or propose regulations to the board for adoption. The board shall determine whether to hold a hearing within 60 days of submission of a proposed regulation.

(b) No regulation or emission control requirement shall be adopted until after a public hearing by the board. As used in this section, the term "regulation" includes any amendment or repeal thereof.

(c) Notice of the hearing shall be given at least 30 days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or air quality standard. The notice shall be published in a newspaper of general circulation in the county and city. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of its hearings.

(d) At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board.

(e) The board may designate a hearing officer to take evidence, and the hearing officer may make recommendations to the board.

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(f) No regulation or emission control requirement adopted by the board shall become effective until 30 days after its filing under the State Rules Act (NMSA 1978, §§ 14-3-24, 14-3-25, 14-4-1 et seq.).

(g) A copy of adopted air quality control regulations shall be on file in the office of the county clerk and shall be available for inspection by the public during regular business hours. Copies of such regulations shall be available to any person upon request and payment of a reasonable charge set by the county clerk.

(Ord. No. 94-5, § 6, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-6.

Sec. 30-36. Permits, permit appeals to the board and permit fees.

(a) By regulation, the board shall require:

(1) Any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department prior to such construction or modification; and

(2) Any person intending to operate any source for which an operating permit is required pursuant to the 1990 amendments to the federal act, except as otherwise specifically provided by regulation, to obtain an operating permit from the department.

(b) Regulations adopted by the board shall include at least the following provisions:

(1) Requirements for the submission of relevant information including, but not limited to, information the department deems necessary to ensure that regulations and standards under this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act will not be violated;

(2) Specification of the deadlines for processing permit applications, provided the deadline for a final decision by the department on a construction permit application may not exceed:

a. One hundred eighty days after the application is determined to be complete, if the application is not affected by requirements for prevention of significant deterioration; or

b. Two hundred forty days after the application is determined to be complete, if the application is affected by requirements for prevention of significant deterioration.

(3) Specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit, provided the permit regulations adopted include provisions requiring that notice be given to the state environment department of all applications by any source that emits, or has a potential emission rate of, 100 tons per year or more of any regulated air contaminant, including any source of fugitive emissions of any regulated air contaminant, at least 60 days prior to the date on which construction or major modification is to commence.

(4) A schedule of construction permit fees sufficient to cover:

a. The reasonable costs of reviewing and acting upon any application for such permit; and

b. The reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court or other costs associated with an enforcement action.

(5) A schedule of emission fees consistent with the provisions of section 502(b)(3) of the 1990 amendments to the federal act.

(6) Specification of the maximum length of time for which a permit shall be valid, provided that for an operating permit, such period may not exceed five years.

(7) For an operating permit only:

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a. Provisions consistent with sections 502(b) and 505(b) of the federal act that require: notice to, and review and comment by, the United States Environmental Protection Agency; and if the department receives notice of objection from the United States Environmental Protection Agency before the operating permit is issued, the department shall not issue the permit unless the permit is revised and issued pursuant to section 505(c) of the federal act;

b. Provisions governing renewal of the operating permit; and

c. Specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

(c) The department may deny any application for:

(1) A construction permit if it appears that the construction or modification will not meet applicable requirements of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), the federal act or any regulation adopted pursuant thereto; or

(2) An operating permit if:

a. The source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the board;

b. It appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national, state or applicable local ambient air quality standard; or

c. Any other provision of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act will be violated.

(d) The department may specify conditions to any permit granted under this section, including:

(1) For a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of this article, the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), the federal act or any regulations promulgated pursuant thereto; and

(2) For an operating permit:

a. Imposition of individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) and the federal act or the emission rate specified in the operating permit application, whichever is most stringent;

b. Compliance with applicable federal standards of performance;

c. Imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

d. Any combination of the conditions listed in this subsection (d).

(e) This section does not authorize the department to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, regulations of the board and permit conditions may be met by machinery, devices or equipment otherwise available.

(f) The issuance of a construction or operating permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any applicable regulations of the board. Any conditions placed upon a permit by the department shall be enforceable to the same extent as a regulation of the board.

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(g) Any person who participated in a permitting action before the department shall be notified by the department of the action taken by the department and the reasons for the action. Notification of the applicant shall be by certified mail.

(h) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. The petition shall be made in writing to the board within 30 days from the date notice is given of the department's action. Unless a timely request for hearing is made, the decision of the department shall be final.

(i) If a timely petition for hearing is made, the board shall hold a hearing within 90 days after receipt of the petition. The board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall ensure that the public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

(j) The board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

(k) The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department.

(l) Notwithstanding any other provision of law and subject to the provisions of NMSA 1978, § 74-2-4, a final decision on a permit by the department, the board or the court of appeals that a new source will or will not meet applicable local, state, and federal air pollution standards and regulations shall be conclusive and is binding on the county, the City of Albuquerque and every state agency and, as an issue before the same, shall be deemed resolved in accordance with that final decision.

(m) Fees collected pursuant to this section shall be deposited in a fund created pursuant to NMSA 1978, § 74-2-16 if collected pursuant to a permit regulation adopted by the board pursuant to this section.

(Ord. No. 94-5, § 7, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-7.

Sec. 30-37. Variances.

(a) The board may grant an individual variance from the limitations prescribed under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board, or any permit condition imposed by the department whenever it is found, upon presentation of adequate proof that:

(1) Compliance with any part of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board, or any permit condition will:

a. Result in an arbitrary and unreasonable taking of property; or

b. Impose an undue economic burden upon any lawful business, occupation or activity; and

(2) The granting of the variance will not:

a. Result in a condition injurious to health or safety; or

b. Cause or contribute to an air contaminant level in excess of any primary national ambient air standard.

(b) No variance shall be granted pursuant to this section until the board has considered the relative interests of the applicant, the other owners of property likely to be affected by the discharges and the general public.

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(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available.

(2) If the variance is granted on the grounds that compliance with the particular requirements from which variance is sought will necessitate the taking of measures that, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the board, is requisite for the taking of the necessary measures. A variance granted on the grounds specified in this subsection (c)(2) shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable.

(3) If the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (c)(2) of this section, it shall be for not more than one year.

(d) Any person seeking a variance shall do so by filing a petition for variance with the director. The director shall promptly investigate the petition and make a recommendation to the board as to the disposition of the petition.

(e) Upon receiving the recommendation of the director on the variance, the board shall:

(1) If the recommendation of the director favors a variance, hold a public hearing prior to the granting of any variance; and

(2) If the director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

(f) In the hearing, the burden of proof shall be upon the petitioner.

(Ord. No. 94-5, § 8, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-8.

Sec. 30-38. Judicial review; administrative actions.

(a) Any person adversely affected by an administrative action taken by the board or the director may appeal to the court of appeals. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within 30 days following the date of the action being appealed.

(b) For appeals of regulations, that date of the action shall be the date of the filing of the regulation by the board pursuant to the State Rules Act, (NMSA 1978, §§ 14-3-24, 14-3-25, 14-4-1 et seq.).

(c) Upon appeal, the court of appeals shall set aside the action only if found to be:

(1) Arbitrary, capricious or an abuse of discretion;

(2) Not supported by substantial evidence in the record; or

(3) Otherwise not in accordance with law.

(d) After a hearing and a showing of good cause by the appellant, a stay of action being appealed may be granted:

(1) By the board or the director, whichever took the action being appealed; or

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(2) By the court of appeals if the board or the director denies a stay or fails to act upon an application for a stay within 60 days after receipt of the application.

(Ord. No. 94-5, § 9, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-9.

Sec. 30-39. Emergency powers of the director.

(a) Notwithstanding any other provision of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article or any regulation of the board, if the director of the department determines that a source or combination of sources present an imminent and substantial endangerment to the public health or welfare or to the environment, the director may bring suit in the district court for the county to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

(b) If it is not practicable to ensure prompt protection of the public health or welfare or the environment by commencement of a civil action, the director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than 24 hours, unless the director brings a civil action before the expiration of the 24 hours. If the director brings an action within that time, the order shall be effective thereafter for 48 hours or for such longer period as may be authorized by the court pending litigation.

(Ord. No. 94-5, § 10, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-10.

Sec. 30-40. Confidential information.

(a) Any records, reports or information obtained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article by the board or the department shall be available to the public, except that upon a satisfactory showing to the director or the board, as applicable, by any person that records, reports or information, or particular parts thereof, except emission data, to which the director or the board has access under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), if made public would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the director or the board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of NMSA 1978, § 14-2-1 and 18 USC 1905, except that such record, report or other information may be disclosed:

(1) To other officers, employees or authorized representatives of the department or the board concerned with carrying out the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.);

(2) To officers, employees or authorized representatives of the United States Environmental Protection Agency concerned with carrying out the federal act; or

(3) When relevant, in any proceeding under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or the federal act.

(b) The board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.

(Ord. No. 94-5, § 11, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-11.

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Sec. 30-41. Limitations on article regulations.

This article does not:

(1) Authorize the board to make any regulation with respect to any condition or quality of the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries;

(2) Grant to the board any jurisdiction or authority affecting the relation between employees and employers with respect to or arising out of any condition of air quality; or

(3) Supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

(Ord. No. 94-5, § 12, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-11.1.

Sec. 30-42. Enforcement; compliance orders; field citations.

(a) Whenever, on the basis of any information, the director determines that any person has violated or is violating any requirement or prohibition of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation promulgated pursuant to this article, or any condition of a permit issued pursuant thereto, the director may:

(1) Issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) Commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

(b) Any order issued pursuant to subsection (a) of this section may include a suspension or revocation of any permit, or portion of a permit, issued by the director. Any penalty assessed in the order shall not exceed $15,000.00 per day of noncompliance for each violation.

(c) Any order issued pursuant to subsection (a) of this section shall become final unless, no later than 30 days after the order is served, the person named in this section submits a written request to the director for a public hearing. Upon such request, the director shall promptly conduct a public hearing. The director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the director, who shall make the final decision.

(d) The board may adopt a field citation program though regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $1,000.00 per day of violation may be issued by officers or employees of the department as designated by the director. The program will be implemented by the department.

(e) Any person to whom a field citation is issued pursuant to subsection (d) of this section may, within a reasonable time as prescribed by regulation by the board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

(f) Payment of a civil penalty required by a field citation issued pursuant to subsection (d) of this section shall not be a defense to further enforcement by the department to correct a violation or to assess the maximum

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statutory penalty pursuant to other authorities in the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article if the violation continues.

(g) In determining the amount of any penalty to be assessed pursuant to this section, the director or the individual issuing a field citation shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

(h) In connection with any proceeding under this section, the director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

(i) Penalties collected pursuant to an administrative order or a field citation shall be deposited in the county or City of Albuquerque general fund, as applicable.

(Ord. No. 94-5, § 13, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-12.

Sec. 30-43. Civil penalty; representation of the county and the city.

(a) Any person who violates any provision of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.), this article, any regulation of the board or any permit condition or emergency order adopted or issued pursuant to that act or this article may be assessed a civil penalty not to exceed $15,000.00 for each day during any portion of which a violation occurs.

(b) In any court action to enforce the provisions of the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article or regulation, permit condition or emergency order, adopted, imposed or issued pursuant thereto:

(1) The county shall be represented by the district attorney; and

(2) The City of Albuquerque shall be represented by the city attorney.

(Ord. No. 94-5, § 14, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-12.1.

Sec. 30-44. Inspection.

The director or an authorized representative, upon presentation of departmental credentials:

(1) Shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the board or any permit conditions are located; and

(2) May at reasonable times:

a. Have access to and copy any records required to be established and maintained by regulations of the board or any permit condition;

b. Inspect any monitoring equipment and method required by regulation of the board or by any permit condition; and

c. Sample any emissions that are required to be sampled pursuant to regulation of the board or any permit condition.

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(3) If premises described in subsection (1) or (2) of this section are unoccupied, a department employee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and demand entry.

(4) If entry is refused, the department shall proceed to obtain a search warrant by filing the documents and following the procedures required by the district court or metropolitan court. The sworn statement filed in conjunction with the application for the search warrant or order shall:

a. Set forth the particular premises, or portion of the premises, sought to be inspected;

b. State that the owner or occupant of the premises, or portion of the premises, has refused entry;

c. State that inspection of the premises or portion of the premises is necessary to determine whether it complies with the requirements of this article;

d. Set forth the particular provisions of this article sought to be enforced;

e. Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion of the premises, which constitutes a violation of this article; and

f. State that the department or the department's designated representative is authorized by the county manager to make the inspection.

(Ord. No. 94-5, § 15, 2-2-94)

State law reference(s)—Similar provisions, NMSA 1978, § 74-2-13.

Sec. 30-45. Enforcement summaries.

The department shall deliver to the county manager and the board of county commissioners, and to the mayor and city councilors or the designated representatives of any of them, a copy of the monthly enforcement summary which the department submits to the board.

(Ord. No. 94-5, § 16, 2-2-94)

Sec. 30-46. Criminal penalties for violation of article.

(a) Any person who knowingly commits any violation of this article or NMSA 1978, § 74-2-14(C) shall be punished as provided in section 1-6.

(b) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or a board regulation or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method to be maintained under the Air Quality Control Act (NMSA 1978, § 74-2-1 et seq.) or this article or regulation adopted pursuant thereto is guilty of a misdemeanor and shall, upon conviction, be punished as provided in section 1-6.

(c) Except as provided in NMSA 1978, § 74-2-14(C), (D), any person who knowingly commits any violation of a regulation of the board is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of NMSA 1978, § 31-19-1.

(Ord. No. 94-5, § 17, 2-2-94)

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Sec. 30-47. Local air quality permit fund.

(a) Pursuant to NMSA 1978, § 74-2-16 and this article, the city will establish an environmental health department air quality permit fund.

(b) All fees collected by the department shall be deposited in the fund created in subsection (a) of this section, and shall be used by the city only for the purpose of paying the reasonable costs of funding the department's performance for the county and the city of the following permitting functions required by the federal Clean Air Act Amendments of 1990 as follows:

(1) Reviewing and acting upon any application for a permit;

(2) If the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis and demonstration; and

(6) Preparing inventories and tracking emissions.

(Ord. No. 94-5, § 18, 2-2-94)

Secs. 30-48—30-75. Reserved.

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Exhibit D

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. R-23-176 ENACTMENT NO. R-2023-097

SPONSORED BY: Dan Lewis

RESOLUTION

ESTABLISHING A MORATORIUM FOR THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD TO ACT UNDER CHAPTER 9, ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR QUALITY CONTROL BOARD ORDINANCE UNTIL FEBRUARY 1, 2024.

WHEREAS, in R-2023-044 Council declared that Petition 2022-3 before the Albuquerque-Bernalillo County Air Quality Board ("Board") could be harmful to the welfare of the City; and

WHEREAS, the City Council declares the proposed rules in the record for Petition 2022-3 addresses quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, cause injury, contrary to New Mexico case law as held in *Southwest Organizing Project v. Albuquerque-Bernalillo Cty. Air Quality Control Bd.*, 2021-NMCA-005; and

WHEREAS, the City Council declares the proposed rules in the record for Petition 2022-3 purport to impact on industrial development by design and not as a consequence of preventing or abating air pollution, contrary to New Mexico case law as held in *Service Co. of New Mexico v. New Mexico Environmental Imp. Bd.*, 89 N.M. 223, 549 P.2d 638 (Ct. App. 1976); and

WHEREAS, the City Council is considering making changes to Sections 9-5-1-1 to -99 and needs time to carefully deliberate about further action; and

WHEREAS, the intended purpose of the resolution is to advance the health, safety and welfare of the public and to further goals and policies adopted by the Council.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

[Bracketed/Underscored Material] - New
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SECTION 1. ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD. The Albuquerque-Bernalillo County Air Quality Board shall have no authority to, and shall not make any regulation or standard to, address quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, cause injury; or adopt or amend a standard or regulation whereby the impact on industrial development is by design and not a consequence of preventing or abating air pollution until February 1, 2024.

SECTION 2. CITY OF ALBUQUERQUE. The City of Albuquerque shall not use its resources to facilitate any action by the Board to make, adopt, or amend any regulation or standard described in Section 1 until February 1.

SECTION 3. The City is directed to collaborate with Bernalillo County to address any differences in City and County air quality policies.

SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Council hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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FOIA No. 2025-EPA-09254 ED_020431_00001495-00068

PASSED AND ADOPTED THIS 8th DAY OF November, 2023
BY A VOTE OF: 5 FOR 4 AGAINST.

For: Bassan, Grout, Jones, Lewis, Sanchez

Against: Benton, Davis, Fiebelkorn, Peña

Pat Davis, President
City Council

APPROVED THIS 22 DAY OF [illegible], 2023

Bill No. R-23-176

- Veto -

Timothy M. Keller, Mayor
City of Albuquerque

VETO

The Mayor's veto was overridden by EC-23-403 on December 4, 2023 by a vote of 7 FOR and 2 AGAINST. For: Bassan,Davis, Grout, Jones Lewis, Pena, Sanchez Against: Benton, Fiebelkorn

ATTEST:

Rachel Rodarte for Ethan Watson
Ethan Watson, City Clerk

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FOIA No. 2025-EPA-09254 ED_020431_00001495-00069

Exhibit E

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-88 ENACTMENT NO. O-2023-029

SPONSORED BY: Dan Lewis

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ORDINANCE

REPEALING CHAPTER 9, ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR QUALITY CONTROL BOARD ORDINANCE; ABOLISHING THE CURRENT ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD; ADOPTING CHAPTER 9, ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR QUALITY CONTROL ORDINANCE; CREATING THE ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD.

WHEREAS, it has been asserted by legal counsel representing the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) that said Board is an autonomous entity established by state statute, and not subject to control by Environmental Health, the City Council, or the County Commission; and

WHEREAS, it has been further affirmed by legal counsel representing the Air Board that the Air Board maintains collaborative relations with Environmental Health, the New Mexico Environmental Department, and the Environmental Protection Agency, without being governed by them; and

WHEREAS, these statements suggest that the Air Board may not be answerable to elected officials and, consequently, the electorate; and

WHEREAS, the absence of adherence to state law by the Air Board could result in a lack of accountability; and

WHEREAS, not all meetings sanctioned by the body regarding policy changes are accessible to the general public; and

WHEREAS, the Air Board conducts sub-committee meetings and engages select members of the public in those meetings; and

WHEREAS, the Open Meetings Act was established with the intent of ensuring that policy decisions affecting the public are made in a transparent

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and open manner, to serve the best interests of all residents of New Mexico; and

WHEREAS, adherence to the Open Meetings Act is essential to the preservation of a free society and the democratic process, as it is crucial for a policymaking body to maintain the trust of the public; and

WHEREAS, a significant portion of the Air Board comprises individuals advocating for specific interests rather than a diverse representation of experts in the relevant subject matter; and

WHEREAS, historically, the Air Board has strived to include members with backgrounds in the fields of medicine, science, industry, advocacy, law, and technical academia; and

WHEREAS, it is imperative to maintain a composition that reflects the diverse expertise required for the comprehensive consideration of pertinent matters.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. REPEALER. Chapter 9, Article 5, Part 1 is hereby repealed.

SECTION 2. NEW MATERIAL. Chapter 9, Article 5, Part 1 is hereby added to read as follows:

"PART 1: AIR QUALITY CONTROL BOARD.

§ 9-5-1-1 SHORT TITLE.

Sections 9-5-1-1 et seq. may be cited as the "Joint Air Quality Control Board Ordinance."

§ 9-5-1-2 DEFINITIONS.

As provided in the New Mexico Air Quality Control Act, Sections 74-2-1 through 74-2-17 NMSA 1978 (hereinafter referred to as the "Air Quality Control Act"), the following definitions shall apply to terms used in §§ 9-5-1-1 et seq.

AIR CONTAMINANT. Any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any decay or reaction product thereof.

AIR POLLUTION. The emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a

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duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

BOARD. The Albuquerque-Bernalillo County Air Quality Control Board created by §§ 9-5-1-1 et seq.

DEPARTMENT. The administrative agency that is the local agency under the Air Quality Control Act.

DIRECTOR. The administrative head of the Department or his or her authorized representative.

EMISSION LIMITATION and EMISSION STANDARD. A requirement established by the Board, the Department, or pursuant to the Federal Act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

ENVIRONMENT DEPARTMENT. The Environment Department of the state.

EX PARTE COMMUNICATION. An oral or other communication with a board member, a board hearing officer, or board attorney regarding the merits of an expected or pending petition or related proceeding if:

(1) the communication is made by a person, including a board member, hearing clerk, hearing officer, or board attorney;

(2) the person communicating knows or has reason to know a petition will be or has been filed for a hearing before the Board;

(3) the communication is made without all other parties to the proceeding being present or receiving the same communication received by the board member, board hearing officer, or board attorney, except where authorized by the closed meeting provisions of the Open Meetings Act; and

(4) the communication is intended to affect, or reasonably may be expected to affect the board member's, board hearing officer's, or board attorney's opinion regarding the merits of the expected or pending petition or related proceeding.

FEDERAL ACT. The Federal Clean Air Act, 42 U.S.C. 7401 through 7642, its subsequent amendments and successor provisions.

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FEDERAL STANDARD OF PERFORMANCE. Any standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412.

HAZARDOUS AIR POLLUTANT. An air contaminant that has been classified as a hazardous air pollutant pursuant to the Federal Act.

MANDATORY CLASS I AREA. Any of the following areas in the state of New Mexico that were in existence on August 7, 1977:

(1) National wilderness areas that exceed 5,000 acres in size; and

(2) National parks that exceed 6,000 acres in size.

MAYOR. The Mayor or his or her authorized representative.

MODIFICATION. Any physical change in, or change in the method of operation of a source that results in an increase in the Potential Emission Rate of any Regulated Air Contaminant emitted by the source or that results in the emission of any Regulated Air Contaminant not previously emitted, but does not include:

(1) A change in ownership of the source;

(2) Routine maintenance, repair or replacement;

(3) Installation of air pollution control equipment and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the Federal Act; or

(4) Unless previously limited by enforceable permit conditions:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) An increase in the hours of operation; or

(c) Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

NONATTAINMENT AREA. For any air contaminant, an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the Federal Act.

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PERSON. An individual, partnership, corporation, association, the state or political subdivision of the state or any agency, department, or instrumentality of the United States and any of their officers, agents or employees.

PLAN. Any and all parts of the state implementation plan that pertain to the County that are adopted by the Board for submittal by the Governor of the state to the Federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.

POTENTIAL EMISSION RATE. The emission rate of a source at its maximum capacity in the absence of air pollution control equipment that is not vital to production of the normal product of the source or to its normal operation; also defined by Board regulations as "pre-controlled" emissions.

REGULATED AIR CONTAMINANT. Any air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the Federal Act.

SIGNIFICANT DETERIORATION. Any increase in the ambient concentrations of any air contaminant above the levels allowed by the Federal Act or Federal regulations for that air contaminant in the area within which the increase occurs.

SOURCE. Any structure, building, equipment, facility, installation or operation that emits or may emit any air contaminant.

STANDARD OF PERFORMANCE. A requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction.

STATE IMPLEMENTATION PLAN. Any plan submitted by the Governor of the state of New Mexico to the Federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.

§ 9-5-1-3 JOINT AIR QUALITY CONTROL BOARD.

(A) In accordance with the New Mexico Air Quality Control Act, a joint air quality control board known as the Albuquerque-Bernalillo County Air Quality Control Board is created. The Board shall serve as a joint local authority acting on behalf of both the City and the County. Within the exterior boundaries of the county, the Board shall have authority and jurisdiction to exercise the same functions pertaining to air quality as the functions that have

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been delegated by the Air Quality Control Act to the New Mexico Environmental Improvement Board except any functions reserved exclusively for the Environmental Improvement Board.

(B) The membership and organization of the Board shall be as described in this section.

(1) The Board shall consist of seven members, four of whom shall be appointed by the Mayor with the advice and consent of the City Council and three of whom shall be appointed by the County Commission. The Mayor shall submit qualified appointments to City Council within 30 days of the effective date. If the Mayor does not timely submit qualified persons for appointment, City Council may appoint the initial members of the Board.

(2) Members shall be appointed for three-year terms. No member shall serve more than two consecutive terms at a time. If a person is appointed to fill an unexpired term of another member, that term shall be considered a term for the purpose of this limitation. The positions on the Board shall be staggered appointments so no more than two City appointee's terms expire in any single year. Vacant positions shall be filled by individuals appointed by the same authority that appointed the outgoing member.

(3) Nominations and appointments to the Board shall be made as follows:

(a) At least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set forth in the New Mexico Air Quality Control Act, as amended, and the Federal Clean Air Act, 42 U.S.C.A. Section 7401, et seq., as amended. The board should be comprised of members who broadly represent the diversity and demographics of the City by way of, including but not limited to, cultural, gender, and geographic diversity. Further, to the extent that the requirement does not conflict with this division (a), Board members will be selected as follows: one Board member shall be a registered professional licensed engineer who shall have at least five (5) years' experience in the field of air pollution control; one Board member shall be a physician licensed in New Mexico who shall be experienced in the health effects of air contaminants; one Board member shall be a person involved in

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the program of an institute of higher learning in the state involved in the conducting of training in air pollution evaluation and control; and one Board member shall be a person from City industry with current full-time employment in a private manufacturing concern and have a college degree and 8 years of combined technical training and experience in permit compliance or air pollution abatement for Title 5 or non-Title 5 sources for a source permitted in the City or County. As used in this section: REPRESENT THE PUBLIC means does not have a controlling interest in, have 5 percent or more of his or her capital invested in, serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders or any trade or business association of which such a person is a member; SIGNIFICANT PORTION OF INCOME means 10 percent or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant, to retirement, pension, or singular arrangement. Income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient's gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders; and PERSONS SUBJECT TO PERMITS OR ENFORCEMENT ORDERS includes any individual, corporation, partnership, or association who holds, is an applicant for, or is subject to any permit, or who is or may become subject to any enforcement order under the Federal Clean Air Act, Air Quality Control Act, any regulation of the Board or any permit condition issued thereto, except that it does not include (1) an individual who is or may become subject to an enforcement order solely by reason of his or her ownership or operation of a motor vehicle or (2) any department or agency of, a state, local or regional government.

(b) No person employed on a full time basis by either the City or the County shall be a member of the Board. No elected City or County official, and no member of the immediate family of any elected City or County official shall

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be appointed to the Board.

(c) Members shall submit to the Department a signed written statement to assure compliance with the applicable law on Board composition, upon appointment and renewed annually or with any change in employment, and such statement shall be available for public inspection. In the event either the Department cannot make a finding that at least a majority of the Board as constituted by appointment of its members meets the requirements of applicable law, the Department shall notify the City Council and the County Commission of the determination that at least a majority of its membership does not meet the requirements. The Department shall advise and make recommendations regarding corrective action necessary to allow the Board to be qualified under applicable law, including substitutionary appointments of a member or members. The Board shall not act to hear petitions of permit appeals, variances, or regulatory changes until the City Council and County Commission have both determined that it can do so consistent with applicable law.

(d) City-appointed members shall be residents of the City and County-appointed members shall be residents of the County.

(e) A Board member may be removed from office by the appointing authority if:

(i) The appointing authority determines the member has violated any law, regulation, or ordinance, or for other good cause such as malfeasance or the intentional failure to carry out the duties of the Board, or is otherwise incapable or unfit to discharge the duties of the office;

(ii) the member has missed three consecutive meetings or has been absent from more than 50% of the meetings during any 12 consecutive meetings; or

(iii) to comply with the requirements of division (B)(3)(a) for member composition of the Board.

(f) At least two months before a Board member's term expires, the Department shall solicit a recommended list of qualified members for the City vacancy as suggested by the City Council and the Department for consideration by the Mayor. The County Commission will appoint its

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representatives to the Board. The list shall include a brief biography describing the qualifications of each candidate. From the list, as modified or enlarged by the appointing authority, appointments to the Board will be made.

(g) Candidates appointed shall be notified in writing, and the candidate must accept or reject the appointment in writing.

(h) Unless a member retires or is removed, each member shall serve until a successor has been appointed.

(i) If a vacancy occurs for reasons other than expiration of a term, the Department shall promptly utilize the procedure described in division (e) above. Each vacancy shall be filled by the authority that appointed the departing member. The replacement member shall serve for the remainder of the unexpired term.

(4) Four members present shall constitute a quorum. A quorum shall be present for all matters decided by a vote of the Board.

(5) Any action, order or decision of the Board requires a simple majority vote of the members present, except for adoption, amendment or repeal of a Board regulation, in which case the concurrence of four members shall be required.

(6) All officers of the Board shall be elected annually by the Board for one-year terms. No officer shall serve in the same position for more than two consecutive years at a time.

(7) The Board may adopt rules to govern its proceedings. Such rules shall not take effect until reviewed and approved by the City Attorney and County Attorney.

(C) The Board shall meet in public facilities with public seating available.

(D) The Board shall meet monthly if a quorum is available unless a meeting is unnecessary or delayed for good reason. The Board shall hold a minimum of six monthly meetings a year. Special additional meetings may be held as needed.

(E) Notice of time, place and agenda of meetings, work sessions, committee meetings, hearings, any other gathering of a quorum of the Board, and subcommittee meetings shall be published according to the requirements of law, including the Open Meetings Act. Meetings, work sessions, committee

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meetings, hearings and any other gathering of a quorum of the Board, and subcommittee meetings shall be open to the public and shall follow the procedures described in the Open Meetings Act.

(F) In addition to any requirements applicable to each member based on the member's appointing authority as set forth in the City and County codes of conduct, any member of the Board who has a conflict of interest regarding a matter before the Board shall disqualify himself or herself from the discussion and shall abstain from the vote on such matter. If a potential conflict of interest is raised during a meeting a member of the board shall submit the question to the entire Board for a determination of whether disqualification is necessary. The member with the potential conflict being voted on shall not vote in this determination. The Board's determination of whether disqualification is necessary shall be final. In the event a member is made aware of a conflict of interest requiring disqualification or abstention outside of a meeting, the member shall disclose the potential conflict of interest to the board and may seek guidance concerning disqualification from the board attorney or seek an advisory opinion from the County or City, as applicable to each member based on the member's appointing authority. A conflict of interest means any interest which may yield, directly or indirectly any monetary or other material benefit to the Board member or the member's spouse or minor child.

(G) The City Environmental Planning Commission (EPC) and the County Planning Commission (CPC) may appoint a member of the EPC and of the CPC, respectively, to be liaisons to the Air Quality Control Board. The EPC and CPC liaisons may attend Board meetings and may participate in Board discussions, but will not be members of the Board and will not vote. The respective liaisons may communicate with the Board and their respective planning commissions regarding air quality issues.

(H) The City shall provide the administrative support it deems necessary to the Board to assist the Board with carrying out the administrative functions of its powers and duties under the Air Quality Control Act. Nothing herein shall limit the City's authority and ability to maintain full oversight and control over City resources.

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(1) The Department shall attend all meetings of the Board, but not be entitled to a vote. The Department shall record all transactions and proceedings of the Board. The Department shall handle correspondence, keep records, prepare reports, and perform such other duties as the City may direct or authorize to carry out the administrative functions of the City and Board's powers and duties under the Air Quality Control Act.

(2) The Director is the custodian of all files and records of the Board and the Board shall provide such files and records to the Director upon request.

(3) The Director shall be an ex officio member of the Board and may meet with the Board, but does not have a vote. Nothing herein limits or waives ex parte communication prohibitions which shall apply to the Director.

(4) Staff may be an employee of the City but shall not include such employee's supervisory staff.

(5) In the exercise of any of its powers or duties, the Board may act with legal advice received in accordance with the Open Meetings Act, Chapter 10, Article 15, NMSA 1978. Such legal advice shall be provided by the City. Such legal research shall be distributed to all Board members. Legal advice and legal research shall only be requested with the concurrence of four Board members. An attorney to the Board shall not be a member of the Board or serve as an ex-officio member, and shall act only in an advisory capacity. The Board shall not delegate its authority to the Board's attorney.

§ 9-5-1-4 DUTIES AND POWERS OF THE BOARD.

(A) The Board, in accordance with the Air Quality Control Act, shall prevent or abate Air Pollution within the City and County.

(B) The Board shall:

(1) Adopt, promulgate, publish, amend and repeal regulations consistent with the Air Quality Control Act and §§ 9-5-1-1 et seq. to attain and maintain national ambient air quality standards and prevent or abate air pollution, including regulations prescribing air standards, within the geographic area of the Board's jurisdiction, or any part thereof; and

(2) Adopt a plan for the regulation, control, prevention or abatement of Air Pollution, recognizing the differences, needs, requirements and conditions within the County or any part thereof.

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(C) Regulations adopted by the Board may:

(1) Include regulations to protect visibility in Mandatory Class I Areas, to prevent significant deterioration of air quality and to achieve national ambient air quality standards in nonattainment areas, provided that such regulations:

(a) shall be no more stringent than but at least as stringent as required by the Federal Act and federal regulations pertaining to visibility protection in Mandatory Class I Areas, pertaining to prevention of significant deterioration and pertaining to nonattainment areas; and

(b) Shall be applicable only to sources subject to such regulation pursuant to the Federal Act;

(2) Prescribe standards of performance for Sources and Emission Standards for Hazardous Air Pollutants that, except as provided in division (3) below:

(a) Shall be no more stringent than but at least as stringent as required by federal standards of performance; and

(b) Shall be applicable only to sources subject to such federal standards of performance;

(3) Include regulations governing emissions from solid waste incinerators that shall be as least as stringent as, and may be more stringent than, any applicable federal emission limitations:

(4) Require notice to the Department of the intent to introduce or allow the introduction of an air contaminant into the air within the geographical area of the Board's jurisdiction; and

(5) Require any person emitting any air contaminant to:

(a) Install, use and maintain emission monitoring devices;

(b) Sample emissions in accordance with methods and at locations and intervals as may be prescribed by the Board;

(c) Establish and maintain records of the nature and amount of emissions;

(d) Submit reports regarding the nature and amounts of emissions and the performance of emission control devices; and

(e) Provide any other reasonable information relating to the emission of air contaminants.

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(D) Any regulation adopted under this section shall be consistent with federal law, if any, relating to control of motor vehicle emission.

(E) In making its regulations, the Board shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

(1) Character and degree of injury to or interference with health, welfare, visibility and property;

(2) The public interest, including the social and economic value of the sources and subjects of air contaminants; and

(3) Technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

§ 9-5-1-5 DUTIES AND POWERS OF THE DEPARTMENT.

The Department shall:

(A) Administer and enforce the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. and any regulations adopted pursuant thereto and any other laws relating to Air Pollution applicable within the City and the County. The Department shall perform, within the boundaries of the County, all functions delegated to the New Mexico Environment Department under the Act, except for the duties and powers reserved exclusively for the Environment Department.

(B) Develop facts and make investigations and studies consistent with the Air Quality Control Act and §§ 9-5-1-1 et seq., and in connection therewith, enter at all reasonable times in or upon any private or public property, except private residences, that the Department has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any enforcement action is contemplated, and a copy thereof shall be furnished to the owner or occupant of the premises before the action is filed.

(C) Institute legal proceedings to compel compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., or any regulation of the Board.

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(D) Encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity.

(E) Consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system, or mechanism or the air pollution problem that may be related to the source, device, system or mechanism, provided that consultation shall not relieve any person from compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., regulations in force, pursuant thereto, or any other provision of law.

(F) Establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of Section 507 of the Federal Act.

(G) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government or from any person.

(H) Classify and record air contaminant sources that in its judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics that relate to air pollution, provided that classifications may be for application to the County as a whole or to any designated area of the City or County, and shall be made with special reference to the effects on health, economic and social factors and physical effects on property.

(I) Develop and present to the Board a Plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the Department's responsibility as established by §§ 9-5-1-1 et seq.

§ 9-5-1-6 ADOPTION OF REGULATIONS; NOTICE AND HEARING.

(A) Any person may recommend or propose regulations to the Board for adoption.

(B) Persons interested in recommending or proposing regulations shall engage other interested persons, the Department, and any other relevant regulatory entities in the regulation development process. The petition shall

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identify the activities undertaken for development of the proposed regulation text and how the petitioner engaged other interested persons, the Department, and any other relevant regulatory entities. Failure to solicit and consider the positions of others may result in the denial of a hearing.

(C) The Board shall determine whether to hold a hearing within 60 days of the submission of a proposed regulation. In addition to other applicable notice requirements, notice of the Board's intention to consider whether to hold a hearing shall be given at least 15 days prior to the meeting at which the matter will be considered. At a minimum, notice shall be posted in the lobby of City Hall and County offices; electronically on the Board's web site; and in writing to the Director. The notice shall state the subject, the time and the place of the meeting and the manner in which interested persons may obtain relevant information and present their views.

(D) No regulation or emission control requirement shall be adopted until after a public hearing by the Board. As used in this section, REGULATION includes any amendment or repeal thereof.

(E) Notice of hearing shall be given at least 30 days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The subject shall include a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule with reasonable specificity. The notice shall also state where interested persons may secure copies of any proposed regulation or air quality standard. The notice shall be published in a newspaper of general circulation in the City and County. Reasonable effort shall be made to give notice to all persons who have made a written request to the Board for advance notice of its hearings.

(F) The Board shall not consider alternate proposals at the hearing, though it can consider modifications to a proposal which simply deletes, clarifies or elaborates on elements of the already-submitted proposal without adding or changing substantive new obligations or requirements.

(G) At the hearing, the Board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or

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represented at the hearing shall be given written notice of the action of the Board.

(H) The Board shall designate a hearing officer to take evidence in the hearing.

(I) All hearings shall be recorded verbatim and any transcription costs shall be borne by the petitioner.

(J) At no time before a petition is expected to be filed and at no time between the filing of a petition and the final decision of the Board or withdrawal of the petition or related regulatory action shall any person have ex parte communication.

(K) No regulation or emission control requirement shall be filed under the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978, until at least 60 days after it is presented by the Department to City Council. No regulation or emission control requirement adopted by the Board shall become effective until 30 days after its filing under the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.

(L) A copy of adopted air quality control regulations shall be on file in the office of the City Clerk and shall be available for inspection by the public during regular business hours. Copies of the regulations shall be available to any person upon request and payment of a reasonable charge set by the Mayor.

§ 9-5-1-7 PERMITS; APPEALS; FEES.

(A) By regulation, the Board shall require:

(1) Any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the Department prior to such construction or modification; and

(2) Any person intending to operate any source for which an operating permit is required pursuant to the 1990 amendments to the Federal Act, except as otherwise specifically provided by regulation, to obtain an operating permit from the Department.

(B) Regulations adopted by the Board shall include at least the following provisions:

(1) Requirements for the submission of relevant information, including

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but not limited to information the Department deems necessary to ensure that regulations and standards under §§ 9-5-1-1 et seq., the Air Quality Control Act or the Federal Act will not be violated.

(2) Specification of the deadlines for processing permit applications; provided, the deadline for a final decision by the Department on a construction permit application may not exceed:

(a) One hundred and eighty days after the application is determined to be complete, if the application is not affected by requirements for prevention of significant deterioration; or

(b) Two hundred and forty days after the application is determined to be complete, if the application is affected by requirements for prevention of significant deterioration;

(3) Specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit, provided the permit regulations adopted include provisions requiring that notice be given to the New Mexico Environment Department of all applications by any source that emits, or has a Potential Emission Rate of 100 tons per year or more of any Regulated Air Contaminant, including any source of fugitive emissions of any Regulated Air Contaminant, at least 60 days prior to the date on which construction or major modification is to commence;

(4) A schedule of construction permit fees sufficient to cover:

(a) The reasonable costs of reviewing and acting upon any application for such permit; and

(b) The reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court or other costs associated with an enforcement action.

(5) A schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the Federal Act;

(6) Specification of the maximum length of time for which a permit shall be valid, provided that for an operating permit, such period may not exceed five years; and

(7) For an operating permit only:

(a) Provisions, consistent with Sections 502(b) and 505(b) of the Federal

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Act, that require:

1. Notice to and review and comment by the United States Environmental Protection Agency (EPA); and

2. If the Department receives notice of objection from the United States Environmental Protection Agency before the operating permit is issued, the Department shall not issue the permit unless the permit is revised and issued pursuant to Section 505(c) of the Federal Act;

(b) Provisions governing renewal of the operating permit; and

(c) Specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

(C) The Department may deny any application for:

(1) A construction permit if it appears that the construction or modification will not meet applicable requirements of §§ 9- 5-1-1 et seq., the Air Quality Control Act, the Federal Act or any regulation adopted pursuant thereto; or

(2) An operating permit if:

(a) The source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the Board; or

(b) It appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national, state or applicable local ambient air quality standard; or

(c) Any other provision of §§ 9-5-1-1 et seq. and the Air Quality Control Act or the Federal Act will be violated.

(D) The Department may specify conditions to any permit granted under this section, including:

(1) For a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of §§ 9-5-1-1 et seq., the Air Quality Control Act, the Federal Act or any regulations promulgated pursuant thereto; and

(2) For an operating permit:

(a) Imposition of, individual emission limits, determined on a case-by-

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case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the Federal Act or the emission rate specified in the operating permit application, whichever is most stringent;

(b) Compliance with applicable federal standards of performance;

(c) Imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) Any combination of the conditions listed above.

(E) This section does not authorize the Department to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, regulations of the Board and permit conditions may be met by machinery, devices or equipment otherwise available.

(F) The issuance of a construction or operating permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. or any applicable regulations of the Board. Any conditions placed upon a permit by the Department shall be enforceable to the same extent as a regulation of the Board.

(G) Any person who participated in a permitting action before the Department shall be notified by the Department of the action taken by the Department and the reasons for the action. Notification of the applicant shall be by certified mail.

(H) Any person who participated in a permitting action before the Department and who is adversely affected by such permitting action may file a petition for hearing before the Board. The petition shall be made in writing to the Board within 30 days from the date notice is given of the Department's action. Unless a timely request for hearing is made, the decision of the Department shall be final.

(I) If a timely petition for hearing is made, the Board shall hold a hearing within 90 days after receipt of the petition. The Board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting action deemed by the Board to substantially affect the public interest, the Board shall ensure that the, public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be

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given a reasonable opportunity to submit data, views or arguments orally or, in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

(J) The Board shall designate a hearing officer to take evidence in the hearing. All hearings shall be recorded verbatim and any transcription and administrative costs shall be borne by the petitioner.

(K) The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department.

(L) At no time before a petition is expected to be filed and at no time between the filing of a petition and the final decision of the Board or withdrawal of the petition or related permit action shall any person have ex parte communication.

(M) Notwithstanding any other provision of law, and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the Department, the Board or the court of appeals that a new source will or will not meet applicable local, state and federal air pollution standards and regulations shall be conclusive and is binding on every city, county and state agency, and as an issue before any such agency shall be deemed resolved in accordance with that final decision.

(N) Fees collected pursuant to this section shall be deposited in a fund created pursuant, to Section 74-2-16 NMSA 1978 if collected pursuant to a permit regulation adopted by the Board pursuant to this section.

§ 9-5-1-8 VARIANCES.

(A) The Board may grant an individual variance from the limitations prescribed under the Air Quality Control Act, §§ 9-5-1- 1 et seq., any regulation of the Board, or any permit condition imposed by the Department whenever it is found, upon presentation of adequate proof:

(1) That compliance with any part of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation of the Board, or any permit condition will:

(a) Result in an arbitrary and unreasonable taking of property; or

(b) Impose an undue economic burden upon any lawful business,

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occupation or activity; and

(2) That the granting of the variance will not:

(a) Result in a condition injurious to health or safety; or

(b) Cause or contribute to an air contaminant level in excess of any primary national ambient air quality standard.

(B) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

(C) Any variance or renewal thereof shall be granted within the requirements of Subsection A of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the ground that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available; If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures that, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this division (2) shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(2) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in divisions (1) and (2) of this division (C), it shall be for not more than one year.

(D) Any person seeking a variance shall do so by filing a petition for variance with the Director. The Director shall promptly investigate the petition and make a recommendation to the Board as to the disposition of the petition.

(E) Upon receiving the recommendation of the Director on the variance, the Board shall:

(1) If the recommendation of the Director favors a variance, hold a

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public hearing prior to the granting of any variance; and

(2) If the Director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

(F) In the hearing, the burden of proof shall be upon the petitioner.

(G) At no time before a petition is expected to be filed and at no time between the filing of a petition and the final decision of the Board or withdrawal of the petition or related variance action shall any person have ex parte communication.

§ 9-5-1-9 JUDICIAL REVIEW; ADMINISTRATIVE ACTIONS.

(A) Any person adversely affected by an administrative action taken by the Board or the Director may appeal to the Court of Appeals. All appeals shall be upon the record made at the hearing and shall be taken to the Court of Appeals within 30 days following the date of the action being appealed.

(B) For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the Board pursuant to the State Rules Act, Sections 14-3-24, 14-3-25, and 14-4-1 through 14-4-9 NMSA 1978.

(C) Upon appeal, the Court of Appeals shall set aside the action only if found to be:

(1) Arbitrary, capricious or an abuse of discretion;

(2) Not supported by substantial evidence in the record; or

(3) Otherwise not in accordance with law.

(D) After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

(1) By the Board or the Director, whichever took the action being appealed; or

(2) By the Court of Appeals if the Board or the Director denies a stay or fails to act upon an application for a stay within 60 days after receipt of the application.

§ 9-5-1-10 EMERGENCY POWERS OF THE DIRECTOR.

(A) Notwithstanding any other provision of the Air Quality Control Act, §§ 9-5-1-1 et seq., or any regulation of the Board, if the Director of the Department determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to

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the environment, the Director may bring suit in the District Court for the County to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

(B) If it is not practicable to assure prompt protection of the public health or welfare or the environment by commencement of a civil action, the Director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than 24 hours, unless the Director brings a civil action before the expiration of the 24 hours. If the Director brings an action within that time, the order shall be effective thereafter for 48 hours or for such longer period as may be authorized by the court pending litigation.

§ 9-5-1-11 CONFIDENTIAL INFORMATION.

(A) Any records, reports or information obtained under the Air Quality Control Act or §§ 9-5-1-1 et seq. by the Board or the Department shall be available to the public, except that upon a satisfactory showing by any person to the Director or the Board that records, reports or information, except emission data, or particular parts thereof, to which the Director or the Board has access under the Air Quality Control Act, if made public would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the Director or the Board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that such record, report or other information may be disclosed:

(1) To other officers, employees or authorized representatives of the Department or the Board concerned with carrying out the Air Quality Control Act;

(2) To officers, employees or authorized representatives of the United States Environmental Protection Agency concerned with carrying out the Federal Act; or

(3) When relevant, in any proceeding under the Air Quality Control Act

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or the Federal Act.

(B) The Board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.

§ 9-5-1-12 LIMITATIONS ON AUTHORITY AND REGULATIONS.

(A) Sections 9-5-1-1 et seq. do not:

(1) Authorize the Board to make any regulation with respect to any condition or quality of the outdoor atmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries;

(2) Grant to the Board any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of air quality; or

(3) Supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

(B) The Board shall have no authority to:

(1) Make any regulation to address quality of life impacts absent scientific evidence that there is a nexus to air pollution by identifying the quantities and durations of air contaminants that may, with reasonable probability, cause injury;

(2) Adopt or amend a standard or regulation whereby the impact on industrial development is by design and not a consequence of preventing or abating air pollution;

(3) Expand the definition of air pollution;

(4) Serve as a forum for public discussion for matters not on the agenda;

(5) Draft and present to itself regulations, except it may adopt bylaws to govern its non-hearing proceedings in accordance with § 9-5-1-3(B)(7);

(6) Direct the work of the Director or Department, including no authority, express or implied, to advise, recommend or determine costs associated with Board activities and the City's ability to pay such costs;

(7) Recommend to the Mayor, Director, Department, County Manager,

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City Council, or County Commission policies for air quality matters, needs, improvements, and programs;

(8) Advise the Mayor, Director, Department, County Manager, City Council, or County Commission regarding air quality matters, needs and programs; and

(9) Advise the Environmental Planning Commission or County Planning Commission regarding air quality matters.

§ 9-5-1-13 LOCAL AIR QUALITY PERMIT FUND ESTABLISHED.

(A) Pursuant to Section 74-2-16 NMSA 1978 and §§ 9-5-1-1 et seq., an Environmental Health Department air quality permit fund is established.

(B) All fees collected by the Department pursuant to §§ 9-5-1-1 et seq. shall be deposited in the fund created in division (A) above, and shall be used by the City only for the purpose of paying the reasonable costs of funding the department's performance of the following permitting functions required by the Federal Clean Air Act Amendments of 1990 as follows:

(1) Reviewing and acting upon any application for a permit;

(2) If the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis and demonstration; and

(6) Preparing inventories and tracking emissions.

§ 9-5-1-14 INSPECTION.

The Director or an authorized representative, upon presentation of Departmental credentials:

(A) Shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located; and

(B) May at reasonable times:

(1) Have access to and copy any records required to be established and maintained by regulations of the Board or any permit condition; and

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(2) Inspect any monitoring equipment and method required by regulations of the Board or by any permit condition; and

(3) Sample any emissions that are required to be sampled pursuant to regulation of the Board or any permit condition.

(C) If premises described in divisions (A) or (B) above are unoccupied, a Department employee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and demand entry.

(D) If entry is refused, the Department shall proceed to obtain a search warrant by filing the documents and following the procedures required by the Metropolitan Court or District Court. The sworn statement filed in conjunction with the application for the search warrant or order shall:

(1) Set forth the particular premises, or portion thereof, sought to be inspected;

(2) State that the owner or occupant of the premises or portion thereof, has refused entry;

(3) State that inspection of the premises or portion thereof is necessary to determine whether it complies with the requirements of §§ 9-5-1-1 et seq.;

(4) Set forth the particular provisions of §§ 9-5-1-1 et seq. sought to be enforced;

(5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion thereof, which constitutes a violation of §§ 9-5-1-1 et seq.; and

(6) State that the Department or the Department's designated representative is authorized by the Mayor to make the inspection.

§ 9-5-1-15 REPRESENTATION OF THE DEPARTMENT, THE CITY AND THE COUNTY.

In any court action to enforce the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. or any regulation, permit condition or emergency order adopted, imposed or issued pursuant thereto:

(A) The City and the Department shall be represented by the City Attorney; and

(B) The County or City Attorney shall be represented by the District Attorney.

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§ 9-5-1-98 VIOLATIONS; COMPLIANCE ORDERS; FIELD CITATIONS.

(A) Whenever, on the basis of any information, the Director determines that any person has violated or is violating any requirement, or prohibition of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation promulgated pursuant to §§ 9-5-1-1 et seq., or any condition of a permit issued pursuant thereto, the Director may:

(1) Issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) Commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

(B) Any order issued pursuant to division (A) above may include a suspension or revocation of any permit, or portion thereof, issued by the Director. Any penalty assessed in the order shall not exceed $15,000 per day of noncompliance for each violation.

(C) Any order issued pursuant to division (A) above shall become final unless, no later than 30 days after the order is served, the person named therein submits a written request to the Director for a public hearing. Upon such request, the Director shall promptly conduct a public hearing. The Director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the Director, who shall make the final decision.

(D) The Board may adopt a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $1,000 per day of violation may be issued by officers or employees of the Department as designated by the Director. The program will be implemented by the Department.

(E) Any person to whom a field citation is issued pursuant to division (D) above may, within a reasonable time as prescribed by regulation by the Board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field citation. If a request for hearing is not made within

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the time specified in the regulation, the penalty assessment in the field citation shall be final.

(F) Payment of a civil penalty required by a field citation issued pursuant to division (D) above shall not be a defense to further enforcement by the Department to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act or §§ 9-5-1-1 et seq. if the violation continues.

(G) In determining the amount of any penalty to be assessed pursuant to this section, the Director or the individual issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

(H) In connection with any proceeding under this section, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

(I) Penalties collected pursuant to an administrative order or a field citation shall be deposited in the City or the County general fund, as applicable.

§ 9-5-1-99 PENALTY.

(A) Civil Penalty. Any person who violates any provision of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation of the Board or any permit condition or emergency order adopted or issued pursuant to the Air Quality Control Act or §§ 9-5-1-1 et seq. may be assessed a civil penalty not to exceed $15,000 for each day during any portion of which a violation occurs.

(B) Criminal Penalties.

(1) Any person who knowingly commits any violation of §§ 9-5-1-1 et seq. or a regulation of the Board which is not described as a felony in Section 74-2-14.C or 74-2-14.D NMSA 1978 is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

(2) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act or who falsifies, tampers with or knowingly renders inaccurate any monitoring

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device or method to be maintained under the Air Quality Control Act or §§ 9-5-1-1 et seq. or regulation adopted pursuant thereto is guilty of a petty misdemeanor and shall, upon conviction, be punished by a fine of not more than $10,000, per day for each violation, or by imprisonment for not more than six months, or by both."

Section 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word, or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 4. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico 1994.

Section 5. EFFECTIVE DATE. This ordinance shall take effect December 3, 2023.

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PASSED AND ADOPTED THIS 8th DAY OF November, 2023
BY A VOTE OF: 5 FOR 4 AGAINST.

For: Bassan, Grout, Jones, Lewis, Sanchez

Against: Benton, Davis, Fiebelkorn, Peña

Pat Davis, President
City Council

APPROVED THIS 22 DAY OF December, 2023

Bill No. O-23-88

VETO

Timothy M. Keller, Mayor
City of Albuquerque

The Mayor's veto was overridden by EC-23-404 on December 4, 2023

ATTEST: by a vote of 6 FOR and 3 AGAINST.

For: Bassan, Grout, Jones, Lewis, Pena, Sanchez

Against: Benton, Davis, Fiebelkorn

Rachel Rodarte for Ethan Watson

Ethan Watson, City Clerk

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Exhibit F

BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

AQCB Petition No. 2022-03

IN THE MATTER OF THE PETITION TO AMEND TITLE 20, CHAPTER 11 OF THE NEW MEXICO ADMINISTRATIVE CODE TO REQUIRE REVIEW AND CONSIDERATION OF HEALTH, ENVIRONMENT AND EQUITY IMPACTS,

VOLUME II

Mountain View Neighborhood Association,
Mountain View Community Action,
Friends of Valle de Oro,

Petitioners

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 5th day of December, 2023, the above-entitled matter came on for continued hearing before the Albuquerque-Bernalillo County Air Quality Control Board, taken at the Albuquerque Convention Center, 401 Second Street, Northwest, and virtually through Zoom Videoconference, commencing at the hour of 8:30 a.m.

REPORTED BY: THERESA E. DUBOIS, RPR, CCR #29
ALBUQUERQUE COURT REPORTING SERVICE, LLC
3150 Carlisle Boulevard, Northeast
Suite 104
Albuquerque, New Mexico 87110

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As I explained, I'm a city attorney.

MR. LEWIS: You're absolutely right. I apologize.

MS. SEDILLO-LOPEZ: I'm the Board's attorney, not the City attorney, I'm the Board attorney.

MR. LEWIS: I do apologize. I do apologize.

We -- we had this discussion last night. And Ms. Keefe, our City Attorney, certainly specified the difference between an ordinance and a resolution. And that when a resolution goes through the process, I mean the city clerk put a number on it today, and it becomes law in the City of Albuquerque. So, today, this Bill is law in the City of Albuquerque.

VICE-CHAIR RICHARDS: Mr. Hearing Officer.

MS. SEDILLO-LOPEZ: It may be law when it is effective.

HEARING OFFICER SANCHEZ: Ms. Richards, do you have a question?

MR. LEWIS: And ma'am, I don't mean any disrespect whatsoever. So I apologize for not addressing you in the correct way.

VICE-CHAIR RICHARDS: Councilor Lewis, my name is Kitty Richards. I'm a county appointee to the Board. I have served this community as a public servant with the county Environmental Health Department, as well as with

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the State of New Mexico Environment Department and with the State of New Mexico Department of Health as an epidemiologist, as an environmental scientist and as a manager over community health.

I've also worked in the healthcare industry for six years, which is a large employer. I have now volunteered for a few years here as a representative of the Air Quality Control Board. I was Chair and now I'm Vice-Chair.

I am very, very deeply, deeply disturbed by how you have divided our community. I -- I have seen all of the stuff in the newspapers, and I think a lot of it was promulgated by your actions. I fear for my family. I fear for my own life, and it was absolutely unnecessary.

And I really -- if you're an elected official, to try and dis -- to villainize me because of your statements, which were utterly untrue, and put my family at risk, it's just unjustifiable. I feel like I am a poll worker in Georgia. It's absolutely unnecessary.

MR. LEWIS: Ma'am, the ordinance that was passed by the city council that the mayor vetoed and that the council overrode last night is the ordinance that you're referring to. That creates a criteria for board members.

VICE-CHAIR RICHARDS: I'm not referring to any ordinance. I'm referring to press releases from your

FOIA No. 2025-EPA-09254 ED_020431_00001495-00104

office --

MR. LEWIS: It doesn't apply to you.

VICE-CHAIR RICHARDS: -- from media that has picked up those press releases and that has named my name, a public servant for 25 years -- not great pay, but because of my service and my concern about my community.

MR. LEWIS: Yeah. Thank you.

VICE-CHAIR RICHARDS: Thank you very much for doing that for me and putting my family -- my family at risk.

MR. LEWIS: The ordinance doesn't apply to the county commission whatsoever.

UNIDENTIFIED SPEAKER: Get out. Get out.

Go. We don't want you here. We've got a bucket of water in here.

HEARING OFFICER SANCHEZ: Please --

CHAIRPERSON PAUL: Folks, this isn't appropriate. This is public comment. Let -- let everyone have their public comment.

I agree that Councilor Lewis's actions were inappropriate, too, but this doesn't help us proceed. So I would ask people to make their comments.

MR. LEWIS: Look, if what I wrote --

CHAIRPERSON PAUL: Next in line, please.

MR. LEWIS: Madam Chair, what I --

FOIA No. 2025-EPA-09254 ED_020431_00001495-00105

Exhibit G

BEFORE THE ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

AQCB Petition No. 2022-03

IN THE MATTER OF THE PETITION TO AMEND TITLE 20, CHAPTER 11 OF THE NEW MEXICO ADMINISTRATIVE CODE TO REQUIRE REVIEW AND CONSIDERATION OF HEALTH, ENVIRONMENT AND EQUITY IMPACTS,

VOLUME V

MOUNTAIN VIEW NEIGHBORHOOD ASSOCIATION, MOUNTAIN VIEW COMMUNITY ACTION, FRIENDS OF VALLE DE ORO,

Petitioners,

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 8th day of December, 2023, the above-entitled matter came on for continued hearing before the Albuquerque-Bernalillo County Air Quality Control Board, taken at the Albuquerque Convention Center, 401 Second Street, Northwest, and virtually through Zoom Videoconference, commencing at the hour of 8:30 a.m.

REPORTED BY: THERESA E. DUBOIS, RPR, CCR #29
ALBUQUERQUE COURT REPORTING SERVICE, LLC
3150 Carlisle Boulevard, Northeast
Suite 104
Albuquerque, New Mexico 87110

FOIA No. 2025-EPA-09254 ED_020431_00001495-00107

changed your relationship with the rule; is that accurate? It seemed like you were willing -- you met with them initially, informally, but then after -- once there was -- the petition was accepted, what happened then?

MR. ALBRECHT: It's an interesting thing. So when a petition -- when the petitioner puts it before the Board, we're very careful of doing any kind of ex parte communication, you know, meeting with them. It's kind of -- we just want to make sure, because it's not our petition, it's theirs, that we -- that we just kind of stayed away.

Because we met with them on the 14th, they dropped it on the 21st. And I think we did meet -- they did meet on the 5th, just to have a discussion. I wasn't part of that, though. And then, here we are.

BOARD MEMBER GALEWSKY: I'm sure if you've been listening to the testimony, virtually everyone has said that there was not enough interaction with EHD.

MR. ALBRECHT: I -- I -- I agree with that. You know, typically, when we do rulemakings -- let's say if we're the petitioners, we will come up -- we'll identify, okay, we're going to do this rule and we come up with the objective: Why are we doing this rule? Can we implement it? It is enforceable? Yes.

Okay. Let's just -- let's put pen to paper. We

FOIA No. 2025-EPA-09254 ED_020431_00001495-00108

will meet as a group. We usually assign one lead person from every division to get a very collaborative work, a good product. Once we get it to draft form, typically, you want to get stakeholder input.

You will meet with regulated community, you will meet with whomever is interested. That didn't happen. And that's one of -- I think that's one of the things that I've been hearing. And that's what we've been stating is, if we would have been upfront -- and let's say back in June, if we would have been at the table in June, I think we could have provided some really good guidance.

And I do think we were -- we were at the table in August in all of those hearings. There was a lot of -- there was good collaboration; not to say there wasn't disagreements, because there were. I mean, there's some things that they weren't willing to, you know, sacrifice, which is fine, which is why in August, if you remember, the Board asked, you know, redline, strike out the rule.

The rule at that time, if we redline striked it, that whole paper would have been red. And so we decided to -- we went in, like, fifth gear, and we met biweekly, two or three times a week for hours, and trying to put together something that would be enforceable, something we could enforce.

And that's what was presented to the Board in

FOIA No. 2025-EPA-09254 ED_020431_00001495-00109

Exhibit H

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
2/1/2024 10:45 AM
KATINA WATSON
CLERK OF THE COURT
Amanda Jimenez

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD and the BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,

Plaintiffs,

vs. **No. D 202-CV-2023-09295**

CITY OF ALBUQUERQUE,

Defendant.

[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTIVE RELIEF

THIS MATTER CAME before the Court upon Bernalillo County Air Quality Control Board, Plaintiff's application for a Preliminary Injunction pending a trial on the merits, and considering the City of Albuquerque, Defendant's response thereto, as well as the position of the County of Bernalillo and arguments presented at a hearing on January 25, 2024, and being otherwise fully advised of the premises, pursuant to NMRCP 1-066 and applicable case law including *National Trust for Historic Preservation v. City of Albuquerque*, 1994-NMCA-057, 117 N.M, 874 P.2d 798.

THE COURT FINDS AND CONCLUDES:

1) Plaintiffs have a substantial likelihood of prevailing on the merits of the pending matter.
2) A Preliminary Injunction during the pendency of the litigation will not cause damage to the Defendant's interests.
3) A Preliminary Injunction is not adverse to the public interest.

FOIA No. 2025-EPA-09254 ED_020431_00001495-00111

4) Granting Preliminary Relief prevents irreparable harm to the Plaintiffs.

5) This Preliminary Injunction will maintain the status quo that existed prior to the passage of Resolution 23-176 and Ordinance 23-88.

WHEREFORE, THE COURT GRANTS the requested Preliminary Injunction and enjoins the enforcement and applicability of Resolution 23-176 and Ordinance 23-88 which were passed by the Albuquerque City Council on December 4th, 2023. This Preliminary Injunction will stay in place pending final Court findings and conclusions on the validity of the Resolution and Ordinance after a trial on the merits.

IT IS SO ORDERED.

Honorable Francis J. Mathew, District Judge

Submitted by:

Antoinette Sedillo Lopez
Attorney for Plaintiff Albuquerque Air Quality Control Board

Approved:

Email approval dated Jan.31, 2024
W. Ken Martinez
Attorney for Plaintiff Bernalillo County

Email approval as to form dated Jan. 31, 2024
Randy M. Autio
Attorney for Defendant City of Albuquerque

FOIA No. 2025-EPA-09254 ED_020431_00001495-00112

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 7/24/2024 2:11:53 PM
To: Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Tripathi, Arati [Tripathi.Arati@epa.gov]; Mills, Clarissa [mills.clarissa@epa.gov]; Welton, Patricia [Welton.Patricia@epa.gov]; McGuire, James (he/him/his) [McGuire.James@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Subject: RE: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Thanks Lynde. Adding Gautam and Matt so they know.

From: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Sent: Wednesday, July 24, 2024 10:07 AM
To: Payne, James (Jim) <payne.james@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; McGuire, James (he/him/his) <McGuire.James@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: RE: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Thanks Jim. We consulted Abi's group (Geoff Wilcox) when this ordinance was being considered a while back. We will circle up with OGC to discuss.
Lynde

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, July 24, 2024 8:55 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; McGuire, James (he/him/his) <McGuire.James@epa.gov>
Subject: RE: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

And hello to ORC6 good colleagues!

From: McGuire, James (he/him/his) <McGuire.James@epa.gov>
Sent: Tuesday, July 23, 2024 11:00 PM
To: Payne, James (Jim) <payne.james@epa.gov>; Goerke, Ariadne (she/her/hers) <Goerke.Ariadne@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Tripathi, Arati <Tripathi.Arati@epa.gov>
Cc: Mills, Clarissa <mills.clarissa@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>
Subject: Fwd: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

FYI

Thanks,

James McGuire

Begin forwarded message:

From: "Dwyer, Stacey" <Dwyer.Stacey@epa.gov>
Date: July 23, 2024 at 9:25:51 PM CDT
To: "Garcia, David" <Garcia.David@epa.gov>, "Ngo, Kim" <Ngo.Kim@epa.gov>, "McGuire, James (he/him/his)" <McGuire.James@epa.gov>
Cc: "Nance, Earthea" <Nance.Earthea@epa.gov>, "Semien, Joy" <Semien.Joy@epa.gov>, "Lugo Homs, Yessenia" <LugoHoms.Yessenia@epa.gov>, "Mills, Clarissa" <mills.clarissa@epa.gov>, "McDonald, James (he/him/his)" <McDonald.James@epa.gov>
Subject: Fwd: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Sent from my iPhone

Begin forwarded message:

From: "Iwata, Jackie" <jiwata@nrdc.org>
Date: July 23, 2024 at 6:18:48 PM CDT
To: "Regan, Michael" <Regan.Michael@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Garcia, David" <Garcia.David@epa.gov>
Cc: "Bernard, Mitch" <mbernard@nrdc.org>, "Imperiale, Sara" <simperiale@nrdc.org>, John Walker <jwalke@nrdc.org>, ljinewmexico@gmail.com, "Engelman-Lado, Marianne (she/her/hers)" <EngelmanLado.Marianne@epa.gov>, "Temple, Kurt" <Temple.Kurt@epa.gov>, "Wilson, Adam" <wilson.adam@epa.gov>, "Goerke, Ariadne (she/her/hers)" <Goerke.Ariadne@epa.gov>, "Dwyer, Stacey" <Dwyer.Stacey@epa.gov>, "Welton, Patricia" <Welton.Patricia@epa.gov>, "Nunez, Alejandra" <Nunez.Alejandra@epa.gov>
Subject: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Administrators Regan and Goffman and Director Garcia,

Please find attached a petition from Los Jardines Institute and the Natural Resources Defense Council (NRDC) requesting that EPA review an ordinance enacted by the Albuquerque City Council for consistency with the Clean Air Act. Exhibits supporting the petition are also attached.

This Petition requests that EPA find and notify Albuquerque that Ordinance O-2023-29 would deprive the Albuquerque-Bernalillo County Air Quality Control Board of authority required under the Clean Air Act and contradict the federally-approved terms of New Mexico's state implementation plan and Title V permitting program. If the Ordinance takes effect, the Petition requests that EPA (1) issue SIP and Title V program deficiency notices; (2) put in place a federal implementation plan and federal Title V program if Albuquerque fails to take corrective action; and (3) impose sanctions.

Los Jardines Institute and NRDC previously filed a Title VI complaint with EPA's Office of External Civil Rights Compliance against the City of Albuquerque and Albuquerque Environmental Health Department. Because the complaint and petition concern related events, we have included individuals copied on the Title VI correspondence on this email.

If you have trouble opening or accessing any of the documents, please let us know.

Sincerely,

Jackie Iwata

JACKIE IWATA
Attorney

NATURAL RESOURCES DEFENSE COUNCIL
1152 15TH ST. NW SUITE 300
WASHINGTON, DC 20005
O: 202.836.9451
JIWATA@NRDC.ORG
NRDC.ORG
PRONOUNS: SHE/HER

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Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 7/24/2024 2:30:25 PM
To: Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]
CC: Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Magee, Melanie [Magee.Melanie@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act
Attachments: 2024.07.23 CAA petition - final.pdf; Compiled CAA Petition Exhibits.pdf

LS:

Thanks for giving us a heads up about this.

Ex. 5 AC/DP

Abi is out until next week and Karen is Constructive Abi until then. We will of course appreciate you all taking a close look at this and letting us know what you think about the various issues.

Ex. 5 AC/DP

G

From: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Sent: Wednesday, July 24, 2024 10:09 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: Donaldson, Guy <Donaldson.Guy@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Hi Geoff,
You helped us out a while back to review the draft ordinance– (I-SIP/Boards/128) when I have a moment to review the changes, will get back to you all on initial thoughts.

From: Garcia, David <Garcia.David@epa.gov>
Sent: Wednesday, July 24, 2024 7:32 AM
To: Mills, Clarissa <mills.clarissa@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Donaldson, Guy <Donaldson.Guy@epa.gov>; Howard, Ashley <Howard.Ashley@epa.gov>; Ngo, Kim <Ngo.Kim@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Clarissa,

Please refer to documents from Los Jardines Institute and the Natural Resources Defense Council (NRDC) requesting that EPA review an ordinance enacted by the Albuquerque City Council for consistency with the Clean Air Act.

David F. Garcia
Director,
Air and Radiation Division
Office: 214 665-7593
Cell: 214 789-9622

From: Iwata, Jackie <jiwata@nrdc.org>
Sent: Tuesday, July 23, 2024 6:17 PM
To: Regan, Michael <Regan.Michael@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Garcia, David <Garcia.David@epa.gov>
Cc: Bernard, Mitch <mbernard@nrdc.org>; Imperiale, Sara <simperiale@nrdc.org>; John Walker <jwalke@nrdc.org>; ljinewmexico@gmail.com; Engelman-Lado, Marianne (she/her/hers) <EngelmanLado.Marianne@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>; Goerke, Ariadne (she/her/hers) <Goerke.Ariadne@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Administrators Regan and Goffman and Director Garcia,

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This Petition requests that EPA find and notify Albuquerque that Ordinance O-2023-29 would deprive the Albuquerque-Bernalillo County Air Quality Control Board of authority required under the Clean Air Act and contradict the federally-approved terms of New Mexico's state implementation plan and Title V permitting program. If the Ordinance takes effect, the Petition requests that EPA (1) issue SIP and Title V program deficiency notices; (2) put in place a federal implementation plan and federal Title V program if Albuquerque fails to take corrective action; and (3) impose sanctions.

Los Jardines Institute and NRDC previously filed a Title VI complaint with EPA's Office of External Civil Rights Compliance against the City of Albuquerque and Albuquerque Environmental Health Department. Because the complaint and petition concern related events, we have included individuals copied on the Title VI correspondence on this email.

If you have trouble opening or accessing any of the documents, please let us know.

Sincerely,

Jackie Iwata

JACKIE IWATA
Attorney

NATURAL RESOURCES DEFENSE COUNCIL
1152 15TH ST. NW SUITE 300
WASHINGTON, DC 20005
O: 202.836.9451
JIWATA@NRDC.ORG
NRDC.ORG

PRONOUNS: SHE/HER

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Message

From: Panos, Christos [Panos.Christos@epa.gov]
Sent: 7/24/2024 2:54:29 PM
To: Abrahamian, Tanya (she/her/hers) [abrahamian.tanya@epa.gov]; Becoat, Gregory [becoat.gregory@epa.gov]; Benjamin, Lynorae [benjamin.lynorae@epa.gov]; Chen, Eugene [Chen.Eugene@epa.gov]; Deese, William [deese.william@epa.gov]; Dobrahner, Jaslyn [Dobrahner.Jaslyn@epa.gov]; Dorantes, Michael (he/him/his) [Dorantes.Michael@epa.gov]; Fradkin, Kenneth [Fradkin.Kenneth@epa.gov]; Freund, Weston (he/him/his) [Freund.Weston@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Garcia, Ariel [Garcia.Ariel@epa.gov]; Gordon, Michael [Gordon.Mike@epa.gov]; Goudeau, Charlotte [Goudeau.Charlotte@epa.gov]; Hall, Jeremiah [hall.jeremiah@epa.gov]; Hall, Kristin [Hall.Kristin@epa.gov]; Hunt, Jeff [Hunt.Jeff@epa.gov]; Kelly, Johnj (he/him/his) [Kelly.Johnj@epa.gov]; LaRocca, Sarah [Larocca.Sarah@epa.gov]; Longo, Linda (she/her/hers) [Longo.Linda@epa.gov]; McDowell, Jaron [McDowell.Jaron@epa.gov]; McIntyre, Gerald [McIntyre.Gerald@epa.gov]; Mohr, Ashley [Mohr.Ashley@epa.gov]; Morgan, Ruthw [morgan.ruthw@epa.gov]; Neiswinter, Ian [Neiswinter.Ian@epa.gov]; Ogbodo, Ndubisi [Ogbodo.Ndubisi@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Paige, Carrie [Paige.Carrie@epa.gov]; Panos, Christos [Panos.Christos@epa.gov]; Parke, Nicolas [Parke.Nicolas@epa.gov]; Puplampu, William [puplampu.william@epa.gov]; Ruan-Lei, Karolina [ruan-lei.karolina@epa.gov]; Ruddick, Randall [ruddick.randall@epa.gov]; Schmitt, Ellen (she/her/hers) [Schmitt.Ellen@epa.gov]; Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Spann, Jane [Spann.Jane@epa.gov]; Stevens, Arnold [stevens.arnold@epa.gov]; Sutton, Lisa [Sutton.Lisa@epa.gov]; Suzuki, Debra [Suzuki.Debra@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]; Vaupel, Claudia [Vaupel.Claudia@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Wang, Mae [Wang.Mae@epa.gov]; Wiley, Adina [Wiley.Adina@epa.gov]; Williams-Miles, Pearlene [WilliamsMiles.Pearlene@epa.gov]; Withey, Charlotte (she/her/hers) [Withey.Charlotte@epa.gov]; Wolkins, Jed (he/him/his) [wolkins.jed@epa.gov]; Yannayon, Laura [Yannayon.Laura@epa.gov]; Zull, Aaron [zull.aaron@epa.gov]
CC: National SIP Processing Workgroup [NatlSIPProcessingWG@epa.gov]; Arra, Sarah (she/her/hers) [Arra.Sarah@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Lowder, Erin (she/her/hers) [Lowder.Erin@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]; McQuilkin, Wendy [Mcquilkin.Wendy@epa.gov]; Morris, Stephanie [Morris.Stephanie@epa.gov]; Reddick, Lorraine [Reddick.Lorraine@epa.gov]; Saltman, Tamara [Saltman.Tamara@epa.gov]; South, Mia (she/her/hers) [South.Mia@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Washington, Stephanie [Washington.Stephanie@epa.gov]
Subject: RE: July Agenda - National SIP Processing Workgroup Conference Call
Attachments: 2024-07-25_Agenda.docx; Optional Procedure for Processing Comment Extention FR Notices.docx

Microsoft Teams meeting

Join on your computer, mobile app or room device

Click here to join the meeting

Ex. 6 Personal Privacy (PP)

Draft Agenda National SIP Processing Workgroup Conference Call
Thursday, July 25, 2024 12:00 PM to 1:00 PM ET

Ex. 6 Personal Privacy (PP)

SIP Workgroup SharePoint site

Region 8 will take meeting minutes (action items – if needed).

Discussion Items

1. EJ Template / EJ in SIPs
2. Additional Questions/Comments from the Regions

Attached Files: (please do not share outside the Agency)

1) 2024-07-25_Agenda.docx
2) Optional Procedure for Processing Comment Extention FR Notices.docx

++++++++++++++++++++++++++

Chris Panos | EPA Region 5 | Air and Radiation Division (AR-18J) | (312) 353-8328 | panos.christos@epa.gov

-----Original Appointment-----

From: National SIP Processing Workgroup <NatlSIPProcessingWG@epa.gov>
Sent: Thursday, January 18, 2024 2:53 PM
To: National SIP Processing Workgroup; Panos, Christos; Becoat, Gregory; Bell, Tiereny; Benjamin, Lynorae; Deese, William; Dobrahner, Jaslyn; Dorantes, Michael (he/him/his); Fradkin, Kenneth; Freund, Weston (he/him/his); Gallegos, Jacob; Garcia, Ariel; Gordon, Michael; Goudeau, Charlotte; Hall, Jeremiah; Hunt, Jeff; Kelly, Johnj (he/him/his); LaRocca, Sarah; Longo, Linda (she/her/hers); McIntyre, Gerald; Mohr, Ashley; Morgan, Ruthw; Ogbodo, Ndubisi; Olszewski, Joshua; Puplampu, William; Ruan-Lei, Karolina; Ruddick, Randall; Schmitt, Ellen (she/her/hers); Schoellkopf, Lynde (she/her/hers); Spann, Jane; Spenillo, Justin; Stevens, Arnold; Sutton, Lisa; Suzuki, Debra; Vargas, Aaron; Vaupel, Claudia; Wang, Mae; Weinelt, Eva; Wiley, Adina; Williams-Miles, Pearlene; Yannayon, Laura; Zull, Aaron; Parke, Nicolas; Villegas, Brooke (she/her/hers); Hall, Kristin
Cc: Arra, Sarah (she/her/hers); Brachtl, Megan; Lowder, Erin (she/her/hers); McEathron, Kimberly (she/her/hers); McQuilkin, Wendy; Morris, Stephanie; Reddick, Lorraine; Saltman, Tamara; South, Mia (she/her/hers); Vijayan, Abi; Washington, Stephanie; Senter, Stephen; Bartley, Richard; Przyborski, Jay
Subject: National SIP Processing Workgroup Conference Call
When: Thursday, July 25, 2024 11:00 AM-12:00 PM (UTC-06:00) Central Time (US & Canada).
Where: Microsoft Teams Meeting

Agenda to follow.
Please reply to panos.christos@epa.gov if you no longer wish to be on this distribution list.

Conference calls are the fourth Thursday of the month except for the **third Thursday of the month for November and December** because of Thanksgiving and Christmas Holidays. Times below are Eastern Time Zone.

Fourth Thursday of the Month.

		Start Time	*End Time*
January	01/25/2024	12:00 pm	01:00 pm
February	02/22/2024	12:00 pm	01:00 pm
March	03/28/2024	12:00 pm	01:00 pm
April	04/25/2024	12:00 pm	01:00 pm
May	05/23/2024	12:00 pm	01:00 pm
June	06/27/2024	12:00 pm	01:00 pm
July	07/25/2024	12:00 pm	01:00 pm

August	08/22/2024	12:00 pm	01:00 pm
September	09/26/2024	12:00 pm	01:00 pm
October	10/24/2024	12:00 pm	01:00 pm

Third Thursday of the Month.

		Start Time	*End Time*
November	11/21/2024	12:00 pm	01:00 pm
December	12/19/2024	12:00 pm	01:00 pm

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Ex. 6 Personal Privacy (PP)

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Message

From: Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]
Sent: 7/24/2024 3:21:41 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
CC: Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Magee, Melanie [Magee.Melanie@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Tripathi, Arati [Tripathi.Arati@epa.gov]
Subject: RE: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Ex. 5 AC/DP

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, July 24, 2024 9:30 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>; Donaldson, Guy <Donaldson.Guy@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Lee, Michael (he/him/his) <lee.michaelg@epa.gov>
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

LS:

Thanks for giving us a heads up about this.

Ex. 5 AC/DP

Abi is out until next week and Karen is Constructive Abi until then. We will of course appreciate you all taking a close look at this and letting us know what you think about the various issues.

Ex. 5 AC/DP

G

From: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Sent: Wednesday, July 24, 2024 10:09 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Cc: Donaldson, Guy <Donaldson.Guy@epa.gov>; Magee, Melanie <Magee.Melanie@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Hi Geoff,
You helped us out a while back to review the draft ordinance– (I-SIP/Boards/128) when I have a moment to review the changes, will get back to you all on initial thoughts.

From: Garcia, David <Garcia.David@epa.gov>
Sent: Wednesday, July 24, 2024 7:32 AM
To: Mills, Clarissa <mills.clarissa@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>
Cc: Donaldson, Guy <Donaldson.Guy@epa.gov>; Howard, Ashley <Howard.Ashley@epa.gov>; Ngo, Kim <Ngo.Kim@epa.gov>; Robinson, Jeffrey <Robinson.Jeffrey@epa.gov>
Subject: FW: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

Clarissa,

Please refer to documents from Los Jardines Institute and the Natural Resources Defense Council (NRDC) requesting that EPA review an ordinance enacted by the Albuquerque City Council for consistency with the Clean Air Act.

David F. Garcia
Director,
Air and Radiation Division
Office: 214 665-7593
Cell: 214 789-9622

From: Iwata, Jackie <jiwata@nrdc.org>
Sent: Tuesday, July 23, 2024 6:17 PM
To: Regan, Michael <Regan.Michael@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Garcia, David <Garcia.David@epa.gov>
Cc: Bernard, Mitch <mbernard@nrdc.org>; Imperiale, Sara <simperiale@nrdc.org>; John Walker <jwalke@nrdc.org>; ljinewmexico@gmail.com; Engelman-Lado, Marianne (she/her/hers) <EngelmanLado.Marianne@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Wilson, Adam <wilson.adam@epa.gov>; Goerke, Ariadne (she/her/hers) <Goerke.Ariadne@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Welton, Patricia <Welton.Patricia@epa.gov>; Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Petition for action regarding legislation by the Albuquerque City Council that is inconsistent with the Clean Air Act

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Administrators Regan and Goffman and Director Garcia,

Please find attached a petition from Los Jardines Institute and the Natural Resources Defense Council (NRDC) requesting that EPA review an ordinance enacted by the Albuquerque City Council for consistency with the Clean Air Act. Exhibits supporting the petition are also attached.

This Petition requests that EPA find and notify Albuquerque that Ordinance O-2023-29 would deprive the Albuquerque-Bernalillo County Air Quality Control Board of authority required under the Clean Air Act and contradict the federally-approved terms of New Mexico's state implementation plan and Title V permitting program. If the Ordinance takes effect, the Petition requests that EPA (1) issue SIP and Title V program deficiency notices; (2) put in place a federal implementation plan and federal Title V program if Albuquerque fails to take corrective action; and (3) impose sanctions.

Los Jardines Institute and NRDC previously filed a Title VI complaint with EPA's Office of External Civil Rights Compliance against the City of Albuquerque and Albuquerque Environmental Health Department. Because the complaint and petition concern related events, we have included individuals copied on the Title VI correspondence on this email.

If you have trouble opening or accessing any of the documents, please let us know.

Sincerely,

Jackie Iwata

JACKIE IWATA
Attorney

NATURAL RESOURCES DEFENSE COUNCIL
1152 15TH ST. NW SUITE 300
WASHINGTON, DC 20005
O: 202.836.9451
JIWATA@NRDC.ORG
NRDC.ORG
PRONOUNS: SHE/HER

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Message

From: St. Romain, Alexandra (ENRD) [Alexandra.St.Romain@usdoj.gov]
Sent: 7/24/2024 8:39:04 PM
To: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Svingen, Eric [Svingen.Eric@epa.gov]; Weiler, Eaton [weiler.eaton@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]
CC: Gange, Heather (ENRD) [Heather.Gange@usdoj.gov]
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright
Attachments: 23-3583 (ECF No. 74).pdf

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Hi All,

Attached is the as-filed letter.

Best,
Alex

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Wednesday, July 24, 2024 9:01 AM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

Libby, thanks for the comment.

Ex. 5 AC/AWP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

From: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Sent: Tuesday, July 23, 2024 8:27 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi Eric,

Ex. 5 AC/AWP

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

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From: Pettit, Elizabeth (Libby)
Sent: Tuesday, July 23, 2024 10:23 AM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

Thanks for sharing this update, Eric. We're reviewing internally and will get back to you soon.

Libby Pettit (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | WJCN 7302A | (202) 566-2879

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Tuesday, July 23, 2024 9:15 AM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>; Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi folks,

Ex. 5 AC/AWP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Friday, July 19, 2024 1:03 PM
To: Svingen, Eric <Svingen.Eric@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

Hello everyone,

Ex. 5 AC/AWP

We realize that a number of you are out on leave, as I will be for the next two weeks starting on Monday the 22nd. In my absence, Alex St. Romain has graciously offered to work with Eric.

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

From: Svingen, Eric <Svingen.Eric@epa.gov>
Sent: Friday, July 19, 2024 7:08 AM
To: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: [EXTERNAL] RE: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hi Heather – Thank you for always keeping us updated. Hope you have a nice Friday and weekend.

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From: Gange, Heather (ENRD) <Heather.Gange@usdoj.gov>
Sent: Thursday, July 18, 2024 6:56 PM
To: Weiler, Eaton <weiler.eaton@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Svingen, Eric <Svingen.Eric@epa.gov>
Cc: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Subject: Detroit 6th Circuit Challenge: FRAP 28(j) Letter re: Loper Bright

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Hello everyone,

Ex. 5 AC/AWP

Best regards,

Heather

Heather E. Gange
Senior Attorney, E-DOC

U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section

P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4206 (office)
(202) 532-3157 (cell)
She/her/hers

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Message

From: Boydston, Michael [Boydston.Michael@epa.gov]
Sent: 7/24/2024 10:34:50 PM
To: Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]
CC: Bianco, Karen [Bianco.Karen@epa.gov]; Coleman, Leslie (she/her/hers) [Coleman.Leslie@epa.gov]; Volk, Everett [volk.everett@epa.gov]; Cherry, Randall [Cherry.Randall@epa.gov]; Nann, Barbara [nann.barbara@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: July 2024 ORC/OGC SIP Group Call
Attachments: SSM_Opinion.pdf

Ex. 5 AC/AWP/DP

Michael Boydston
Senior Assistant Regional Counsel
EPA Region 8
303.312.7103
he / him

From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Wednesday, July 24, 2024 8:16 AM
To: Greenglass, Nora <Greenglass.Nora@epa.gov>; Futerman, Andrew (he/him/his) <Futerman.Andrew@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Pettit, Elizabeth (Libby) pettit.elizabetha@epa.gov; Vargas, Aaron <Vargas.Aaron@epa.gov>; Ogbodo, Ndubisi <Ogbodo.Ndubisi@epa.gov>; Messing, Aaron <messing.aaron@epa.gov>; Bailey, Ashten <Bailey.Ashten@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Bigioni, Neil (he/him/his) <bigioni.neil@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Bushey, Douglas (he/him/his) <bushey.douglas@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Chen, Alexander <Chen.Alex@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>; Cobb, Brandon <cobb.brandon@epa.gov>; Curley, Michael <Curley.Michael@epa.gov>; Dain, Gregory <Dain.Greg@epa.gov>; Daugavietis, Andre (he/him/his) <daugavietis.andre@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>; Frizzell, Gretchen (she/her/hers) <Frizzell.Gretchen@epa.gov>; Gallagher, Shirin <Gallagher.Shirin@epa.gov>; Gardner, Allison (she/her/hers) <Gardner.Allison@epa.gov>; Ghose, Debashis <Ghose.Debashis@epa.gov>; Gross, Louise C <gross.louise@epa.gov>; HertzWu, Sara <HertzWu.Sara@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>; Hong, Jeanhee <Hong.Jeanhee@epa.gov>; Logan, Paul (he/him/his) <Logan.Paul@epa.gov>; Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Mills, Flaire <Mills.Flaire@epa.gov>; Meinhardt, Danielle <meinhardt.danielle@epa.gov>; Nann, Barbara <nann.barbara@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Peachey, Robert (he/him/his) <peachey.robert@epa.gov>; Puplampu, William <puplampu.william@epa.gov>; Sawyer, Bonnie (she/her/hers) <Sawyer.Bonnie@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Smith, Noah <SMITH.NOAH@EPA.GOV>; Andrews, Suzanne (she/her/hers) <Andrews.Suzanne@epa.gov>; Snyder, Doug <Snyder.Doug@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Triplett, Eric <Triplett.Eric@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Volk, Everett <volk.everett@epa.gov>; Walters, Julie <Walters.Julie@epa.gov>; Wehling, Jefferson <Wehling.Jefferson@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>;

Withey, Charlotte (she/her/hers) <Withey.Charlotte@epa.gov>; Thomas, Donzetta <Thomas.Donzetta@epa.gov>; Kaban, Rosemary <Kaban.Rosemary@epa.gov>; England, JJ <England.Jj@epa.gov>; Dru, Jacobine (she/her/hers) <Dru.Jacobine@epa.gov>; Stephens, Ryan <Stephens.Ryan@epa.gov>; Grubb, Christopher <Grubb.Christopher@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Goudeau, Charlotte <Goudeau.Charlotte@epa.gov>; Weekley, Erin <weekley.erin@epa.gov>; Garfinkle, Stacey <garfinkle.stacey@epa.gov>; Parke, Nicolas <Parke.Nicolas@epa.gov>; Zaharoff, Josh (he/him/his) <Zaharoff.Josh@epa.gov>; Finkle, Jacob (he/him/his) <Finkle.Jacob@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Schluter, Catherine (she/her/hers) <Schluter.Catherine@epa.gov>; Khalsa, Dharma (she/her/hers) <Khalsa.Dharma@epa.gov>; Palumbo, Antonette <Palumbo.Antonette@epa.gov>; Shelton, Stacy (she/her/hers) <Shelton.Stacy@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Getz, Jamie <Getz.Jamie@epa.gov>; Berchiolli, Justin <Berchiolli.Justin@epa.gov>; James, Corin <James.Corin01@epa.gov>; Durch, Kyle <Durch.Kyle@epa.gov>; Coleman, Leslie (she/her/hers) <Coleman.Leslie@epa.gov>; Short, Ashley (she/her/hers) <Short.Ashley@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Johnson, Joan-A <Johnson.Joan-A@epa.gov>; Vetterick, Kate <Vetterick.Kate@epa.gov>; Przyborski, Jay <Przyborski.Jay@epa.gov>
Cc: Owens, Chloe <Owens.Chloe@epa.gov>; Sleddens, Wilhelm <Sleddens.Wilhelm@epa.gov>; Bieri, Britt <bieri.britt@epa.gov>
Subject: RE: July 2024 ORC/OGC SIP Group Call

Friendly reminder to send along any topics by COB today. Thanks to those who have already sent things in!

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

From: Kerr, Hali (she/her/hers)
Sent: Monday, July 22, 2024 4:16 PM
To: Greenglass, Nora <Greenglass.Nora@epa.gov>; Futerman, Andrew (he/him/his) <Futerman.Andrew@epa.gov>; Gallegos, Jacob <Gallegos.Jacob@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Ogbodo, Ndubisi <Ogbodo.Ndubisi@epa.gov>; Messing, Aaron <Messing.Aaron@epa.gov>; Bailey, Ashten <Bailey.Ashten@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>; Bigioni, Neil (he/him/his) <bigioni.neil@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Bushey, Douglas (he/him/his) <bushey.douglas@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Chen, Alexander <Chen.Alex@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>; Cobb, Brandon <cobb.brandon@epa.gov>; Curley, Michael <Curley.Michael@epa.gov>; Dain, Gregory <Dain.Greg@epa.gov>; Daugavietis, Andre (he/him/his) <daugavietis.andre@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>; Frizzell, Gretchen (she/her/hers) <Frizzell.Gretchen@epa.gov>; Gallagher, Shirin <Gallagher.Shirin@epa.gov>; Gardner, Allison (she/her/hers) <Gardner.Allison@epa.gov>; Ghose, Debashis <Ghose.Debashis@epa.gov>; Gross, Louise C <gross.louise@epa.gov>; HertzWu, Sara <HertzWu.Sara@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Hogan, Stephanie (she/her/hers) <Hogan.Stephanie@epa.gov>; Hong, Jeanhee <Hong.Jeanhee@epa.gov>; Logan, Paul (he/him/his) <Logan.Paul@epa.gov>; Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Meyer, Jonathan <Meyer.Jonathan@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Mills, Flaire <Mills.Flaire@epa.gov>; Meinhardt, Danielle <meinhardt.danielle@epa.gov>; Nann, Barbara <nann.barbara@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>; Okoye, Winifred <Okoye.Winifred@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Peachey, Robert (he/him/his) <peachey.robert@epa.gov>; Puplampu, William <puplampu.william@epa.gov>; Sawyer, Bonnie (she/her/hers) <Sawyer.Bonnie@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Schramm, Daniel <Schramm.Daniel@epa.gov>; Seidman, Emily <seidman.emily@epa.gov>; Skelley, Dana <Skelley.Dana@epa.gov>; Smith, Noah <SMITH.NOAH@EPA.GOV>; Andrews, Suzanne (she/her/hers) <Andrews.Suzanne@epa.gov>; Snyder, Doug <Snyder.Doug@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Ting, Kaytrue <Ting.Kaytrue@epa.gov>; Triplett, Eric <Triplett.Eric@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Villatora, Liliana <Villatora.Liliana@epa.gov>; Volk, Everett <volk.everett@epa.gov>; Walters, Julie <Walters.Julie@epa.gov>; Wehling, Jefferson <Wehling.Jefferson@epa.gov>; Weiler, Eaton <weiler.eaton@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>;

Withey, Charlotte (she/her/hers) <Withey.Charlotte@epa.gov>; Thomas, Donzetta <Thomas.Donzetta@epa.gov>; Kaban, Rosemary <Kaban.Rosemary@epa.gov>; England, JJ <England.Jj@epa.gov>; Dru, Jacobine (she/her/hers) <Dru.Jacobine@epa.gov>; Stephens, Ryan <Stephens.Ryan@epa.gov>; Grubb, Christopher <Grubb.Christopher@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Goudeau, Charlotte <Goudeau.Charlotte@epa.gov>; Weekley, Erin <weekley.erin@epa.gov>; Garfinkle, Stacey <Garfinkle.stacey@epa.gov>; Parke, Nicolas <Parke.Nicolas@epa.gov>; Zaharoff, Josh (he/him/his) <Zaharoff.Josh@epa.gov>; Finkle, Jacob (he/him/his) <Finkle.Jacob@epa.gov>; Williams, Melina <Williams.Melina@epa.gov>; Schluter, Catherine (she/her/hers) <Schluter.Catherine@epa.gov>; Khalsa, Dharma (she/her/hers) <Khalsa.Dharma@epa.gov>; Palumbo, Antonette <Palumbo.Antonette@epa.gov>; Shelton, Stacy (she/her/hers) <Shelton.Stacy@epa.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Getz, Jamie <Getz.Jamie@epa.gov>; Berchiolli, Justin <Berchiolli.Justin@epa.gov>; James, Corin <James.Corin01@epa.gov>; Durch, Kyle <Durch.Kyle@epa.gov>; Coleman, Leslie (she/her/hers) <Coleman.Leslie@epa.gov>; Short, Ashley (she/her/hers) <Short.Ashley@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Johnson, Joan-A <Johnson.Joan-A@epa.gov>; Vetterick, Kate <Vetterick.Kate@epa.gov>; Przyborski, Jay <Przyborski.Jay@epa.gov>
Cc: Owens, Chloe <Owens.Chloe@epa.gov>; Sleddens, Wilhelm <Sleddens.Wilhelm@epa.gov>; Bieri, Britt <bieri.britt@epa.gov>
Subject: July 2024 ORC/OGC SIP Group Call

Hello all,

Summer flies! Our next ORC/OGC SIP Group Call will be this Thursday 7/25 at 2 pm ET.

If you have any topics you would like to raise, please let me know by COB on Wednesday, 7/24.

Thank you,
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

-----Original Appointment-----
From: Kerr, Hali (she/her/hers)
Sent: Thursday, May 9, 2024 11:15 AM
To: Kerr, Hali (she/her/hers); Greenglass, Nora; Futerman, Andrew (he/him/his); Gallegos, Jacob; Pettit, Elizabeth (Libby); Vargas, Aaron; Ogbodo, Ndubisi; Messing, Aaron; Bailey, Ashten; Bianco, Karen; Bigioni, Neil (he/him/his); Boydston, Michael; Nolbaum, Seth (he/him/his); Bushey, Douglas (he/him/his); Carrillo, Andrea; Chen, Alexander; Cherry, Randall; Christenson, Kara (she/her/hers); Cobb, Brandon; Curley, Michael; Dain, Gregory; Daugavietis, Andre (he/him/his); Dugan, Brett; Frizzell, Gretchen (she/her/hers); Gallagher, Shirin; Gardner, Allison (she/her/hers); Ghose, Debashis; Gross, Louise C; HertzWu, Sara; Hoffman, Howard; Hogan, Stephanie (she/her/hers); Hong, Jeanhee; Logan, Paul (he/him/his); Lueders, Jesse (he/him/his); McHale, Mary; Meyer, Jonathan; Mills, Derek; Mills, Flaire; Meinhardt, Danielle; Nann, Barbara; Nowell, Valerie; Okoye, Winifred; Olszewski, Joshua; Peachey, Robert (he/him/his); Puplampu, William; Sawyer, Bonnie (she/her/hers); Schoellkopf, Lynde (she/her/hers); Schramm, Daniel; Seidman, Emily; Skelley, Dana; Smith, Noah; Andrews, Suzanne (she/her/hers); Snyder, Doug; Talbert, Stephanie; Tennenbaum, Susan; Thrift, Mike; Ting, Kaytrue; Triplett, Eric; Vijayan, Abi; Villatora, Liliana; Volk, Everett; Walters, Julie; Wehling, Jefferson; Weiler, Eaton; Wilcox, Geoffrey; Withey, Charlotte (she/her/hers); Thomas, Donzetta; Kaban, Rosemary; England, JJ; Dru, Jacobine (she/her/hers); Stephens, Ryan; Grubb, Christopher; Perez Ortiz, Yasmin; Goudeau, Charlotte; Weekley, Erin; Garfinkle, Stacey; Parke, Nicolas; Zaharoff, Josh (he/him/his); Finkle, Jacob (he/him/his); Williams, Melina; Schluter, Catherine (she/her/hers); Khalsa, Dharma (she/her/hers); Palumbo, Antonette; Shelton, Stacy (she/her/hers); Villegas, Brooke (she/her/hers); Getz, Jamie; Berchiolli, Justin; James, Corin; Durch, Kyle; Coleman, Leslie (she/her/hers); Short, Ashley (she/her/hers); Smith, Isabella; Johnson, Joan-A; Vetterick, Kate; Przyborski, Jay
Cc: Owens, Chloe; Sleddens, Wilhelm; Bieri, Britt
Subject: ORC/OGC SIP Group Call

When: Thursday, July 25, 2024 2:00 PM-2:50 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Extending the monthly ORC/OGC SIP Group call series through 2024.

Microsoft Teams Need help?

Join the meeting now

Ex. 6 Personal Privacy (PP)

More info

For organizers: Meeting options | Reset dial-in PIN

This meeting may be recorded. If the meeting is recorded, it will be announced via a banner showing "this meeting is being recorded." Participation in a recorded meeting will be deemed as consent to be recorded. Meeting recordings may be official agency records subject to appropriate policy, rules and regulations.

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 7/26/2024 10:16:50 PM
To: Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: Sasser, Erika [Sasser.Erika@epa.gov]; Jones, Rhea (she/her/hers) [Jones.Rhea@epa.gov]; Wesson, Karen [Wesson.Karen@epa.gov]; Hagan, Nicole [Hagan.Nicole@epa.gov]; Perlmutt, Lars [perlmutt.lars@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: PM NAAQS brief (for review by 8/1)
Attachments: PM_NAAQS_Recon_Draft3_Brief (7-26 from DOJ).DOCX; Opening Br (Industry and AZ).pdf; Opening Br (States).pdf

Tomas,

Attached is the latest draft of the PM NAAQS brief which I have also just sent to Susannah Weaver. I have not reviewed this draft yet but the prior drafts were largely in good shape so I expect the same is true here Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

DOJ would like our comments back by Aug 2 so I am hoping to collect any comments on this draft by Thursday August 1, but if you (or another reviewer) needs more time let me know and we can try to adjust.

Ex. 5 AC/AWP/DP

Thanks very much,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

Message

From: Mays, Rory [Mays.Rory@epa.gov]
Sent: 7/30/2024 1:31:01 PM
To: Ling, Michael [Ling.Michael@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Durch, Kyle [Durch.Kyle@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; James, Corin [James.Corin01@epa.gov]
CC: Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Lingard, Robert (he/him/his) [Lingard.Robert@epa.gov]; Lee, Anita (she/her/hers) [Lee.Anita@epa.gov]; Lee, Lily [LEE.LILY@EPA.GOV]; Leers, Ben (he/him/his) [Leers.Ben@epa.gov]; Christenson, Kara (she/her/hers) [Christenson.Kara@epa.gov]; Wehling, Jefferson [Wehling.Jefferson@epa.gov]; Vagenas, Ginger [Vagenas.Ginger@epa.gov]; Mays, Rory [Mays.Rory@epa.gov]; Oconnor, Karina (she/her/hers) [OConnor.Karina@epa.gov]
Subject: REQUEST for REVIEW: SJV PM2.5 Contingency Measures - Draft Final Rule and related documents
Attachments: 2024 NFRM on SJV PM2.5 CM SIP Submissions.docx; 2023-12-20 Prop App SJV PM2.5 Cont. Meas. SIPs (88 FR 87988).pdf; 2024-07-09 Final App CA Smog Check Contingency Measure (89 FR 56222).pdf; 2024-01-17 CARB Comment Letter-SJV PM2.5 CM Proposal.pdf; 2024-01-19 CVAQ Comment Letter-SJV PM2.5 CM Proposal.pdf; 2024-01-19 Valley EJ Orgs Comment Letter-SJV PM2.5 CM and Smog Check CM Proposals.pdf; 2024-01-19 Valley EJ Orgs Comment Exh 1-16-SJV PM2.5 CM and Smog Check CM Proposals.pdf; Clearer Copy of 2024-01-19 Valley EJ Orgs Exh 9 (ED_014792B_00001595_Formal_RIF).pdf

Hello HQ Partners!

We'd like to request your review of the draft final rule on San Joaquin Valley (SJV) PM2.5 contingency measure SIP submissions within 2+ weeks (say, by Thu 8/15/2024).

We have separately submitted the draft final rule into the OGC portal, and *would be happy to provide an overview, discuss review time period, or provide any additional documents you may need*. We have a 9/30/2024 consent decree deadline to take final action either finalizing a FIP or (as we plan to do here) approving SIP submissions for SJV for the 1997 annual PM2.5 std., 2006 24-hour PM2.5 std., and 2012 annual PM2.5 std. For now, I'm attaching:

- **63-page draft final rule – the only Word document attached herein**
- 12/20/2023 proposed rule (TSDs and other files available at: https://www.regulations.gov/docket/EPA-R09-OAR-2023-0477)
- 7/9/2024 Smog Check contingency measure final rule (we discuss emission reductions from that measure in this draft final rule)
- Comment letters
  - CARB – supportive
  - CVAQ – adverse
  - Valley EJ Organizations (and Exhibits, including clearer version of Exhibit 9) – adverse
  - (Note: CARB and CVAQ also submitted comments on our Smog Check Contingency Measure proposed rule, which we have addressed in the separate final rule published 7/9/2024.)

Ex. 5 AC/DP

Please let me or Jeff Wehling know if you have questions. We very much appreciate your review and look forward to working with you. Thank you!

Rory

Rory M. Mays
Acting Manager, Geographic Strategies and Modeling Section, Air and Radiation Division, Region 9
U.S. Environmental Protection Agency
mays.rory@epa.gov, 415-972-3227

24-05107-AO-EX

Letter re BLM's failure to comply with Clean Air Act in issuing oil and gas drilling permits in CA

Contact/s:	Name	Organization
	Michelle Ghafar	Earthjustice
	Elizabeth Forsyth	Center for Biological Diversity

Instructions: RA-R9-Prepare draft response for signature by the Regional Administrator for Region 9.

Signature: RA-R9-Regional Administrator

Addressee: AD-Administrator

Assigned to: R09-Correspondence Team

File Code: 301_1051_a Records of Senior Officials - Historically significant records of senior officials

Due: 31-Jul-24

CC: OGC, AO-OCIR-RMOD, OAR Team, OECA, OEJECR Team

Status: Response Creation

Letter Date: 16-Jul-24

Received: 17-Jul-24 1:01 PM

Created By: Service SVC_Quill

Date Signed:

Closed:

History:

Date & Time	Action Taken	Action Taken By
17-Jul-24 1:01 PM	Created from email from	
17-Jul-24 3:54 PM	Priority change to Normal (14 days)	Cynthia Gaines
17-Jul-24 4:20 PM	Approval set to Approved	Kristy Miller
17-Jul-24 4:20 PM	Task completed with Decision = Approved	Kristy Miller

FOIA No. 2025-EPA-09254

ED_020431_00001539-00001

From: EPAExecSec<EPAExecSec@epa.gov>
Sent on: Wednesday, July 17, 2024 12:37:14 PM
To: Quill<Quill@epa.gov>
Subject: FW: Letter re BLM's failure to comply with Clean Air Act in issuing oil and gas drilling permits in CA
Attachments: 2024-07-16 Bakersfield BLM APDs and CAA Violations - BLM-DOI-EPA.pdf (501.31 KB)

Reading file

From: Michelle Ghafar <mghafar@earthjustice.org>
Sent: Tuesday, July 16, 2024 6:36 PM
To: Regan, Michael <Regan.Michael@epa.gov>; Guzman, Martha <Guzman.Martha@epa.gov>; Lakin, Matt (he/him/his) <Lakin.Matthew@epa.gov>
Cc: Anna Stimmel <astimmel@earthjustice.org>; Firenze Rodríguez <frodriguez@earthjustice.org>; Frida Murga <fmurga@earthjustice.org>; Jessica Hann <jhann@earthjustice.org>; Prijatel, Jean (she/her/hers) <PRIJATEL.JEAN@EPA.GOV>; Kelly, ThomasP <Kelly.ThomasP@epa.gov>; Plenys, Thomas <Plenys.Thomas@epa.gov>; Chan, Janice <Chan.Janice@epa.gov>
Subject: Letter re BLM's failure to comply with Clean Air Act in issuing oil and gas drilling permits in CA

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Dear Officials of U.S. EPA:
Please find attached a letter alerting you to BLM's continuing and routine violations of federal law, including the Clean Air Act, when issuing oil and gas drilling permits in the San Joaquin Valley, California. The letter is submitted on behalf of Center for Biological Diversity, The Wilderness Society, Patagonia, the Natural Resources Defense Council, the Chalon Indian Council of Bakersfield of the Chalon Indian Nation, the Central California Asthma Collaborative, Friends of the Earth, Leadership Counsel for Justice and Accountability, and the Center on Race, Poverty, and the Environment. This letter follows up on our previous letter on this issue sent to your agency on September 8, 2022.
All attachments to this letter are saved and can be accessed via this Sharefile link: https://earthjustice.sharefile.com/i/ibad58b014d847e4a. The link will prompt users to create an account, which can then be used to access the attachments. Please let me know if you have any trouble accessing the documents.
We welcome the opportunity to discuss our proposed solutions for the shortcomings in BLM's permit approval process and Clean Air Act compliance to protect San Joaquin Valley residents, and request a meeting with you on next steps. Please contact me to schedule this discussion.
We would appreciate confirmation that you have received this message.
Thank you,
Michelle Ghafar
She/Her/Hers
Attorney
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
T: 415-217-2186
F: 415-217-2040
earthjustice.org

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July 16, 2024

VIA ELECTRONIC SUBMISSION

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator: Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Regan.Michael@epa.gov

Debra Anne Haaland, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
(Through counsel)

Martha Guzman Aceves,
Regional Administrator – Region 9
Guzman.Martha@epa.gov
Matthew Lakin,
Director, Air and Radiation Division – Region 9
Lakin.Matthew@epa.gov
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Tracy Stone-Manning, Director
Nada Wolff Culver, Principal Deputy Director
U.S. Bureau of Land Management
1849 C Street, N.W.
Washington, D.C. 20240
(Through counsel)

Re: The U.S. Bureau of Land Management's Routine Violations of the Clean Air Act in Issuing Oil and Gas Drilling Permits on Public Land in California

Dear Officials of U.S. Bureau of Land Management ("BLM"), U.S. Department of Interior ("DOI"), and U.S. Environmental Protection Agency ("EPA"):

On behalf of Center for Biological Diversity, The Wilderness Society, Patagonia, the Natural Resources Defense Council, the Chalon Indian Council of Bakersfield of the Chalon Indian Nation, the Central California Asthma Collaborative, Friends of the Earth, Leadership Counsel for Justice and Accountability, and the Center on Race, Poverty, and the Environment, we write to follow up on our September 8, 2022 letter, which alerted you to BLM's routine violations of

the National Environmental Policy Act, the Federal Land Policy and Management Act, the Mineral Leasing Act, and the Clean Air Act ("CAA") when issuing oil and gas drilling permits in the San Joaquin Valley, California.[1] Since we sent this letter nearly two years ago, BLM has failed to address the numerous violations of federal law highlighted in the letter. Moreover, BLM has recently re-calculated air pollution emissions from oil wells it permitted in the San Joaquin Valley in 2023 and the results show that air pollution from oil and gas development is two orders of magnitude larger than BLM previously estimated. This new BLM calculation indicates that the agency has likely been violating the CAA's conformity review requirement, and allowing oil and gas companies to skirt the CAA's Nonattainment New Source Review and Title V operating permit requirements, for decades.

Given these circumstances, which underscore the impact that BLM's permitting activities continue to inflict on communities suffering some of the worst air pollution in the United States, we now call on leadership at BLM and EPA to: (1) conduct a comprehensive review of whether BLM and the oil and gas industry are in compliance with the CAA; (2) institute a pause on new oil and gas drilling permits on federal land in California until this review is complete; (3) ensure that, going forward, all future oil and gas permits issued by BLM are submitted for public and EPA review and comment *before BLM approval* with at least a 30-day comment period; and (4) that they comply with all federal laws.

The San Joaquin Valley air basin is on the frontlines of the air quality and public health problems the CAA is designed to address and prioritize. The Valley is home to our nation's greatest air quality challenges and is in "extreme" nonattainment for ozone pollution—the main ingredient in the smog that blankets the Valley. Ozone is not emitted directly from human activities; rather it is the product of the interaction of two "precursor" pollutants emitted from extraction and burning of petroleum hydrocarbons: nitrogen oxides ("NOx") and volatile organic compounds ("VOCs"). By 2035, oil and gas production is projected to be the largest source of NOx in Kern County, accounting for nearly seventy percent of all NOx emissions. One study likewise estimates that VOC emissions from oil and gas extraction in the Valley are equivalent to total transportation emissions in the region. Pollution in the Valley has worsened so much that NOx emissions are now visible from space—a development that can be largely attributed to an increase in oil and gas operations.[2]

This pollution has real health impacts on the many communities of color and low-income communities who live in the Valley, which include members of the undersigned organizations. In Kern County, where most oil and gas production in California takes place, over half the population is Hispanic/Latinx, and nearly half of residents speak a language other than English at home. These frontline communities are statistically the most affected by pollution in the state,

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[1] *See* Letter from coalition of community, environmental justice, and environmental organizations to BLM, DOI, and EPA officials re. BLM's Failure to Comply with Federal Law in Issuing Oil and Gas Drilling Permits on Public Land in California (Sept. 8, 2022). All sources in this comment letter are saved in a folder at the following link: https://earthjustice.sharefile.com/i/ibad58b014d847e4a.

[2] *See* Comments on Applications for Permit to Drill in the Bakersfield Field Office, submitted to BLM (Aug. 29, 2022).

FOIA No. 2025-EPA-09254 ED_020431_00001539-00004

meaning they experience the most asthma emergency room visits, heart attacks, and low birth-weight infants, and have the highest levels of poverty and unemployment. Pollution caused by oil and gas drilling is also associated with respiratory and neurological issues, cardiovascular damage, birth defects in babies, cancer, and premature mortality. EPA's National-Scale Air Toxics Assessment indicates that the respiratory hazard index in Kern County is higher than it is in 95 percent of the nation, and the cancer risk is higher than it is in 75 percent of the nation.[3]

These overburdened communities need all the protections that the CAA provides precisely because of the extreme extent of the air quality and public health crises in the Valley. The CAA is our nation's law aimed at preventing the unhealthy air currently plaguing the Valley. Its purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). The CAA authorizes EPA, the agency with primary regulatory authority under the Act, to establish National Ambient Air Quality Standards ("NAAQS") for serious pollutants known as "criteria pollutants," including ozone. 42 U.S.C. §§ 7407–7410. The CAA requires every region in the U.S. to reach attainment of the NAAQS for all criteria pollutants, and it has set timetables for attainment since the 1970s. 42 U.S.C. § 7407(a)–(d)(1)(A). Areas that fail to attain NAAQS standards are designated "nonattainment areas." 42 U.S.C. § 7407(d)(1). For ozone, regions are assigned "marginal" to "extreme" classifications depending on the level of pollution. 42 U.S.C. § 7511(a)(1). Because ozone is the product of the interaction between NOx and VOC, control of ozone under CAA regulations consists of emissions limitations on those precursors. *See, e.g.*, 40 C.F.R. § 93.153(b)(1). Permitting thresholds become more stringent as the severity of the ozone nonattainment increases. For example, the permitting threshold is 100 tons per year of NOx and VOCs in "moderate" nonattainment areas, whereas in "extreme" nonattainment areas like the San Joaquin Valley, this threshold is set at 10 tons per year. *See* 42 U.S.C. § 7511a; 57 Fed. Reg. 13,498, 13,523 (Apr. 16, 1992).

This means that in the San Joaquin Valley, a new source of more than 10 tons per year of NOx or VOCs is classified as a "major source" of pollution and must undergo Nonattainment New Source Review and obtain a major source operating permit under Title V of the CAA. 42 U.S.C. §§ 7661–7661f. These permitting provisions require opportunities for public comment on permits, enforceable monitoring and reporting requirements in operating permits, and the lowest achievable emission rate from new major sources of pollution. 42 U.S.C. § 7501. The CAA also mandates that federal activities—which include BLM's federal permitting of oil and gas wells—must not cause or contribute to any new violation of any NAAQS standard in any area. 42 U.S.C. § 7506(c)(1). Federal agencies are therefore required to undertake a "conformity determination" when NOx or VOCs caused by a federal action would exceed 10 tons per year in the San Joaquin Valley. 40 C.F.R. § 93.153(b)(1). This "conformity review" requires agencies to publicly notice the action and invite public comment and to ensure that pollution emissions are mitigated by (a) redesigning the action to reduce the emissions, (b) reducing the same type of emissions elsewhere at the facility, or (c) securing offsets in the same nonattainment or maintenance area or adjacent area with an equal or higher classification. 40 C.F.R. §§ 93.156, 93.158.

[3] *See id.*

FOIA No. 2025-EPA-09254 ED_020431_00001539-00005

Our 2022 letter to your agencies highlighted major violations by BLM when issuing new oil and gas permits on public lands, including failing to provide public notice and opportunity to comment on draft environmental assessments before issuing permits and failing to provide detailed air emissions calculations to support BLM's air pollution emissions estimates for new oil and gas wells. We stressed the need for detailed air emissions calculations, because BLM's unsupported estimates of air pollution from oil and gas wells in the San Joaquin Valley had typically been unrealistically low—orders of magnitude lower than comparable emissions calculations from Kern County and from BLM's analysis of oil and gas emissions in other states.[4]

BLM's prediction that emissions from development of new oil and gas wells would be substantially below the 10 tons per year threshold has been the basis for its determination—repeated each time it issues new permits in the Valley—that it is not required to conduct conformity review under the CAA. BLM has also never undertaken an analysis of whether oil and gas operators require review under the CAA's Nonattainment New Source Review and an operating permit under Title V of the CAA. In an area of the country suffering from some of the worst air pollution, and where the threshold for conformity review and "major source" permitting is only 10 tons per year for NOx and VOCs, performing these calculations correctly is of paramount importance. Indeed, EPA has also repeatedly called on BLM to provide detailed emissions calculations for its review before issuing new oil and gas permits.[5]

Since our September 2022 letter, several of the undersigned groups filed a lawsuit challenging BLM's May 31, 2023, issuance of six permits for new oil wells in the Valley, including on the basis that BLM provided no support for its unrealistically low air pollution emissions estimates for these wells.[6] In response to the lawsuit, BLM admitted it used the wrong methodology to calculate emissions. It acknowledged that it must re-calculate emissions, and it promised to provide the public with an opportunity to comment on its revisions.[7]

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[4] *Id.*

[5] *See* EPA Region 9 Comments to BLM's Bakersfield Field Office re. Bakersfield Field Office Hydraulic Fracturing Draft Supplemental Environmental Impact Statement (June 10, 2019); EPA Region 9 Comments to BLM's Bakersfield Field Office re. Bakersfield Field Office Hydraulic Fracturing Final Supplemental Environmental Impact Statement (Dec. 2, 2019); Letter from Matthew J. Lakin, Acting Director, Air and Radiation Division, EPA Region 9 to Michelle Ghafar (Oct. 20, 2022); Emails between Thomas Plenys at EPA Region 9, Environmental Review Branch and Matthew J. Thomas and Franklin E. Giles at BLM's Bakersfield Field Office (Nov. 16, 2022 through Feb. 21, 2023); Letter from Tom Kelly, Air and Radiation Division, EPA Region 9 to Matthew Thomas at BLM's Bakersfield Field Office (Apr. 3, 2023).

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BLM issued final revised calculations on May 23, 2024, in a new environmental assessment, with—yet again—no opportunity for EPA or the public to comment on its revised emissions calculations, despite the agency's assurances.[8] On the same date, BLM also issued an environmental assessment for four other new wells in the Valley, calculating air emissions in a similar manner, and then immediately approved these wells one business day later, again with no opportunity for public or EPA review of its analysis.[9]

BLM's revised calculations show that emissions for the six wells involved in the legal challenge to its recent permits in the Valley are up to *two orders of magnitude* higher than BLM originally calculated; calculated NOx emissions increased by more than *12,000%*—from 0.053 tons per year for well development to 6.8 tons per year. Despite these significant increases in BLM's emissions calculations, the calculations still are likely artificially low and inaccurate as BLM has omitted important sources of emissions—including the emissions from construction of the well pads, power poles, and pipelines that are slated to be built and from power and water generation needed to supply well operations. Conveniently, having omitted these sources, BLM's new calculations of these emissions are just slightly under the 10 tons per year threshold for CAA conformity review and major source permitting.

Given the lack of public and EPA scrutiny of these calculations and the likely errors, we call on BLM to immediately withdraw these six permits, along with the four issued in May 2024, and provide opportunity for public and EPA review, to ensure that these calculations are performed correctly.

BLM has admittedly undercounted air pollution emissions by two orders of magnitude in permits challenged in litigation. This analytical failure suggests that BLM has likely been routinely violating its conformity review obligations and permitting major new sources of air pollution without adequate review and mitigation, for decades. The agency has also likely been facilitating industry violations of the CAA by failing to ensure oil and gas companies are in compliance with Nonattainment New Source Review and Title V of the CAA before issuing oil and gas permits. Compounding further BLM's failures, the agency has failed to follow mandatory EPA guidance that would require it to aggregate oil wells into a single source for the purpose of calculating emissions in the permitting context. EPA has clarified that oil and gas equipment and activities must be deemed a single source for permitting purposes when these equipment and activities are under common control and located on the same site or on sites that share equipment and are

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within ¼ mile of each other.[10] BLM's ongoing practice of routinely issuing small batches of new oil and gas drilling permits at a time, with no analysis of whether new wells are connected to other adjacent activities under common control, has allowed the agency to evade consideration of whether permits should be evaluated together as a major source of air pollution.

As demonstrated by the image below of a ¼ mile radius around only one of the proposed six wells that the lawsuit challenged—showing that this well is within ¼ mile of *more than 50* other active oil and gas wells owned by the same company, as well as storage tanks and other equipment—new proposed wells in the Valley are generally adjacent to numerous other wells and associated equipment, all of which must be aggregated and analyzed to determine whether they constitute a major source of air pollution. Indeed, California Resources Production Corporation, which received the permits for the six challenged wells, has over 1,500 other wells at the Mount Poso field alone, with more than 600 of those wells in "active" status.

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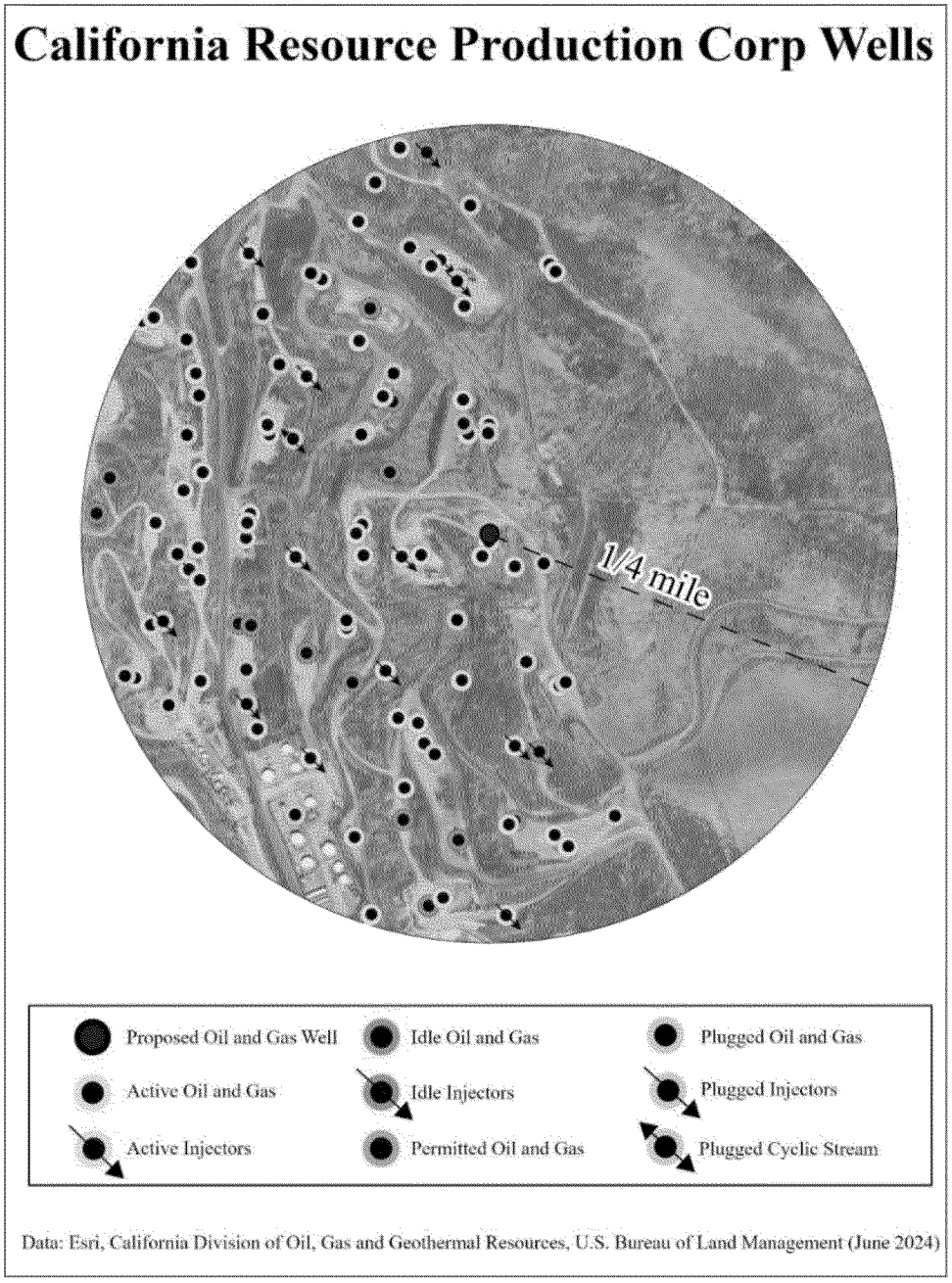

For all of these reasons, we call on leadership at BLM and EPA to urgently address the pollution and public health crises plaguing the Valley by ensuring that BLM holds itself and the oil and gas industry accountable to the CAA's requirements. The oil wells described here and challenged in litigation are only the tip of the iceberg: BLM's Bakersfield Field Office has set a Reasonably Foreseeable Development Scenario of 100 to 400 new wells a year on federal land in the San Joaquin Valley.[11] Each of these wells represents part of a death by a thousand cuts to the

[11] BLM, Bakersfield Field Office Hydraulic Fracturing Draft Supplemental Environmental Impact Statement (Apr. 2019) at 2, https://eplanning.blm.gov/public_projects/nepa/100601/171488/208501/Bakersfield_Field_Office_Hydraulic_Fracturing_Draft_Supplemental_EIS.pdf.

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Valley's air quality that federal law is meant to prevent. BLM should not allow additional harmful pollution in already overburdened environmental justice communities until it and EPA conduct a comprehensive analysis of Clean Air Act permitting in the Valley. Only in this manner can BLM ensure, with full transparency to the public, that BLM is in compliance with federal law.

We welcome the opportunity to discuss this issue with you at your earliest convenience and request a meeting on next steps. Please contact Michelle Ghafar to coordinate scheduling.

Sincerely,

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July 16, 2024

VIA ELECTRONIC SUBMISSION

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(Through counsel)

Re: The U.S. Bureau of Land Management's Routine Violations of the Clean Air Act in Issuing Oil and Gas Drilling Permits on Public Land in California

Dear Officials of U.S. Bureau of Land Management ("BLM"), U.S. Department of Interior ("DOI"), and U.S. Environmental Protection Agency ("EPA"):

On behalf of Center for Biological Diversity, The Wilderness Society, Patagonia, the Natural Resources Defense Council, the Chalon Indian Council of Bakersfield of the Chalon Indian Nation, the Central California Asthma Collaborative, Friends of the Earth, Leadership Counsel for Justice and Accountability, and the Center on Race, Poverty, and the Environment, we write to follow up on our September 8, 2022 letter, which alerted you to BLM's routine violations of

the National Environmental Policy Act, the Federal Land Policy and Management Act, the Mineral Leasing Act, and the Clean Air Act ("CAA") when issuing oil and gas drilling permits in the San Joaquin Valley, California.[1] Since we sent this letter nearly two years ago, BLM has failed to address the numerous violations of federal law highlighted in the letter. Moreover, BLM has recently re-calculated air pollution emissions from oil wells it permitted in the San Joaquin Valley in 2023 and the results show that air pollution from oil and gas development is two orders of magnitude larger than BLM previously estimated. This new BLM calculation indicates that the agency has likely been violating the CAA's conformity review requirement, and allowing oil and gas companies to skirt the CAA's Nonattainment New Source Review and Title V operating permit requirements, for decades.

Given these circumstances, which underscore the impact that BLM's permitting activities continue to inflict on communities suffering some of the worst air pollution in the United States, we now call on leadership at BLM and EPA to: (1) conduct a comprehensive review of whether BLM and the oil and gas industry are in compliance with the CAA; (2) institute a pause on new oil and gas drilling permits on federal land in California until this review is complete; (3) ensure that, going forward, all future oil and gas permits issued by BLM are submitted for public and EPA review and comment *before BLM approval* with at least a 30-day comment period; and (4) that they comply with all federal laws.

The San Joaquin Valley air basin is on the frontlines of the air quality and public health problems the CAA is designed to address and prioritize. The Valley is home to our nation's greatest air quality challenges and is in "extreme" nonattainment for ozone pollution—the main ingredient in the smog that blankets the Valley. Ozone is not emitted directly from human activities; rather it is the product of the interaction of two "precursor" pollutants emitted from extraction and burning of petroleum hydrocarbons: nitrogen oxides ("NOx") and volatile organic compounds ("VOCs"). By 2035, oil and gas production is projected to be the largest source of NOx in Kern County, accounting for nearly seventy percent of all NOx emissions. One study likewise estimates that VOC emissions from oil and gas extraction in the Valley are equivalent to total transportation emissions in the region. Pollution in the Valley has worsened so much that NOx emissions are now visible from space—a development that can be largely attributed to an increase in oil and gas operations.[2]

This pollution has real health impacts on the many communities of color and low-income communities who live in the Valley, which include members of the undersigned organizations. In Kern County, where most oil and gas production in California takes place, over half the population is Hispanic/Latinx, and nearly half of residents speak a language other than English at home. These frontline communities are statistically the most affected by pollution in the state,

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[1] *See* Letter from coalition of community, environmental justice, and environmental organizations to BLM, DOI, and EPA officials re. BLM's Failure to Comply with Federal Law in Issuing Oil and Gas Drilling Permits on Public Land in California (Sept. 8, 2022). All sources in this comment letter are saved in a folder at the following link: https://earthjustice.sharefile.com/i/ibad58b014d847e4a.

[2] *See* Comments on Applications for Permit to Drill in the Bakersfield Field Office, submitted to BLM (Aug. 29, 2022).

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meaning they experience the most asthma emergency room visits, heart attacks, and low birth-weight infants, and have the highest levels of poverty and unemployment. Pollution caused by oil and gas drilling is also associated with respiratory and neurological issues, cardiovascular damage, birth defects in babies, cancer, and premature mortality. EPA's National-Scale Air Toxics Assessment indicates that the respiratory hazard index in Kern County is higher than it is in 95 percent of the nation, and the cancer risk is higher than it is in 75 percent of the nation.[3]

These overburdened communities need all the protections that the CAA provides precisely because of the extreme extent of the air quality and public health crises in the Valley. The CAA is our nation's law aimed at preventing the unhealthy air currently plaguing the Valley. Its purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). The CAA authorizes EPA, the agency with primary regulatory authority under the Act, to establish National Ambient Air Quality Standards ("NAAQS") for serious pollutants known as "criteria pollutants," including ozone. 42 U.S.C. §§ 7407–7410. The CAA requires every region in the U.S. to reach attainment of the NAAQS for all criteria pollutants, and it has set timetables for attainment since the 1970s. 42 U.S.C. § 7407(a)–(d)(1)(A). Areas that fail to attain NAAQS standards are designated "nonattainment areas." 42 U.S.C. § 7407(d)(1). For ozone, regions are assigned "marginal" to "extreme" classifications depending on the level of pollution. 42 U.S.C. § 7511(a)(1). Because ozone is the product of the interaction between NOx and VOC, control of ozone under CAA regulations consists of emissions limitations on those precursors. *See, e.g.*, 40 C.F.R. § 93.153(b)(1). Permitting thresholds become more stringent as the severity of the ozone nonattainment increases. For example, the permitting threshold is 100 tons per year of NOx and VOCs in "moderate" nonattainment areas, whereas in "extreme" nonattainment areas like the San Joaquin Valley, this threshold is set at 10 tons per year. *See* 42 U.S.C. § 7511a; 57 Fed. Reg. 13,498, 13,523 (Apr. 16, 1992).

This means that in the San Joaquin Valley, a new source of more than 10 tons per year of NOx or VOCs is classified as a "major source" of pollution and must undergo Nonattainment New Source Review and obtain a major source operating permit under Title V of the CAA. 42 U.S.C. §§ 7661–7661f. These permitting provisions require opportunities for public comment on permits, enforceable monitoring and reporting requirements in operating permits, and the lowest achievable emission rate from new major sources of pollution. 42 U.S.C. § 7501. The CAA also mandates that federal activities—which include BLM's federal permitting of oil and gas wells—must not cause or contribute to any new violation of any NAAQS standard in any area. 42 U.S.C. § 7506(c)(1). Federal agencies are therefore required to undertake a "conformity determination" when NOx or VOCs caused by a federal action would exceed 10 tons per year in the San Joaquin Valley. 40 C.F.R. § 93.153(b)(1). This "conformity review" requires agencies to publicly notice the action and invite public comment and to ensure that pollution emissions are mitigated by (a) redesigning the action to reduce the emissions, (b) reducing the same type of emissions elsewhere at the facility, or (c) securing offsets in the same nonattainment or maintenance area or adjacent area with an equal or higher classification. 40 C.F.R. §§ 93.156, 93.158.

[3] *See id.*

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BLM's prediction that emissions from development of new oil and gas wells would be substantially below the 10 tons per year threshold has been the basis for its determination—repeated each time it issues new permits in the Valley—that it is not required to conduct conformity review under the CAA. BLM has also never undertaken an analysis of whether oil and gas operators require review under the CAA's Nonattainment New Source Review and an operating permit under Title V of the CAA. In an area of the country suffering from some of the worst air pollution, and where the threshold for conformity review and "major source" permitting is only 10 tons per year for NOx and VOCs, performing these calculations correctly is of paramount importance. Indeed, EPA has also repeatedly called on BLM to provide detailed emissions calculations for its review before issuing new oil and gas permits.[5]

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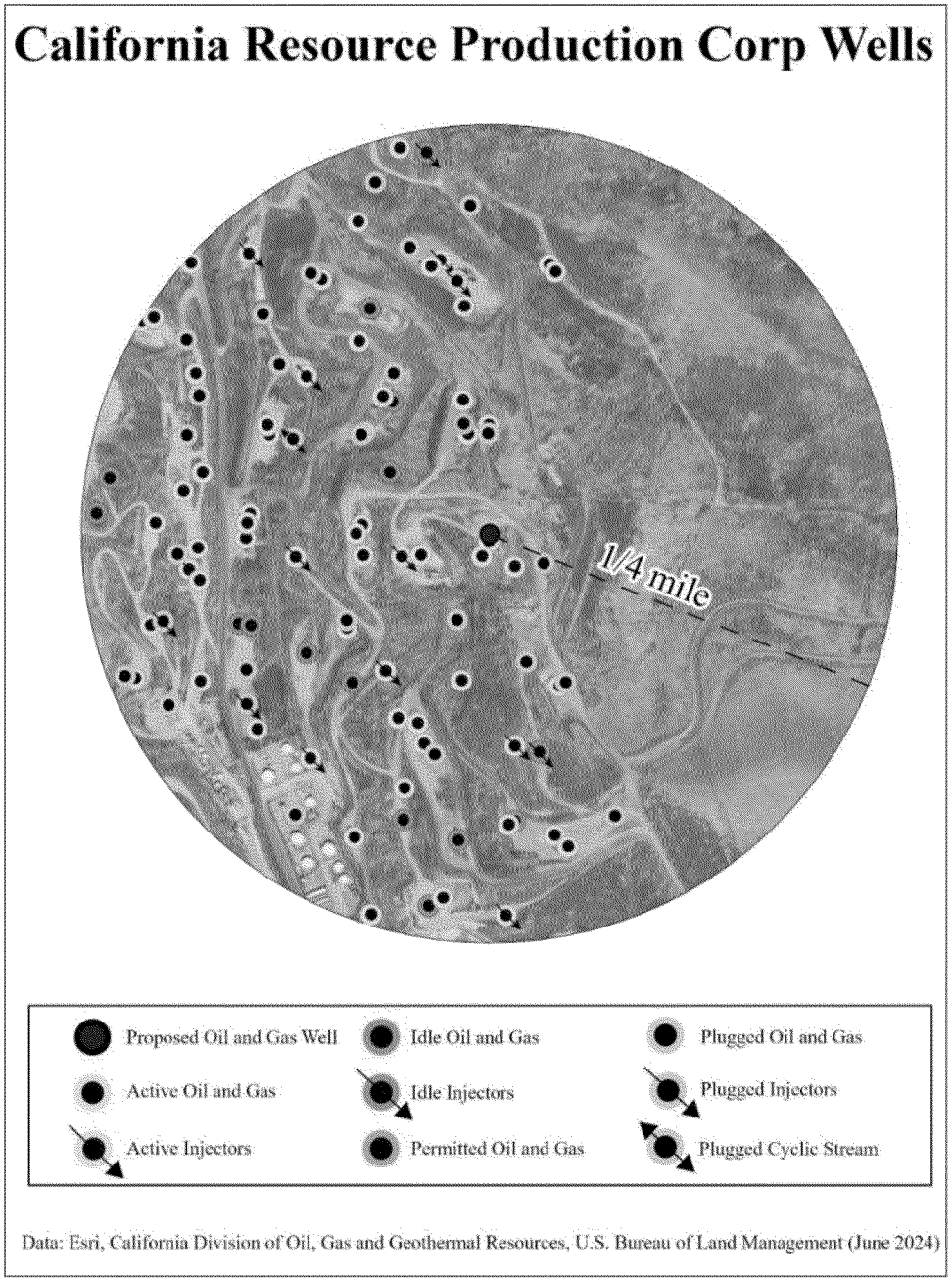

For all of these reasons, we call on leadership at BLM and EPA to urgently address the pollution and public health crises plaguing the Valley by ensuring that BLM holds itself and the oil and gas industry accountable to the CAA's requirements. The oil wells described here and challenged in litigation are only the tip of the iceberg: BLM's Bakersfield Field Office has set a Reasonably Foreseeable Development Scenario of 100 to 400 new wells a year on federal land in the San Joaquin Valley.[11] Each of these wells represents part of a death by a thousand cuts to the

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Chairwoman
Chalon Indian Council of Bakersfield of the Chalon Indian Nation
PO Box 902
Bakersfield, CA 93302
T: 292-669-2567
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Kevin Hamilton
Co-Executive Director
Central California Asthma Collaborative
1939 N. Gateway Blvd., Suite 103
Fresno, CA 93727
T: 559-272-4874
kevin.hamilton@centralcalasthma.org

FOIA No. 2025-EPA-09254 ED_020431_00001542-00009

Hallie Templeton
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Friends of the Earth
1101 15th Street NW, 11th Floor
Washington, DC 20005
T: 434-326-4647
htempleton@foe.org

Emma De La Rosa
Regional Policy Manager
Leadership Counsel for Justice & Accountability
1527 19th Street, Suite 212
Bakersfield, CA 93301
T: 661-889-5324
edelarosa@leadershipcounsel.org

Daniel Ress
Senior Attorney
Center on Race, Poverty & the Environment
1012 Jefferson Street
Delano, CA 93215
T: 303-437-3289
dress@crpe-ej.org

cc:

Gabe Garcia, Bakersfield Field Office Manager
U.S. Bureau of Land Management

Gordon Toevs, Acting California State Director
U.S. Bureau of Land Management

Joe Stout, California Associate State Director
U.S. Bureau of Land Management

FOIA No. 2025-EPA-09254 ED_020431_00001542-00010

Message

From: Hong, Jeanhee [Hong.Jeanhee@epa.gov]
Sent: 7/31/2024 11:47:47 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: James, Corin [James.Corin01@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]
Subject: RE: ISO statutory/court opinion language on controlling nature of D.C. Circuit
Attachments: Title V AD final rule_07-21-23.pdf

CUI//PRIVILEGE

Hi Abi, et al –

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Jeanhee Hong (she/her)
USEPA Office of General Counsel
Air and Radiation Law Office
(202) 565-0040

Controlled by U.S. Environmental Protection Agency

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Wednesday, July 31, 2024 3:59 PM
To: OGC ARLO <OGC_ARLO@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: ISO statutory/court opinion language on controlling nature of D.C. Circuit

Hi ARLO brain trust,

Ex. 5 AC/AWP/DP

This is a pretty time sensitive matter, so appreciate any leads anyone has to offer asap! Please include Corin, Geoff, and myself on any responses, thanks much!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 8/1/2024 4:03:54 AM
To: Hong, Jeanhee [Hong.Jeanhee@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: James, Corin [James.Corin01@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]
Subject: RE: ISO statutory/court opinion language on controlling nature of D.C. Circuit

CUI//PRIVILEGE

J:

Ummm…. Just beware.

Ex. 5 AC/AWP/DP

G

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From: Hong, Jeanhee <Hong.Jeanhee@epa.gov>
Sent: Wednesday, July 31, 2024 7:48 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Lee, Michael (he/him/his) <lee.michaelg@epa.gov>
Subject: RE: ISO statutory/court opinion language on controlling nature of D.C. Circuit

CUI//PRIVILEGE

Hi Abi, et al –

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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Jeanhee Hong (she/her)
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Message

From: Schramm, Daniel [Schramm.Daniel@epa.gov]
Sent: 8/1/2024 12:40:24 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: James, Corin [James.Corin01@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Hong, Jeanhee [Hong.Jeanhee@epa.gov]
Subject: RE: ISO statutory/court opinion language on controlling nature of D.C. Circuit
Attachments: RE: Non-acquiescence to Regional Circuit Courts in CAA regulations; National Environmental Development Associations Clean Air Project v Environmenta (NEDACAP II 2018).rtf

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Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 8/1/2024 5:32:18 PM
To: Hong, Jeanhee [Hong.Jeanhee@epa.gov]
CC: Schramm, Daniel [Schramm.Daniel@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; James, Corin [James.Corin01@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
Subject: take a look at the intervenors' brief
Attachments: for jeanhee 23-60616 - Texas v EPA - Intervenor Brief (003).pdf

CUI//PRIVILEGE

J:

Ex. 5 AC/AWP/DP

I would be curious what your assessment is.

G

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Message

From: Kataoka, Mark [Kataoka.Mark@epa.gov]
Sent: 8/1/2024 10:20:30 PM
To: Orlin, David [Orlin.David@epa.gov]
CC: Talty, Mark [Talty.Mark@epa.gov]; Frank, Carin (she/her/hers) [Frank.Carin@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)
Attachments: Govt Response to En Banc Petition.PDF

Ex. 5 AC/AWP/DP

Obviously I'm a bit confused here.

Mark Kataoka
Assistant General Counsel
Regulatory Issues Practice Group
EPA OGC CCILO
202-564-5584

From: Orlin, David <Orlin.David@epa.gov>
Sent: Wednesday, July 31, 2024 2:57 PM
To: Kataoka, Mark <Kataoka.Mark@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
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Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Tuesday, July 30, 2024 5:31 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

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Sorry if I am being confusing. For the PM brief I need to give DOJ our comments on this Friday (so I am hoping to collect comments by Thursday)—before Mark comes back. We aren't filing til after Mark comes back, but I don't know how much opportunity I will have to make further edits (if someone wants to say it's a critical edit I expect we could but I am supposed to be giving them our front office's edits on this Friday).

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Tuesday, July 30, 2024 5:14 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Thanks (I wasn't sure if you need to send our comments on PM NAAQS brief to DOJ significantly in advance of Aug 19).

Sounds like not before Aug 5

Mark Kataoka
Assistant General Counsel
Regulatory Issues Practice Group
EPA OGC CCILO
202-564-5584

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, July 30, 2024 4:35 PM
To: Kataoka, Mark <Kataoka.Mark@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

I'm sorry! On the PM NAAQS we have to turn the brief by Friday for filing Aug 19.

On the request for supplemental views on the impact of Loper on the Texas litigation about the light duty GHG rules we don't have any sense of schedule but I doubt very much will get done this week (although that is also due Aug 19)

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Tuesday, July 30, 2024 4:11 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

David – is there a deadline for review, i.e., is it before or after Mark T returns on Mon Aug 5?

Mark Kataoka
Assistant General Counsel
Regulatory Issues Practice Group
EPA OGC CCILO
202-564-5584

From: Kataoka, Mark
Sent: Monday, July 29, 2024 6:45 PM
To: Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Talty, Mark <Talty.Mark@epa.gov>
Subject: FW: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Adding Carin

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, July 29, 2024 2:56 PM
To: Talty, Mark <Talty.Mark@epa.gov>
Cc: Kataoka, Mark <Kataoka.Mark@epa.gov>
Subject: FW: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

FYI—DC Circuit asking for supplemental briefing by Aug 19 in our light duty GHG standards for MY2023-2026 in light of Loper Bright. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

PS Thanks very much for the staff meeting discussion—very interesting and helpful.

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov>
Sent: Monday, July 29, 2024 2:25 PM
To: Orlin, David <Orlin.David@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Durch, Kyle <Durch.Kyle@epa.gov>
Cc: Chen, Sue (ENRD) <Sue.Chen@usdoj.gov>
Subject: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi folks; I hope everyone has been well.

We got an order today requesting supplemental briefing in both the Texas case challenging EPA's standards and the NRDC case challenging NHTSA's standards. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Sue is out this week and I am just starting to think through the issues and coordinate with Civil but I wanted to give you the heads up right away.

Our supplemental brief is due Aug 19.

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 8/2/2024 12:57:56 AM
To: James, Corin [James.Corin01@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: question about our brief.
Attachments: Texas v EPA - 23-60616 - Fifth Circuit - EPAs Answering Brief.pdf

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C and A:

Here is another specific follow up question.

Ex. 5 AC/AWP/DP

G

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Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/2/2024 7:45:40 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: PM_NAAQS_Recon_Draft3_Brief (7-26 from DOJ) MG.DOCX
Attachments: PM_NAAQS_Recon_Draft3_Brief (7-26 from DOJ) MG.DOCX

CUI//PRIVILEGE

If you want to see what she sent, not that you have to

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

Controlled by U.S. Environmental Protection Agency

From: Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Sent: Friday, August 2, 2024 3:44 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: PM_NAAQS_Recon_Draft3_Brief (7-26 from DOJ) MG.DOCX

CUI//PRIVILEGE

David

This is a fabulous brief. Kudos to you and the team for working with EPA to make this draft so very good. There are a handful of comments in the draft; no line edits. A few other comments to pass along:

Ex. 5 AC/AWP/DP

That's all. Again, fantastic draft. Please let me know if you have any follow up questions or would like to discuss any of my comments.

Meghan

Meghan E. Greenfield
Senior Counsel for Litigation
Office of General Counsel
U.S. Environmental Protection Agency
T: 202-564-0177
M: 771-216-2437
E: Greenfield.Meghan@epa.gov

Controlled by U.S. Environmental Protection Agency

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/2/2024 8:21:43 PM
To: Kataoka, Mark [Kataoka.Mark@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Talty, Mark [Talty.Mark@epa.gov]; Frank, Carin (she/her/hers) [Frank.Carin@epa.gov]
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Ex. 5 AC/AWP/DP

Have a good weekend

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Friday, August 2, 2024 4:18 PM
To: Orlin, David <Orlin.David@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

[I see the brief is locked against editing so maybe you're already sent it, which is fine; sorry I didn't get to it sooner]

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

That's all I have in Mark T's absence.

Have a nice weekend

Mark Kataoka
Assistant General Counsel
Regulatory Issues Practice Group
EPA OGC CCILO
202-564-5584

From: Orlin, David <Orlin.David@epa.gov>
Sent: Friday, August 2, 2024 8:21 AM
To: Kataoka, Mark <Kataoka.Mark@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Thursday, August 1, 2024 6:21 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

Ex. 5 AC/AWP/DP

Obviously I'm a bit confused here.

Mark Kataoka
Assistant General Counsel
Regulatory Issues Practice Group
EPA OGC CCILO
202-564-5584

From: Orlin, David <Orlin.David@epa.gov>
Sent: Wednesday, July 31, 2024 2:57 PM
To: Kataoka, Mark <Kataoka.Mark@epa.gov>
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David Orlin (he/him)
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From: Kataoka, Mark <Kataoka.Mark@epa.gov>
Sent: Tuesday, July 30, 2024 5:31 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

OK well I started a response yesterday by copying and pasting language from Loper in response to the comment bubble that poses whether to react to Loper but I haven't tried to actually come up with wording for the brief – do you want to schedule time to discuss that (or do you want to figure it out and we can review your draft wording)? Obviously I'm a bit incapacitated w/Mark T out.

Mark Kataoka
Assistant General Counsel
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EPA OGC CCILO
202-564-5584

From: Orlin, David <Orlin.David@epa.gov>
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Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
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From: Kataoka, Mark <Kataoka.Mark@epa.gov>
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To: Orlin, David <Orlin.David@epa.gov>
Cc: Talty, Mark <Talty.Mark@epa.gov>; Frank, Carin (she/her/hers) <Frank.Carin@epa.gov>
Subject: RE: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

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EPA OGC CCILO
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Cc: Orlin, David <Orlin.David@epa.gov>; Talty, Mark <Talty.Mark@epa.gov>
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Adding Carin

From: Orlin, David <Orlin.David@epa.gov>
Sent: Monday, July 29, 2024 2:56 PM
To: Talty, Mark <Talty.Mark@epa.gov>

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Subject: FW: supplemental briefing order in 22-1031 Texas v. EPA (tailpipe GHG emission standards)

FYI—DC Circuit asking for supplemental briefing by Aug 19 in our light duty GHG standards for MY2023-2026 in light of Loper Bright. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov>
Sent: Monday, July 29, 2024 2:25 PM
To: Orlin, David <Orlin.David@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Durch, Kyle <Durch.Kyle@epa.gov>
Cc: Chen, Sue (ENRD) <Sue.Chen@usdoj.gov>
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Ex. 5 AC/AWP/DP

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Message

From: Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]
Sent: 8/6/2024 7:14:22 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]
Subject: SIP EJ Template Update- Staffing?
Attachments: SIP EJ EO template - final - 2023-02-07-july-2024.docx; Templates for Executive Order 12898 and Executive Order 14096_v3_redline_09_19_23.docx

Hi Abi and Emily,

Ex. 5 AC/DP

Could you let me know if you want to be included or if you have staff you want to name? Happy to include you and staff of course.

Thanks,

Dylan Mataway-Novak (he/him/his)
Group Leader, State and Local Programs Group
Air Quality Policy Division
U.S. Environmental Protection Agency
Email: Mataway-Novak.Dylan@epa.gov
Phone: (919) 541-5795

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Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 8/6/2024 7:41:33 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Weaver, Susannah [Weaver.Susannah@epa.gov]; James, Corin [James.Corin01@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Greenfield, Meghan [Greenfield.Meghan@epa.gov]
Subject: RE: follow up on our 5th Circuit CM litigation
Attachments: POET Biorefining LLC v Environmental Protection Agency.pdf

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Ex. 5 AC/AWP/DP

++++++++++++++
(202) 695-6287
he/him/his

Controlled by U.S. Environmental Protection Agency

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Tuesday, August 6, 2024 2:58 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
M: 202-603-6170

E: marks.matthew@epa.gov

Controlled by U.S. Environmental Protection Agency

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, August 6, 2024 8:27 AM
To: Weaver, Susannah <Weaver.Susannah@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
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CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

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he/him/his

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Sent: Monday, August 5, 2024 11:21 PM
To: James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: James, Corin <James.Corin01@epa.gov>
Sent: Friday, August 2, 2024 3:26 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Hi Susannah, those 'finishing touches' took longer than expected, but see attached for the paper Abi mentioned.

We look forward to discussing on Monday, and let us know if you have further thoughts/questions in the meantime.

Thanks,
Corin

Controlled by U.S. Environmental Protection Agency

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, August 1, 2024 6:28 PM
To: Weaver, Susannah <Weaver.Susannah@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Hi Susannah,

Geoff and Corin are putting finishing touches on a great paper walking through the potential arguments we could bring to DOJ and the court, and will be sending it to you by tomorrow. We also had a helpful discussion with the DOJ staff attorney on this case. Between the potential arguments and the DOJ discussion, we'd like to circle up with you early next week. I'll set up a meeting for Monday, but please in the meantime let us know if there's anything else we should be aware of. Thanks!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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Controlled by U.S. Environmental Protection Agency

From: Weaver, Susannah <Weaver.Susannah@epa.gov>
Sent: Wednesday, July 31, 2024 2:59 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Hi all,

Here were the notes I was looking at during our meeting. They were just my attempt to organize my thinking in response to Geoff's points.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

If you think we can make any of these arguments in a way that will be persuasive to DOJ or there are others I'm missing, let me know.

Thanks,
Susannah

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From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Tuesday, July 30, 2024 4:44 PM
To: Weaver, Susannah <Weaver.Susannah@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: follow up on our 5th Circuit CM litigation

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SW and MG:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

G

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Message

From: Marks, Matthew [Marks.Matthew@epa.gov]
Sent: 8/6/2024 8:06:43 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Weaver, Susannah [Weaver.Susannah@epa.gov]; James, Corin [James.Corin01@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Greenfield, Meghan [Greenfield.Meghan@epa.gov]
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
M: 202-603-6170
E: marks.matthew@epa.gov

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From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, August 6, 2024 3:42 PM
To: Marks, Matthew <Marks.Matthew@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

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Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
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Washington, DC 20460
T: 202-564-3276
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CUI//PRIVILEGE

Hi Susannah, those 'finishing touches' took longer than expected, but see attached for the paper Abi mentioned.

We look forward to discussing on Monday, and let us know if you have further thoughts/questions in the meantime.

Thanks,
Corin

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Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Hi Susannah,

Geoff and Corin are putting finishing touches on a great paper walking through the potential arguments we could bring to DOJ and the court, and will be sending it to you by tomorrow. We also had a helpful discussion with the DOJ staff attorney on this case. Between the potential arguments and the DOJ discussion, we'd like to circle up with you early next week. I'll set up a meeting for Monday, but please in the meantime let us know if there's anything else we should be aware of. Thanks!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: RE: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

Hi all,

Here were the notes I was looking at during our meeting. They were just my attempt to organize my thinking in response to Geoff's points.

Ex. 5 AC/AWP/DP

If you think we can make any of these arguments in a way that will be persuasive to DOJ or there are others I'm missing, let me know.

Thanks,
Susannah

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Tuesday, July 30, 2024 4:44 PM
To: Weaver, Susannah <Weaver.Susannah@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Vijayan, Abi

<Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: follow up on our 5th Circuit CM litigation

CUI//PRIVILEGE

SW and MG:

Some of us continue not to understand why DOJ is so adamant that the 5th Circuit LEAN is controlling, or so controlling that it would compel EPA to take a remand, in the pending CM litigation. This is our basic thinking:

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

G

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Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/6/2024 9:09:57 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: PM NAAQS - latest draft
Attachments: PM_NAAQS_recon_Draft_Brief_Draft4.DOCX

This is the draft Sarah just sent me. I haven't looked at it but based on our conversation I think she took most of our comments Ex. 5 AC/AWP/DP
Ex. 5 AC/AWP/DP She also said we were about 300 words over. She reiterates next steps below.

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Tuesday, August 6, 2024 4:48 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: PM NAAQS - latest draft

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Hi David:

Here's the draft we were just discussing. As I mentioned, I'll be sending this to Jack tomorrow morning and we aim to get it to Matt by Friday morning.

Sarah

Sarah A. Buckley (she/her)
Senior Counsel for Appellate Matters
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
sarah.buckley@usdoj.gov
Ph: (202) 616-7554

Message

From: Weaver, Susannah [Weaver.Susannah@epa.gov]
Sent: 8/7/2024 4:10:07 PM
To: Mathis, Jennifer (CRT) [Jennifer.Mathis@usdoj.gov]; Stoneman, Christine (CRT) [Christine.Stoneman@usdoj.gov]; daria.neal@usdoj.gov; Konschnik, Katherine (ENRD) [Katherine.Konschnik@usdoj.gov]
CC: Rhodes, Julia (she/her/hers) [Rhodes.Julia@epa.gov]; Goerke, Ariadne (she/her/hers) [Goerke.Ariadne@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: New draft of SIP NA Guidance
Attachments: SIP NA Guidance 8.7.2024.docx; Redline of 8.7.2024 SIP NA Guidance.docx

CUI//PRIVILEGE

Dear Jennifer, Christine, Daria, and Kate,

Please find attached a new clean draft of the SIP NA Guidance, which reflects extensive edits in response to your feedback and responses to many of your comments (we marked as "resolved" comments that contained nits and the like after accepting the edits). I've also included a redline to the latest draft you all reviewed. We'd like to connect as soon as you all have had some time to take a look and give your high-level feedback—let me know when you might be ready for that. Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Jeff will reach out to Sparkle to discuss next steps. As I know you all know, Ex. 5 AC/AWP/DP and we still have OMB review before we can issue anything. We very much appreciate your partnership on this.

Thanks,
Susannah

Susannah Landes Weaver
Deputy General Counsel
Office of General Counsel
Environmental Protection Agency
(202) 564-1928 (office)
(202) 819-6517 (mobile)

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Message

From: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]
Sent: 8/7/2024 8:40:18 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; James, Corin [James.Corin01@epa.gov]
CC: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]
Subject: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)
Attachments: ENV_DEFENSE-#1227005-v2-Texas_v__EPA_--_Texas_SIP_disapproval__DRAFT_voluntary_remand_motion.DOCX

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EPA team,

I understand that a decision has been made to Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP As Ben is out on leave today and tomorrow, I am distributing for comment Ex. 5 AC/AWP/DP Could folks please review this and provide us with a consolidated set of agency comments by the end of the day tomorrow? We're aiming to finalize and file when Ben gets back on Friday afternoon, as this is time sensitive.

Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Message

From: Lawrence, Sydney [lawrence.sydney@epa.gov]
Sent: 8/7/2024 8:44:49 PM
To: Clark, Adam [Clark.Adam@epa.gov]
CC: Fulton, Abby [Fulton.Abby@epa.gov]; Cherry, Randall [Cherry.Randall@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Vetter, Cheryl [Vetter.Cheryl@epa.gov]
Subject: RE: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08
Attachments: Colorado_Common Provisions - Affirmative Defense - PR_HQ version.docx

Hi Adam,

Returning HQ's minor edits to the Colorado SSM SIP Call response. Great work on this – let us know if you have any questions.

Thanks,
Sydney

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Monday, July 22, 2024 12:40 PM
To: Lawrence, Sydney <lawrence.sydney@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: RE: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08

Thanks all!

From: Lawrence, Sydney <lawrence.sydney@epa.gov>
Sent: Monday, July 22, 2024 7:24 AM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: RE: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08

Oh yep my mistake – Aug 8th, not 9th. Sounds good, thank you Libby!

From: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>
Sent: Monday, July 22, 2024 9:09 AM
To: Lawrence, Sydney <lawrence.sydney@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: RE: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08

Thanks, Adam and Sydney. I'll be reviewing for OGC and the August 9 (or 8? I see it says 8th in the portal and the 9th is my usual compressed day anyway) deadline works for me.

From: Lawrence, Sydney <lawrence.sydney@epa.gov>
Sent: Monday, July 22, 2024 8:39 AM
To: Clark, Adam <Clark.Adam@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>;

Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>
Subject: RE: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08

Hi Adam,

Confirming that we have received the Colorado SSM SIP call response in the portal. The Aug 9 review deadline works for me; however, I believe Seth will be on leave beginning later this week, so I'll defer to OGC on what their review coverage looks like and if they'd like to extend the review deadline.

Thanks,
Sydney

From: Microsoft Power Apps and Power Automate <microsoft@powerapps.com>
Sent: Friday, July 19, 2024 10:42 AM
To: Ling, Michael <Ling.Michael@epa.gov>; Lawrence, Sydney <lawrence.sydney@epa.gov>; Herrington, Leigh <Herrington.Leigh@epa.gov>; Millar, Emily <Millar.Emily@epa.gov>; Deabler, Gabrielle <Deabler.Gabrielle@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Bianco, Karen <Bianco.Karen@epa.gov>
Subject: HQ SIP Portal: Air Plan Approval; Revisions to Colorado Common Provisions Regulation Due 2024-08-08



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A new item titled "Air Plan Approval; Revisions to Colorado Common Provisions Regulation" has been submitted by Region 08 to the HQ SIP Portal. Please visit the link below to view the item:

Ex. 6 Personal Privacy (PP)

Title: Air Plan Approval; Revisions to Colorado Common Provisions Regulation
State: CO
Region: 08
Standard: N/A
Area: Statewide
Document Category: SSM SIP Call Response
Date Submitted to HQ: 2024-07-19
HQ Due Date: 2024-08-08
Reason for Review: National Consistency
Requested Review Office: OAQPS & OGC
Region Comments: **Ex. 5 AC/DP**

Ex. 5 AC/DP

Regional Manager(s): Fulton, Abby;
Regional Staff Lead(s): Clark, Adam;
ORC Staff Lead(s): Cherry, Randall;
OAQPS Staff Involved: Lawrence, Sydney;
OGC Staff Involved: Pettit, Elizabeth (Libby); Nolbaum, Seth (he/him/his);
ORC Reviewed Before Submission to HQ: Yes
Link to Files:

Ex. 6 Personal Privacy (PP)

Ex. 6 Personal Privacy (PP)

If you want to unsubscribe from these emails, please use this form.

Message

From: Greenglass, Nora [Greenglass.Nora@epa.gov]
Sent: 8/8/2024 12:03:20 PM
To: Weaver, Susannah [Weaver.Susannah@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Weatherall, Grace [Weatherall.Grace@epa.gov]
Subject: FOR REVIEW - Subpart Ba merits brief
Attachments: West Virginia v EPA - Pet Opening Brief 06.07.2024.pdf

Hi All,
The third draft of EPA's merits brief in the Subpart Ba litigation is available for your review here: ENV_DEFENSE-#1225201-v4-Ba_Rule_EPA_brief_EPA Comments 08.08.2024.docx. Matt Marks and Eric Hostetler reviewed the previous draft, so my expectation is that this is in good shape. I've included Tsuki's notes about revisions he made/didn't make relative to the previous version below.

@Vijayan, Abi, the discussion of SIPs and 110 is on/around pages 31 and 32.

Tsuki has requested our comments by **COB Monday, August 12.** From there, the draft will move to the ENRD front office and, Tsuki thinks, likely the DOJ OASG. Our filing date is August 22.

Susannah, I will put this in your binder, as well.

Please let me know if you have any questions.
Thank you,
Nora

From Tsuki:

Ex. 5 AC/AWP/DP

Nora Greenglass (she/her/hers)
Attorney-Advisor
U.S. EPA | Office of General Counsel
Air & Radiation Law Office
Tel: 202-564-3095 (office)
202-603-6299 (cell)

Message

From: Simcox, Alison [simcox.alison@epa.gov]
Sent: 8/8/2024 4:17:49 PM
To: Ling, Michael [Ling.Michael@epa.gov]
CC: Dain, Gregory [Dain.Greg@epa.gov]; McConnell, Robert [mcconnell.robert@epa.gov]; Wortman, Eric (he/him/his) [Wortman.Eric@epa.gov]; Brashear, Angelina (she/her/hers) [Brashear.Angelina@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]; James, Corin [James.Corin01@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Dykes, Teresa [Dykes.Teresa@epa.gov]; Rapp, Steven [Rapp.Steve@epa.gov]; Simcox, Alison [simcox.alison@epa.gov]; McHale, Mary [McHale.Mary@epa.gov]; Ferreira, Nicholas (he/him/his) [ferreira.nicholas@epa.gov]; Talley, David [Talley.David@epa.gov]; Bae, Estelle (she/her/hers) [Bae.Estelle@epa.gov]; Frizzell, Gretchen (she/her/hers) [Frizzell.Gretchen@epa.gov]; Huser, Jennifer [Huser.Jennifer@epa.gov]; Peter, David [peter.david@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov]; Beckham, Lisa (she/her/hers) [BECKHAM.LISA@EPA.GOV]; Ruddick, Randall [ruddick.randall@epa.gov]; Salem, Nevine [Salem.Nevine@epa.gov]; Fradkin, Kenneth [Fradkin.Kenneth@epa.gov]; Lin, Stephanie [Lin.Stephanie@epa.gov]
Subject: RE: SIP Reporting Workgroup
Attachments: Copy of 10333_gasoline_stations_year.xlsx

Hi Michael,

Ex. 5 AC/DP

Ex. 5 AC/DP

Alison

Alison Simcox, PhD
US EPA Region 1
Air Quality Branch
Air and Radiation Division

From: Ling, Michael <Ling.Michael@epa.gov>
Sent: Thursday, August 8, 2024 8:59 AM
To: Dykes, Teresa <Dykes.Teresa@epa.gov>; Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Rapp, Steven <Rapp.Steve@epa.gov>; Simcox, Alison <simcox.alison@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Ferreira, Nicholas (he/him/his) <ferreira.nicholas@epa.gov>; Talley, David <Talley.David@epa.gov>; Bae, Estelle (she/her/hers) <Bae.Estelle@epa.gov>; Frizzell, Gretchen (she/her/hers) <Frizzell.Gretchen@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>; Peter, David <peter.david@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Beckham, Lisa (she/her/hers) <BECKHAM.LISA@EPA.GOV>; Ruddick, Randall <ruddick.randall@epa.gov>
Cc: Salem, Nevine <Salem.Nevine@epa.gov>; Fradkin, Kenneth <Fradkin.Kenneth@epa.gov>; Lin, Stephanie <Lin.Stephanie@epa.gov>
Subject: RE: SIP Reporting Workgroup

Ex. 5 AC/DP

From: Dykes, Teresa <Dykes.Teresa@epa.gov>
Sent: Wednesday, August 7, 2024 10:17 PM
To: Ling, Michael <Ling.Michael@epa.gov>; Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Rapp, Steven <Rapp.Steve@epa.gov>; Simcox, Alison <simcox.alison@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Ferreira, Nicholas (he/him/his) <ferreira.nicholas@epa.gov>; Talley, David <Talley.David@epa.gov>; Bae, Estelle (she/her/hers) <Bae.Estelle@epa.gov>; Frizzell, Gretchen (she/her/hers) <Frizzell.Gretchen@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>; Peter, David <peter.david@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Beckham, Lisa (she/her/hers) <BECKHAM.LISA@EPA.GOV>; Ruddick, Randall <ruddick.randall@epa.gov>
Cc: Salem, Nevine <Salem.Nevine@epa.gov>; Fradkin, Kenneth <Fradkin.Kenneth@epa.gov>; Lin, Stephanie <Lin.Stephanie@epa.gov>
Subject: RE: SIP Reporting Workgroup

Ex. 5 AC/DP

Terri Dykes
Senior Attorney
Air Enforcement Division, Stationary Source Enforcement Branch
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave. NW
Mail Code 2242A
Washington, DC 20460
202.564.9883
(call for physical delivery address)

Do not release this email. This is confidential attorney-client communication and/or privileged attorney work product created for law enforcement purposes.

From: Ling, Michael <Ling.Michael@epa.gov>
Sent: Wednesday, August 7, 2024 5:57 PM
To: Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Rapp, Steven <Rapp.Steve@epa.gov>; Simcox, Alison <simcox.alison@epa.gov>; McHale, Mary <McHale.Mary@epa.gov>; Ferreira, Nicholas (he/him/his) <ferreira.nicholas@epa.gov>; Talley, David <Talley.David@epa.gov>; Bae, Estelle (she/her/hers) <Bae.Estelle@epa.gov>; Frizzell, Gretchen (she/her/hers) <Frizzell.Gretchen@epa.gov>; Huser, Jennifer <Huser.Jennifer@epa.gov>; Peter, David <peter.david@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Beckham, Lisa (she/her/hers) <BECKHAM.LISA@EPA.GOV>; Ruddick, Randall <ruddick.randall@epa.gov>
Cc: Salem, Nevine <Salem.Nevine@epa.gov>; Fradkin, Kenneth <Fradkin.Kenneth@epa.gov>; Lin, Stephanie <Lin.Stephanie@epa.gov>
Subject: RE: SIP Reporting Workgroup

Hi all. As mentioned last week, we will still have this reporting WG call tomorrow (Thursday). The main agenda item is

Ex. 5 AC/DP

I will also provide an update on the preparation of the briefing paper and would like to check in on how the conversations are going in your office ahead of Tuesday's APM special purpose call.

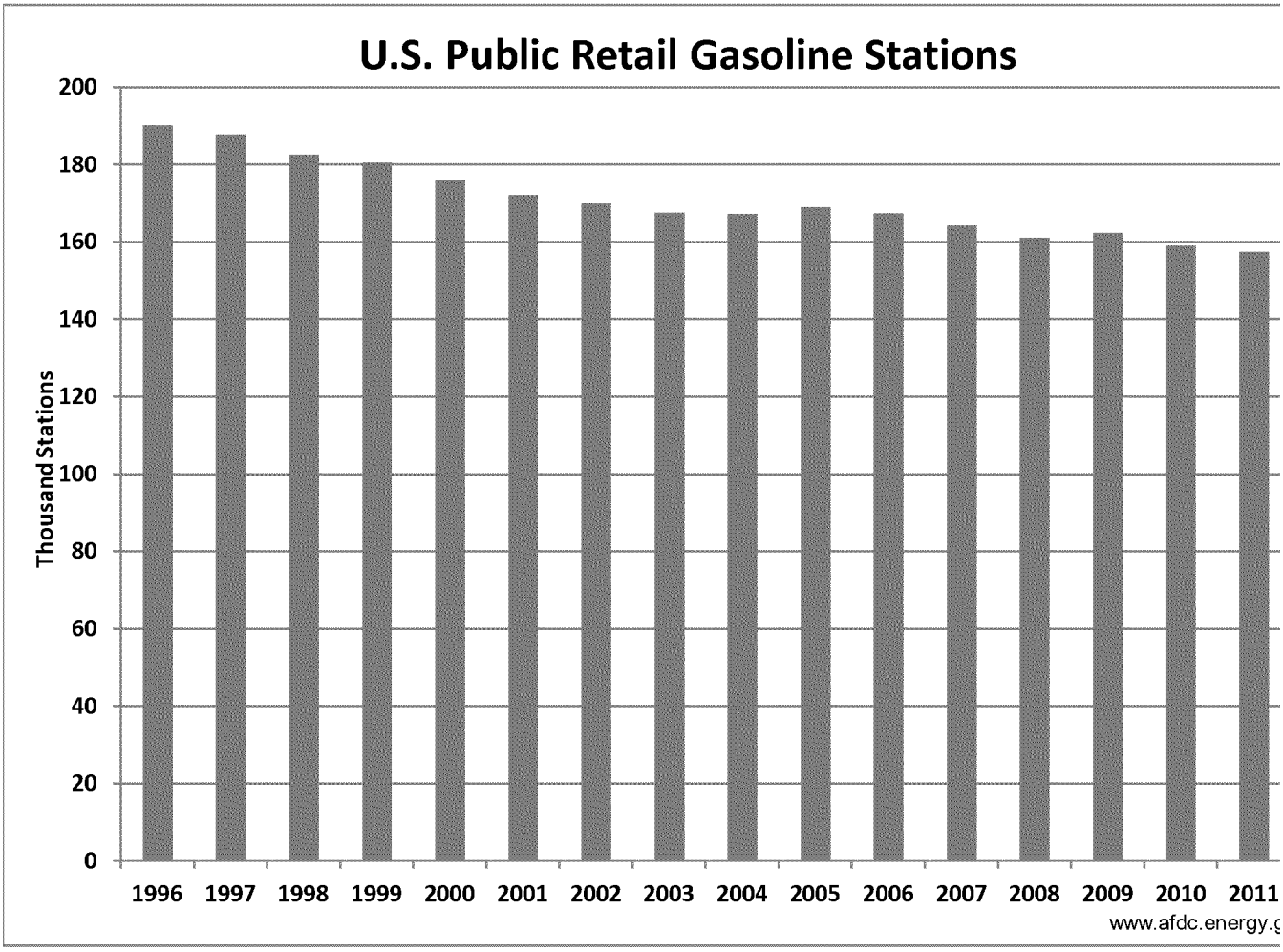
Talk to you tomorrow!

Public Retail Gasoline Stations by State and Ye										
State	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
Alabama	6,000	5,500	5,390	5,000	4,500	4,500	5,000	5,468	5,360	5,450
Alaska	263	257	267	262	377	350	390	400	319	322
Arizona	4,804	1,907	1,923	1,950	2,114	2,110	2,339	2,400	2,018	2,277
Arkansas	3,280	3,220	3,313	2,984	2,831	2,652	2,652	2,925	3,185	3,300
California	14,194	14,200	11,258	11,258	11,258	9,520	9,730	9,750	9,630	9,822
Colorado	2,308	2,517	2,308	2,256	2,340	2,084	2,229	2,234	2,182	2,348
Connecticut	1,948	1,800	1,532	1,654	1,639	1,526	1,558	1,576	1,526	1,524
Delaware	478	468	500	572	406	422	405	380	400	383
Dist. of Col.	93	128	114	100	120	166	119	95	100	120
Florida	9,249	9,550	9,024	9,301	9,318	9,471	9,504	9,409	9,275	9,215
Georgia	7,936	7,466	7,356	7,765	7,104	8,015	7,928	7,585	7,908	7,995
Hawaii	415	406	378	370	375	448	448	361	348	366
Idaho	1,208	1,182	1,158	765	945	917	794	842	800	789
Illinois	5,695	5,170	5,119	4,639	4,527	4,653	4,695	4,700	4,900	5,100
Indiana	3,445	3,422	3,350	3,200	3,200	3,200	3,302	3,000	3,300	3,300
Iowa	2,954	2,955	2,932	3,534	2,899	3,420	2,686	2,433	2,788	2,732
Kansas	2,659	2,525	2,507	2,797	2,461	2,300	2,683	2,373	2,200	2,500
Kentucky	4,406	4,311	4,265	4,214	4,065	3,978	3,825	3,734	3,653	3,606
Louisiana	8,810	7,100	7,424	7,276	6,598	6,400	5,200	3,179	3,223	4,082
Maine	1,200	1,400	1,300	1,274	1,369	1,395	1,420	1,461	1,325	1,534
Maryland	2,177	2,164	2,175	2,770	2,363	2,354	2,368	2,385	2,403	2,369
Massachusetts	2,400	2,600	2,400	2,600	2,600	2,400	2,600	2,600	2,600	2,600
Michigan	3,539	5,447	5,447	5,223	5,225	5,205	5,193	5,172	5,176	5,089
Minnesota	3,500	3,955	4,123	4,053	4,028	3,430	3,609	3,711	3,974	3,820
Mississippi	3,904	3,893	3,874	3,799	3,767	3,747	3,721	3,655	3,628	3,626
Missouri	5,420	5,181	5,083	4,981	4,819	4,721	4,669	4,600	4,825	4,410
Montana	1,382	1,385	1,600	1,568	1,500	1,500	1,000	925	1,100	1,100
Nebraska	1,884	2,341	1,940	2,214	1,868	1,685	1,654	1,643	1,638	1,600
Nevada	875	747	902	850	890	917	954	1,008	1,037	1,035
New Hampshire	977	950	963	893	938	898	903	943	960	981
New Jersey	3,864	4,500	3,200	3,900	3,900	3,783	3,800	3,200	3,400	3,608
New Mexico	1,752	1,577	1,722	1,650	1,478	1,417	1,417	1,558	1,549	1,490
New York	6,650	6,504	6,374	6,246	6,246	6,100	5,863	6,352	7,050	7,050
New Carolina	8,763	8,852	7,816	7,629	7,493	7,431	7,392	7,371	7,272	7,186
North Dakota	1,093	938	929	886	1,003	861	845	835	835	830
Ohio	6,200	6,200	6,076	6,050	6,050	6,000	5,568	5,568	4,923	5,125
Oklahoma	4,351	4,172	4,139	4,005	3,935	4,000	4,000	4,254	4,091	3,732
Oregon	1,650	1,893	1,854	1,857	1,785	1,800	1,800	1,790	1,776	1,752
Pennsylvania	5,300	5,300	5,200	5,000	4,920	4,945	4,452	4,611	4,675	4,628
Rhode Island	500	540	510	525	519	519	519	503	340	375
South Carolina	4,283	4,300	4,572	4,481	4,055	3,933	3,990	3,990	3,978	3,960
South Dakota	1,583	1,600	1,600	1,600	1,624	1,096	1,085	1,102	1,100	1,085
Tennessee	5,291	5,338	5,350	5,016	4,945	4,999	4,969	4,918	4,913	4,782
Texas	14,063	15,074	15,074	14,773	15,000	16,100	16,000	16,515	14,636	14,206
Utah	1,330	1,270	1,320	1,324	1,100	1,067	1,200	1,208	1,273	1,104
Vermont	781	760	774	759	650	980	980	950	975	642
Virginia	6,000	6,000	6,000	5,241	4,877	5,243	4,981	4,896	4,851	4,846
Washington	2,650	2,500	4,000	3,000	3,500	1,613	1,731	1,813	1,850	3,228
West Virginia	2,062	2,000	2,000	2,000	2,000	2,000	2,000	1,440	1,400	1,300

ear						
2006	2007	2008	2009	2010	2011	2012
5,500	6200	6150	6300	6300	6300	6300
460	566	442	440	372	365	361
2,190	2000	2051	2037	2081	2063	2027
3,300	2754	2540	2495	2350	2125	2107
9,857	9970	10200	10400	10104	10100	10100
2,300	2183	2322	2296	2253	2233	2188
1,475	1558	1530	1520	1502	1484	1488
384	377	373	373	415	419	419
121	114	118	114	115	85	87
9,217	9217	9169	9138	8987	9037	9037
7,685	8215	6890	7414	7563	8252	8471
328	344	362	360	396	396	421
847	790	957	929	1006	946	911
5,100	5000	4396	4406	4357	4370	3875
1,684	2396	3058	3028	2998	3028	3069
2,658	2659	2700	2934	2864	2740	2398
2,500	2800	2800	2800	2132	1974	1983
3,507	3600	3317	3174	3089	2991	2922
4,082	3650	3594	3658	3752	3714	3696
1,436	1373	1427	1349	1308	1257	1257
2,346	2339	2182	2150	2149	2123	1990
2,700	2700	3385	3221	3195	3032	2993
5,076	4984	4890	4828	4770	4752	4749
3,656	3649	3080	3125	3280	3657	2856
3,559	3550	3369	3354	3046	2968	2926
4,312	4178	4094	4045	3969	3914	3852
900	400	800	545	545	500	558
1,542	1486	1541	1501	1506	1494	1568
1,094	1169	1010	1082	1130	1130	1036
800	1700	914	926	950	863	857
3,301	3301	3142	3178	3219	3217	3333
1,478	1170	1165	1146	1158	1152	1188
7,050	6700	6500	6500	6200	6164	6030
7,052	6908	6878	6784	6670	6528	6270
930	922	788	757	733	726	723
4,935	4935	4957	4764	4634	4473	4617
3,500	3250	3200	3200	3200	3200	3200
1,724	1696	1673	1642	1601	1593	2010
4,678	4703	4713	4685	4685	4685	4685
375	377	375	401	405	410	388
3,924	3677	3682	3805	3430	3050	3098
1,073	1053	1042	1018	1014	1007	870
4,713	4650	4619	4529	4500	4430	4400
16,500	13760	13657	13926	13393	13023	13715
1,104	1125	1125	1122	1112	1093	1087
621	646	616	639	627	681	658
4,650	4650	4140	4130	4003	3947	3939
3,228	3056	3086	4200	4170	4110	4018
1,300	1300	1450	1450	1511	1200	1353

Wisconsin	4,027	4,027	3,946	3,867	3,867	3,348	3,348	3,300	4,253	4,253
Wyoming	650	400	215	636	550	550	500	450	425	410
Total U.S.	**190,246**	**187,892**	**182,596**	**180,567**	**175,941**	**172,169**	**170,018**	**167,571**	**167,346**	**168,987**

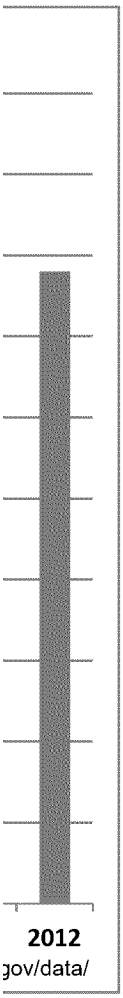
Data Source: National Petroleum News. 1996-2006 numbers posted at www.npnweb.com/, post-2006 numbers in NPN MarketFacts 2012 Report. Table "2012 NPN Station Count (a)"
http://www.npnweb.com/Media/E-CommerceProductCatalog/NPN%20MarketFacts%202012.pdf
Notes:
Survey conducted the first quarter of each year
Indiana's figure reflects the reporting agency's modification of its data collection technique for the information it r
Worksheet available at www.afdc.energy.gov/data
Last updated 07/08/2014



4,126	3919	4024	3973	3680	3829	3682
598	573	575	559	577	563	299
167,476	**164,292**	**161,078**	**162,350**	**159,006**	**157,393**	**156,065**

posted

eported



Public Retail Gasoline Stations by Year	
State	Total U.S.
1996	190.246
1997	187.892
1998	182.596
1999	180.567
2000	175.941
2001	172.169
2002	170.018
2003	167.571
2004	167.346
2005	168.987
2006	167.476
2007	164.292
2008	161.768
2009	162.350
2010	159.006
2011	157.393
2012	156.065

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/8/2024 4:44:43 PM
To: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Subject: FW: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)
Attachments: ENV_DEFENSE-#1227005-v3-Texas_v__EPA_--_Texas_SIP_disapproval__DRAFT_voluntary_remand_motion.DOCX

CUI//PRIVILEGE

Here's the relevant email exchange with Eric.

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 8:31 AM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Attached is a revised draft along the lines discussed in my email exchange with Geoff yesterday. This draft

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD)
Sent: Wednesday, August 7, 2024 5:49 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>

Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

Geoff,

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 7, 2024 5:00 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Eric:

Thank you for sending this draft.
A couple of immediate quick points/questions.

Ex. 5 AC/AWP/DP

Please advise.

G

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Wednesday, August 7, 2024 4:40 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi

<Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA team,

I understand that a decision has been made Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Texas. As Ben is out on leave today and tomorrow, I am distributing for comment a Ex. 5 AC/AWP/DP Could folks please review this and provide us with a consolidated set of agency comments by the end of the day tomorrow? We're aiming to finalize and file when Ben gets back on Friday afternoon, as this is time sensitive.

Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/8/2024 4:48:35 PM
To: Weaver, Susannah [Weaver.Susannah@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Greenfield, Meghan [Greenfield.Meghan@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Subject: RE: TX CMs remand motion
Attachments: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Here's the relevant email exchange with Eric. He said:

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: Weaver, Susannah <Weaver.Susannah@epa.gov>
Sent: Thursday, August 8, 2024 12:45 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; James, Corin <James.Corin01@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: RE: TX CMs remand motion

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Thursday, August 8, 2024 12:41 PM
To: James, Corin <James.Corin01@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: RE: TX CMs remand motion

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

++++++++++++++++

(202) 695-6287
he/him/his

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From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 11:57 AM
To: Greenfield, Meghan <Greenfield.Meghan@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: RE: TX CMs remand motion

CUI//PRIVILEGE

Thanks, Meghan.

Here's the shared link:
ENV DEFENSE-#1227005-v3-Texas v EPA -- Texas SIP disapproval DRAFT voluntary remand motion.DOCX

I'll plan to send back to Eric at 5pm unless I hear otherwise from any of you. Thanks in advance for the quick turnaround on this.

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From: Greenfield, Meghan <Greenfield.Meghan@epa.gov>
Sent: Thursday, August 8, 2024 11:38 AM
To: James, Corin <James.Corin01@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: RE: TX CMs remand motion

CUI//PRIVILEGE

Thanks, Corin. I will take the lead on reviewing this for the IO. That timing works for me.

Meghan

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From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 9:42 AM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>; Greenfield, Meghan <Greenfield.Meghan@epa.gov>

Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: TX CMs remand motion

Hi all, flagging that DOJ sent us a draft remand motion for the Texas contingency measures case and asked for our edits by end of day today so they can file tomorrow.

Abi/Geoff/I are reviewing this morning and then will plan to share with you all this afternoon (~12pm) for review. Let me know if that timing presents issues for anyone.

Thanks,
Corin

Message

From: England, JJ [England.Jj@epa.gov]
Sent: 8/8/2024 6:39:18 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Nowell, Valerie [Nowell.Valerie@epa.gov]
CC: Weatherall, Grace [Weatherall.Grace@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; James, Corin [James.Corin01@epa.gov]; Triplett, Eric [Triplett.Eric@epa.gov]
Subject: RE: GA RH SIP and Reporting Issues
Attachments: Conservation Groups Comments on Georgia Second Period Regional Haze Plan - 07.03.2024.pdf

CUI//PRIVILEGE

Hi all,

Thanks for checking in. Yes, you are correct, we did get reporting comments. I've attached the comments to this email. The reporting comments are on pages 40 (Brunswick Cellulose) and 44 (International Paper - Savannah). We are in the process of preparing responses to all comments received, but I agree that developing the position on how to respond to these particular comments will ultimately need to be a headquarters issue due to the ongoing deliberations on this. Our R4 air program has an internal deadline of tomorrow to have draft responses to comments to me, and ORC will be reviewing those responses and updating them as needed prior to submitting the FR into the portal. More to come. Thanks again.

-JJ

JJ England
Attorney Adviser, Air & EPCRA Law Office
U.S. EPA - Region 4
Direct: (404) 562-9489

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From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Thursday, August 8, 2024 1:33 PM
To: Seidman, Emily <seidman.emily@epa.gov>; Nowell, Valerie <Nowell.Valerie@epa.gov>; England, JJ <England.Jj@epa.gov>
Cc: Weatherall, Grace <Weatherall.Grace@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Subject: RE: GA RH SIP and Reporting Issues

CUI//PRIVILEGE

R4 Friends:

Could you please share the actual comment letter(s) with us? You may have already shot them around, but I forget. It will be helpful to our larger group efforts on this issue.

G

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From: Seidman, Emily <seidman.emily@epa.gov>
Sent: Thursday, August 8, 2024 1:31 PM
To: Nowell, Valerie <Nowell.Valerie@epa.gov>; England, JJ <England.Jj@epa.gov>
Cc: Weatherall, Grace <Weatherall.Grace@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: GA RH SIP and Reporting Issues

CUI//PRIVILEGE

Hi Valerie and JJ,

My understanding is that Region 4 received comments on the proposed Georgia regional haze SIP approval regarding reporting.

Ex. 5 AC/DP

I'm copying Grace (regional haze OGC lead for GA) and the ARLO experts on reporting (Corin, Geoff, and Abi).

Thanks in advance!
Emily

Emily Seidman | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | WJCN 7409L | office phone: (202) 564-0906 | cell phone: (202) 794-0051

Pronouns: she/her/hers

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Controlled by U.S. Environmental Protection Agency

July 3, 2024

Estelle Bae
Air and Radiation Division
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street SW
Atlanta, GA 30303

Electronic Filing via Regulations.gov

Re: Comments on Proposed Air Plan Approval; Georgia; Second Period Regional Haze Plan [EPA Docket No. EPA–R04–OAR–2023–0220]

Dear Ms. Bae,

The National Parks Conservation Association (NPCA), Sierra Club, the Coalition to Protect America's National Parks, and SELC (collectively, the Conservation Groups) submit the following comments on the Environmental Protection Agency's (EPA) proposal to approve Georgia's Regional Haze State Implementation Plan (SIP) for the Second Planning Period (SIP Revision), 89 Fed. Reg. 47,481 (June 3, 2024).[1] The Conservation Groups submitted public comments to Georgia on the State's draft SIP Revision on July 26, 2022, raising a number of the same issues discussed in these comments.[2]

National Parks Conservation Association (NPCA) is a national organization whose mission is to protect and enhance America's national parks for present and future generations. NPCA performs its work through advocacy and education. NPCA has over 1.5 million members and supporters nationwide, including more than 35,300 in Georgia, with its main office in Washington, D.C. and 24 regional and field offices. NPCA is active nationwide in advocating for strong air quality requirements to protect our parks, including submission of petitions and comments relating to visibility issues, Regional Haze SIPs, climate change and mercury impacts

[1] Ga. Dep't Nat. Res., Georgia's State Implementation Plan for the Regional Haze (Second Planning Period) (Aug. 11, 2022) [hereinafter "SIP Revision"].
[2] SIP Revision, App'x H-3a, Nat'l Parks Conservation Ass'n, et al., Conservation Organizations Comments on the Pre-Hearing Draft Georgia Regional Haze State Implementation Plan (July 26, 2022) [hereinafter "Conservation Groups State Comments"].

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on parks, and emissions from individual power plants and other sources of pollution affecting national parks and communities. NPCA's members live near, work at, and recreate in all the national parks, including those directly affected by emissions from Georgia's sources.

Southern Environmental Law Center (SELC) is one of the nation's most powerful defenders of the environment, rooted in the South. With a long track record, SELC takes on the toughest environmental challenges in court, in government, and in our communities to protect our region's air, water, climate, wildlife, lands, and people. Nonprofit and nonpartisan, the organization has a staff of 196, including 91 attorneys, and is headquartered in Charlottesville, VA, with offices in Asheville, Atlanta, Birmingham, Chapel Hill, Charleston, Nashville, Richmond, and Washington, D.C.

Sierra Club is a national nonprofit organization with 67 chapters and approximately 660,000 members—including over 9,860 in Georgia—dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club has long participated in regional haze rulemakings and litigation across the country to advocate for public health and our nation's national parks.

The Coalition to Protect America's National Parks (Coalition) represents over 2,500 current, former, and retired employees and volunteers of the National Park Service, with over 45,000 collective years of stewardship of America's most precious natural and cultural resources. We are protection rangers and interpreters, scientists and maintenance workers, managers and administrators, and specialists in the full spectrum of the parks' resources. Our membership also includes former National Park Service directors, deputy directors, regional directors, and park superintendents. Recognized as the Voices of Experience, the Coalition educates, speaks, and acts for the preservation and protection of the National Park System, and mission-related programs of the National Park Service.

In its SIP Revision, Georgia selected just three sources in the entire state for Four-Factor Analyses—Brunswick Cellulose, International Paper Co. – Savannah (IP Savannah), and Georgia Power's Plant Bowen.[3] The State further declined to require any of these sources to install new (i.e., additional) controls to reduce their haze-forming emissions. Rather, the State determined that only (1) Plant Bowen's existing measures and (2) fuel-use limits that result in cost savings for Brunswick and IP Savannah were necessary to make reasonable progress, rejecting all other control options analyzed as not cost-effective.[4] EPA now proposes to approve Georgia's SIP Revision in its entirety, providing almost no independent analysis of its own to determine whether the State's plan complies with the requirements of the Clean Air Act and the

[3] 89 Fed. Reg. 47,481, 47,493 (June 3, 2024). Notably, Georgia submitted its final SIP Revision to EPA just 16 days after the public comment period on the draft SIP Revision closed without making any changes to the plan in response to FLM or public comments. *See* Letter from Richard E. Dunn, Dir., Ga. Dep't Nat. Res., to Daniel Blackman, Reg'l Admin, Region 4, Env't Prot. Agency at 2 (Aug. 11, 2022) [hereinafter "Transmittal Letter"].
[4] 89 Fed. Reg. at 47,494-96.

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Regional Haze Rule.[5] EPA merely proposes to rubber stamp Georgia's SIP Revision without grappling with any of the significant errors the Conservation Groups and Federal Land Managers (FLMs) have raised. As discussed in these comments and in the attached expert reports from Joe Kordzi (Kordzi Report)[6] and Vicki Stamper (Stamper Report),[7] which are incorporated in their entirety into these comments, EPA's proposal to approve Georgia's SIP Revision is arbitrary and capricious, in violation of the Clean Air Act and the Regional Haze Rule (RHR):

- EPA ignores significant flaws in the visibility modeling conducted by the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) that Georgia relied on for its source selection process. The VISTAS modeling did not accurately reflect the likely contribution of sources in Georgia and other states to visibility impairment at Class I Areas in the Southeast, causing Georgia to improperly exclude major sources of haze-forming pollution from Four-Factor Analyses.
- EPA incorrectly proposes to approve Georgia's reliance on VISTAS multi-step source selection process and unreasonably high selection thresholds. Based on this VISTAS process, Georgia selected an inappropriately small set of sources for Four-Factor Analyses. EPA must direct Georgia to analyze additional sources of visibility impairing pollution that likely contribute to impairment at in-state and out-of-state Class I Areas, including Georgia Power's Plant Scherer, Transcontinental Pipe Line Co's Compressor Station 120, CEMEX Southeast, LLC, and 12 additional industrial sources across the State. EPA must also direct Georgia to include Plant Wansley's permanent retirement in the SIP as a federally enforceable requirement to ensure the plant cannot restart without a new permitting analysis.
- The Agency incorrectly endorses Georgia's decision to not consider any NOx controls from any Four-Factor Analyses conducted for sources. Georgia based its decision to ignore NOx controls on VISTAS' flawed and inaccurate modeling. Both Georgia and EPA both overlook the fact that the VISTAS modeling did not accurately reflect the contribution of nitrate to visibility impairment in the Southeast, including at Georgia's own Class I Areas.
- Georgia's cost-effectiveness approach to rely on an Arkansas Excel document with round one cost-effectiveness numbers escalated to 2019 was flawed because

[5] In the docket for its proposal, EPA includes a document titled "Georgia Regional Haze Technical Support Document (TSD)" that supposedly provides "additional detail" to support EPA's proposed approval. 89 Fed. Reg. at 47,491; Env't Prot. Agency, Georgia Regional Haze Technical Support Document (TSD) (June 3, 2024) [hereinafter "EPA TSD"]. However, a review of that TSD shows that it does not provide any technical review of Georgia's SIP Revision. Rather, it merely summarizes the State's SIP Revision in slightly more detail than EPA's proposal without providing any independent review of whether the SIP Revision complies with the Clean Air Act and RHR. *See generally* EPA TSD.

[6] Joe Kordzi, A Review of EPA's Proposed Approval of the Georgia Regional Haze State Implementation Plan (June 2024) [hereinafter "Kordzi Report"] (attached as Ex. 1). Mr. Kordzi is an independent air quality consultant and engineer with extensive experience in the Regional Haze Program.

[7] SIP Revision, App'x H-3a, Exhibit 2, Vicki R. Stamper, Review and Comments on Reasonable Progress Four-Factor Analyses Evaluated as Part of the Georgia Regional Haze Plan for the Second Implementation Period (July 25, 2022) [hereinafter "Stamper Report"]. The attachments to the Stamper Report are also included in Appendix H-3a to the SIP Revision and appear in EPA's docket. Ms. Stamper is an independent air quality consultant and engineer with extensive experience in the Regional Haze Program.

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round two does not consider visibility benefits like round one did, the haze program must progress in successive rounds and require more expensive measures, the spreadsheet itself is incomplete, and the escalation of some older data inappropriate. EPA must consider these issues and reject Georgia's flawed cost-effectiveness approach.

- Rather than conduct a rigorous review of the Four-Factor Analyses for the three sources Georgia did select in its SIP Revision, EPA shirks its oversight duties under the Clean Air Act and proposes to rubber stamp the State's highly flawed and inadequately documented control determinations. EPA must require Georgia to correct its Four-Factor Analyses for Plant Bowen, Brunswick Cellulose, and IP Savannah and require each source to install readily available, feasible, and cost-effective controls that are necessary to make reasonable progress in the second planning period.
- EPA improperly proposes to incorporate into Georgia's SIP state-issued Title V permit terms for Plant Bowen, Brunswick, and IP Savannah that are not practically enforceable, omit necessary reporting requirements, and fail to satisfy the requirements of the Clean Air Act and RHR.
- EPA cannot approve Plant Bowen or Plant Brunswick's permits into the SIP with unlawful SSM exemptions that could apply to the proposed regional haze limits. Plant Bowen's permit also contains an unlawful emergency affirmative defense provision that could apply to the proposed SIP limit, and must be removed.
- EPA ignores that Georgia's SIP does not include any measures to prevent future visibility impairment necessary to achieve the Clean Air Act's natural visibility goal.
- EPA incorrectly proposes to approve Georgia's reasonable progress goals even though those goals do not reflect the visibility conditions that will be achieved for its three Class I Areas by the end of the second planning period as a result of the controls the state determined are necessary for reasonable progress based on its Four-Factor Analyses.
- EPA must reject Georgia's consultation process because it failed to engage in meaningful FLM consultation, failed to document its disagreement with Indiana, and failed to critically evaluate whether additional controls from out-of-state sources.
- EPA entirely ignores its commitments to consider the environmental justice impacts of the visibility impairing pollution from Georgia sources and its action on the State's SIP Revision.

EPA must correct these errors and disapprove Georgia's deficient SIP Revision. EPA should then promptly issue a robust Federal Implementation Plan (FIP) that imposes necessary control measures on the State's sources of haze-forming pollution to ensure that Georgia and other states impacted by Georgia sources make reasonable progress toward the Regional Haze Program's goal of achieving natural visibility conditions at all Class I Areas.

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I. Improving Visibility in Class I Areas Will Result in Economic, Public Health, and Environmental Benefits.

Georgia is home to three Class I Areas: Okefenokee National Wilderness Area, Wolf Island National Wilderness Area, and Cohutta National Wilderness Areas. These protected areas provide habitat for a range of wildlife species, including threatened and endangered species, and provide year-round recreational opportunities for residents and visitors. They also preserve some of the most inspiring and critical landscapes in the world. For instance, Okefenokee, encompassing 353,981 acres of Class I wilderness area, is also a Wetland of International Importance under the RAMSAR Intergovernmental Treaty of 1971 because of its importance and value on an international scale.[8]

Because these areas are designated as "Class I" under the Clean Air Act, their air quality is entitled to the highest level of protection. Yet, these areas are still affected by more than one hundred sources of pollution in Georgia and other states that negatively impact their air quality and viewsheds.[9] Today, iconic wilderness areas and national parks are marred by air pollution that diminishes long range scenic views and robs visitors of their connection to and appreciation of large landscapes. Much of the air pollution in these Class I Areas stems from power plant and other industrial facility emissions of sulfur dioxide (SO_2) and nitrogen oxides (NOx), which react in the atmosphere to form "haze" pollution many miles downwind of the sources.

Beyond Georgia's own Class I Areas, in-state pollution sources impact Class I Areas in other nearby states, including iconic national parks like Great Smoky Mountains in Tennessee and North Carolina, Shenandoah in Virginia, and Mammoth Cave in Kentucky.[10] Air quality and visibility conditions at Great Smoky Mountains National Park have improved considerably since the 1990s.[11] Yet, pollution from sources across the southeast, including those located in Georgia, still threatens the Park. Mammoth Cave National Park, on the other hand, is the third most polluted park for regional haze in the country.[12] To effectively address air pollution in Mammoth Cave, downwind states like Georgia must take steps to reduce their share of pollution that travels hundreds of miles, negatively affecting the Park's air quality.

Class I Areas are an important component of Georgia's economy, as well as the economies of other states in the region. Class I parks and wilderness areas draw hundreds of

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[8] U.S. Fish & Wildlife Serv., Okefenokee National Wildlife Refuge (last visited June 12, 2024), https://www.fws.gov/refuge/okefenokee.

[9] Nat'l Parks Conservation Ass'n, Analysis of Georgia Sources (2024) (attached as Ex. 2) [hereinafter "NPCA Georgia Source Analysis"]. NPCA explains its methodology for determining source Q/d (emission over distance) values using EPA's updated 2020 National Emissions Inventory (NEI) and 2023 Clean Air Markets Program Data (CAMPD). Nat'l Parks Conservation Ass'n, Regional Haze Rule: Details of Analysis and Data Sources (2024) (attached as Ex. 3).

[10] NPCA Georgia Source Analysis.

[11] Kelsey Barnett-Fischels, Clearing the Air in the Smokies, Nat'l Parks Conservation Ass'n (May 1, 2024), https://www.npca.org/articles/3777-clearing-the-air-in-the-smokies.

[12] Nat'l Parks Conservation Ass'n, Polluted Parks: How Air Pollution and Climate Change Continue to Harm America's National Parks at 7 (2024), https://www.npca.org/reports/air-climate-report (attached as Ex. 4) [hereinafter "Polluted Parks 2024"]; *see also* Nat'l Parks Conservation Ass'n, Case Study: Mammoth Cave National Park (last visited June 12, 2024), https://www.npca.org/case-studies/case-study-mammoth-cave-national-park.

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thousands of visitors from around the world each year, providing a boon to gateway communities and local recreation businesses.[13] In 2022, outdoor recreation activities in the state contributed over $15 billion in value to Georgia's economy, supporting more than 160,000 jobs.[14] However, when the air at a Class I Area is polluted, visitation can drop by eight percent, harming local economies.[15] Air quality directly affects public use and enjoyment of our national parks and wilderness areas. As a result, a strong regional haze plan for Georgia is necessary to improve visibility at the State's three Class I Areas, as well as other Class I Areas in the region, to protect this critical contributor to local and state economies.

Reducing air pollution through Georgia's regional haze SIP would also improve public health, particularly for communities surrounding the State's various sources of air pollution. The same pollutants that mar scenic views at national parks and wilderness areas also cause adverse public health impacts. For example, NOx pollution is a precursor to ground-level ozone, which is associated with respiratory diseases, asthma attacks, and decreased lung function.[16] NOx reacts with ammonia, moisture, and other compounds to form particulates that can cause and worsen respiratory diseases, aggravate heart disease, and lead to premature death.[17] Similarly, SO_2 worsens asthma symptoms, leads to increased hospital visits, and can form particulates that aggravate respiratory and heart diseases and cause premature death.[18] Particulate matter (PM) can penetrate deep into the lungs and cause a host of health problems, such as aggravated asthma, decreased lung function, and heart attacks.[19] NOx and SO_2 emissions also harm terrestrial and aquatic plants and animals through acid rain and nitrogen deposition, which in turn causes ecosystem changes, like eutrophication of mountain lakes.[20]

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[13] U.S. Forest Serv., National Visitor Use Monitoring Survey Results: National Summary Report (Sept. 2023), https://www fs.usda.gov/sites/default/files/2022-National-Visitor-Use-Monitoring-Summary-Report.pdf (providing information on visitation to national forests and wilderness areas from FY 2018 through FY 2022) (attached as Ex. 5); Nat'l Park Serv., 2022 National Park Visitor Spending Effects (Aug. 2023), https://www nps.gov/subjects/socialscience/vse.htm#:~:text=Economic%20Contributions%20to%20the%20National,Service%20lands%20across%20the%20country (attached as Ex. 6).

[14] Ga. Bureau Econ. Analysis, Outdoor Recreation Satellite Account (ORSA): 2022—Georgia (2024), https://apps.bea.gov/data/special-topics/orsa/summary-sheets/ORSA%20-%20Georgia.pdf (attached as Ex. 7).

[15] *See* David Keiser et al., Air Pollution and Visitation at U.S. National Parks, 4 Sci. Advances 3-6 (July 18, 2018), https://www.science.org/doi/10.1126/sciadv.aat1613 (attached as Ex. 8).

[16] Env't Prot. Agency, Health Effects of Ozone Pollution (last updated Apr. 9, 2024), https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution.

[17] Env't Prot. Agency, Basic Information About NO_2 (last updated July 25, 2023), https://www.epa.gov/no2-pollution/basic-information-about-no2#:~:text=Nitrogen%20Dioxide%20(NO2)%20is,larger%20group%20of%20nitrogen%20oxides; Env't Prot. Agency, Health and Environmental Effects of Particulate Matter (PM) (last updated Aug. 23, 2023), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm.

[18] Env't Prot. Agency, Sulfur Dioxide Basics (last updated Jan. 31, 2024), https://www.epa.gov/so2-pollution/sulfur-dioxide-basics; Env't Prot. Agency, Health and Environmental Effects of Particulate Matter (PM) (last updated Aug. 23, 2023), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm.

[19] Env't Prot. Agency, Health and Environmental Effects of Particulate Matter (PM) (last updated Aug. 23, 2023), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm.

[20] Polluted Parks 2024 at 8-9; Env't Prot. Agency, Health and Environmental Effects of Particulate Matter (PM) (last updated Aug. 23, 2023), https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm; Env't Prot. Agency, Ecosystem Effects of Ozone Pollution (last updated Nov. 1, 2023), https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution.

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II. The Clean Air Act's Regional Haze Program

To improve air quality in our most treasured landscapes, Congress enacted the Clean Air Act's Regional Haze Program, establishing "as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."[21] In order to protect the "intrinsic beauty and historical and archeological treasures"[22] found in national parks, wilderness areas, and other "Class I" areas, the Regional Haze Program sets a national regulatory floor and requires states to design and implement programs to curb haze-causing emissions within their jurisdictions. To meet Congress' natural visibility goal, EPA issued the Regional Haze Rule (RHR), which requires states (or EPA where a state fails to act) to make "reasonable progress" toward eliminating human-caused visibility impairment at each Class I Area.[23]

Together, the Clean Air Act and RHR establish an iterative process that requires states to prepare and submit Regional Haze SIPs every ten years to further reduce visibility-impairing pollution at each Class I Area.[24] The RHR sets out a planning sequence that states must follow when developing their SIPs.[25] States first calculate baseline, current, and natural visibility conditions, as well as the Uniform Rate of Progress (URP) for each Class I Area within their borders, which is the amount of progress that would ensure that natural visibility conditions are achieved if kept constant each year.[26] This calculation shows a straight-line "glidepath" between baseline visibility conditions and natural visibility conditions. Second, states develop their long-term strategies for addressing regional haze pollution.[27] Third, they develop reasonable progress goals and then compare those goals to the URP to track the amount of progress that will be made at each Class I Area by the end of the planning period based on the controls included in the long-term strategy.[28] Finally, states adopt monitoring strategies and other measures to ensure compliance with their SIPs.[29]

A. Long-Term Strategy

In developing its long-term strategy, a state must consider its anthropogenic sources of visibility impairment and evaluate different emission reduction strategies to control haze-forming emissions from those sources. In selecting sources for reasonable progress analyses, a state should consider "major and minor stationary sources or groups of sources, mobile sources and area sources."[30] The state's reasonable progress analyses (a.k.a., Four-Factor Analyses) for selected sources, which form the basis for the state's long-term strategy, must address the four factors identified in the Clean Air Act and RHR: (1) the cost of compliance, (2) the time necessary for compliance, (3) the energy and non-air quality environmental impacts of

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[21] 42 U.S.C. § 7491(a)(1).
[22] H.R. Rep. No. 95-294, at 203-04 (1977), reprinted in 1977 U.S.C.C.A.N 1077, 1282.
[23] 40 C.F.R. § 51.308(d)(1)-(3), (f)(2)-(3).
[24] *Id.* § 51.308(f).
[25] 82 Fed. Reg. 3078, 3091 (Jan. 10, 2017).
[26] 40 C.F.R. § 51.308(f)(1).
[27] *Id.* § 51.308(f)(2).
[28] *Id.* § 51.308(f)(3).
[29] *Id.* § 51.308(f)(6); 82 Fed. Reg. at 3091.
[30] 40 C.F.R. § 51.308(f)(2)(i).

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compliance, and (4) the remaining useful life of the source.[31] Notably, neither the statute nor the RHR lists visibility improvement as a fifth factor in the reasonable progress analysis. The state "must include in its implementation plan a description of the criteria it used to determine which sources or groups of sources it evaluated and how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy."[32]

In addition to reasonable progress analyses for selected sources, states must also consider five additional factors in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs; (2) measures to mitigate pollution from construction activities; (3) source retirement and replacement schedules; (4) smoke management techniques for agricultural and forestry management purposes; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.[33] States must further document the technical basis for the SIP, including monitoring data, modeling, and emission information, and the baseline emission inventory upon which its strategies are based.[34]

A State's long-term strategy must contain "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal."[35] The emission limits and other measures included in a state's long-term strategy must be sufficient to achieve reasonable progress for the Class I Areas within the state's borders, as well as the out-of-state Class I Areas affected by the state's emissions.[36] A state cannot exclude sources from a reasonable progress analysis or reject controls identified in an analysis because Class I Areas impacted by in-state sources are projected to be at or below their respective URP glidepaths. EPA has made clear that the URP is not a "safe harbor."[37] Rather, the rate of progress that is achieved by the implementation of all reasonable controls as determined by a review of the four statutory factors "is, by definition, a reasonable rate of progress."[38]

States must also include elements in their SIPs to ensure the "emission limits, schedules of compliance and other measures"[39] that form the basis of the long-term strategies are practically enforceable. The Clean Air Act requires that SIPs include (1) "enforceable emission limitations and other control measures, means, or techniques . . . , as well as schedules and timetables for compliance, as may be necessary" and (2) "a program to provide for the enforcement of the measures described in [the SIP], and regulation of the modification and construction of any stationary source within the areas covered by the plan."[40] SIPs must also include sufficient monitoring, recording, and recordkeeping requirements to allow states, EPA,

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[31] 42 U.S.C. § 7491(g)(1); 40 C.F.R. § 51.308(f)(2)(i).
[32] 40 C.F.R. § 51.308(f)(2)(i).
[33] *Id.* § 51.308(f)(2)(iv).
[34] *Id.* § 51.308(f)(2)(iii).
[35] 42 U.S.C. § 7491(b)(2); 40 C.F.R. § 51.308(f)(2)(i).
[36] 40 C.F.R. § 51.308(d)(3), (f)(2).
[37] 82 Fed. Reg. at 3093.
[38] *Id.*
[39] 42 U.S.C. § 7491(b)(2); 40 C.F.R. § 51.308(f)(2).
[40] 42 U.S.C. § 7410(a)(2).

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and the public to determine whether sources are complying with applicable SIP requirements.[41] Data collected by sources or otherwise obtained by states must be available to the public.[42] Where a proposed SIP fails to include practically enforceable emission limits and measures, EPA must disapprove the proposed SIP and promulgate a FIP.[43]

B. Reasonable Progress Goals

In addition to long-term strategies, states must also establish in their SIPs reasonable progress goals, expressed in deciviews, that provide for progress towards the natural visibility goal for all in-state Class I Areas.[44] The reasonable progress goals must reflect the visibility conditions that will be achieved at the end of the implementation period as a result of the measures included a state's long-term strategy.[45] As EPA has explained, states must follow its "long-standing" SIP planning sequence whereby states first identify in their long-term strategies the controls that are necessary to make reasonable progress based on an analysis of the four statutory factors *and then* develop reasonable progress goals by determining the amount of visibility improvement that will result from the controls included in the long-term strategies.[46]

Reasonable progress goals must provide for progress on the most impaired days and no degradation on the clearest days by the end of the planning period.[47] If a reasonable progress goal for either an in-state or an out-of-state Class I Area impacted by in-state sources reflects a slower rate of improvement than the relevant URP glidepath at the end of the planning period, the state must provide a technically "robust demonstration" that there are no other available control measures that should be included in the SIP.[48]

C. State-to-State and FLM Consultation

The Clean Air Act and RHR further require states to consult with both FLMs and other states on their Regional Haze SIPs. For state-to-state consultations, the RHR requires states to: (1) consult with other states that have sources that impact in-state Class I Areas and/or with states that have Class I Areas that are impacted by in-state sources to develop "coordinated emission

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[41] *Id.* § 7410(a)(2)(F) (requiring SIPs to provide for "the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps . . . to monitor emissions from []sources," as well as "periodic reports on the nature and amounts of emissions and emissions-related data"); 40 C.F.R. § 51.308(f)(6)(vi) (requiring haze SIPs to include "reporting, recordkeeping, and other measures, necessary to assess and report on visibility").
[42] 40 C.F.R. § 51.116(c); *id.* § 51.211 (providing that SIPs must include "legally enforceable procedures" for maintaining records and periodic reporting, including "[i]nformation on the nature and amount of emissions"); *id.* § 51.230(f) (requiring SIPs to provides states with the authority to make emissions monitoring data available to public).
[43] *See e.g.*, 79 Fed. Reg. 5032, 5058 (March 3, 2014) (explaining that "as discussed in our proposed notices and elsewhere in this final notice, Wyoming's regional haze SIP lacks requirements for monitoring, recordkeeping, and reporting sufficient to ensure that the BART limits are enforceable and are met on a continuous basis"); *see also* 78 Fed. Reg. 34,738, 34,788 (June 10, 2013) (proposing to disapprove of Wyoming's monitoring, recordkeeping, and reporting requirements because they were not practically enforceable.).
[44] 40 C.F.R. § 51.308(f)(3)(i).
[45] *Id.*
[46] 82 Fed. Reg. at 3091.
[47] 40 C.F.R. § 51.308(f)(3)(i).
[48] *Id.* § 51.308(f)(3)(ii).

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management strategies"; (2) demonstrate they have included in their SIPs all measures agreed to during state-to-state consultation or regional planning processes; and (3) consider the emission reduction measures identified by other states as being necessary to make reasonable progress.[49] As part of this process, "states must exchange their four factor analyses and the associated technical information," including "modeling, monitoring and emissions data and cost and feasibility studies"[50] and must thoroughly document their interstate consultations in their SIPs.[51] "Congress was clear that both downwind states (i.e., 'a State in which any [Class I Federal] area . . . is located[']) and upwind states (i.e., 'a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area') must revise their SIPs to include measures that will make reasonable progress at all affected Class I areas."[52]

For FLM consultation, states must provide FLMs with an opportunity to consult in person and at a point early enough in the SIP development process that states "can meaningfully" consider information and recommendations provided by FLMs in making decisions on their long-term strategies.[53] States must consult with FLMs on (1) their assessment of visibility impairment in impacted Class I Areas and (2) their recommendations on the development and implementation of strategies to address such impairment.[54] Finally, in order for the public and EPA to assess whether states have satisfied their consultation requirements, states must also document the timing and content of their consultation with FLMs, including a description of how states addressed any comments provided by FLMs.[55] The FLM consultation process is not a mere box checking exercise. Rather, it is a mandatory, iterative, and substantive process, requiring states to meaningfully consider and incorporate into their SIPs the FLMs' recommendations and to ensure the public has an opportunity to review and comment on those efforts.

D. EPA's Review of Regional Haze SIPs

The Clean Air Act's Regional Haze Program provides states with the initial opportunity to develop Regional Haze SIPs that clean up the air in our national parks and wilderness areas. However, EPA must determine if a state's SIP complies with the requirements of the Clean Air Act and RHR and is authorized to approve, disapprove, or partially approve and partially disapprove of a SIP or a SIP revision.[56] As courts have recognized, EPA has broad oversight authority over the Regional Haze Program,[57] highlighting EPA's "substantive role in deciding whether state SIPs are compliant with the [Clean Air Act] and its implementing regulations."[58] EPA is not limited to a ministerial role of verifying whether states made the required

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[49] *Id.* § 51.308(f)(2)(ii).
[50] 82 Fed. Reg. at 3088.
[51] 40 C.F.R. § 51.308(f)(2)(ii)(C), (iii).
[52] 82 Fed. Reg. at 3094.
[53] 40 C.F.R. § 51.308(i)(2); *see also* 42 U.S.C. § 7491(d).
[54] 40 C.F.R. § 51.308(i)(2).
[55] *Id.* § 51.308(i)(2)-(4).
[56] 42 U.S.C §§ 7410(c)(1), (k)(3), (l), 7491.
[57] *North Dakota v. EPA*, 730 F.3d 750, 760-62 (8th Cir. 2013); *Oklahoma v. EPA*, 723 F.3d 1201, 1207-10 (10th Cir. 2013).
[58] *Arizona ex rel. Darwin v. EPA*, 815 F.3d 519, 532 (9th Cir. 2016); *see also Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 485-86 (2004).

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determinations under the Act but must instead review the substantive content of those same determinations "for consistency with the statute and regulations."[59] To that end, EPA may only approve of those SIPs, or portions of SIPs, that meet all the applicable requirements of the Act and must disapprove of SIPs or portions of SIPs that are based upon analyses that are neither reasoned nor moored to the Act's provisions.[60]

Moreover, where EPA has disapproved a SIP that does not comply with the requirements of the Clean Air Act or RHR, it is further authorized to amend SIPs and replace them with FIPs to fill the regulatory gap left by a disapproval.[61] The Clean Air Act states that EPA "shall promulgate a [FIP] at any time within 2 years after [the Agency] . . . disapproves a [SIP] submission in whole or in part," unless EPA approves a corrected and revised SIP before promulgating a FIP.[62] The Supreme Court has stated that EPA's mandate to replace an inadequate SIP with a FIP is "absolute," and EPA can issue a FIP at any time once it disapproves a SIP.[63] Other courts have similarly confirmed EPA's authority to issue a regional haze FIP once the Agency disapproves a deficient SIP.[64] Congress gave EPA this broad oversight authority to prevent recalcitrant states from undermining the purposes of the Clean Air Act through inadequate SIPs.[65]

EPA actions on regional haze plans under the Clean Air Act cannot be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and cannot be "in excess of" EPA's authority under the Act.[66] The "arbitrary and capricious" standard under the Clean Air Act is the same as that under the Administrative Procedure Act.[67] Agency action is arbitrary and capricious where "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency

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[59] *Arizona ex rel. Darwin*, 815 F.3d at 525 (citing 42 U.S.C. § 7410(c)(1)(A)); *see also North Dakota*, 730 F.3d at 761; *Nat'l Parks Conservation Ass'n v. U.S. Dep't of Interior*, 794 F. Supp. 2d 39, 41 (D.D.C. 2011) ("EPA must require these SIPs to include 'such emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress.'").

[60] *Arizona ex rel. Darwin*, 815 F.3d at 531; *North Dakota*, 730 F.3d at 760-62; *Oklahoma*, 723 F.3d at 1207-10.

[61] 42 U.S.C. § 7410(c)(1)(B) (providing that "[t]he Administrator shall promulgate a Federal implementation plan . . . after the Administrator . . . disapproves a State implementation plan submission in whole or in part"); *Arizona ex rel. Darwin*, 815 F.3d at 543.

[62] 42 U.S.C. § 7410(c)(1).

[63] *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 507-09 (2014) ("EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit.").

[64] *See, e.g.*, *Arizona ex. rel. Darwin*, 815 F.3d at 542–44; *Oklahoma v. EPA*, 723 F.3d 1201, 1223 (10th Cir. 2013); *see also Maryland v. EPA*, 958 F.3d 1185, 1190 (D.C. Cir. 2020); *New York v. EPA*, 964 F.3d 1214, 1229 (D.C. Cir. 2020) (Griffith, Circuit Judge, concurring) (stating that "EPA steps in only when state-led efforts fail"); *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 133 (D.C. Cir. 2015) ("EPA may promulgate a FIP only if a State declines to submit a SIP or if EPA finds that the State's SIP does not meet all of the applicable requirements of the Clean Air Act.").

[65] *See, e.g.*, *Alaska Dep't of Envtl. Conservation v. EPA*, 298 F.3d 814, 819-20 (9th Cir. 2002) (Congress gave EPA oversight authority because of "disappointing state response[s] to air pollution concerns" and its recognition that "states experience[] internal industry 'pressure . . . to relax their standards'"), *aff'd*, 540 U.S. 461 (2004).

[66] 42 U.S.C. § 7607(d)(9)(A), (C).

[67] *Nat'l Ass'n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1228 (D.C. Cir. 2007).

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expertise."[68] Thus, EPA "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[69]

Moreover, to ensure EPA's SIP actions are reasoned, the Agency must act consistently across SIPs. In 1977, Congress amended the Clean Air Act to direct EPA to promulgate rules of general applicability governing EPA's actions to "assure fairness and uniformity in the criteria, procedures, and policies applied by the various [EPA] regions in implementing and enforcing" the Act and to "provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed . . . in implementing and enforcing" the Act.[70] EPA, thus, interprets the statutory provision "as a mandate to assure greater consistency among the Regional Offices in implementing the Act [and] certainly not as a license to institutionalize the kind of inconsistencies that prompted Congress to enact this provision."[71] EPA promulgated final regulations to implement this mandate in 1980, providing a system for assuring fair and consistent application of rules, regulations, and policies throughout the country by establishing procedures and policies that EPA regional staff must follow in implementing the Clean Air Act programs delegated to the regions.[72] Since that time, EPA has issued numerous guidance documents outlining the SIP consistency process Regional Offices must adhere to in their review of state-submitted SIPs to assure consistent application of national programs, policy and guidance.[73]

III. EPA's Proposal to Approve Georgia's Source Selection Process Is Arbitrary and Capricious.

As EPA explains in its proposal, Georgia relied on the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) for its visibility modeling and source selection process in the SIP Revision. Based on that faulty VISTAS modeling and unreasonable source selection process, Georgia selected just three sources for Four-Factor Analyses—Brunswick Cellulose, IP Savannah, and Plant Bowen. EPA entirely ignores the significant flaws in the VISTAS modeling and source selection process adopted by Georgia, and its proposal to approve of Georgia's reliance on the VISTAS processes is unreasonable, arbitrary, and capricious. By incorrectly proposing to approve Georgia's selection process, EPA further ignores that the State unreasonably excluded numerous sources from Four-Factor Analyses that contribute visibility impairment at both in-state and out-of-state Class I Areas.

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[68] *Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*").
[69] *Id.* (quoting *Burlington Truck Lines v. U.S.*, 371 U.S. 156, 168 (1962)).
[70] 42 U.S.C. § 7601(a)(2).
[71] 44 Fed. Reg. 13,043, 13,045 (March 9, 1979).
[72] 40 C.F.R. Part 56; *see generally* 45 Fed. Reg. 85,400 (Dec. 24, 1980).
[73] *See e.g.*, Memorandum from Janet McCabe, Deputy Assistant Admin., Off. Air & Radiation, Env't Prot. Agency, to Reg'l Admins., Regions I – X (April 6, 2011), https://www.epa.gov/ground-level-ozone-pollution/streamlining-sip-process; Memorandum from William L. Wehrum, Acting Assistant Admin., Off. of Air & Radiation, Env't Prot. Agency, to Air Div. Dirs., Region I - X (Sept. 7, 2007), https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20050911_wehrum_revised_consistency_process.pdf.

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A. EPA Ignores Significant Flaws in VISTAS's Visibility Modeling.

EPA notes that Georgia used the VISTAS modeling to project the impact of the State's 2028 SO_2 and NOx emissions on in-state and out-of-state Class I Areas and proposes to approve Georgia's reliance on that modeling to identify the Class I Areas impacted by in-state sources and for source selection.[74]

In 2021, NPCA commissioned an expert modeler, Howard Gebhart, to review the VISTAS modeling on which Georgia relied in its SIP Revision. Mr. Gebhart identified significant flaws in VISTAS' modeling methodology.[75] NPCA informed all the states in the VISTAS region, including Georgia, about the major flaws in the modeling multiple times during the SIP Revision development process.[76] Although NPCA also informed EPA of the significant errors in the VISTAS modeling in 2021,[77] EPA does not acknowledge, let alone address, these errors in its proposal. The numerous flaws in the VISTAS modeling infected the entire source selection process for all VISTAS states, including Georgia.

First, the VISTAS modeling significantly underpredicted the contribution of sulfate to visibility impairment on the 20% most impaired days.[78] In fact, the sulfate errors were so significant that the modeling failed to come anywhere near meeting VISTAS' performance goals and failed to meet the modeling acceptance criteria for a number of Class I Areas, [79] including those in Georgia. For instance, the VISTAS modeling exceeded the acceptance criteria for sulfate at Okefenokee by -11.42%.[80] The model underpredicted sulfate across all seasons but had the largest underprediction during the summer months when sulfate extinction is known to be a major contributor to visibility impairment.[81] As a result, the VISTAS model results do not accurately predict sulfate levels during the period when visibility is most problematic in the Class I Areas. The model, thus, baked in the exclusion of large SO_2 polluters in Southeastern states, including Georgia. Although Georgia claims that it applied the 2028 future projections for sulfate using relative response factors (RRFs), which it asserts should have corrected for the sulfate underpredictions inherent in the model,[82] neither Georgia nor EPA provide any kind of assessment of whether use of RRFs adequately corrected for the extremely large errors in the VISTAS modeling. In its 2018 modeling guidance, EPA discusses the use of RRFs, making it clear that the effectiveness of RRFs is dependent on the type of data used to calculate them.[83]

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[74] 89 Fed. Reg. at 47,491-93, 47,497.
[75] Gebhart Howard, Technical Review of VISTAS Visibility Modeling for the Second Round of Regional Haze State Implementation Plans (May 2021) [hereinafter "Gebhart VISTAS Report"] (attached as Ex. 9).
[76] Letter from Stephanie Kodish, Sr. Dir. & Counsel, Clean Air and Climate Programs, Nat'l Parks Conservation Ass'n, et al. to Ron Gore, Chief, Air Quality Div., Ala. Dep't Env't Mgmt., et al. (May 12, 2021) [hereinafter "Letter to VISTAS States"] (attached as Ex. 10); Conservation Groups State Comments at 18-21.
[77] *See* Letter to VISTAS States at 11-12 (copying EPA regional and headquarters staff).
[78] Gebhart VISTAS Report at 4; Kordzi Report at 3-5.
[79] Gebhart VISTAS Report at 4.
[80] SIP Revision at 73, tbl.6-9; Kordzi Report at 3-4.
[81] Gebhart VISTAS Report at 4.
[82] SIP Revision, App'x H-4b, Ga. Dep't Nat. Res., Responses to Comments Received on Georgia's State Implementation Plan for Regional Haze (Second Planning Period) at 32 (Aug. 11, 2022) [hereinafter "Georgia Response to Public Comments"].
[83] Kordzi Report at 4.

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Thus, the calculation of RRFs and their application to modeling to correct for errors, like the sulfate underpredictions in the VISTAS modeling, are also subject to potential errors.[84]

Second, VISTAS relied on an outdated 2011 base year modeling platform for its 2028 future year emissions projections, using 2011 emissions profiles for EGUs.[85] VISTAS assumed that EGUs would operate in the exact same manner in 2028 as they did in 2011.[86] However, this model assumption is undoubtedly incorrect, as many EGUs in the VISTAS region, including those in Georgia, are expected to have significant changes in load utilization, and so, significantly different emission profiles in 2028 than they did in 2011.[87] As a result, the VISTAS 2028 projection modeling does not accurately represent the contribution of the region's EGUs to visibility impairment.

Third, VISTAS used outdated monitoring data for its 2028 future year projections that did not reflect the dramatic shift in nitrate contribution to visibility impairment in the Southeast over the last five to ten years.[88] VISTAS used monitoring data from 2009 to 2013 to identify the 20% most impaired days for analyzing visibility impacts in Class I Areas and assumed that the same days would make up the 20% most impaired days in 2028.[89] However, a review of more recent monitoring data from 2014 to 2018, which Georgia used to determine current conditions at its Class I Areas,[90] shows that the 20% most impaired days have shifted to include more winter days since the 2009-2013 baseline period.[91] Thus, nitrate has become a much larger contributor to visibility impairment in Class I Areas, doubling or even tripling at some locations since the 2009-2013 timeframe.[92] Because VISTAS relied on base year emissions from 2009-2013, its 2028 future year projections did not reflect the shift in nitrate contribution, again causing the modeling results to exclude major NOx sources.

Although the Conservation Groups raised the significant flaws in the VISTAS modeling and source selection method multiple times during the SIP development process, as noted above, EPA ignores these problems. As a result, EPA fails to consider an important aspect of the problem, rendering its proposal to approve of Georgia's reliance on the VISTAS modeling arbitrary and capricious.[93]

B. EPA's Approval of Georgia's Source Selection Thresholds Is Unreasonable.

The errors in the VISTAS modeling discussed above were carried forward into the source selection process for VISTAS states, including Georgia. Those errors caused VISTAS, and the states that relied on the VISTAS process, to improperly exclude sources from Four-Factor

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[84] *Id.*
[85] Gebhart VISTAS Report at 6.
[86] *Id.*
[87] *Id.* at 6-7.
[88] *Id.* at 7.
[89] *Id.*
[90] *See, e.g.*, SIP Revision at 32.
[91] Gebhart VISTAS Report at 7.
[92] *Id.*
[93] *State Farm*, 463 U.S. at 43.

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Analyses.[94] For instance, and as noted above, the VISTAS modeling underpredicted the contribution of sulfate to visibility impairment and did not accurately reflect the contribution of nitrate to impairment at Class I Areas, thereby excluding major sources SO_2 and NOx in the source selection process.

In addition to the impact of the modeling errors, Georgia also adopted VISTAS' unreasonable multi-step source screening process and unreasonably high source selection thresholds. VISTAS's source attribution analysis used a two-step process: (1) an "Area of Influence" (AOI) analysis to identify potential sources of visibility impairment impacting Class I Areas within the VISTAS domain, and (2) a Particulate Matter Source Apportionment Technology (PSAT) "tagging" process for sources identified at the AOI step.[95] Georgia adopted screening thresholds for each of these steps to eliminate sources: (1) a 2% threshold for in-state sources and 4% threshold for out-of-state sources at the AOI step; and (2) a 1% contribution threshold at the PSAT step.[96] Based on the VISTAS selection process and thresholds, Georgia selected just three sources for Four-Factor Analyses.[97]

As with the VISTAS modeling noted above, Mr. Gebhart similarly identified major flaws in the VISTAS source selection process at both the AOI and PSAT steps. First, Mr. Gebhart explained that the AOI analysis was too restrictive, employing unreasonably high selection thresholds that identified too few sources.[98] VISTAS identified just five Georgia sources at the AOI step.[99] By using a percentage threshold, the calculated threshold in absolute terms was higher for Class I Areas with the most severe visibility impairment, meaning that fewer sources were identified at the AOI step for Class I Areas with the worst impairment.[100] Yet, for the areas with the worst impairment, more sources should be selected to make progress toward the natural visibility goal. Additionally, neither Georgia nor EPA provide any justification for doubling the AOI threshold for out-of-state sources. Out-of-state sources contribute to impairment at Georgia's Class I Areas to the same or even greater degree as many in-state sources, as air pollution does not abide by state boundaries.[101] Thus, the State's decision to double its AOI threshold for out-of-state sources is unsupported. And contrary to EPA's claim in its proposal,[102] VISTAS, and Georgia by extension, considered sulfate and nitrate separately, which does not align with how these pollutants actually function where sulfate and nitrate combine in the atmosphere to contribute to impairment.[103]

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[94] Gebhart VISTAS Report at 13.
[95] SIP Revision at 192-93; 89 Fed. Reg. at 47,493.
[96] SIP Revision at 192-93; 89 Fed. Reg. at 47,493.
[97] SIP Revision at 196, tbl.7-29; 89 Fed. Reg. at 47,493.
[98] Gebhart VISTAS Report at 9-10.
[99] *Id.* at 10.
[100] *Id.* at 11.
[101] Kordzi Report at 6; NPCA Georgia Source Analysis (NONGASourcesImpactGACIA tab).
[102] 89 Fed. Reg. at 47,493 (stating that, at the AOI step, Georgia applied its thresholds to "sulfate and nitrate combined").
[103] Gebhart VISTAS Report at 13; *see, e.g.*, SIP Revision at 156 (explaining that the extinction weight residence time analysis for the AOI step of the screening process "was weighted by ammonium sulfate and ammonium nitrate extinction for that day and used to produce separate sulfate and nitrate EWRT plots," allowing "separate analyses for sulfate and nitrate").

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Second, the PSAT tagging process introduced additional modeling errors into the source selection process.[104] VISTAS applied PSAT tagging to only sulfate and nitrate, and applied it to those pollutants individually. As noted above, sulfate and nitrate act in combination in the atmosphere, along with other haze precursors, to contribute to light extinction and visibility impairment.[105] As a result, VISTAS likely underestimated the overall visibility impact of individual sources in its PSAT analysis.[106] This underestimate is likely even more pronounced for sources that were tagged in the PSAT analysis that are located less than 50 km from a Class I Area.[107] PSAT modeling has been shown to be unreliable for sources located within a short distance of Class I Areas, likely causing Georgia to improperly screen out the numerous in-state sources that are located in close proximity to the State's Class I Areas.[108] VISTAS also tagged sources using an outdated 2028 emissions projection.[109] Although the VISTAS documentation notes that the initial 2028 emission inventory projections were updated for the final modeling, the associated PSAT modeling did not use the final 2028 inventory.[110] VISTAS claimed to account for its reliance on the outdated 2028 emissions projections by "scaling" predicted sulfate and nitrate to the corresponding changes in SO_2 and NOx emissions in the updated 2028 inventory.[111] This scaling assumes that there is a linear relationship between SO_2 and NOx emissions and sulfate and nitrate concentrations.[112] However, ample evidence shows that there is a non-linear relationship between emissions and sulfate/nitrate concentrations.[113] Thus, reliance on an outdated 2028 emissions projection and "scaling" introduced additional errors into the modeling.[114] Moreover, the PSAT tagging process was entirely unnecessary, as the AOI step would have already identified the sources that contributed to impairment at Class I Areas.

EPA proposes to rubber stamp Georgia's reliance on the VISTAS source selection process and unreasonably high source selection thresholds without acknowledging or addressing the significant flaws in the VISTAS modeling and selection process. Turning a blind eye to these major problems, EPA concludes that Georgia's source selection method was reasonable because it "enabled the selection of three in-state sources that are projected to have the highest impact on visibility."[115] However, EPA itself has made clear that reliance on a selection threshold "that captures only a small portion of a state's contribution to visibility impairment in Class I Areas is more likely to be unreasonable."[116] Thus, EPA advises that, although states have some discretion in SIP development, their selection processes "should be designed and conducted to ensure that [they] result[] in a set of pollutants and sources the evaluation of which has the potential to

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[104] Kordzi Report at 5-6.
[105] Gebhart VISTAS Report at 13.
[106] *Id.*
[107] Kordzi Report at 7-10.
[108] *Id.* at 10.
[109] Gebhart VISTAS Report at 11, 13.
[110] *Id.* at 11.
[111] *Id.* at 11, 13.
[112] *Id.* at 13.
[113] *Id.*
[114] *Id.*
[115] 89 Fed. Reg. at 47,497.
[116] Memorandum from Peter Tsirigotis, Dir., Env't Prot. Agency, to Reg'l Air Dirs., Regions 1-10 at 3 (July 8, 2021), https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf [hereinafter "2021 Clarification Memo"].

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meaningfully reduce their contributions to visibility impairment."[117] Indeed, as EPA has explained, the source selection process "is a critical step in states' analytical processes" as it ultimately "determin[es] what constitutes reasonable progress" for the second planning period.[118] To ensure it captured a meaningful portion of in-state sources, Georgia should have used a different selection method with a lower threshold, such as a Q/d (emissions over distance value) of 5 or lower, or an equivalent threshold.

EPA also claims in its proposal that Georgia's source selection method is reasonable "given the specific circumstances present in Georgia," noting that VISTAS's modeling projects that visibility conditions in the State's Class I Areas is projected to improve since the 2000-2004 baseline and 2014-2018 current periods and "Georgia is also not contributing to visibility impairment at any Class I areas above the URP."[119] EPA again has itself made clear that the URP glidepath is not a safe harbor to avoid requiring additional reasonable progress measures for Class I Areas, including those that are projected to be at or below the glidepath in 2028.[120] Indeed, EPA disapproved SIPs during the first planning period where states claimed they were not required to select sources or conduct Four-Factor Analyses because visibility was projected to be at or below the glidepath even without additional measures.[121] Consequently, even if the Class I Areas impacted by Georgia sources already meet and exceed the glidepath, the Clean Air Act and RHR still require that the State engage in rigorous source selection and conduct Four-Factor Analyses to determine whether additional control measures are reasonable.[122] The fact that visibility conditions are projected to improve at Georgia's Class I Areas and those areas are below their respective URPs is not a valid basis on which EPA can approve the State's flawed selection method.

As discussed in more detail below, there are numerous sources that Georgia should have, but failed to, select for Four-Factor Analyses given their likelihood to contribute to impairment at in-state and other out-of-state Class I Areas. Indeed, the National Park Service (NPS) identified 6 facilities[123] and NPCA identified 21 sources in Georgia with a Q/d above 5[124] that the State should have selected for Four-Factor Analyses. Because Georgia's selection method was

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[117] *Id.* (explaining that states that rely on a visibility threshold or proxy "should set the threshold at a level that captures a meaningful portion of the state's total contribution to visibility impairment").
[118] *Id.*
[119] 89 Fed. Reg. at 47,497-98.
[120] 82 Fed. Reg. at 3093 ("The URP is not a safe harbor. . . ."); Memorandum from Peter Tsirigotis, Dir., Env't Prot. Agency, to Reg'l Air Dirs., Regions 1-10 at 50 (Aug. 20, 2019), https://www.epa.gov/sites/default/files/2019-08/documents/8-20-2019_-_regional_haze_guidance_final_guidance.pdf [hereinafter "2019 Guidance"]; 2021 Clarification Memo at 15-16; *see also* Kordzi Report at 12.
[121] 82 Fed. Reg. at 3084; *see also id.* at 3084 n.30 (providing an example of a SIP rejection).
[122] *Id.* at 3099 ("Even if a state is currently on or below the URP, there may be sources contributing to visibility impairment for which it would be reasonable to apply additional control measures in light of the four factors."); 2021 Clarification Memo at 15-16 (explaining that states cannot use the glidepath as a safe harbor and instead "must select a reasonable number [of] sources and evaluate and determine emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors").
[123] SIP Revision, App'x H-1b, National Park Service (NPS) Regional Haze SIP Feedback for the Georgia, Department of Natural Resources, Environmental Protection Division at 7-9, tbl.1 (June 22, 2026) [hereinafter "NPS Consultation Letter"].
[124] Conservation Groups State Comments at 10-11 & tb.1, 20.

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significantly flawed and unreasonably excluded sources that likely contribute to visibility impairment, EPA's proposal to approve the State's selection method is arbitrary and capricious.

C. EPA Incorrectly Endorses Georgia's Decision to Exclude Consideration of NOx Controls in any Four-Factor Analyses.

EPA proposes to conclude that Georgia "appropriately focused on controlling point source SO_2 emissions based on data showing ammonium sulfate is the dominant visibility impairing pollutant at the Georgia Class I areas."[125] EPA notes that Georgia relied on VISTAS modeling to show that no in-state sources exceeded its (unreasonably high) selection thresholds for nitrate.[126] EPA, thus, endorses Georgia's decision not to consider NOx controls any Four-Factor Analyses for sources. EPA's proposed conclusion is belied by the record.

Again, EPA ignores all the significant flaws in the VISTAS modeling on which it and Georgia rely. As discussed above, the VISTAS modeling did not accurately reflect the shift in the 20% most impaired days and the corresponding increase in the contribution of nitrate to visibility impairment at Southeastern Class I Areas.[127] As Mr. Gebhart explained in his report, more of the 20% most impaired days now occur in the winter, when nitrate plays a bigger role in visibility impairment.[128] Georgia also explained in its SIP that "nitrate concentrations are higher on winter days and are more important for the coastal sites where the 20% most impaired days occur during the winter months."[129] Notably, both Wolf Island and Okefenokee are coastal Class I Areas. Indeed, EPA, Georgia, NPS, and the Forest Service have all noted that nitrate's contribution to visibility impairment has increased in recent years.[130] A review of current conditions information in Georgia's SIP Revision confirms that nitrate contributes a substantial portion of light extinction at Cohutta. On multiple of the 20% most impaired days for this Class I Area during the 2014-2018 period, nitrate is the biggest contributor to light extinction.[131]

EPA itself has established an expectation that states will, at a minimum, consider both SO_2 and NOx in this planning period[132] and has explained that "the rate of progress that will be achieved by the emission reductions resulting from all reasonable control measures is, by

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[125] 89 Fed. Reg. at 47,498.
[126] *Id.* at 47,493-94.
[127] *See supra* Section III.A.
[128] Gebhart VISTAS Report at 7.
[129] SIP Revision at 26.
[130] 89 Fed. Reg. at 47,493; SIP Revision at 104 (explaining that "there are some days where organic matter and/or nitrate can have large impacts on" Cohutta and Okefenokee and that "organic matter on poor visibility days are associated with episodic events while the nitrate components are associated with anthropogenic emissions"); NPS Consultation Letter at 5 (stating that "the nitrate contribution to visibility impairment on the 20% most impaired days has been increasing over the last decade at Great Smoky Mountains, Mammoth Cave, and Shenandoah National Parks"); SIP Revision, App'x H-1a, U.S. Forest Serv., Technical Comments on Georgia Environmental Protection Division (EPD) Draft Regional Haze (RH) State Implementation Plan (SIP) at 3 (June 17, 2022) (explaining that the share of visibility impairment at Cohutta from 2001 to 2020 from sulfate has generally decreased while the share of impairment from nitrate has increased (2% in 2001 to 27% in 2020)).
[131] SIP Revision at 34, fig.2-7.
[132] 2021 Clarification Memo at 4-5

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definition, a reasonable rate of progress."[133] As discussed in more detail below, there are multiple sources of significant NOx emissions that Georgia should have, but failed to, analyze for NOx controls.[134] By endorsing Georgia's decision to completely exclude consideration of NOx controls, EPA ignores an important aspect of the problem.[135]

D. EPA Ignores that Georgia Unreasonably Excluded Sources from Four Factor Analyses.

To correct the serious errors in the State's source selection method, EPA must require Georgia to assess additional EGU and non-EGU industrial sources identified by NPS and NPCA with emissions that likely contribute to impairment in Class I areas in Georgia and other states. Neither Georgia nor EPA can justify the State's failure to analyze additional sources by relying on the VISTAS modeling and source selection process, as discussed above.[136] Consideration of these additional sources is necessary to ensure that Georgia's SIP Revision meaningfully reduces the State's contribution to visibility impairment to make progress toward the natural visibility goal in the second planning period.[137]

1. Georgia Power's Plant Scherer

Georgia Power's Plant Scherer is located near Juliette, in Monroe County, about 210.2 km from Cohutta Wilderness Area. It consists of three EGUs, and though it is equipped with selective catalytic reduction (SCR) for NOx control, baghouses for PM control, and wet lime flue gas desulfurization (FGD) scrubbers for SO_2 control, it still releases massive amounts of visibility-impairing SO_2 and NOx emissions. Plant Scherer's 2028 modeled SO_2 emissions were 1,985 tons per year (tpy) (the fourth highest of the twenty-eight listed sources),[138] and its 2028 modeled NOx emissions were 12,747 tpy.[139] As explained in detail in Section III.C., and given Plant Scherer's incredibly high NOx emission projections for 2028, neither EPA nor Georgia can reasonably ignore potential cost-effective NOx controls, optimizations, and/or upgrades to reduce NOx emissions from this facility. NPS found that "Scherer Units 1–3 are not effectively controlled for NOx emissions . . . [and] . . . the Scherer SCR systems have low performance in comparison to other similar units."[140] NPS thus recommended that Georgia "require an

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[133] 82 Fed. Reg. at 3093; 2021 Clarification Memo at 7 (explaining that "[a] reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions").
[134] *See also* Kordzi Report at 3.
[135] *State Farm*, 463 U.S. at 43.
[136] In its response to comments in the SIP Revision, Georgia merely cites back to its arbitrary source selection process to justify its failure to conduct Four-Factor Analyses for any of the sources discussed in this section. *See* Georgia Response to Public Comments at 10-11, 21-22; SIP Revision, App'x H-4a, Ga. Dep't Nat. Res., Responses to FLM Consultation Comments Received on Georgia's Draft State Implementation Plan for Regional Haze (Second Planning Period) at 20-21 (Aug. 11, 2022) [hereinafter "Georgia Response to FLM Comments"].
[137] 2021 Clarification Memo at 3.
[138] SIP Revision at 198, tbl.7-32 (showing all the facilities in Georgia with SO_2 emissions greater than 100 tpy in 2017).
[139] SIP Revision at 199, tbl.7-33 (showing all the facilities in Georgia with NOx emissions greater than 100 tpy in 2017).
[140] NPS Consultation Letter at 25; Georgia Response to FLM Comments at 20.

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evaluation of the SCR systems for the Scherer units and investigate ways to improve performance and reduce NOx emissions."[141] NPS further explained that:

> The SCR systems on Units 1–3 are operating at 53%–77% control efficiency and achieving average annual emission rates of 0.12–0.15 lb/mmBtu . . . . According to the CAMD database, the SCR units were installed between 2010 and 2013. The EPA Control Cost Manual (CCM) Chapter on SCR notes that modern SCR systems on "*commercial coal-, oil-, and natural gas–fired SCR systems are often designed to meet control targets of over 90 percent*" (down to 0.04 lb/MMBtu).[142]

In fact, Plant Scherer's NOx emissions can be cut in half at no capital cost whatsoever by simply requiring Georgia Power to operate its existing SCRs continuously throughout the year, instead of only during the May to September ozone season. The attached Stamper Report explains that, if the SCRs at Plant Scherer were operated year-round, it would reduce the facility's NOx emissions by approximately 2,420 tpy.[143] That would be about a 40 percent reduction in the Plant's average 2017-2021 NOx emissions.[144] Georgia's haze plan does not provide a sufficient reason for leaving this easily-achievable reduction on the table.

Although the SO_2 emission rate at each Scherer unit is often very low, the Stamper Report explains that at times the SO_2 emission rates are as much as ten times higher.[145] Thus, the controls are not consistently achieving the level of control that they are capable of.[146] Imposing an annual SO_2 emission limit of 0.01-0.02 lb/MMBtu, which reflects its average SO_2 emission rate, in addition to the permit terms, would ensure that SO_2 emissions do not increase in the future.[147]

EPA must require Georgia to include Plant Scherer in its reasonable progress analysis and require a Four-Factor Analysis for the plant.

2. Georgia Power's Plant Wansley

Plant Wansley is located in Franklin, Heard County. Georgia's SIP Revision includes only a brief discussion of Plant Wansley, despite the facility's significant modeled SO_2 emissions:

> This facility is 156.8 km from the Cohutta Wilderness Area and the AoI sulfate contribution is 1.05%. SO_2 emissions used in the AoI analysis was 4,856.0 tpy. The SO_2 emissions for the past three years were 2,720.78 tpy (2017), 2,134.03 tpy (2018), and 1,656.01 tpy (2019) and the average over this period was 2,170.27 tpy. Due to Georgia Power's plans to shift from coal to natural gas and renewable energy, these emissions are more reasonable for future operations of this facility.

[141] NPS Consultation Letter at 25; Georgia Response to FLM Comments at 20.
[142] NPS Consultation Letter at 25; Georgia Response to FLM Comments at 20.
[143] Stamper Report at 19-20.
[144] *Id.* at 18 (2,420/5,905 tpy).
[145] *Id.* at 19.
[146] *Id.* at 5.
[147] *Id.* at 19.

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> Plant Wansley has not become subject to any new emissions limits or installed any new controls during this time period. Scaling the AoI sulfate contribution of 1.05% by the ratio of current to 2028 SO_2 emissions (2,170.27/4,856.0) results in a revised AoI sulfate contribution of 0.47%; therefore, this facility will be screened out due to insignificant visibility impacts at the Cohutta Wilderness Area. Additionally, the PSC approved the retirement of Plant Wansley in August 2022.[148]

In EPA's proposal to approve Georgia's SIP, EPA recognizes Georgia's rationale that a recent change from coal to natural gas reduced visibility impacts and lowered Plant Wansley's sulfate contribution.[149] In addition, EPA recognizes that as of December 28, 2022, "Plant Wansley has permanently ceased operations" and Georgia revoked all of the facility's air quality permits.[150] EPA also notes that Georgia's letter to Georgia Power revoking Plant Wansley's operating permit is in the regulatory docket.[151]

Though Plant Wansley has ceased to operate, nothing in the SIP Revision prevents Wansley from restarting operations, with corresponding increases in emissions, in the future. The Clean Air Act requires that SIPs "shall" include "enforceable emission limitations and other control measures" as necessary to "meet the applicable requirements" of the Act.[152] The RHR, under Section 51.308(f)(2) similarly requires each state to include "enforceable emission limitations" as necessary to ensure reasonable progress toward the national visibility goal.[153]

Although Georgia has withdrawn the operating permit for Plant Wansley, and EPA has recognized that the plant is "permanently retired," for the avoidance of any doubt, EPA must incorporate into the SIP Plant Wansley's permanent retirement as a federally enforceable requirement. Under longstanding EPA guidance, the withdrawal of Plant Wansley's permits is one indication of its operators' intentions to permanently retire the facility.[154] Any attempt to restart a boiler at Plant Wansley would require a new construction or major modification permit including either a prevention of significant deterioration (PSD) or new source review analysis.[155] By including Plant Wansley's permanent retirement in the SIP, EPA would ensure there is no available argument for Plant Wansley to restart without such analysis.

3. Transcontinental Gas Pipe Line Co., LLC – Compressor Station 120

According to the facility's Title V operating permit, the Transcontinental Gas Pipe Line Company LLC – Compressor Station 120 is a natural gas compressor station located in

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[148] SIP Revision at 193-94.
[149] 89 Fed. Reg. 47,494.
[150] *Id.*
[151] *Id.* 47,494, n.58; Ltr from R. Dunn, GA EPD to C. Sloman, Georgia Power, Re: revocation of Part 70 Operating Permit No. 4911-149-0001-V-04-0 Wansley Steam – Electric Generating Plant, Carrollton Revoke Permit (Dec. 28, 2022), at https://www.regulations.gov/document/EPA-R04-OAR-2023-0220-0107.
[152] 42 U.S.C. § 7410(a)(2)(A).
[153] 40 C.F.R. § 51.308(f)(2); *see also* 2021 Clarification Memo at 10 (discussing reliance on "on-the-way" measures, like source retirements).
[154] *See In the Matter of Monroe Elec. Generating Plant*, Proposed Operating Permit, Petition No. 6-99-2 (June 11, 1990), at 7-8, n.9 (listing EPA memos).
[155] *Id.*

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Stockbridge, Georgia (Henry County), that is driven by natural gas-fired reciprocating internal combustion engines (RICE) and natural gas-fired turbines.[156] According to an NPCA analysis of EPA's 2020 National Emissions Inventory (NEI) data, this facility emits 2,283.57 tpy of NOx and likely impacts 12 Class I Areas.[157] Compressor Station 120 has a Q/d of 16.04 for Cohutta Wilderness Area in Georgia and 10.9 for Great Smoky Mountains National Park in Tennessee and North Carolina.[158] Despite this facility's significant NOx emissions and that it likely impacts a number of Class I Areas in Georgia and other states, Georgia did not select Compressor Station 120 for a Four-Factor Analysis.

However, there are likely feasible and cost-effective controls available to reduce Compressor Station 120's NOx emissions. For instance, a March 6, 2020, report of Four-Factor Analyses for the oil and gas industry includes a number of available control technologies and lists state and local air agency emission limits and rules applicable to existing natural gas-fired RICE and turbines, like those used to power Compressor Station 120.[159] EPA must require Georgia to conduct a Four-Factor Analysis of potential controls for Compressor Station 120, including its existing RICE and turbines.

4. CEMEX Southeast, LLC

CEMEX Southeast, LLC is a Portland Cement manufacturing facility located in Clinchfield, (Houston County), Georgia. According to an NPCA analysis of 2020 NEI data, this facility emits 1,424.37 tpy of NOx and 130.87 tpy of SO_2 and likely impacts 8 Class I areas.[160] CEMEX Southeast has a Q/d of 9.5 for Okefenokee in Georgia, 5.5 for Great Smoky Mountains National Park in Tennessee and North Carolina, and 7.3 for St. Marks National Wildlife Refuge in Florida.[161] Despite this facility's significant haze-forming emissions and that it likely impacts a number of Class I Areas in Georgia and other states, Georgia did not select CEMEX Southeast for a Four-Factor Analysis.

Yet, just as with Compressor Station 120, there are likely available controls that could reduce haze-forming emissions from CEMEX Southeast that Georgia failed to consider in its SIP Revision. Ceramic catalytic filtration systems, for example, are commercially available, technically feasible, and have been shown to be cost effective for other Portland Cement plants.[162] Other agencies conducting Four-Factor Analyses have considered such systems as an available and technically feasible form of NOx control for cement plants, including the City of

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[156] Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, Transcontinental Gas Pipe Line Company, LLC – Compressor Station 120, Permit No. 4922-151-0025-V-04-0 at 1 (Sept. 5, 2019), https://permitsearch.gaepd.org/permit.aspx?id=PDF-VF-208629 (attached as Ex. 11).

[157] NPCA Georgia Source Analysis.

[158] *Id.*

[159] Vicki Stamper & Megan Williams, Oil and Gas Sector Reasonable Progress Four-Factor Analysis of Controls for Five Source Categories at 10-57, 61-90 (March 6, 2020) (attached as Ex. 12).

[160] NPCA Georgia Source Analysis.

[161] *Id.*

[162] Steven Klafka, Wingra Eng'g, S.C., GCC Rio Grande – Pueblo Cement Plant, Four-Factor Reasonable Progress Analysis at 5-11 (Oct. 5, 2021) (attached as Ex. 13); Steven Klafka, Wingra Eng'g, S.C., Holcim Florence Cement Plant, Four-Factor Reasonable Progress Analysis at 5-11 (Sept. 30, 2021) (attached as Ex. 14).

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Albuquerque.[163] EPA must also require Georgia to conduct a Four-Factor Analysis of potential controls for CEMEX Southeast.

5. Georgia Failed to Select 12 Additional Sources That Likely Contribute to Impairment at Class I Areas.

In addition to the sources noted above, Georgia also failed to select 12 additional sources that likely contribute to visibility impairment at in-state and out-of-state Class I Areas: Green Power Solutions; International Paper Co. – Temple Inland Rome Linerboard Mill (Rome Linerboard Mill); Georgia Pacific Cedar Springs LLC; Interstate Paper LLC; Georgia Pacific Consumer Products LP – Savannah River Mill; Rayonier Performance Fibers LLC; PCA Valdosta Mill; C-E Minerals Plants 1, 2, and 6; Graphic Packaging Macon Mill; Weyerhaeuser NR Port Wentworth; Pinova, Inc.; and Thermal Ceramics. Each of these sources have reported NOx and/or SO_2 emissions in the 2020 NEI and, according to an NPCA analysis, have Q/ds above 5 for multiple Class I Areas in the Southeast.[164]

For example, the Rome Linerboard Mill is a pulp mill that Georgia tagged for PSAT analysis but ultimately screened out based on the flawed VISTAS source screening process.[165] Yet, according to NPCA's analysis, the Rome Linerboard Mill emits 1,332.49 tpy of NOx and 1,125.62 tpy of SO_2.[166] This facility likely impacts 12 Class I Areas, including Cohutta in Georgia with a Q/d of 28.80, Joyce Kilmer-Slickrock Wilderness Area in North Carolina with a Q/d of 15.36, and Great Smoky Mountains National Park in Tennessee and North Carolina with a Q/d of 14.3.[167] In fact, NPS noted in its consultation materials that the Rome Linerboard Mill ranked third for haze contributions to VISTAS Class I Areas based on cumulative AOI screening results and was in the top 80% of total AOI impact for five Class I Areas, including Great Smoky Mountains National Park.[168] Georgia-Pacific Cedar Springs LLC is another paperboard mill that Georgia did not select based on the VISTAS process. According to NPCA's analysis, this facility emits 2,461.26 tpy of NOx and 338.2 tpy of SO_2 and likely impacts 16 Class I Areas.[169] Cedar Springs has a Q/d of 13.87 for Okefenokee in Georgia and 29.25 for Bradwell Bay Wilderness Area in Florida.[170]

Although each of these 12 sources likely contribute to visibility impairment at both in-state and out-of-state Class I Areas, Georgia erroneously did not select any of them for a Four-Factor Analysis. EPA also fails to address any of these facilities in its proposal. EPA must require Georgia to conduct a Four-Factor Analysis of potential controls for each of these

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[163] E. Research Group, Inc., Review of Regional Haze 2nd Implementation Period Four-Factor Analysis for GCC Rio Grande, Inc., Tijeras, New Mexico at 2-7 to 2-8, 2-13 to 2-14 (Aug. 27, 2020), https://www.cabq.gov/airquality/documents/final-gcc-rio-grande-four-factor-analysis-review_erg.pdf (attached as Ex. 15).
[164] *See generally* NPCA Georgia Source Analysis.
[165] 89 Fed. Reg. at 47,493.
[166] NPCA Georgia Source Analysis.
[167] *Id.*
[168] NPS Consultation Letter at 25.
[169] NPCA Georgia Source Analysis.
[170] *Id.*

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facilities to ensure that the State meets the Clean Air Act's requirements to make reasonable progress in the second planning period.

IV. Georgia's Cost-Effectiveness Analyses Are Arbitrary.

Georgia did not set a cost-effectiveness threshold in deciding whether or not to require large sources of haze-forming pollutants to install additional control measures to achieve reasonable progress. As explained in the Kordzi Report, instead of setting a threshold, Georgia relied on an Excel spreadsheet from the state of Arkansas that includes "the cost-effectiveness of a control for specific sources categories that states found acceptable in the first round of SIPs and then to escalate those figures to 2019 dollars."[171] Georgia also claims that it supplemented that Arkansas spreadsheet with VISTAS data, though that "appears to be limited to a few examples from Tennessee."[172] Although EPA acknowledges that Georgia relied on the Arkansas Excel document for its cost-effectiveness determinations, EPA does not address whether it was reasonable for Georgia to do so. In fact, EPA does not address Georgia's cost-effectiveness methodology anywhere in its supposed "review" of the State's source-specific analyses.[173] EPA must reject this approach because it suffers from numerous problems.

First, the Arkansas analysis of round one cost-effectiveness data is misleading because it does not consider that round one cost-effectiveness measures were considered alongside visibility benefits.[174] However, EPA has made clear for round two that, "a state should not use visibility to summarily dismiss cost-effective potential controls."[175] For example, the Kordzi Report explains that in round one "there were low-cost controls that resulted in the same or greater degree of visibility improvement than higher cost controls,"[176] so some higher cost controls might have been ruled out on visibility benefits rather than cost-effectiveness alone, skewing any comparison to round two.

Second, the Arkansas round one spreadsheet "ignores the reality of the progression of the Regional Haze program."[177] As Colorado explained its selection of a threshold value of $10,000 per ton of pollution reduced, "[t]his threshold value is an increase from Round 1 and reflects the fact that with each successive round of planning, less costly and easier to implement strategies have already been adopted."[178] The Kordzi Report summarizes this problem:

> Arkansas's approach would mean that the only way the program would make progress would be through source retirement or other federal programs. Otherwise,

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[171] Kordzi Report at 22.
[172] *Id.*.
[173] 89 Fed. Reg. at 47,498-99.
[174] Kordzi Report at 22.
[175] 2021 Clarification Memo at 13.
[176] Kordzi Report at 22.
[177] *Id.* at 23.
[178] In the Matter of Proposed Revisions to Regulation Number 23, Colo. Dep't Pub. Health & Env't, Air Pollution Control Div., Prehearing Statement at 7 (Oct. 7, 2021) [hereinafter "Colorado SIP Revision"] (attached as Ex. 16).

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the same sources will be reviewed for the same controls, at the same acceptability (albeit escalated) threshold, over and over through successive rounds of SIPs.[179]

Third, Arkansas' spreadsheet fails to include the high end of first round cost-effectiveness values up to $10,000/ton.[180] And finally, Arkansas wrongfully included some cost-effectiveness data that is too old to escalate according to EPA's Control Cost Manual.[181] EPA's complete failure to address all of these problems in Georgia's cost method ignores a significant aspect of the problem,[182] and EPA must reject Georgia's use of the Arkansas spreadsheet.

Although the Clean Air Act does not require Georgia to "use []a bright line rule" for determining cost effectiveness, the Ninth Circuit has explained that "the law does require [the State] to cogently explain why it has exercised its discretion in a given manner."[183] To provide a reasoned basis for its decisions, Georgia must first establish a threshold, or explain and justify some other objective measure, for determining cost effectiveness that is in line with other states' chosen measures and apply that threshold consistently across its Four-Factor Analyses.[184]

Moreover, Georgia's approach is unreasonable when compared with the approaches that other states have taken in the second planning period. Both Colorado and Nevada used a $10,000/ton of pollution reduced threshold.[185] Just as Colorado noted in setting its cost threshold, Nevada explained that it doubled its cost-effectiveness threshold from the first implementation "to ensure that the entire fleet of potential new control measures throughout Nevada are thoroughly considered, as well as, to ensure that enough controls are implemented during the second period to continue achieving reasonable progress at . . . [Class I Areas]."[186] New Mexico has also adopted a $7,000/ton threshold.[187]

EPA must also reject Georgia's approach because it would be inconsistent with EPA's own reasoning in its proposal to partially disapprove Arizona's SIP Revision. Arizona used a cost threshold of $6,500/ton[188] which would have allowed some measures in Georgia's SIP to be cost-effective, including switching to Powder River Basin (PRB) coal at Plant Bowen.[189] Yet

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[179] Kordzi Report at 23.
[180] *Id.* (citing 77 Fed. Reg. 73,369 and 78 Fed. Reg. 53,250).
[181] Kordzi Report at 23-24 (citing Control Cost Manual & Cost Control Manual foonote 9: Vatavuk, W.M. "Updating the CE Plant Cost Index." Chemical Engineering, January 2002. Available at http://www.chemengonline.com/Assets/File/CEPCI_2002.pdf.)
[182] *State Farm*, 463 U.S. at 43.
[183] *Nat'l Parks Conservation Ass'n v. EPA*, 788 F.3d 1134, 1142-43 (9th Cir. 2015) (citation and internal quotation omitted).
[184] 2019 Guidance at 38 ("Absent a thorough explanation, inconsistent control determinations are 'the hallmark of arbitrary action.'" (quoting *Nat'l Parks Conservation Ass'n v. EPA*, 788 F.3d at 1145).
[185] Colorado SIP Revision at 7; Nev. Div. of Env't Prot., Nevada Regional Haze State Implementation Plan for the Second Planning Period at 5-6 (Aug. 2022) [hereinafter "Nevada SIP Revision"] (attached as Ex. 17); *see also* Stamper Report at 9, n.21 (noting cost-effectiveness thresholds adopted by other states).
[186] Nevada SIP Revision at 5-6.
[187] Stamper Report at 9, n.22 (citing NMED and City of Albuquerque, Regional Haze Stakeholder Outreach Webinar #2 at 12, available at https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2017/01/NMED_EHD-RH2_8_25_2020.pdf).
[188] 89 Fed. Reg. 47,398, 47,429 (May 31, 2024).
[189] *See supra* Section V.A.3.iii.

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EPA has proposed to reject Arizona's cost threshold, finding that Arizona "did not provide an adequate justification for how this threshold resulted in a reasonable set of control measures."[190] The same rationale applies to Georgia's SIP Revision.

For all of the above reasons, EPA must reject Georgia's cost-effectiveness approach, and all the Four-Factor Analyses that rejected additional controls based on this approach.

V. EPA Shirks Its Duty to Review Georgia's Source-Specific Four-Factor Analyses.

The Clean Air Act requires EPA to conduct a substantive review of Georgia's SIP Revision to ensure it complies with the regional haze requirements of the Act and the RHR.[191] EPA cannot merely rubber stamp the State's SIP submission without engaging in any meaningful analysis. Yet, EPA proposes to do exactly that, providing no independent analysis of Georgia's Four-Factor Analyses for the only three facilities the State selected. EPA's entire review of Georgia's analyses for the three facilities spans little more than a single page in the proposal.[192] EPA's Technical Support Document that accompanies its proposal also does not provide any technical review of Georgia's SIP Revision. Rather, the TSD merely regurgitates what the State did in its SIP Revision, just in slightly more detail than EPA's proposal.[193] EPA entirely fails to grapple with the record before it and shirks its SIP review duties under the Act.[194]

As EPA has stated, "for at least the next planning period or two, the requirement to consider the four statutory factors for a reasonably selected set of sources should result in the adoption of additional control measures."[195] "If four-factor analyses evaluate a reasonable range of potential control options, [EPA] anticipate[s] that in many cases states will find that new (*i.e.*, additional) measures are necessary to make reasonable progress."[196] EPA, thus, expects states to "undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal."[197]

Despite EPA's stated expectations for this planning period, Georgia does not require any of the sources to adopt additional control measures to make reasonable progress. Rather, the State only imposes fuel-use limits for Brunswick Cellulose and IP Savannah that will result in cost savings for the sources and determines that only Plant Bowen's existing measures are necessary for reasonable progress. Still, EPA accepts, without question, Georgia's decisions to ignore and reject readily available, feasible, and cost-effective controls, in violation of the Clean Air Act and the RHR.

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[190] 89 Fed. Reg. at 47,429; *see also* 89 Fed. Reg. 55,140, 55,154-56 (EPA's proposal to disapprove Missouri's cost threshold approach which was based on the same Arkansas spreadsheet).
[191] *See supra* Section II.D.
[192] 89 Fed. Reg. at 47,498-99.
[193] *See generally* EPA TSD.
[194] *Fred Meyer Stores, Inc. v. Nat'l Lab. Rels. Bd.*, 865 F.3d 630, 638 (D.C. Cir. 2017) (explaining that the Agency's decision "evidence[d] a complete failure to reasonably reflect upon the information contained in the record and grapple with contrary evidence—disregarding entirely the need for reasoned decisionmaking").
[195] 82 Fed. Reg. at 3098.
[196] 2021 Clarification Memo at 8.
[197] *Id.* at 2.

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A. Georgia Power's Plant Bowen

Georgia evaluated additional SO_2 controls for reasonable progress in its Class I Areas for only one EGU—Georgia Power Company's Plant Bowen, though it did not require anything more than the status quo.[198] Plant Bowen consists of four EGUs (Units 1-4) that were built five decades ago between 1971-1975.[199] The facility is located in Bartow County, about 185 km from Great Smoky Mountains National Park and 84.3 km from Cohutta Wilderness Area. Plant Bowen releases an enormous amount of SO_2 and NOx emissions. The Plant is projected to emit 10,453 tpy of SO_2 and 6,643 tpy of NOx in 2028,[200] and is ranked number one among the Georgia facilities for haze contributions in VISTAS Class I Areas based on both AOI and PSAT source screening results. Based on NPCA's analysis of EPA 2023 Clean Air Markets Program Data (CAMPD), Plant Bowen has some of the largest Q/d values for Class I Areas in the Southeast—the facility has incredibly high Q/ds of 152.1 for Cohutta, 73.3 for Great Smoky Mountains National Park, 79.4 for Joyce-Kilmer Slickrock Wilderness Area, and 29.6 for Bradwell Bay Wilderness Area.[201] In addition, Florida, North Carolina, Tennessee and South Carolina requested a reasonable progress analysis for Georgia Power Company's Plant Bowen since this facility significantly contributes to visibility impairment in those states' Class I areas.[202]

Underscoring the unreasonableness of Georgia's haze plan is the fact that **Plant Bowen's SO_2 emission rates have increased since round one of regional haze.** The Kordzi Report describes how, although Plant Bowen was reviewed for Best Available Retrofit Technology (BART) in the first round of regional haze planning, Georgia relied on the Clean Air Interstate Rule (CAIR) to satisfy BART for SO_2 and NOx for EGUs and did not include any enforceable mechanism to ensure Plant Bowen's emissions did not increase.[203] Contrary to the intent of the Regional Haze Program, "Bowen's SO_2 rate has doubled to tripled from what it was in 2010 with high functioning scrubber systems."[204] In addition to Plant Bowen's switch to burning high-sulfur coal, Georgia explains that Plant Bowen's SO_2 emissions have also increased in the past decade because it has shifted from a baseload facility to more of a peaking facility.[205]

Despite Plant Bowen's enormous emissions of visibility-impairing pollution, and its increased emissions since the first round of regional haze planning, EPA is proposing to approve Georgia's conclusion that Bowen does not need to do anymore for reasonable progress than the status quo, which includes continuing to burn very high-sulfur Illinois Basin (IB) coal. However, returning back to Central Appalachian Coal (CAPP) coal that Plant Bowen burned in the past is demonstrably cost-effective based on public information. And Georgia's own analysis of switching to low-sulfur PRB coal shows that it is cost-effective even based on Georgia's overinflated numbers. EPA must reject Georgia's Four-Factor Analysis for Plant Bowen.

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[198] SIP Revision at 196, tbl.7-29.
[199] Stamper Report at 6.
[200] SIP Revision at 198-99, tbls.7-32 & 7-33
[201] NPCA Georgia Source Analysis.
[202] SIP Revision at 245.
[203] Kordzi Report at 26, 29.
[204] *Id.* at 29.
[205] Georgia Response to Public Comments at 15.

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1. Georgia's Four-Factor Analysis Determination Regarding Plant Bowen is Flawed

In its SIP Revision, Georgia concluded that Plan Bowen is:

> already subject to various stringent emission limits, and emissions reductions have already been made at the facility. Currently, the coal-fired electric generating units (EGUs), Units 1-4, must burn <3% sulfur coal and are fully controlled for SO_2 with FGD scrubbers. All units are subject to the Georgia Multi-pollutant Rule (sss), which requires the scrubbers to be operated with an average 95% removal rate or greater, and scrubber operation is further optimized for compliance with all applicable regulations, including the Mercury and Air Toxics Standard (MATS), and Effluent Limitation Guidelines (ELG). Compared to emissions preceding installation of the scrubber, Plant Bowen has reduced annual SO_2 emissions from Units 1-4 by over 96%.[206]

EPA, in turn, simply recites what Georgia did in its SIP Revision and summarily concludes that Georgia's conclusions and methods were reasonable.[207] EPA thus proposes that Plant Bowen's permit must be incorporated into the Georgia SIP because it is necessary to make reasonable progress.[208]

EPA, however, did not scrutinize Georgia's analysis of Plant Bowen and importantly did not consider the public comments submitted to Georgia at the state level, including our comments and the Stamper Report. As we explained in our comments at the state level, and expanded upon in the Kordzi Report, Georgia's Four-Factor Analysis for Plant Bowen is inadequate and flawed for several reasons.

2. Georgia Greatly Overstated the Costs of Switching to Appalachian Coal.

Plant Bowen could easily return to burning the lower-sulfur CAPP coal that it burned in the past. Georgia wrongfully rejected this switch based on two flawed assumptions that "wrongly lower the amount of SO_2 reduction that would occur with a switch to a lower sulfur CAPP coal."[209] First, the State assumed an SO_2 rate of 0.07 lbs/MMBtu with CAPP coal when Bowen in fact averaged 0.05 lbs/MMBtu or lower for many years when burning CAPP coal.[210] Second, Georgia assumed a coal sulfur content that is higher than most of the CAPP Bowen previously burned.[211]

In addition, Bowen's cost-effectiveness calculation contains an annual fuel cost of $86 million to switch to CAPP that is completely undocumented. Though Plant Bowen has claimed

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[206] SIP Revision at 207-08.
[207] 89 Fed. Reg. at 47,499.
[208] *Id.*
[209] Kordzi Report at 29.
[210] *Id.*
[211] *Id.* at 27, tbl.2.

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this is a trade secret, EPA and Georgia must review this information and declare whether they have found it acceptable according to the documentations requirements of 51.308(f)(2)(iii).[212] Moreover, EPA has not made any independent determination as to whether this information satisfies the stringent requirements for a confidential business information (CBI) classification, but instead appears to rely on the company's assertions alone. To provide the public with sufficient information to fully evaluate the proposal and the final rule, EPA must evaluate whether this information is in fact CBI.[213] It is unlikely that all, if any, of the fuel cost information provided by the plant operator is CBI, as the information is not a trade secret, nor is its disclosure "likely to cause substantial harm to the business's competitive position."[214] Moreover, as the Kordzi Report makes clear, there are numerous suppliers of CAPP coal with the same characteristics as the coal Bowen burns with publicly-available coal prices and sulfur content.[215] Accordingly, there is no basis for acceding to Georgia Power's conclusory assertion that the cost of switching fuel is CBI.

Despite the unverifiable information in Georgia's SIP, the Kordzi Report thoroughly demonstrates with publicly available information the following: (1) there are many coal suppliers in nearby states that offer CAPP coal with sulfur contents of 1.05 % or lower and transportation via rail (which Bowen uses);[216] (2) the available CAPP coal, with Bowen's current scrubber efficiencies, would correspond to an SO_2 emission rate of approximately 0.05 lbs/MMBtu; and (3) the available CAPP coal supplies are much cheaper on a $/MMBtu basis than what Bowen is currently paying.[217] Based on this contradictory public information, EPA must reject Georgia's Four-Factor Analysis for Plant Bowen.

3. Georgia Greatly Overstated the Costs of Switching to 100% Powder River Basin (PRB) Coal.

In 2014 Plant Bowen switched from lower-sulfur CAPP coal to IB coal, which has a very high sulfur content. [218] Besides the option discussed above to return to lower-sulfur CAPP, switching to PRB coal could also result in a significant reduction in SO_2 emissions from the plant.[219] Instead of requiring Plant Bowen to reduce its significant haze-forming emissions through lower sulfur PRB coal, however, EPA and Georgia accepted at face value all of Georgia Power's claims that such a switch would be cost prohibitive.

Georgia Power claimed that switching to PRB coal would result in a 27% derate in capacity that it calculated based on the heat content of PRB coal (8,800 Btu/lb) in comparison to IB coal (12,002 Btu/lb).[220] And because Plant Bowen provides capacity value to meet reserve margin requirements, Georgia Power submitted that it would have to procure short-term and

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[212] *Id.* at 30.
[213] 40 C.F.R. § 2.204(a)(2), (3).
[214] *Id.* § 2.208(e)(1).
[215] Kordzi Report at 30-47.
[216] *Id.* at 26-47, tbls.4-5.
[217] *Id.* at 47.
[218] Georgia Response to Public Comments at 15.
[219] Stamper Report at 7.
[220] SIP Revision at 209.

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long-term replacement capacity at "market rate or the cost of new construction."[221] Georgia Power then concluded that the net present value of the 27% derate would be $709 million, with an annualized cost of $51.7 million that translates into a $6,424/ton cost effectiveness.[222]

EPA must scrutinize this cost analysis. As we pointed out in our state-level comments and in the Stamper Report, Georgia Power's cost analysis contains several problems that cause it to be overinflated.

i. 6.04% Rate of Return

First and most boldly, Georgia Power wants to earn a 6.04% rate of return for any electricity it must purchase to make up for lost capacity.[223] Even though Georgia Power would not earn a rate of return like that for continuing to burn high-sulfur coal to meet capacity obligations, it contends that it is entitled to earn a 6% return for simply purchasing electricity from the market. The Stamper Report explains that this cost should not be a capital expense but an operational or fuel expense that is not subject to a large rate of return.[224] It is well-established that the utility rate of return is designed to allow utilities to earn a return on *capital* investments.[225] Fuel, purchased power, and operational expenses are not typically entitled to such returns. If Georgia Power claims a rate of return on electricity purchases, it must provide a regulation or order from the Georgia public service commission showing it is entitled to this.

In its response to comments Georgia, quoting directly from Georgia Power, did not offer any further explanation. Georgia provided only the same conclusion that "[t]he capacity penalty costs associated with the projected derate for coal switching to PRB coal were correctly accounted for as indirect capital costs in the Plant Bowen FFA because these costs are not simply operating costs to purchase electricity."[226] If Georgia Power assumed that Bowen must use the conservative case of new construction to make up for lost capacity, then the State must explain why and provide supporting documentation and analysis including why it could not use market purchases to fill any gap. If Georgia Power is claiming that it is entitled to earn a rate of return on electricity purchases, it should document that it is entitled to this by providing a regulation or order from the Georgia Public Service Commission. EPA cannot approve Georgia's cost determination that switching to PRB is not cost-effective without this explanation.

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[221] Stamper Report at 8 (citing October 2021 Georgia Power Plant Bowen Regional Haze Four-Factor Analysis at 15-16.)
[222] *Id.* at 8-9 (citing October 2021 Georgia Power Plant Bowen Regional Haze Four-Factor Analysis at 17 and at Appendix B, pdf page 102 of report (tbl.A1.3)).
[223] Stamper Report at 8.
[224] *Id.* at 8.
[225] *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (the "return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital"); *Bluefield Water Works and Improvement Co. v. Pub. Serv. Co.*, 262 U.S. 679, 693 (1923) ("The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties").
[226] Georgia Response to Public Comments at 15.

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ii. Mismatch in Assumption for Post-PRB Switch Cost Analysis

Second, in its cost analysis for switching to PRB coal, Georgia does not make a fair comparison between apples and apples by assuming operating time will increase at the same time it will need to purchase $51 million worth of electricity to cover lost capacity.[227] The cost analysis included costs for new power purchases because it was assumed that use of lower heat value PRB coal would result in a 27% derating of the Bowen units. Yet the cost analysis does not account for revenue from additional sales of electricity resulting from increased hours of operations.

In response to comments, Georgia and Georgia Power asserted that the higher operating hours were the result of increased fuel usage, which would be required to achieve the baseline heat input due to PRB having a lower heat content than Bowen's current coal source.[228] According to Georgia and Georgia Power, it takes more tons of PRB coal to achieve the same heat input, and there are continued differences in the amount of electricity produced because of the differences in moisture content and boiler heat rates. As an initial matter, that is not what the four-factor analysis says. The analysis says that the use of PRB will "increase[e] operating time," which should result in increased generation that could be sold. Moreover, the analysis already accounts for any increased fuel cost as a different line item in the cost analysis, which suggests that Georgia Power is, at least in part, double counting the purportedly increased fuel usage.

Even assuming that switching to PRB coal would decrease the hourly heat rate input for each of the Bowen units, thereby decreasing the maximum hourly generating capacity of each EGU by about 27%, Georgia Power's cost analysis appears to overstate the need (and cost) for replacement energy. Using 2019 operations as the baseline (as Georgia and did in its four factor analysis), we calculated a 27% derate from the total nameplate capacity of the four Bowen units as reported to the Energy Information Administration Form 860 for 2019. Assuming (as Georgia Power assumed) that 2019 operations reflect future operations, we calculated that the Company would need to purchase electricity to make up for the derate in only 5.8% hours in the year. Based on 2019 plantwide generation rates, this means Georgia Power would need to purchase only 134,982 MWh to make up for the derate caused by switching to PRB coal. In Table A2.2 of the four-factor analysis, however, Georgia Power estimated that switching to PRB would require the purchase of approximately 8,000,000 MWh of energy to replace the deficit, overstating the need by several orders of magnitude. This deficit appears to be the result of Georgia Power's assumption that the 27% capacity penalty would apply during *all* hours of operation. But such a derate would only impact the *peak* hours of plant operation when the plant was not able to produce sufficient hourly megawatts to satisfy its demand for that hour. As noted, and as reflected in the attached exhibit, switching to PRB coal would mean that only during 5.8% of the plant's operating hours (or 134,982 MWh) would Georgia Power need to obtain additional energy. [229] Even assuming above-average energy prices (e.g., $40/MWh), the switch to PRB coal would require the Company to spend only $5 million annually, an order of magnitude lower

[227] Stamper Report at 8.
[228] Georgia Response to Public Comments at 15-16.
[229] Vicki Stamper Analysis: Plant Bowen 2019 Hours Above a 27 Percent Derate (2024) (attached as Ex. 27).

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than Georgia Power's assumed $51.7 million per year penalty. Such an inflated capacity penalty cost would almost certainly make fuel switching appear much less cost effective.

To the extent that Georgia Power suggests that it needs to purchase or build replacement *capacity* to meet "peak demands and reserve margin requirements,"[230] the Company's four-factor analysis fails to provide the "robust" technical support and demonstration necessary to verify those assertions.[231] In its four-factor analysis, Georgia Power asserts that the "cost of replacement capacity in any year is assumed to be at either a *market rate or the cost of new construction* depending on *whether Georgia Power has a projected capacity need in such year* without Plant Bowen Units 1-4."[232] The analysis then assumes a $51 million annualized cost, which is the difference between Bowen's maximum capacity burning IB coal and its maximum capacity burning PRB coal.[233] But as with Bowen's energy deficit discussed above, the Company fails to establish that it actually "has a projected capacity need in [any] such year," such that Georgia Power would need to replace some or all of Bowen's derated maximum capacity. Moreover, Georgia Power fails to provide any documentation for current "market rate" or "cost of new construction." As a result, it is impossible to verify the needed capacity replacement and cost (if any) associated with switching from IB to PRB coal. EPA must carefully review Georgia Power's cost assumptions and confirm that the Company's capacity penalty calculations are appropriate.

iii. Confidential Cost Calculations and Documentation

Georgia also refuses to make available for public review the calculations and supporting documentation for the cost analysis of switching to PRB coal.[234] Since Georgia rejected switching to lower sulfur PRB coal based on the supposedly high cost of that control option, the underlying documentation and calculations must be subject to public scrutiny before PRB coal is ruled out.

Georgia's response to this comment was the bare assertion that "the costs of replacement capacity and projected capacity needs in each year are based on trade secret information submitted to the Georgia Public Service Commission (GPSC) for the 2019 Georgia Power Integrated Resource Plan (IRP)."[235] Just because Georgia Power unilaterally claims information is trade secret information as part of a state IRP proceeding does not make it so. In a Georgia IRP proceeding, for example, Georgia Power may designate information as confidential, but that designation can be challenged and overruled by the Commission.[236] In any event EPA and

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[230] Georgia Power, Regional Haze 4-Factor Analysis, Georgia Power Plant Bowen at 16 (July 2022) [hereinafter "July 2022 Plant Bowen 4-Factor Analysis"].
[231] 2019 Guidance at 3; 2021 Clarification Memo at 8-9.
[232] July 2022 Plant Bowen 4-Factor Analysis at 17 (emphasis added).
[233] *Id.*
[234] Stamper Report at 8.
[235] Georgia Response to Public Comments at 16.
[236] GA Rules and Regulations 515-3-1.11(7) ("Any party or intervenor, the Commission staff, the Consumers' Utility Counsel, or the Commission on its own motion, may challenge the designation of information as a "trade secret" by filing a motion to that effect with the Commission. In such a case, the affected party or utility shall have the burden of proving that the information constitutes a trade secret. If, after a hearing and an in-camera inspection, the Commission determines that the information provided does not constitute a trade secret or only a portion of the

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Georgia are obligated by the documentations requirements of 51.308(f)(2)(iii) to review this information and declare whether they have found it acceptable. However, neither Georgia nor EPA has indicated if they have reviewed the information and found it acceptable. As discussed previously, EPA must also make an independent determination as to whether this information satisfies the stringent requirements for CBI.[237] EPA's failure to do so violates the Clean Air Act and the RHR.

iv. Switching to PRB coal is cost effective.

Even putting the above issues aside that lead to an overinflated cost effectiveness, Georgia's calculated costs of $6,424/ton of SO_2 reduced to switch to PRB coal is cost effective.[238] As explained in detail in Section IV, this cost-effectiveness value is lower than the thresholds being used by other states (Colorado - $10,000/ton, New Mexico - $7,000/ton, Arizona - $6,500/ton).[239] Moreover, the cost effectiveness should be lower to reflect that switching to PRB coal would result in 46 % lower NOx emission rates without changing Plant Bowen's use of NOx controls.[240] Taking the NOx reductions of switching to PRB coal into account would result in a cost-effectiveness of $4,749/ton of SO_2+NOx removed.[241]

4. EPA Must Require Georgia to Analyze Year-Round Operation of the SCR Systems at Each of Bowen's Units.

Georgia did not evaluate any NOx controls for Plant Bowen based on its unreasonable and unsupported decision to focus solely on SO_2 emissions and controls in the second planning period.[242] However, as explained in detail in Section III.C. above, Georgia's decision to ignore NOx pollution and controls and EPA's proposal to approve that decision are not supported by the record. EPA must require that Georgia evaluate readily available and low-cost control options to reduce visibility-impairing NOx emissions at Plant Bowen.

Although Bowen's four units are equipped with low NOx burners, separated overfire air, and SCR, Bowen operates the SCRs optimally only during the May to September ozone season and they "severely underperform."[243] Georgia could cut Plant Bowen's NOx emissions in half at no capital cost whatsoever by simply requiring Georgia Power to operate its existing SCRs continuously throughout the year, instead of only during the May to September ozone season.

The Stamper Report describes in detail Plant Bowen's complex multi-plant and individual NOx emission limits and concludes that "the NOx emission limits in the current Title V permit do not reflect the optimal operation of the NOx controls at each unit including the

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information is a trade secret, or that the protected information must be disclosed in part or in whole in connection with any hearing, or otherwise, then the Commission shall issue an order to that effect, which order shall be automatically stayed for thirty (30) days from the date of the order.")

[237] 40 C.F.R. § 2.204(a)(2), (3).

[238] Stamper Report at 9.

[239] *Id.*; Kordzi Report at 22-24.

[240] Stamper Report at 9.

[241] *Id.*

[242] Georgia Response to Public Comments at 9, 30-31, 34.

[243] Kordzi Report at 48; Stamper Report at 10.

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SCR."[244] The attached Kordzi Report further finds that "modern SCR systems have long been able to consistently operate at a monthly average NOx level of 0.05 lbs/MMBtu or lower, as acknowledged by EPA itself."[245]

Thus, EPA must require that Georgia evaluate this "readily implementable control option . . . that reflects the capability of the SCR systems" on a 30-boiler operating day average of 0.05 lbs/MMBtu emission rate, which would entail only minimal additional costs for additional reagent.[246] Plant Bowen has an alternative 30-boiler operating day average NOx emission limit of 0.07 lb/MMBtu in its Title V permit, demonstrating that Georgia has found that Bowen can meet this rate, so, at a bare minimum, EPA must require Georgia impose this rate.[247] The 0.07 lb/MMBtu NOx emission limit could reduce annual NOx emissions at Plant Bowen by 46% at no capital cost whatsoever and will surely be cost effective.[248] And a 0.05 lbs/MMBtu emission rate would reduce the plant's NOx emissions even more.

5. EPA Cannot Approve the Incorporation of Plant Bowen's Permit into Georgia's SIP with Unlawful SSM Exemption and Emergency Affirmative Defense Provisions Because They Could Apply to the SO_2 MATS/Regional Haze SO_2 limit.

EPA proposes to adopt into Georgia's SIP the Mercury and Air Toxics Standards (MATS) SO_2 emission limit of 0.20 pounds per million British thermal units (lb/MMBtu) based on a 30-day operating rolling average.[249] To implement this control measure, EPA proposes to include the September 6, 2023 Plant Bowen permit amendment, Permit No. 4911-015-0011-V-04-3, into the SIP.[250] The conditions in this permit amendment modify the existing Title V permit No. 4911-015-0011-V-04-0, issued on March 6, 2019.[251]

Plant Bowen's 2019 Title V permit contains startup, shutdown, and malfunction exemptions and an emergency affirmative defense provision that apply to the MATS SO_2 limit

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[244] Stamper Report at 12.

[245] Kordzi Report at 48; *see also* 76 Fed. Reg. 491 (Jan. 11, 2011); 76 Fed. Reg. 52,388, 52,404 (Aug. 22, 2011) ("The Havana Unit 9 data shows that it has operated under 0.05 lbs/MMBtu from mid-2009 to the end of 2010 on a continuous basis. In fact, this unit has operated under 0.035 lbs/MMBtu for much of that time. The Parish Unit 7 data shows that it has operated under 0.05 lbs/MMBtu from mid-2006 to mid 2010 on a continuous basis. In fact, this unit has operated for months at approximately 0.035 lbs/MMBtu, and for approximately 2 years at approximately 0.04 lbs/MMBtu. The Parish Unit 8 data show that it has operated almost continuously under 0.045 lbs/MMBtu since the beginning of 2006. Other units' data show months of continuous operation below 0.05 lbs/MMBtu. We believe this data demonstrates that similar coal fired units that have been retrofitted with SCRs are capable of achieving NOx emission limits of 0.05 lbs/MMBtu on a continuous basis."); EPA, Complete Response to Comments for NM Regional Haze/Visibility Transport FIP (Aug. 5, 2011), Exhibit 2: Best Performing SCR Retrofit Installations (June 8, 2011), https://www.regulations.gov/document/EPA-R06-OAR-2010-0846-0129 (attached as Ex. 18).

[246] Stamper Report at 12; Kordzi Report at 49.

[247] Stamper Report at 12.

[248] *Id.*

[249] EPA TSD at 10.

[250] *Id.*

[251] Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, Bowen Steam-Electric Generating Plant, Permit No. 49911-015-0011-V-04-3 (Sept. 6, 2023), Docket No. EPA-R04-OAR-2023-0220-0009; Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, Bowen Steam-Electric Generating Plant, Permit No. 4911-015-0011-V-04-0 (March 6, 2019), ("Plant Bowen's 2019 Title V Permit"), Docket No. EPA-R04-OAR-2023-0220-0059.

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that EPA proposes to adopt to achieve reasonable progress. As explained below, these two permit provisions are unlawful and must be removed from Plant Bowen's Title V permit.

i. The Excess Emission and Emergency Affirmative Defense Permit Provisions

The "Excess Emission" permit condition could allow Plant Bowen to exceed its MATs/regional haze SO_2 limit during startup, shutdown and malfunction events. Plant Bowen's 2019 Title V Permit Condition 8.14.4 entitled "Excess Emissions" states:

> a. Excess emissions resulting from startup, shutdown, or malfunction of any source which occur though ordinary diligence is employed shall be allowed provided that: [391-3-1-.02(2)(a)7(i)]
>
> i. The best operational practices to minimize emissions are adhered to;
>
> ii. All associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions;
>
> and
>
> iii. The duration of excess emissions is minimized.
>
> …..
>
> c. The provisions of this condition and Georgia Rule 391-3-1-.02(2)(a)7 shall apply only to those sources which are not subject to any requirement under Georgia Rule 391-3-1-.02(8) – New Source Performance Standards or any requirement of 40 CFR, Part 60, as amended concerning New Source Performance Standards. [391-3-1-.02(2)(a)7(iii)]

The provision states explicitly that it does not apply to sources that are subject to any New Source Performance Standards (NSPS) that are listed under 40 CFR Part 60, but nothing in that provision provides that the exemption does not apply to sources that are subject to the national emission standards for hazardous air pollutants (NESHAP) rules like MATS that are listed under 40 CFR Part 63, or regional haze limits. The only other limitations that are placed on this exemption are that the plant adhere to "best operational practices" and minimize excess emissions.

Additionally, Plant Bowen's "emergency" affirmative defense provision would allow Plant Bowen to claim an affirmative defense in any enforcement action brought for an alleged violation of Bowen's SO_2 MATS/regional haze limit. Plant Bowen's 2019 Title V Permit Condition 8.13.2 states:

> 8.13.2 An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the Permittee demonstrates, through properly signed contemporaneous operating logs or other relevant evidence, that: [391-3-1-.03(10)(d)7 and 40 CFR 70.6(g)(2) and (3)]

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a. An emergency occurred and the Permittee can identify the cause(s) of the emergency;

b. The Permitted facility was at the time of the emergency being properly operated;

c. During the period of the emergency, the Permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards, or other requirements in the Permit; and

d. The Permittee promptly notified the Division and submitted written notice of the emergency to the Division within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

8.13.3 In an enforcement proceeding, the Permittee seeking to establish the occurrence of an emergency shall have the burden of proof. [391-3-1-.03(10)(d)7 and 40 CFR 70.6(g)(4)]

8.13.4 The emergency conditions listed above are in addition to any emergency or upset provisions contained in any applicable requirement. [391-3-1-.03(10)(d)7 and 40 CFR 70.6(g)(5)]

The provision plainly applies to any "technology-based emission limitations" including MATS and regional haze emission standards.

ii. EPA's Proposal to Incorporate Plant Bowen's MATS Limit into Georgia's SIP Violates the Clean Air Act and RHR Because of Bowen's Title V Permit SSM Exemption.

EPA's proposal to incorporate the MATS/regional haze limits into the Georgia SIP is unlawful because Plant Bowen's permit contains an exemption during periods of startup and shutdown that could apply to those limits.[252] The Section 112 MATS NESHAP standards are "emission standards"[253] that must apply on a "continuous basis."[254] In addition, the Clean Air Act requires that each Title V permit "include enforceable emission limitations and standards,"[255] which likewise must apply on a continuous basis. The requirement for "continuous" emission limitations means that "temporary, periodic, or limited systems of control" do not comply with the Act.[256] As the D.C. Circuit has twice held, "the SSM exemption violates the [Clean Air

[252] Though Georgia's exemption contains so-called general duty requirements like "best operational practices" and the requirement to minimize excess emissions, the general duty is not an "emission standard" that complies with section 112, *Sierra Club v. EPA*, 551 F.3d 1019, 1027-29 (D.C. Cir. 2008), nor is it an "enforceable" emission limitation, 42 U.S.C. § 7410(a)(2)(A).
[253] 42 U.S.C. § 7412(d)(1).
[254] *Id.* § 7602(k); *Sierra Club v. EPA*, 551 F.3d at 1027-28.
[255] 42 U.S.C. § 7661c(a).
[256] *Sierra Club*, 551 F.3d at 1027 (quoting H.R. Rep. No. 95-294, at 92 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1077, 1170); *see also U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606 (D.C. Cir. 2016) ("exempt[ing] periods of malfunction entirely from the application of the emissions standards . . . is [not] consistent with the Agency's enabling statutes").

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Act's] requirement that some section 112 standard apply continuously."[257] Georgia therefore does not have authority "to relax emission standards on a temporal basis,"[258] and EPA cannot approve as an emission limit into the SIP a regional haze/MATs limit that is subject to an unlawful exemption.[259]

And as EPA explained in disapproving Wyoming's exemptions for startup, shutdown, and malfunction emissions in that state's regional haze plan:

> The [Regional Haze Rule] states that "Section 302(k) of the [Clean Air Act] requires emissions limits such as BART [and reasonable progress] to be met on a continuous basis. Although this provision does not necessarily require the use of continuous emissions monitoring, it is important that sources employ techniques that ensure compliance on a continuous basis." . . . it is clear that the rule intended for BART [and reasonable progress] emission limits to be met on a continuous basis and did not provide either explicitly or implicitly exceptions for startup, shutdown, or malfunction.[260]

Although Permit Condition 8.14.4(c) states that it does not apply to a source subject to any New Source Performance Standards, and some units at Plant Bowen are subject to those standards,[261] Georgia Power could nonetheless try to invoke this provision to exempt violations of its MATS/regional haze limits. For example, Georgia Power could attempt to argue that the provision only cannot be applied to exceedances of the NSPS themselves, or only certain units that are subject to those standards. Indeed, Georgia Power prevailed in this argument at the Eleventh Circuit in *Sierra Club v. Georgia Power Co.*[262] In that case, the court rejected Sierra Club's argument that this same SSM exemption does not apply to Plant Wansley because that facility is subject to NSPS. The court stated:

> Georgia's SSM Rule does not apply to "sources" that are subject to the Clean Air Act's "New Source Performance Standards" ("NSPS"). *See* Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)7(iii). Plant Wansley's Unit 5A (a gas-fired generating unit) is subject to NSPS, and the SSM Rule therefore does not apply to Unit 5A. However, Plant Wansley's Units SG01 and SG02 (the two coal-fired units at issue) are not subject to NSPS . . . . As such, Georgia's SSM Rule applies to the exceedances alleged at SG01 and SG02.
>
> Sierra Club is correct that the entire Plant Wansley is a single "major stationary source." *See Sierra Club v. Leavitt*, 368 F.3d 1300, 1302 n.1 (11th Cir.2004). Even so, a "major stationary source" may encompass numerous "sources." 42 U.S.C. §

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[257] *Sierra Club*, 551 F.3d at 1021; *see also U.S. Sugar Corp.*, 830 F.3d at 606.
[258] *Sierra Club*, 551 F.3d at 1028.
[259] 42 U.S.C. § 7410(l); *E.g., Michigan Dep't of Envtl. Quality v. EPA,* 230 F.3d 181 (6th Cir. 2000) (EPA properly disapproved Michigan SIP revision that permitted automatic exemption for sources that violate emissions standards); *see also Arizona Pub. Serv. Co. v. EPA*, 562 F.3d 1116 (10th Cir. 2009); *Montana Sulphur v. EPA*, 666 F.3d 1174 (9th Cir. 2012).
[260] 79 Fed. Reg. 5032, 5170 (Jan. 30, 2014).
[261] *See* Plant Bowen 2019 Title V Permit.
[262] *Sierra Club v. Georgia Power Co.*, 443 F.3d 1346, 1355, n.13 (11th Cir. 2006).

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7661(2); *see also* EPA's response to Sierra Club's Comments on Georgia's Title V program, Mar. 29, 2002, at 2 (noting that "it is not uncommon to have both NSPS and non-NSPS emission sources at the same facility").[263]

Plant Bowen's Title V permit exemption from the permit's 0.2 lbs/MMBtu SO_2 emission limit during periods of startup and shutdown is unlawful, and EPA must require Georgia to remove it.[264]

iii. EPA's Proposal to Incorporate Plant Bowen's MATS Limit into Georgia's SIP Violates the Clean Air Act and RHR Because of the Title V Permit Affirmative Defense Provision.

EPA's proposal to incorporate Plant Bowen's Title V Permit into Georgia's SIP with an "emergency" affirmative defense provision is unlawful. Georgia's affirmative defense provision is based on 40 CFR 70.6(g)(4), which EPA has found to be unlawful and has removed from its regulations.[265] All the reasons EPA provided in its draft and final rule finding this affirmative defense provision unlawful apply here.[266] Condition 8.13.2 in Plant Bowen's 2019 Title V permit is unlawful whether it is construed as an affirmative defense or an exemption.

If Condition 8.13.2 in Plant Bowen's Title V permit is construed as an affirmative defense to penalties, it unlawfully limits the authority of courts to decide appropriate penalties in civil actions. Congress gave the courts, not EPA or states, jurisdiction to provide remedies in civil suits for violations of emission standards, including any standard, limitation, or schedule in any operating permit.[267] Congress also prescribed factors that courts must consider in determining the amount, if any, of any civil penalties to assess for any violation.[268] Plant Bowen's emergency SSM affirmative defense provision in its Title V permit is unlawful because it is inconsistent with those statutory provisions, as the D.C. Circuit has repeatedly held, and as EPA has recognized when it removed the provision from its regulations.

If Plant Bowen's Title V permit affirmative defense provision is considered an exemption, it is unlawful because it would render emission limitations in the Title V permit non-continuous, contrary to the Act requirement that emission limitations must be continuous.[269]

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[263] *Id.*

[264] The D.C. Circuit recently held that startup and shutdown exemptions in state implementation plans are not *per se* unlawful because the Clean Air Act gives states authority to adopt emission limitations as necessary or appropriate, or other control measures, means, or techniques that need not be continuous, to meet the requirements of the Act. *Env't Comm. of Fla. Elec. Power Coordinating Grp., Inc. v. Env't Prot. Agency*, 94 F.4th 77, 100 (D.C. Cir. 2024). That decision explicitly does not apply to section 112 regulations like MATS that were addressed in the *Sierra Club* case. *Id.* at 103. In contrast to SIPs, Section 112 regulations "require the use of 'emission limitations' without condition." *Id.* The decision also makes clear, that to the extent a state adopts an emission imitation like the regional haze numeric SO_2 limit for Plant Bowen, the limitation must still satisfy the Act's requirement that emission limits be continuous. *Id.*

[265] 88 Fed. Reg. 47,029 (July 21, 2023).

[266] *Id.*; 81 Fed. Reg. 38,645 (June 14, 2016).

[267] 42 U.S.C. § 7604(a); *NRDC v. EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014) (finding affirmative defense unlawful under Act's plain text).

[268] 42 U.S.C. § 7413(e)(1); *NRDC*, 749 F.3d at 1063.

[269] 42 U.S.C. § 7602(k); *Sierra Club*, 551 F.3d at 1027-28.

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Georgia's affirmative defense offers a "defense to an action brought for noncompliance."[270] It is thus entirely possible this could be misinterpreted to mean that, where the provision's terms are met, the source did not violate the governing emission limitation. That is an exemption from the emission limitation. Section 302(k) of the Act requires that emission standards limit emissions "on a continuous basis," and therefore exemptions from emission limitations are unlawful.[271]

By its own terms, the Title V defense applies to "technology-based *emission limitations*," like Plant Bowen's MATS/proposed regional haze limit.[272] The *Sierra Club* decision squarely applies to such technology-based emission limitations. As EPA stated in its final rule removing the emergency affirmative defense from the Title V regulations, "[t]o the extent that the affirmative defense provisions could have been interpreted to provide an exemption or define whether a violation has occurred, the EPA reiterates that such an exemption would be impermissible under the EPA's interpretation of the [Clean Air Act] and in light of [the Court's opinion in] Sierra Club."[273] EPA recognizes that the same logic that the *Sierra Club* case applied to a NESHAP provision applies to "other emission limitations subject to the definition of 'emission limitation' within section 302(k), including emission limits contained within a source's title V permit."[274] As EPA explains:

> If there is no "violation" when certain criteria or conditions for an affirmative defense are met, then there is, in effect, no emission limitation that applies when the criteria or conditions are met, and the affirmative defense would operate to create an exemption from the emission limitation . . . based on the EPA's interpretation of the Sierra Club decision, this would violate the basic [Clean Air Act] principle that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise.[275]

The affirmative defense must be removed from Plant Bowen's permit. EPA recognized in its rule removing the Title V emergency affirmative defense from EPA regulations that "states would be expected to remove title V affirmative defense provisions from permits (or clearly label remaining provisions as state-only) at the earliest possible occasion when each permit is next reviewed by the permitting authority, such as the next permit renewal or unrelated permit revision."[276] For Plant Bowen, that "unrelated permit revision" is now. As EPA states, simply removing the provision would not require much work.[277]

Thus, EPA's proposal to incorporate Plant Bowen's permit into Georgia's SIP violates the Clean Air Act and the RHR, since it contains an affirmative defense that affects the MATS limit that Georgia determined was necessary to make reasonable progress for Plant Bowen. As with

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[270] Plant Bowen 2019 Title V Permit, Condition 8.13.2.
[271] *Sierra Club*, 551 F.3d at 1027-28.
[272] 42 U.S.C. § 7412(d).
[273] 88 Fed. Reg. at 47,035; *See, e.g.*, *Sierra Club*, 551 F.3d at 1027-28 (finding SSM exemption conflicts with the Act's plain language).
[274] 88 Fed. Reg. at 47,036.
[275] *Id.* at 47,035; *id.* at 47,036 (explaining that an exemption would "run afoul of the [Clean Air Act] requirement that emission limitations be continuous" (citing 42 U.S.C. § 7602(k)).
[276] 88 Fed. Reg. 47052.
[277] *Id.*

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the exemption, EPA cannot approve as an emission limit into the SIP a regional haze/MATS limit that is subject to an unlawful affirmative defense/exemption.[278] EPA must remove the affirmative defense from Plant Bowen's permit

B. Brunswick Cellulose

Brunswick Cellulose is a pulp mill in Glynn, Georgia, located just 25 kilometers from Wolf Island Wilderness Area. According to NPCA's analysis of the 2020 NEI data for Brunswick, the facility is a significant source of haze-forming pollution, emitting 1,497.8 tpy of NOx and 350.1 tpy of SO_2 and likely impacting at least six Class I Areas.[279] Brunswick has a very high Q/d of 86.8 for Wolf Island.[280] As NPS noted in its consultation materials, Brunswick Cellulose is the fourth ranked source for Georgia according to the VISTAS AOI analysis, landing the facility in the top 80% of total AOI impact for two VISTAS Class I Areas.[281]

Yet, Georgia only required Brunswick Cellulose to adopt new fuel measures for its No. 4 Power Boiler: (1) eliminating the firing of tire-derived fuel; and (2) limiting the firing of No. 6 fuel oil to times of natural gas curtailment with additional fuel oil firing allowed during adverse bark/wood fuel conditions. When firing No. 6 fuel oil during adverse bark/wood fuel conditions, Georgia required that Brunswick limit its SO_2 emissions from the No. 4 Power Boiler to 15 tpy.[282] Georgia rejected all other controls analyzed for the No. 4 Power Boiler, and all controls analyzed for the No. 5 and 6 Recovery Furnaces, as not cost-effective.[283] EPA proposes to approve Georgia's determinations as reasonable.[284] EPA states that the measures adopted for the No. 4 Power Boiler "resulted in greater annual SO_2 emission reductions than some other more expensive fuel-switching options" and would result in cost-savings without requiring significant capital investments to modify the Boiler's equipment.[285] For the No. 5 and 6 Recovery Furnaces, EPA states that "Georgia has adequately demonstrated that based on high control costs, none of the add-on SO_2 controls evaluated for the selected units were reasonable and that existing SO_2 measures at the No. 5 and No. 6 Recovery Furnaces are not necessary for reasonable progress."[286]

1. EPA Cannot Approve Georgia's Flawed Four-Factor Analyses for Brunswick and Must Require the Facility to Install Cost-Effective Controls.

Given the facility's significant NOx emissions, EPA must require Georgia to conduct a Four-Factor Analysis for NOx controls to ensure that the State requires a reasonable range of

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[278] 42 U.S.C. § 7410(l); *e.g., Michigan Dep't of Envtl. Quality,* 230 F.3d 181 (EPA properly disapproved Michigan SIP revision that permitted automatic exemption for sources that violate emissions standards); *see also Arizona Pub. Serv. Co.*, 562 F.3d 1116; *Montana Sulphur*, 666 F.3d 1174.
[279] NPCA Georgia Source Analysis.
[280] *Id.*
[281] NPS Consultation Letter at 26.
[282] 89 Fed. Reg. at 47,494-95, 47,498.
[283] *Id.*
[284] *Id.* at 47,498.
[285] *Id.*
[286] *Id.*

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controls to make progress in the second planning period.[287] As noted above, EPA's proposal to endorse Georgia's decision to not conduct any NOx control analyses, including for Brunswick, was arbitrary and capricious.[288] NPS also recommended that Georgia conduct a NOx control analysis for Brunswick Cellulose given its significant NOx emissions.[289]

Additionally, Georgia's Four-Factor Analyses of SO_2 controls for the facility are riddled with errors that EPA neither acknowledges nor addresses. NPS found that Georgia did not follow EPA's Control Cost Manual in its analyses of wet scrubber and dry sorbent injection (DSI) controls for the No. 4 Power Boiler and No. 5 and 6 Recovery Furnaces.[290] In contrast, in its proposal to partially disapprove Arizona's SIP Revision for the second planning period, EPA noted that Arizona improperly deviated from the Control Cost Manual without justification, explaining that use of consistent cost methods across haze plans is critical "to draw rational conclusions about the reasonableness of the costs of compliance for particular control options."[291] Thus, EPA concluded that without "adequate documentation supporting deviations from the Control Cost Manual, . . . [Arizona]'s cost analyses are not sufficiently reliable to support its control determinations."[292] To meet its regional haze requirements, as well as the requirement that it act consistently across SIP actions, EPA must also determine that Georgia's unjustified deviations from EPA's Control Cost Manual in its analyses of controls for Brunswick violate the Clean Air Act and RHR.[293]

Moreover, Georgia inappropriately rejected a cost-effective control for the No. 4 Power Boiler. Based even on Georgia's flawed analyses for Brunswick, a wet scrubber would likely reduce SO_2 emissions from the No. 4 Power Boiler by 141 tpy at a cost-effectiveness of $10,330/ton of pollution reduced.[294] The cost-effectiveness for this control is within the range of cost thresholds adopted by other states for the second planning period, as noted above.[295] A wet scrubber would also achieve double the emission reductions of the fuel limits noted above for the No. Power Boiler. In support of its proposal to approve of Georgia's analysis for Brunswick's No. 4 Power Boiler, EPA states only that the fuel limits for the No. 4 Boiler would result in greater SO_2 reductions than other more expensive fuel switching options considered and would not require significant capital investments to modify equipment.[296] EPA does not address the cost-effectiveness or significantly greater emission reductions that would be achieved with a wet scrubber for this emission unit.

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[287] 2021 Clarification Memo at 4-5.
[288] *See supra* Section III.C.
[289] NPS Consultation Letter at 26-27.
[290] *Id.* at 27.
[291] 89 Fed. Reg. at 47,429.
[292] *Id.*
[293] 42 U.S.C. § 7601(a)(2); 40 C.F.R. § 56.5(a) (requiring EPA regional offices to ensure their actions under the Act "[a]re carried out fairly and in a manner that is consistent with the Act and Agency policy" and "[a]re as consistent as reasonably possible with the activities of other Regional Offices").
[294] 89 Fed. Reg. at 47,494.
[295] *See supra* Section IV; *see also* 89 Fed. Reg. at 47,429 (questioning Arizona's decisions to reject haze controls as not cost-effective where they were only "marginally above the chosen cost threshold" by $36 to $269).
[296] 89 Fed. Reg. at 47,498.

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2. At a Minimum, Brunswick's Existing Measures for the No. 5 and 6 Recovery Furnaces Are Necessary for Reasonable Progress.

Even if EPA correctly proposes to approve of Georgia's rejection of any new controls for the No. 5 and 6 Recovery Furnaces (it does not), the Agency's proposed determination that existing measures for the No. 5 and 6 Recovery Furnaces are not necessary for reasonable progress is misplaced. EPA has explained that, if a state does not require a source to adopt new control measures based on a Four-Factor Analysis, "the source's existing measures are generally needed to prevent future visibility impairment (i.e., to prevent future emission increases)[, they are] necessary to make reasonable progress."[297] A state can demonstrate that a source will continue implementing its existing measures such that they are not necessary "based on data and information on (1) the source's past implementation of its existing measures and its historical emission rate, (2) the source's projected emissions and emission rate, and (3) any enforceable emissions limits or other requirements related to the source's existing measures."[298] As EPA notes in its proposal, Georgia's analysis showed only that the State "*expects* emissions from these units to remain in the range of 90.4-213.5 tons/year for the No. 5 Recovery Furnace and in the range of 7.8-22.0 tpy of SO_2 for the No. 6 Recovery furnace."[299] The stated emission ranges for each furnace are very wide, with the top of the range being more than double the bottom. Moreover, nothing in the State's SIP Revision demonstrates that emissions will remain the same at these units in the future. In fact, EPA explains that Georgia submitted a supplement to its SIP Revision providing that the No. 5 Recovery Furnace's emissions fluctuated during the period from 2016 to 2020 and claimed that "the emission rate for the unit is within a consistent range limited by the Permit."[300] Thus, EPA's own justification for its determination underscores that existing permit limits for the facility are, indeed, necessary to make reasonable progress.

3. The Brunswick Permit EPA Proposes to Incorporate into Georgia's SIP Does Not Include Practically Enforceable Emission Limits.

The Brunswick Cellulose permit that EPA proposes to incorporate into the SIP does not contain sufficient measures to ensure the facility complies with the fuel-use limit that Georgia determined is necessary for reasonable progress. As noted above, Georgia required Brunswick to meet a 15 tpy SO_2 limit for the No. 4 Power Boiler when firing No. 6 fuel oil during adverse wood/bark conditions. The permit, as available in EPA's docket, states that Brunswick "shall use emission factors" to calculate its monthly SO_2 emissions for the No. 4 Power Boiler to demonstrate compliance with the 15 tpy limit, but does not specify exactly what emission factor Brunswick must use.[301] A footnote in EPA's proposal notes that Georgia provided a supplement to its SIP submission via email on April 15, 2024, that "provid[ed] clarification on the specific emission factor that the source will use."[302] The April 2024 email states that Brunswick will use

[297] 2021 Clarification Memo at 8-9.
[298] *Id.* at 9.
[299] 89 Fed. Reg. at 47,495 (emphasis added).
[300] *Id.* at 47,498.
[301] Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, Brunswick Cellulose LLC, Permit No. 2631-127-0003-V-07-3 at 3 (Oct. 25, 2023), Document No. EPA-R04-OAR-2023-0220-0011 (providing that Condition 6.2.52 "demonstrate[s] compliance with Condition 3.2.25") [hereinafter "Oct. 2023 Brunswick Permit"].
[302] 89 Fed. Reg. at 47,495 n.63.

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an AP-42 emission factor, namely 157 S lb/Mgal where S is the fuel content as a percentage.[303] Yet, nothing in the permit requires or explains that Brunswick must use the 157 S lb/Mgal factor to determine compliance. Even if the permit did specify that Brunswick must use this AP-42 factor to determine compliance, the permit and its proposed incorporation into the SIP would still be insufficient to determine compliance, as AP-42 factors do not reliably predict emissions. As EPA has explained, the AP-42 factors were developed to provide *approximations* of average emissions for certain kinds of activities and equipment and were not intended for use in permitting and enforcement.[304] Consequently, EPA has repeatedly cautioned that the AP-42 factors "are not likely to be accurate" and "[u]se of these factors as source-specific permit limits . . . is not recommended."[305] As a result, neither EPA nor Georgia can rely on the 157 S lb/Mgal AP-42 factor to establish or demonstrate compliance with the 15 tpy emission limit. Without an identified and valid emission factor for demonstrating compliance with the 15 tpy limit in the permit to be incorporated into Georgia's SIP, that limit is not practically enforceable and EPA's proposal to incorporate it into the SIP violates the Clean Air Act and the RHR.[306]

The 15 tpy limit for the No. 4 Power Boiler is also affected by SSM exemption and affirmative defense provisions. Brunswick's most recently renewed Title V permit, issued on April 18, 2023, and not included in EPA's docket, contains verbatim the same SSM exemption as the 2019 Plant Bowen permit.[307] The Brunswick SSM exemption also states that the exemption does not apply to "sources" subject to NSPS requirements, and so, it is not clear whether that provision applies to Brunswick's 15 tpy limit for the No. 4 Power Boiler.[308] However, if that provision does apply to the 15 tpy limit, then that provision similarly renders the 15 tpy limit unlawful and not practically enforceable for the same reasons discussed above.[309] The Brunswick April 2023 Title V permit also contains verbatim the same affirmative defense provision as the 2019 Plant Bowen permit, which also impacts the enforceability of the proposed

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[303] Email from James Boylan, Chief, Air Prot. Branch, Ga. Env't Prot. Div., to Estelle Bae, Air Permits Sec., Air Planning and Implementation Branch, Air and Radiation Div., Env't Prot. Agency Region 4 (Apr. 15, 2024), Document No. EPA-R04-OAR-2023-0220-0109; Ga. Env't Prot. Div., Response to EPA Regional Haze Questions at 1 (April 14, 2024), Document No. EPA-R04-OAR-2023-0220-0110.

[304] Env't Prot. Agency, A-42: Compilation of Air Emissions Factors From Stationary Sources (last updated June 12, 2024), https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources. EPA explains that an AP-42 emission factor is "a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. Env't Prot. Agency, AP-42: Compilation of Air Emissions Factors From Stationary Sources, Introduction at 1 (1995) (underlining in original), https://www.epa.gov/system/files/documents/2024-01/introduction_2024.pdf.

[305] Env't Prot. Agency, Enforcement Alert: Reminder About Inappropriate Use of AP-42 Emission Factors, Publication No. EPA 325-N-20-001 (Nov. 2020), https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf.

[306] 42 U.S.C. §§ 7410(a)(2), 7491(b)(2); 40 C.F.R. § 51.308(f)(2).

[307] *Compare* Plant Bowen's 2019 Title V Permit at 63 (Condition 8.14.4), *with* Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, Brunswick Cellulose LLC, Permit No. 2631-127-0003-V-07-0 at 83 (Apr. 18, 2023) (Condition 8.14.4) [hereinafter "April 2023 Brunswick Permit"] (attached as Ex. 19).

[308] April 2023 Brunswick Permit at 83 (Condition 8.14.4(c)). Brunswick's April 2023 permit provides that the No. 4 Power Boiler is not subject to any NSPS requirements under 40 C.F.R. Part 60 but shows that other emission units at the facility are subject to NSPS requirements under 40 C.F.R. Part 60. *Id.* at 8.

[309] *See supra* Section V.A.5.ii.

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15 tpy limit for the same reasons discussed above.[310] Thus, EPA's proposal to incorporate the 15 tpy limit into Georgia's SIP violates the Clean Air Act and RHR.[311]

Additionally, the Brunswick permit does not contain necessary reporting requirements. The Brunswick permit, as reproduced in EPA's docket, only includes provisions requiring the facility to maintain documents "kept as part of the record" reflecting its fuel use and emission calculations.[312] The permit makes reference to a requirement that Brunswick report its excess emissions, exceedances, or excursions in accordance with "the report required in Condition 6.1.4" of the permit.[313] However, the permit as included in EPA's docket does not contain condition 6.1.4., and so, the provisions EPA proposes to incorporate into the SIP do not meet the requirements of the Clean Air Act or the RHR.[314]

C. International Paper Co. – Savannah

According to NPCA's analysis of the 2020 NEI data for IP Savannah, the facility is a significant source of haze-forming pollution, emitting 1,568.7 tpy of NOx and 4,259.9 tpy of SO_2 and likely impacting at least 21 Class I areas.[315] IP Savannah has a very high Q/d of 72.9 for Wolf Island.[316] The facility is also ranked second in the VISTAS AOI analysis for Georgia facilities and is in the top 80% of total AOI impact for two of the State's Class I Areas.[317]

The only control measure Georgia determined was necessary for reasonable progress in the second planning period at IP Savannah was a requirement that the facility no longer burn coal at its No. 13 Power Boiler.[318] Georgia rejected circulating dry scrubber (CDS) and DSI controls for the No. 13 Power Boiler as not cost effective.[319] EPA proposes to approve Georgia's control determination for IP Savannah as reasonable because the removal of coal as fuel for the No. 13 Power Boiler will result in a cost saving and "achieve an annual SO_2 emissions reduction[] of 2,662 tpy."[320] EPA further proposes to approve Georgia's rejection of the other controls considered as not cost effective because they "presented challenges in solid waste disposal" and removal of coal as fuel source will allegedly achieve greater reductions than DSI controls.[321] EPA found that Georgia's analysis method was reasonable, including its cost calculations, which the Agency states "followed the EPA Air Pollution Control Cost Manual recommendations where relevant."[322] However, none of EPA's conclusions are supported by the record.

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[310] *See supra* Section V.A.5.iii.
[311] 42 U.S.C. §§ 7410(a)(2), 7491(b)(2); 40 C.F.R. § 51.308(f)(2).
[312] Oct. 2023 Brunswick Permit at 3 (Condition 6.2.52).
[313] *Id.* at 2 (Condition 6.1.7).
[314] 42 U.S.C. § 7410(a)(2)(F); 40 C.F.R. § 51.308(f)(6)(vi).
[315] NPCA Georgia Source Analysis.
[316] *Id.*
[317] NPS Consultation Letter at 28.
[318] 89 Fed. Reg. at 47,495.
[319] *Id.*
[320] *Id.* at 47,498.
[321] *Id.*
[322] *Id.*

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1. EPA Cannot Approve Georgia's Reliance on the Cessation of Coal Burning at the No. 13 Power Boiler Because It Is Not a New Control and Will Not Reduce IP Savannah's Emissions.

Both EPA's and Georgia's claims that the removal of coal as a fuel source for the No. 13 Power Boiler is a new control measure that will achieve any emission reductions in the second planning period are belied by the record. As both EPA and Georgia acknowledge, IP Savannah ceased burning coal at the No. 13 Power Boiler in 2017, three years before the facility submitted its Four-Factor Analysis to the State and five years before Georgia finalized its SIP Revision.[323] The measure is neither "new" nor "additional." EPA's conclusion that the control would achieve any emission reductions, let alone more reductions than other controls analyzed, is misleading at best. IP Savannah's baseline emissions for its control analysis used 2018 and 2019 emissions, and so, already accounted for any emission reductions resulting from the cessation of coal burning at the No. 13 Power Boiler.[324] EPA's assertion that this control measure would achieve an additional 2,662 tpy reduction in SO_2 is inappropriate double counting. EPA cannot approve this measure as a "new" or "additional" measure for the second planning period. However, Georgia's analysis makes clear that the removal of coal burning for the No. 13 Power Boiler is an existing measure that is necessary to make reasonable progress and must be included in the SIP.[325]

2. EPA Must Require IP Savannah to Install Cost-Effective CDS or DSI Controls.

Georgia's cost analyses for CDS scrubber and DSI controls on the No. 13 Power Boiler, which are based on facility-submitted analyses, contain multiple errors and unsupported costs. Georgia used the facility's unsupported 20-year remaining useful life, which the facility attempted to support by pointing to its internal "financial policy" to depreciate costs over a 20-year period.[326] The facility's internal economic life does not support deviating from EPA's Control Cost Manual, which provides that the remaining useful life for these controls is 30 years.[327] The Control Cost Manual specifically notes that the remaining useful life for a control cost analysis is not an "economic life."[328] Georgia further inappropriately accepted IP Savannah's unjustified retrofit factor for both its CDS and DSI control analyses.[329] IP Savannah provided only vague statements or justifications that are specifically excluded from the Control Cost Manual to support a retrofit factor at the highest end of EPA's acceptable range.[330] Rather than blindly accepting IP Savannah's escalated retrofit factor, Georgia should have used an average retrofit factor of 1 for these controls.[331] Additionally, Georgia blindly accepted IP

[323] 89 Fed. Reg. at 47,495.
[324] Kordzi Report at 15; Stamper Report at 13.
[325] 2021 Clarification Memo at 8.
[326] Kordzi Report at 16.
[327] *Id.* at 16-17.
[328] *Id.* at 16. IP Savannah's additional assertions that, based on its experience, equipment would need to be rebuilt before 30 years and that the "abrasive environment" would shorten the life of controls are vague and entirely unsubstantiated. *Id.* at 17.
[329] *Id.* at 19-20; Stamper Report at 14-15.
[330] Kordzi Report at 18-20.
[331] *Id.* at 20.

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Savannah's capacity factor of 59% even though the facility did not provide any documentation to support this cost input.[332] Yet, information in the facility-submitted analysis indicates that the actual capacity factor for the No. 13 Power Boiler is likely much higher at 76.4%.[333] Finally, Georgia did not require or provide any documentation to support (1) IP Savannah's claim that it would have to expand its solid waste disposal site to accommodate CDS or DSI controls, or (2) the cost of expanding the waste disposal site.[334] The facility's claimed costs for waste disposal are also not reliable, as the facility escalated the costs for expanding its disposal site from 2007 to 2021 dollars despite the fact that the Control Cost Manual states that costs should not be escalated more than five years.[335]

Beyond the errors that affected Georgia's cost analyses for both CDS and DSI, Georgia adopted additional errors in the facility-submitted cost analysis for CDS at the No. 13 Power Boiler. Georgia inappropriately accepted an unreasonably low 90% removal efficiency for CDS from the facility-submitted cost analysis.[336] The Control Cost Manual notes that CDS systems can achieve at least 95% removal efficiency, and have been shown to achieve over 98% removal efficiency.[337] Even Georgia acknowledged in the SIP Revision that CDS systems can achieve 98% control in its response to comments, but states, without any support or explanation, that "it supports IP Savannah's choice to use 90% as an appropriate efficiency factor."[338] Georgia also accepted the same waste disposal cost for both CDS and DSI even though IP Savannah's calculated waste rate for CDS was significantly lower than that for DSI.[339] Thus, Georgia should have used a lower waste disposal cost in its analysis for CDS.[340]

All these errors resulted in artificially inflated control costs for CDS and DSI on the No. 13 Power Boiler, and thus, artificially inflated cost-effectiveness values. Georgia also violated the RHR's requirement that it adequately document and support the technical basis for its control determinations.[341] Yet, EPA does not acknowledge or address any of the many errors in Georgia's control analyses. EPA's claim that Georgia followed a reasonable cost analysis method and followed the Control Cost Manual is blatantly unsupported. In contrast, in its proposed partial disapproval of Arizona's SIP Revision, EPA proposes to conclude that Arizona's Four-Factor Analyses for numerous sources were unreasonable because that State based its control determinations on, among other things, inappropriate emission rates for the controls analyzed and unsubstantiated deviations from the Control Cost Manual.[342] Rather than blindly rubber stamping the State's flawed control determinations, EPA must treat the errors in Georgia's

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[332] *Id.* at 20-21.
[333] *Id.* at 21.
[334] Kordzi Report at 21-22; Stamper Report at 15-16.
[335] Kordzi Report at 21; Stamper Report at 15-16.
[336] Kordzi Report at 17-18; Stamper Report at 16.
[337] Kordzi Report at 17.
[338] *Id.* at 18; Georgia Response to Public Comments at 20.
[339] Kordzi Report at 21; Stamper Report at 15.
[340] Kordzi Report at 21.
[341] 40 C.F.R. § 51.308(f)(2)(iii).
[342] 89 Fed. Reg. at 47,428 (stating that the "emission rates used in some of Arizona's four-factor analyses did not appropriately reflect the emissions rate achievable with the relevant controls"); *id.* at 47,428-29 (proposing to partially disapprove Arizona's SIP Revision based, in part, on that State's unsupported deviations from the CCM in its control cost analyses, including cost inputs for remaining useful life).

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SIP Revision consistently with how it has proposed to treat these same errors in Arizona's SIP Revision.[343]

EPA must require Georgia to correct its cost analyses, or correct those analyses itself, and require the installation of either CDS or DSI on the No. 13 Power Boiler as necessary to make reasonable progress. Even using Georgia's flawed cost analyses, CDS and DSI are cost effective. Based on Georgia's analysis, CDS would remove 3,674 tpy of SO_2 at a cost of $5,564/ton and DSI would remove 2,653 tpy of SO_2 at a cost of $6,245/ton.[344] And correcting just some of the errors in Georgia's analyses noted above, both CDS and DSI are highly cost-effective controls at $3,790/ton and $5,920/ton of SO_2 removed, respectively.[345] These costs are well within the range of costs that other states have determined are cost effective for the second planning period.[346] Neither Georgia nor EPA conducted independent, rigorous reviews of IP Savannah's control analyses. Indeed, in its response to comments, Georgia itself admits that "the costs associated with th[ese] specific option[s] were not looked at in depth due to [the removal of coal burning] being an obvious path forward."[347] And EPA's proposal to approve Georgia's determination that these controls are not cost effective based on the State's application of the Arkansas DEQ cost spreadsheet is arbitrary and capricious, as noted above.[348]

3. Georgia and EPA Failed to Consider Other Available Controls to Reduce IP Savannah's Haze-Forming Emissions.

Both Georgia and EPA failed to consider other available control options for reducing SO_2 pollution from IP Savannah – namely, packed bed scrubbers. Packed bed scrubbers are a common SO_2 control option for many industrial sources, including paperboard mills like IP Savannah.[349] These scrubbers are demonstrated to achieve up to 99.99% control efficiency.[350] The Control Cost Manual includes a module for assessing packed bed scrubber controls, and although the record does not contain sufficient information to provide a cost analysis for IP Savannah, the Control Cost Manual examples indicate that packed bed scrubbers are likely a highly cost-effective control option.[351]

Additionally, IP Savannah is a significant source of NOx pollution. EPA must require Georgia to conduct a Four-Factor Analysis for NOx controls on the facility's emission units to ensure that the State requires a reasonable range of controls to make progress in the second planning period.[352]

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[343] 42 U.S.C. § 7601(a)(2); 40 C.F.R. § 56.5(a).
[344] 89 Fed. Reg. at 47,495.
[345] Stamper Report at 17.
[346] *See supra* Section IV. CDS also has other benefits as the FGD system with the lowest energy usage, low freshwater usage, and zero liquid discharge. Stamper Report at 17-18.
[347] Georgia Response to Public Comments at 19.
[348] *See supra* Section IV.
[349] Kordzi Report at 18.
[350] *Id.*
[351] *Id.*
[352] *See supra* Section III.C.; 2021 Clarification Memo at 4-5.

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4. EPA Ignores that the IP Savannah Permit It Proposes to Incorporate into Georgia's SIP Does Not Include Necessary Reporting Requirements.

The IP Savannah permit that EPA proposes to incorporate into Georgia's SIP does not contain necessary reporting requirements. The IP Savannah permit, as reproduced in EPA's docket, only includes provisions requiring the facility to "measure and record" information reflecting fuel use for the No. 13 Power Boiler.[353] The permit makes reference to a requirement that IP Savannah report its excess emissions, exceedances, or excursions in accordance with "the report required in Condition 6.1.4" of the permit.[354] However, the permit as included in EPA's docket does not contain Condition 6.1.4., and so, the provisions EPA proposes to incorporate into the SIP do not include necessary reporting provisions and do not meet the requirements of the Clean Air Act or the RHR.[355]

VI. EPA Ignores that Georgia's SIP Does Not Address Measures Necessary to Prevent Future Impairment.

The Clean Air Act not only requires States to remedy existing visibility impairment but also prevent future impairment that would negatively affect visibility conditions at Class I Areas.[356] Although EPA has historically relied on new source permitting programs, like the prevention of significant deterioration (PSD) and new source review (NSR) programs, to address the Clean Air Act's prevention of future impairment mandate,[357] these programs have changed dramatically over the decades. The current PSD rules, as well as the major source nonattainment NSR rules, now exempt many modifications at existing major sources that were previously subject to PSD review. As a result, the PSD and NSR rules do not provide as comprehensive Class I Area visibility protections as they previously did. As such, it is imperative that Georgia's long-term strategy include measures to prevent future visibility impairment from new sources, as well as new modifications at existing sources of haze pollution.

Georgia, however, does not discuss anywhere in its SIP Revision (1) the programs it has in place to address any potential future increases in emissions or (2) any pending air permit applications for sources that may contribute to future impairment at Class I Areas in Georgia or other states. For example, Georgia is currently reviewing a permit application and draft air construction permit from Twin Pines Minerals for a mineral sands mine processing plant.[358] Twin Pines proposes to locate its mine just three miles from Okefenokee. Although Twin Pines's

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[353] Ga. Dep't Nat. Res., Air Quality – Part 70 Operating Permit, International Paper – Savannah, Permit No. 2631-051-0007-V-04-1 at 3 (Oct. 20, 2023), Document No. EPA-R04-OAR-2023-0220-0010 (Condition 6.2.5).
[354] *Id.* (Condition 6.1.7).
[355] 42 U.S.C. § 7410(a)(2)(F); 40 C.F.R. § 51.308(f)(6)(vi).
[356] 42 U.S.C. § 7491(a)(1); 40 C.F.R. § 51.300(a); *see also id.* § 51.308(f)(2)(iv)(B) (providing that states must consider "[m]easures to mitigate the impacts of construction activities").
[357] 40 C.F.R. § 51.307. 40 C.F.R. §51.307(b)(2) and (c) provide that the PSD requirements of 40 C.F.R. §51.166(o), (p)(1) through (2), and (q) apply to new and modified major sources proposing to locate in nonattainment areas that may have an impact on visibility in a mandatory Class I area.
[358] Ga. Dep't Nat. Res., Draft Air Quality Permit, Twin Pines Minerals LLC – Charlton County, Permit No. 1099-049-0011-B-01-0 (Feb. 12, 2024), *available at* https://epd.georgia.gov/twin-pines (attached as Ex. 20); Twin Pines Minerals, LLC, SIP Permit Application for Mineral Processing Plant: Twin Pines Minerals, LLC – St. George (Charlton County) (Dec. 20, 2019), *available at* https://epd.georgia.gov/twin-pines (attached as Ex. 21).

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permit application indicates that the mine's emissions would be relatively low, the application is woefully incomplete, missing information on the mine and processing plant's emission sources and potential emission levels. As a result, it is nearly impossible for the public to determine exactly what kind of impact the proposed mine may have on air quality at Okefenokee. Notably, this proposed mine and air permit is not covered in Georgia's SIP Revision. The fact that the SIP Revision does not address this proposed facility, or any other currently proposed new sources or modifications of existing sources, underscores the need for the State to address measures to prevent future impairment in its SIP Revision to ensure that it is meeting the Clean Air Act's natural visibility goal.

Yet, nowhere in EPA's proposed approval does the Agency acknowledge or address the fact that Georgia's SIP Revision entirely omits any discussion of measures to prevent future impairment. Again, EPA ignores an important aspect of the problem, and so, its proposal to approve Georgia's SIP is arbitrary and capricious, in violation of the Clean Air Act and RHR.[359]

VII. EPA's Proposal to Approve of Georgia's Reasonable Progress Goals Violates the Clean Air Act and the RHR.

EPA explains in its proposal that reasonable progress goals "*cannot* be determined *before* States have conducted their [Four-Factor Analyses] and determined the control measures that are necessary to make reasonable progress."[360] Rather, as EPA notes in its proposal, "[a]fter a State has developed its LTS, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second planning period, i.e., in 2028, as well as the impacts of other requirements of the [Clean Air Act]."[361] EPA thus recognizes its "long-standing" SIP planning sequence whereby states first identify in their long-term strategies controls *and then* develop reasonable progress goals.[362] Yet, EPA fails to acknowledge that Georgia set reasonable progress goals for its three in-state Class I Areas based on VISTAS's modeling results *before* conducting any Four-Factor Analyses or finalizing its long-term strategy.

EPA wrongfully proposes to find that Georgia's SIP Revision satisfies the RHR's reasonable progress goal requirements.[363] In its proposal, EPA recognizes that Georgia's reasonable progress goals are "based on VISTAS' modeling."[364] Yet, that VISTAS modeling was conducted in 2020, well before Georgia identified controls necessary to make reasonable progress based on the four statutory factors and finalized its long-term strategy in its draft SIP Revision released in June 2022.[365] As discussed in our comments on Georgia's draft SIP Revision, the State impermissibly reversed the SIP planning sequence, as it set the reasonable

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[359] *State Farm*, 463 U.S. at 43.
[360] 89 Fed. Reg. at 47,488 (quoting EPA's 2021 Clarification Memo at 6); *id.* (explaining that states are required to set reasonable progress goals reflecting "the progress that is projected to be achieved by the control measures States have determined are necessary to make reasonable progress based on a four-factor analysis").
[361] *Id.* at 47,484.
[362] 82 Fed. Reg. at 3091.
[363] 89 Fed. Reg. at 47,500.
[364] *Id.*
[365] SIP Revision, App'x E-6, VISTAS, Future Year Model Projections Task 9a (Sept. 23, 2020); Transmittal Letter at 1.

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progress goals before making final determinations on the controls to include in the long-term strategy.[366] The draft SIP Revision comments explained that as proposed, Georgia's reasonable progress goals are based on modeling results, which does not meet the RHR requirement that reasonable progress goals must be based on enforceable SIP measures.[367]

Georgia's response to the Conservation Groups' comments on this issue blatantly ignored the problems with its reasonable progress goals, claiming without any basis that the State's reasonable progress goals "are representative of all known control measures necessary to make reasonable progress."[368] As discussed above, Georgia's own SIP Revision and EPA's proposal directly contradict this statement, clearly showing that the State did not follow the requisite SIP planning sequence. Georgia also cherry-picked a statement from EPA's 2019 Guidance in its response to comments, claiming that states may conduct modeling to establish reasonable progress goals before "the outcome of some final state decisions on emission control measures [are] known."[369] However, Georgia ignored other portions of the 2019 Guidance explaining that, if a state conducted modeling for reasonable progress goals before making final long-term strategy control determinations, the state must "adjust its [reasonable progress goals] to reconcile the scenarios before the SIP revision with the [reasonable progress goals] is submitted."[370] Contrary to this directive, nothing in Georgia's SIP Revision or EPA's proposal indicates that Georgia made any adjustments to its reasonable progress goals after conducting its Four-Factor Analyses and finalizing long-term strategy.

EPA, thus, ignores that Georgia's reasonable progress goals are not reflective of the visibility improvements that the long-term strategy controls will achieve, in violation of the Clean Air Act and RHR. EPA must disapprove Georgia's reasonable progress goals for its three Class I Areas and require that the State adjust those goals to properly reflect enforceable emission limitations in the SIP.

VIII. EPA's Proposal to Approve Georgia's State-to-State Consultations Violates the Clean Air Act and the RHR.

"Congress was clear that both downwind states (*i.e.*, 'a State in which any [mandatory Class I Federal] area . . . is located[']) and upwind states (*i.e.*, 'a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area') must revise their SIPs to include measures that will make reasonable progress at all affected Class I areas."[371] "This consultation obligation is a key element of the regional haze program. Congress, the states, the courts and the EPA have long recognized that regional haze is

[366] Conservation Groups State Comments at 50-51; SIP Revision at 49 ("The air quality modeling results were used to determine a relative reduction in future visibility impairment, which was used to determine future visibility conditions and reasonable progress goals."); *id.* at 232 ("Through the VISTAS modeling, Georgia estimated the expected visibility improvements by 2028 in Cohutta Wilderness Area and Okefenokee National Wilderness Area resulting from existing federal and state regulations expected to be implemented and facility closures expected to occur by 2028 in Georgia and neighboring states.").
[367] SIP Revision at 232.
[368] Georgia Response to Public Comments at 26.
[369] *Id.*
[370] 2019 Guidance at 48; 89 Fed. Reg. at 47,488 n.34 (citing 2019 Guidance at 47-48).
[371] 82 Fed. Reg. at 3,094.

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a regional problem that requires regional solutions."[372] Congress intended this provision of the Clean Air Act to "equalize the positions of the States with respect to interstate pollution,"[373] and EPA's interpretation of this requirement accomplishes this goal by ensuring that downwind states can seek recourse from EPA if an upwind state is not doing enough to address visibility transport.[374]

In developing a long-term strategy for regional haze, 40 C.F.R. § 51.308(f)(2) requires that a state take three distinct steps: consultation; demonstration; and consideration. Specifically, the regulation requires:

> (ii) The State must consult with those States that have emissions that are reasonably anticipated to contribute to visibility impairment in the mandatory Class I Federal area to develop coordinated emission management strategies containing the emission reductions necessary to make reasonable progress.
>
> (A) The State must demonstrate that it has included in its implementation plan all measures agreed to during state-to-state consultations or a regional planning process, or measures that will provide equivalent visibility improvement.
>
> (B) The State must consider the emission reduction measures identified by other States for their sources as being necessary to make reasonable progress in the mandatory Class I Federal area.[375]

In its 2017 amendments to the RHR, EPA explained that "states *must* exchange their four-factor analyses and the associated technical information that was developed in the course of devising their long-term strategies. This information includes modeling, monitoring and emissions data and cost and feasibility studies."[376] In the event of a recalcitrant state, "[t]o the extent that one state does not provide another other state with these analyses and information, or to the extent that the analyses or information are materially deficient, the latter state should document this fact so that the EPA can assess whether the former state has failed to meaningfully comply with the consultation requirements."[377]

Finally, "[i]f a State contains sources which are reasonably anticipated to contribute to visibility impairment in a mandatory Class I Federal area in another State" that has established reasonable progress goals that are slower than the Uniform Rate of Progress, "the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State."[378] To that end, the "State must provide a robust

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[372] *Id.* at 3,085 n.31(citing *Vermont v. Thomas*, 850 F.2d 99, 101 (2d Cir. 1988)).
[373] S. Rep. No. 95-127, at 42 (1977).
[374] *Id.*
[375] 40 C.F.R. § 51.308(f)(2) (emphasis added); *see also*, 64 Fed. Reg. 35,714, 35,732, 35735 (July 1, 1999) (In conducting the four-factor analysis, EPA explained that "…the State must consult with other States which are anticipated to contribute to visibility impairment in the Class I area under consideration … any such State must consult with other States before submitting its long-term strategy to EPA.").
[376] 82 Fed. Reg. at 3088 (emphasis added).
[377] *Id.*
[378] 40 C.F.R. § 51.308(f)(3)(ii)(B).

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demonstration, including documenting the criteria used to determine which sources or groups of sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy."[379] In any event, "[a]ll substantive interstate consultations must be documented."[380]

A. EPA Treats the Consultation Process as a Box-Checking Exercise.

Although consultation is a critical part of the Regional Haze Program, EPA's proposal and TSD only recites what Georgia provided regarding its consultations, without any independent analysis whatsoever.[381] Rather, EPA merely states that Georgia "documented" its consultations with other states.[382] And Georgia itself failed to independently evaluate whether additional controls from out-of-state sources are warranted to achieve reasonable progress. Both Georgia and EPA have an obligation to independently review all of the information in the record and provide a reasoned explanation for their ultimate determinations.

B. Other States with Sources that Impact Georgia

Georgia recognizes that sources in other states like Tennessee, Florida, and Kentucky are projected to impact visibility at Georgia's Class I Areas even more than Georgia's own sources.[383] The only means for Georgia to address these significant impacts from other states is through the consultation requirement in 51.308(f)(2)(ii). Georgia did request that Florida, South Carolina, Kentucky, Tennessee, Ohio, Indiana, and Pennsylvania perform Four-Factor Analyses on these sources, however, as explained in the Kordzi Report, "it appears from a cursory review of these state SIPs that few of these sources are receiving any new controls as a result of regional haze Four-Factor Analyses."[384] As we explained in our state-level comments and summarized below, Georgia failed to critically evaluate whether additional controls from out-of-state sources are warranted to ensure reasonable progress. EPA must therefore commit to carefully reviewing those states' regional haze SIPs with consideration to the impacts on Georgia's Class I Areas.

1. EPA Must Require that Pennsylvania Optimize or Upgrade Controls at Keystone Generating Station.

For Pennsylvania's Keystone Station, Georgia included in its SIP Revision a letter from Pennsylvania concluding that, based on a facility-submitted Four-Factor Analysis, the Keystone units are currently controlled by Best Available Control Technology (BACT)-level controls for SO_2 and NOx, and that Keystone did not identify any technically feasible controls for SO_2 because the units are already controlled by wet FGD (at least 90% effectiveness) and DSI. For

[379] *Id.*
[380] *Id.* § 51.308(f)(2)(ii)(C).
[381] 89 Fed. Reg. at 47,499-47,502; EPA TSD at 22-24.
[382] 89 Fed. Reg. at 47,499-500.
[383] Kordzi Report at 13; SIP Revision at 136, Figures 7-16 & 7-17.
[384] Kordzi Report at 14.

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NOx control, Keystone evaluated potential tuning and upgrading of the low NOx burners already installed for its units but did not identify any reasonable control measures.[385]

Keystone Station is not exempt from a Four-Factor Analysis simply because it has FGD and SCR systems in place to meet the MATS. For one thing, Keystone's scrubbers underperform, as they do not achieve at least a 95% control efficiency.[386] Nor do the scrubbers achieve the 98% control efficiency that a modern wet scrubber system should be able to continuously achieve. Of the scrubber upgrades Keystone did consider in its Four-Factor Analysis, simply running one more level of recycle pumps would be very cost-effective at $413/ton of NOx reduced, and must be required.

While Keystone Units 1 and 2 are equipped with SCR systems, the facility's average NOx emissions rates in 2019 for Units 1 and 2 were 0.104 and 0.103 lb/MMBtu, respectively.[387] As previously noted, modern SCR systems should be able to consistently operate at a monthly average NOx emission rate of 0.05 lbs/MMBtu or lower.[388] Given the facility's likely contribution to impairment at Georgia's Class I Areas, EPA must require Pennsylvania to direct Keystone to evaluate additional cost-effective control measures, such as upgrades and/or system optimizations, emission limitations, available during this implementation period. In addition, EPA must ensure that any cost-effectiveness claims made regarding new controls for Keystone are supported and documented to determine their accuracy.

2. EPA Must Require that Ohio Direct the Gavin Power Plant to Optimize or Upgrade Controls.

Georgia's SIP Revision included a letter requesting that Ohio evaluate and require reasonable controls for the General James M. Gavin Power Plant in Ohio. In response, Ohio provided a cursory evaluation of emissions from the Gavin facility, concluding that Gavin's FGD and SCR systems are at least 90% effective, and therefore the facility is considered to be "effectively controlled."[389]

As discussed in our comments to Ohio on both its SIP Revision and supplement to its SIP Revision, Ohio failed to show that Gavin is, in fact, effectively controlled for NOx pollution, as the State did not show that a Four-Factor Analysis for NOx controls on Gavin would be futile.[390]

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[385] SIP Revision, App'x F-2e, Four Factor Analysis for Regional Haze, Second Decadal Review, Keystone Generating Station Units 1 and 2, AECOM, Revised (Rev.02) (Feb. 11, 2021).
[386] *Id.* at 6.
[387] *Id.*
[388] Keystone asserted that "[o]ptimization of the existing SCR systems will be addressed as part of the forthcoming case-by-case NOx [Reasonably Available Control Technology] analysis." *Id.* at 11. An upcoming RACT analysis is not an offramp from the Clean Air Act's regional haze requirements that apply now. Moreover, a RACT analysis would apply different factors and result in a different and likely less stringent outcome. Therefore, EPA must require that Pennsylvania direct Keystone to conduct the Four-Factor Analyses for Units 1 and 2, including optimization options, and include enforceable emission limitations in its SIP.
[389] SIP Revision, App'x. F-2d, Response at 5.
[390] 2021 Clarification Memo at 5; Nat'l Parks Conservation Ass'n, et al., Conservation Organization Comments on Ohio's Proposed Regional Haze State Implementation Plan for the Second Planning Period at 13 (June 28, 2021) [hereinafter "Conservation Groups Ohio Comments"] (attached as Ex. 22); Nat'l Parks Conservation Ass'n, et al., Comments on the Ohio Environmental Protection Agency's Supplement to the Regional Haze State Implementation

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Moreover, nothing in the RHR itself allows states to exclude sources from a Four-Factor Analysis on the basis that they are "effectively controlled."[391] Additionally, and as discussed in our comments to Ohio on its SIP Revision and supplement, Gavin's facility-submitted Four-Factor Analyses of SO_2 controls were riddled with errors and, contrary to Gavin's claims, there are feasible, available, and cost-effective controls to reduce SO_2 emissions from the facility.[392] Because the Gavin facility likely contributes to impairment at Georgia's Class I Areas, in addition to Ohio's own in-state Class I Areas, EPA must require Ohio to conduct a Four-Factor Analyses of NOx controls and implement readily available and cost-effective SO_2 controls for the Gavin Plant "to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have already achieved."[393]

3. EPA Cannot Approve Georgia's Incomplete Consultation with Indiana.

In addition, Georgia's consultation process with Indiana is incomplete, and so, EPA cannot approve Georgia's insufficient and inadequately documented consultation with that state. EPA notes that Georgia disagreed with Indiana's response "to not require FFAs from its electric generating units (EGUs), including Gibson Station and AEP Rockport Generating Station."[394] The Kordzi Report explains, however, that Georgia's consultation record is incomplete because "there is no record of the Indiana disagreement in the Georgia SIP."[395] If Georgia actually disagreed with Indiana's response, then Section 51.308(f)(2)(ii)(C) would apply, which requires the state to "describe the actions taken to resolve the disagreement," and that EPA "take this information into account." Because Georgia has not adequately documented its disagreement and resolution of that disagreement with Indiana, in violation of the Clean Air Act and the RHR, EPA cannot approve of Georgia's insufficient state-to-state consultation.

C. EPA Cannot Approve Georgia's Consultations with States with Class I Areas Impacted by Georgia Sources.

EPA describes how Georgia received requests for Four-Factor Analyses from four other states for Plant Bowen, and one other state for IP-Savannah. As detailed in these comments, Georgia's Four-Factor Analyses for those facilities suffer from many flaws and violate the requirements of the Clean Air Act and the RHR. Because EPA must disapprove of Georgia's Four-Factor Analyses for these facilities, it must also disapprove of Georgia's state-to-state consultations on these facilities, as Georgia's consulted on analyses that did not meet the requirements of the Act or the RHR. EPA must require Georgia to correct its numerous errors in the Four-Factor Analyses for Plant Bowen and IP Savannah discussed above and conduct new, compliant consultations with the states that requested analyses of those two facilities.

Plan for the Second Implementation Period at 4-8 (Mar. 18, 2024) [hereinafter "Conservation Groups Ohio Supplement Comments"] (attached as Ex. 23).

[391] *See generally* 40 C.F.R. § 51.308.

[392] Conservation Groups Ohio Comments at 13; Conservation Groups Ohio Supplement Comments at 4-8.

[393] 2021 Clarification Memo at 2.

[394] 89 Fed. Reg. 47,497.

[395] Kordzi Report at 13.

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IX. EPA Cannot Approve Georgia's Insufficient Responses to FLM Recommendations.

The Clean Air Act and the RHR require states to consult with the FLMs that oversee the Class I Areas impacted by in-state sources.[396] Specifically, the state "must provide the Federal Land Manager with an opportunity for consultation, in person at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the Federal Land Manager can *meaningfully inform* the State's decisions on the long-term strategy."[397] The "consultation must be early enough for state officials to meaningfully consider the views expressed by the FLMs."[398] The RHR further requires states to provide for "continuing consultation" between the state and FLMs, and to meaningfully address the FLMs' comments in the SIP.[399] Thus, the FLM consultation process is not a mere box checking exercise. Instead, it is a mandatory, iterative process, requiring the state to meaningfully consider and incorporate into the SIP the concerns of the agencies responsible for managing the Class I resources impacted by pollution from the state.

The FLM-State consultation is akin to the public's opportunity to comment on the State's proposed SIP. In both contexts "there must be an *exchange* of views, information, and criticism between interested persons and the agency."[400] Moreover, the dialogue between the FLMs/public and Georgia is a "two-way street."[401] Thus, the consultation comments provided by the FLMs are meaningless unless Georgia responds to the significant points raised by the FLM.

Although Georgia did summarize and provide responses to the FLMs' comments in Appendix H-4A, as described throughout these comments, Georgia did not meaningfully consider or incorporate any of the FLMs' suggestions into the SIP. Contrary to the statute and RHR, Georgia treated the consultation as box-checking exercise. In fact, Georgia released its draft SIP Revision for public comments just two days after it closed the formal consultation with FLMs.[402] Georgia made only the most minor tweaks to its SIP as a result of the FLMs' comments, and in many cases Georgia's responses do not fully respond to the FLMs' concerns. As we detail in these comments above and our state-level comments to Georgia,[403] Georgia did not incorporate any of the FLMs' suggestions on the following problems:

- Georgia's screening thresholds that resulted in very few Georgia sources for analysis;
- Exclusion of NOx from the Four-Factor Analysis;
- Lack of a Four-Factor Analyses for Plant Wansley, Plant Scherer, the Rome Linerboard Mill, Brunswick Cellulose, and IP Savannah;

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[396] 42 U.S.C. § 7491(d); 40 C.F.R. § 51.308(i)(2).
[397] 40 C.F.R. § 51.308(i)(2) (emphasis added).
[398] EPA, Responses to Comments at 445, Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 Fed. Reg. 26,942, May 4, 2016), Docket No. EPA-HQ-OAR-2015-0531 (Dec. 2016) ("Regional Haze Rule Revision Response to Comment").
[399] 40 C.F.R. § 51.308(i)(2),(4); Regional Haze Rule Revision Response to Comment at 445.
[400] *Home Box Office, Inc. v. Federal Communications Comm'n*, 567 F.2d 9, 35 (D.C. Cir. 1977).
[401] *Id.* at 35-36.
[402] NPS Consultation Letter; Transmittal Letter at 2.
[403] Conservation Groups State Comments at 45-50.

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- Concerns about the Plant Bowen Four-Factor Analysis for SO_2;
- Concerns about the VISTAS modeling approach;

EPA must disapprove of Georgia's SIP Revision, as the state failed to meet the Clean Air Act's and RHR's requirements to engage in meaningful FLM consultation. Moreover, because EPA must also disapprove of Georgia's source selection method, Four-Factor Analyses, and reasonable progress goals, as discussed above, it must also disapprove of Georgia's FLM consultation because the State's "consultation was based on a SIP [R]evision that did not meet the required statutory and regulatory requirements" of the Clean Air Act and RHR.[404]

X. EPA Must Consider the Environmental Justice Impacts of Georgia's SIP Revision.

EPA claims that it can entirely ignore the environmental justice implications of Georgia's SIP Revision, stating that "[c]onsideration of [environmental justice] is not required as part of this action."[405] The Agency's failure to consider these impacts contravenes directives from the Biden Administration, as well as EPA's own commitments and action plans. EPA cannot claim to prioritize environmental justice while simultaneously disavowing any need to consider the disproportionate environmental impacts of haze pollution from Georgia's sources or its own actions on Georgia's SIP Revision. EPA's refusal to acknowledge or consider these impacts is not only deeply disappointing, but inexcusable.

A. Executive Orders, as well as EPA's Own Commitments and Action Plans, Direct the Agency to Consider Environmental Justice.

Executive Orders in place since 1994 require EPA to make environmental justice "part of its mission by identifying and addressing . . . disproportionately high and adverse human health or environmental effects of its programs, policies, and activities," including Regional Haze SIP actions, "on minority populations and low-income populations."[406] The Biden Administration has reaffirmed this directive through a series of recent Executive Orders. In 2021, the Biden Administration issued back-to-back Executive Orders directing federal agencies, including EPA, to incorporate environmental justice into all of their actions. With these Orders, the Biden Administration directs agencies to embed equity in their missions, programs, and services,[407] providing that "[a]ffirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government."[408]

Again, in 2023, the Biden Administration issued the "Executive Order Revitalizing Our Nation's Commitment to Environmental Justice for All," declaring that agencies "must advance environmental justice for all by implementing and enforcing the Nation's environmental and civil rights laws."[409] The Order directs agencies to engage in meaningful and robust

[404] 89 Fed. Reg. at 47,436.
[405] *Id.* at 47,503.
[406] Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7629, 7629 (Feb. 11, 1994), as amended by Exec. Order No. 12948, 60 Fed. Reg. 6,381 (Jan. 30, 1995).
[407] Exec. Order No. 14008, § 201, 86 Fed. Reg. 7619, 7622 (Jan. 27, 2021); Exec. Order No. 13985, § 1, 86 Fed. Reg. 7009, 7009 (Jan. 20, 2021).
[408] Exec. Order No. 13985, § 1, 86 Fed. Reg. at 7009.
[409] Exec. Order No. 14096, § 1, 88 Fed. Reg. 25,251, 25,251 (Apr. 21, 2023).

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communication with impacted communities and to "consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse human health and environmental effects . . . of Federal activities on communities with environmental justice concerns."[410]

Recognizing that EPA has a lead role in coordinating environmental justice efforts across the country, EPA Administrator Michael Reagan urged all EPA offices to take "affirmative steps to incorporate environmental justice considerations into their work . . . in regulatory development processes and to consider regulatory options to maximize benefits to these communities."[411] To that end, EPA's Equity Action Plan issued in 2022 makes equity, environmental justice, and civil rights a centerpiece of the Agency's regulatory actions, such as its actions on Regional Haze SIPs.[412] EPA's 2019 Regional Haze Guidance further specifies that "[s]tates may also consider any beneficial non-air quality environmental impacts," such as environmental justice, in developing their haze SIPs.[413] In its 2021 Clarification Memo, EPA also explains that haze SIPs should incorporate environmental justice and equity into technical analyses, both when determining which sources to select for a Four-Factor Analysis and when determining what reasonable progress measures to require for a source.[414]

B. EPA Ignores the Environmental Justice Impacts of Georgia's SIP Revision.

EPA entirely ignores the executive orders, plans, and commitments discussed above in concluding that it is not required to consider the environmental justice impacts of haze-forming pollution from Georgia's in-state sources or its action on the State's SIP Revision. Yet, the same pollutants that mar scenic views at national parks and wilderness areas also cause significant public health impacts,[415] particularly for the people living closest to polluting facilities, as discussed above. Haze-forming pollutants and their resulting adverse health effects disproportionately impact low-income communities and communities of color across the country, including those in Georgia.

EPA's failure to consider the potential environmental justice impacts of the haze pollution from Georgia's sources that remain uncontrolled or under-controlled in the SIP Revision is inexcusable given the plethora of information at the Agency's disposal to analyze these effects. EPA itself administers the EJScreen tool, which uses census tract data to identify the communities that are most vulnerable to, or likely to be exposed to, dangerous pollution.[416] EJScreen data shows that emissions from a number of the sources that both NPS and the

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[410] *Id.* § 3(vi), 88 Fed. Reg. at 25,254; *see also id.* § 3(i), 88 Fed. Reg. at 25,253-56 (directing agencies to "identify, analyze, and address" disproportionate impacts resulting from Federal activities).
[411] *See* EPA, News Release, EPA Administrator Announces Agency Actions to Advance Environmental Justice, Administrator Regan Directs Agency to Take Steps to Better Serve Historically Marginalized Communities (Apr. 7, 2021), https://www.epa.gov/newsreleases/epa-administrator-announces-agency-actions-advance-environmental-justice#:~:text=In%20his%20message%2C%20Administrator%20Regan,in%20communities%20overburdened%20by%20pollution.
[412] U.S. Env't Prot. Agency, E.O. 13985 Equity Action Plan at 4-11 (Apr. 2022), https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf.
[413] 2019 Guidance at 42.
[414] 2021 Clarification Memo at 16.
[415] *See supra* Section I.
[416] Env't Prot. Agency, What Is EJScreen?, https://www.epa.gov/ejscreen/what-ejscreen (last visited Jan. 4, 2024).

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Conservation Groups raised in their comments to Georgia are likely impacting communities characterized by high state percentiles of low income and people of color.

For example, according to EPA's EJScreen tool, 32% of the population within a 10-mile radius of Plant Bowen are low-income and 25% are people of color.[417] The community surrounding Plant Bowen is also in the 73rd percentile for the particulate matter EJ Index and 67th percentile for the ozone EJ Index compared to the rest of the country.[418] A Clean Air Task Force analysis based on 2019 emissions also shows that Plant Bowen's emissions are responsible for 59 deaths, 7 hospital admissions, 13 asthma ER visits, 28 heart attacks, 34 cases of acute bronchitis, 637 asthma attacks, and 3,020 lost work days each year.[419] EJScreen also shows that the population within a 10-mile radius of IP Savannah is 37% low income and 59% people of color, and in the 77th percentile for the particulate matter EJ index compared to the rest of the country.[420] Additionally, the population surrounding the Rome Linerboard Mill, which Georgia did not select or analyze in its SIP Revision and EPA does not discuss anywhere in its proposal, is 44% low income and 40% people of color.[421] The communities surrounding this facility are also in the 82nd percentile and 71st percentile for the particulate matter and ozone EJ indices, respectively.[422] Emissions from these sources are likely negatively affecting these communities.

EPA can and must make good on its commitment to incorporate environmental justice into its mission and actions by not only holding Georgia accountable for its failure to consider the environmental justice impacts of haze pollution from in-state sources, but also by analyzing the potential disparate impacts of its action Georgia's SIP Revision itself.

XI. Conclusion

Georgia wholly failed to satisfy the requirements of the Clean Air Act and RHR by ignoring its obligations to properly select, analyze, and propose controls for haze polluting sources in the State. Yet, in its proposal, EPA largely fails to acknowledge or address any of the significant errors the Conservation Groups raise in these comments or their comments to the State on its draft SIP Revision. Thus, for the reasons discussed above, EPA must revise its proposal and disapprove of Georgia's SIP Revision. Once it finalizes a disapproval of Georgia's SIP Revision, EPA must promptly issue a FIP to fill the regulatory gap and ensure the State makes progress toward the Clean Air Act's natural visibility goal in the second planning period. We look forward to further action from EPA to gain needed emission reductions to benefit our treasured national parks and wilderness areas during the second planning period.

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[417] Env't Prot. Agency, EJScreen Community Report: 10 Miles Ring Centered at 34.136660, -84.930362 at 1 (June 20, 2024) (attached as Ex. 24).
[418] *Id.* at 2.
[419] Clean Air Task Force, Toll From Coal: Bowen (last visited June 23, 2024), https://www.tollfromcoal.org/#/map/(title:703//detail:703//map:703/GA).
[420] Env't Prot. Agency, EJScreen Community Report: 10 Miles Ring Centered at 32.100263, -81.124093 at 1-2 (June 20, 2024) (attached as Ex. 25).
[421] Env't Prot. Agency, EJScreen Community Report: 10 Miles Ring Centered at 34.254946, -85.325918 at 1 (June 20, 2024) (attached as Ex. 26).
[422] *Id.* at 2.

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FOIA No. 2025-EPA-09254 ED_020431_00001608-00063

XII. Exhibits Index

PART 1 SUBMISSION

Exhibit 1	Joe Kordzi, A Review of EPA's Proposed Approval of the Georgia Regional Haze State Implementation Plan (June 2024)
Exhibit 1A	D. Howard Gebhart, Technical Review of North Carolina Regional Haze State Implementation Plan Second Round of Regional Haze State Implementations Plans Supplemental Report (Oct. 2021) (Attachment A to Kordzi Report)
Exhibit 1B	Joe Kordzi, "Ghent emissions.xlsx" (Attachment B to Kordzi Report)
Exhibit 1C	Joe Kordzi, "Bowen emissions.xlsx" (Attachment C to Kordzi Report)
Exhibit 2	National Parks Association, Analysis of Georgia Sources (2024)
Exhibit 3	National Parks Association, Regional Haze Rule: Details of Analysis and Data Sources (2024)
Exhibit 4	National Parks Association, Polluted Parks: How Air Pollution and Climate Change Continue to Harm America's National Parks (2024)
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Exhibit 7	Georgia Bureau of Economic Analysis, Outdoor Recreation Satellite Account (ORSA): 2022—Georgia (2024)
Exhibit 8	David Keiser et al., Air Pollution and Visitation at U.S. National Parks, 4 Sci. Advances (July 18, 2018)
Exhibit 9	Gebhart Howard, Technical Review of VISTAS Visibility Modeling for the Second Round of Regional Haze State Implementation Plans (May 2021)
Exhibit 10	Letter from Stephanie Kodish, Sr. Dir. & Counsel, Clean Air and Climate Programs, National Parks Conservation Association, et al. to Ron Gore, Chief, Air Quality Division, Alabama Department of Environmental Management, et al. (May 12, 2021)
Exhibit 11	Georgia Department of Natural Resources, Air Quality—Part 70 Operating Permit, Transcontinental Gas Pipe Line Company, LLC — Compressor Station 120, Permit No. 4922-151-0025-V-04-0 (Sept. 5, 2019)
Exhibit 12	Vicki Stamper & Megan Williams, Oil and Gas Sector Reasonable Progress Four-Factor Analysis of Controls for Five Source Categories (Mar. 6, 2020)
Exhibit 13	Steven Klafka, Wingra Engineering, S.C., GCC Rio Grande — Pueblo Cement Plant, Four-Factor Reasonable Progress Analysis (Oct. 5, 2021)

FOIA No. 2025-EPA-09254 ED_020431_00001608-00064

Exhibit 14A (Part 1 of 2) Steven Klafka, Wingra Engineering, S.C., Holcim Florence Cement Plant, Four-Factor Reasonable Progress Analysis (Sept. 30, 2021) (submitted in two parts due to file size limitations)

Exhibit 14B (Part 2 of 2) Steven Klafka, Wingra Engineering, S.C., Holcim Florence Cement Plant, Four-Factor Reasonable Progress Analysis (Sept. 30, 2021) (submitted in two parts due to file size limitations)

Exhibit 15 E. Research Group, Inc., Review of Regional Haze 2nd Implementation Period Four-Factor Analysis for GCC Rio Grande, Inc., Tijeras, New Mexico (Aug. 27, 2020)

PART 2 SUBMISSION

Exhibit 16 In the Matter of Proposed Revisions to Regulation Number 23, Colorado Department of Public Health and Environment, Air Pollution Control Division, Prehearing Statement (Oct. 7, 2021)

Exhibit 17 Nevada Division of Environmental Protection, Nevada Regional Haze State Implementation Plan for the Second Planning Period (Aug. 2022)

Exhibit 18 EPA, Complete Response to Comments for NM Regional Haze/Visibility Transport FIP (Aug. 5, 2011), Exhibit 2: Best Performing SCR Retrofit Installations (June 8, 2011)

Exhibit 19 Georgia Department of Natural Resources, Air Quality—Part 70 Operating Permit, Brunswick Cellulose LLC, Permit No. 2631-127-0003-V-07-0 (Apr. 18, 2023)

Exhibit 20 Georgia Department of Natural Resources, Draft Air Quality Permit, Twin Pines Minerals LLC—Charlton County, Permit No. 1099-049-0011-B-01-0 (Feb. 12, 2024)

Exhibit 21 Twin Pines Minerals, LLC, SIP Permit Application for Mineral Processing Plant: Twin Pines Minerals, LLC—St. Georgia (Charlton County) (Dec. 20, 2019)

Exhibit 22 National Parks Conservation Association, et al., Conservation Organization Comments on Ohio's Proposed Regional Haze State Implementation Plan for the Second Planning Period (June 28, 2021)

Exhibit 23 National Parks Conservation Association, et al., Comments on the Ohio Environmental Protection Agency's Supplement to the Regional Haze State Implementation Plan for the Second Implementation Period (Mar. 18, 2024)

Exhibit 24 EPA, EJScreen Community Report: 10 Miles Ring Centered at 34.136660, -84.930362 (June 20, 2024)

FOIA No. 2025-EPA-09254 ED_020431_00001608-00065

Exhibit 25	EPA, EJScreen Community Report: 10 Miles Ring Centered at 32.100263, -81.124093 (June 20, 2024)
Exhibit 26	EPA, EJScreen Community Report: 10 Miles Ring Centered at 34.254946, -85.325918 (June 20, 2024)
Exhibit 27	Vicki Stamper, Analysis: Plant Bowen 2019 Hours Above a 27 Percent Derate (2024)

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Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/8/2024 8:15:46 PM
To: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)
Attachments: ENV_DEFENSE-#1227005-v3-Texas_v__EPA_--_Texas_SIP_disapproval__DRAFT_voluntary_remand_motion_EPA comments.docx

CUI//PRIVILEGE

Thanks, Eric.

See attached for our consolidated edits. Meghan Greenfield had one question/preference that I am passing along:

Ex. 5 AC/AWP/DP

Let us know if you have questions on our edits or otherwise want to discuss.

Thanks,
Corin

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks for the update Corin **Ex. 5 AC/AWP/DP**
Ex. 5 AC/AWP/DP Note the next draft will also be reviewed by other DOJ reviewers, so they may have additional thoughts on the best framing here.

Eric Hostetler
Senior Counsel for Appellate Matters

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From: James, Corin <James.Corin01@epa.gov>
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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Hi Eric,

Apologies for the back-and-forth here, but we shared the draft motion with our front office and Susannah Weaver has a preference Ex. 5 AC/AWP/DP Here's what she said:

Ex. 5 AC/AWP/DP

We're going to make edits to the current draft to reflect this direction (we've already put other edits in the draft sent this morning, so don't want to revert back to the prior version) but we're happy to discuss this afternoon if you have any concerns with this approach.

Thanks,
Corin

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
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To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Attached is a revised draft along the lines discussed in my email exchange with Geoff yesterday. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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Geoff,

Ex. 5 AC/AWP/DP

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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Eric:

Thank you for sending this draft.
A couple of immediate quick points/questions.

Ex. 5 AC/AWP/DP

Please advise.

G

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Wednesday, August 7, 2024 4:40 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA team,

I understand that a decision has been made t **Ex. 5 AC/AWP/DP** **Ex. 5 AC/AWP/DP** As Ben is out on leave today and tomorrow, I am distributing for commen **Ex. 5 AC/AWP/DP** Could folks please review this and provide us with a consolidated set of agency comments by the end of the day tomorrow? We're aiming to finalize and file when Ben gets back on Friday afternoon, as this is time sensitive.

Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/8/2024 9:18:36 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: PM NAAQS - 307(d) harmless error argument
Attachments: PM_NAAQS_Draft_Brief_FOreview.DOCX

Here the latest "final" version of the brief. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Thursday, August 8, 2024 4:00 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: PM NAAQS - 307(d) harmless error argument

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks, David. I added that in. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

This is the draft going to Matt tomorrow.

Thanks,
Sarah

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, August 8, 2024 2:39 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 307(d) harmless error argument

Thanks, Sarah! Here is that sentence—feel free of course to play with it (I stared at "that" for a little but just left it).

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Thursday, August 8, 2024 1:47 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: PM NAAQS - 307(d) harmless error argument

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Yep that works for me.

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, August 8, 2024 12:18 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 307(d) harmless error argument

I will try to circle up with Abi and give you a call this afternoon (hopefully around 2:30 or 3:00 if that's ok?)

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Thursday, August 8, 2024 12:06 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: PM NAAQS - 307(d) harmless error argument

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David:

Ex. 5 AC/AWP/DP

Sarah

Sarah A. Buckley (she/her)
Senior Counsel for Appellate Matters
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
sarah.buckley@usdoj.gov
Ph: (202) 616-7554

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/8/2024 9:54:49 PM
To: Weaver, Susannah [Weaver.Susannah@epa.gov]; Greenfield, Meghan [Greenfield.Meghan@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Subject: FW: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)
Attachments: Texas' SIP disapproval August 8, 2024 PM Draft.docx

CUI//PRIVILEGE

Hi all, see attached and below for the latest from Eric if you are interested – main points are that he thinks our edits should generally be fine, and they are tinkering with the remand language.

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 5:04 PM
To: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

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Thanks Corin. I think these edits should generally be fine. I'm attaching the present draft incorporating those edits and which is undergoing further DOJ review. We're still tinkering with the language at the end regarding **Ex. 5 AC/AWP/DP** Here is the placeholder language on that point in the present draft:

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Controlled by U.S. Environmental Protection Agency

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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Thanks, Eric.

See attached for our consolidated edits. Meghan Greenfield had one question/preference that I am passing along:

Ex. 5 AC/AWP/DP

Let us know if you have questions on our edits or otherwise want to discuss.

Thanks,
Corin

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CUI//PRIVILEGE

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Thanks for the update Corin. I think that should be workable and Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Note the next draft will also be reviewed by other DOJ reviewers, so they may have additional thoughts on the best framing here.

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
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Controlled by U.S. Environmental Protection Agency

From: James, Corin <James.Corin01@epa.gov>
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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Hi Eric,

Apologies for the back-and-forth here, but we shared the draft motion with our front office and Susannah Weaver has a preference to Ex. 5 AC/AWP/DP Here's what she said:

Ex. 5 AC/AWP/DP

We're going to make edits to the current draft to reflect this direction (we've already put other edits in the draft sent this morning, so don't want to revert back to the prior version) but we're happy to discuss this afternoon if you have any concerns with this approach.

Thanks,
Corin

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 8:31 AM
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CUI//PRIVILEGE

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Attached is a revised draft along the lines discussed in my email exchange with Geoff yesterday. This draft

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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Sent: Wednesday, August 7, 2024 5:49 PM
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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

Geoff,

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Eric:

Thank you for sending this draft.
A couple of immediate quick points/questions.

Ex. 5 AC/AWP/DP

Please advise.

G

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EPA team,

I understand that a decision has been made **Ex. 5 AC/AWP/DP** **Ex. 5 AC/AWP/DP** As Ben is out on leave today and tomorrow, I am distributing for comment a **Ex. 5 AC/AWP/DP** Could folks please review this and provide us with a consolidated set of agency comments by the end of the day tomorrow? We're aiming to finalize and file when Ben gets back on Friday afternoon, as this is time sensitive.

Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 8/9/2024 12:29:40 AM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Thrift, Mike [thrift.mike@epa.gov]
Subject: the belt and suspenders issue
Attachments: SSM decision.pdf

Gang:

I feel like I did not explain this clearly enough on our call earlier today, so I want to try to capture it before the flood of work sweeps us away.

Ex. 5 AC/DP

Ex. 5 AC/DP

(Thank you for indulging me with my own mini meltdown moment like other people got to have…)

G

Message

From: Clark, Adam [Clark.Adam@epa.gov]
Sent: 8/9/2024 3:42:50 PM
To: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Lawrence, Sydney [lawrence.sydney@epa.gov]
CC: Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Vetter, Cheryl [Vetter.Cheryl@epa.gov]; Mathias, Scott [Mathias.Scott@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]; Cherry, Randall [Cherry.Randall@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]
Subject: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence
Attachments: BECKER_ACTION MEMO Billings Laurel SO2 FIP PR.docx; Comm Plan_Billings Laurel SO2 FIP Revision PR.docx; Draft Billings Laurel FIP Revision PR July 2024.docx; INTERNAL FACT SHEET_Billings Laurel FIP Revision PR.docx

Hello all,

Per the FIP Process Guide for obtaining the Administrator's signature on FIP actions, Region 8 is submitting the following for OAQPS (Scott) and OGC (Abi) review and email concurrence:

- Draft proposed rule
- Action memo
- Action information/Fact sheet
- Communication plan

Let me know if you have any questions.

Thank you!

Adam Clark
Air Planning and Regulatory Section
EPA Region 8

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/9/2024 6:08:24 PM
To: Weaver, Susannah [Weaver.Susannah@epa.gov]; Greenfield, Meghan [Greenfield.Meghan@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)
Attachments: ENV_DEFENSE-#1239680-v1-Texas_v_EPA_-_Remand_Motion_-_Near_Final.docx

CUI//PRIVILEGE

See below from Ben, especially highlights.

Ex. 5 AC/AWP/DP

Ben has asked for any final edits by 4pm. Here's a shared version of the attached if anyone wants to take a look:

ENV_DEFENSE-#1239680-v1-Texas_v_EPA_-_Remand_Motion_-_Near_Final.docx

Controlled by U.S. Environmental Protection Agency

From: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Sent: Friday, August 9, 2024 1:59 PM
To: James, Corin <James.Corin01@epa.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

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All –

I've received the positions of the other parties on our motion – **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

Attached is the near-final version of the brief (incorporating minor edits from Matt L. and filling in citation placeholders). I'll give it a good final proof now. Sound off with any final edits / tweaks by 4p.

Thanks –

Ben

Controlled by U.S. Environmental Protection Agency

From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 5:56 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Thanks for the update, Eric. Sounds good.

I'll be working tomorrow and can coordinate any final reviews as needed.

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 5:04 PM
To: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
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Thanks Corin. I think these edits should generally be fine. I'm attaching the present draft incorporating those edits and which is undergoing further DOJ review. **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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Sent: Thursday, August 8, 2024 4:16 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks, Eric.

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Ex. 5 AC/AWP/DP

Let us know if you have questions on our edits or otherwise want to discuss.

Thanks,
Corin

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Sent: Thursday, August 8, 2024 1:46 PM
To: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks for the update Corin. I think that should be workable and Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP Note the next draft will also be reviewed by other DOJ reviewers, so they may have additional thoughts on the best framing here.

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Environmental Defense Section
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Hi Eric,

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Ex. 5 AC/AWP/DP

We're going to make edits to the current draft to reflect this direction (we've already put other edits in the draft sent this morning, so don't want to revert back to the prior version) but we're happy to discuss this afternoon if you have any concerns with this approach.

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Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
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From: Hostetler, Eric (ENRD)
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Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Ex. 5 AC/AWP/DP

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Environmental Defense Section
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Ex. 5 AC/AWP/DP

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Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice

(202) 305-2326

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/9/2024 8:01:12 PM
To: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]; Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
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CUI//PRIVILEGE

Hi Ben, see attached for our edits. Ex. 5 AC/AWP/DP

Josh also had the Region look at this and I'll forward an email he sent about that (sorry we didn't coordinate better).

Let me know if there are any follow up questions – I need to step away shortly but will check back ~5pm to see if anything further is needed. Thanks!

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From: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Sent: Friday, August 9, 2024 2:21 PM
To: James, Corin <James.Corin01@epa.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks Corin. That's right – Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thanks –

Ben

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From: James, Corin <James.Corin01@epa.gov>
Sent: Friday, August 9, 2024 2:12 PM
To: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Thanks Ben.

Ex. 5 AC/AWP/DP

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From: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Sent: Friday, August 9, 2024 1:59 PM
To: James, Corin <James.Corin01@epa.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

All –

I've received the positions of the other parties on our motion - **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

Attached is the near-final version of the brief (incorporating minor edits from Matt L. and filling in citation placeholders). I'll give it a good final proof now. Sound off with any final edits / tweaks by 4p.

Thanks –

Ben

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From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 5:56 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks for the update, Eric. Sounds good.

I'll be working tomorrow and can coordinate any final reviews as needed.

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 5:04 PM
To: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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Thanks Corin. I think these edits should generally be fine. I'm attaching the present draft incorporating those edits and which is undergoing further DOJ review. **Ex. 5 AC/AWP/DP**

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Controlled by U.S. Environmental Protection Agency

From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 4:16 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Thanks, Eric.

See attached for our consolidated edits. Meghan Greenfield had one question/preference that I am passing along:

Ex. 5 AC/AWP/DP

Let us know if you have questions on our edits or otherwise want to discuss.

Thanks,
Corin

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 1:46 PM
To: James, Corin <James.Corin01@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Thanks for the update Corin. I think that should be workable and v Ex. 5 AC/AWP/DP Ex. 5 AC/AWP/DP te the next draft will also be reviewed by other DOJ reviewers, so they may have additional thoughts on the best framing here.

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

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From: James, Corin <James.Corin01@epa.gov>
Sent: Thursday, August 8, 2024 1:30 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Hi Eric,

Apologies for the back-and-forth here, but we shared the draft motion with our front office and Susannah Weaver has a preference to Ex. 5 AC/AWP/DP Here's what she said:

Ex. 5 AC/AWP/DP

We're going to make edits to the current draft to reflect this direction (we've already put other edits in the draft sent this morning, so don't want to revert back to the prior version) but we're happy to discuss this afternoon if you have any concerns with this approach.

Thanks,
Corin

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From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Thursday, August 8, 2024 8:31 AM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

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[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Attached is a revised draft along the lines discussed in my email exchange with Geoff yesterday. This draft

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD)
Sent: Wednesday, August 7, 2024 5:49 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

Geoff,

Ex. 5 AC/AWP/DP

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 7, 2024 5:00 PM
To: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>

Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: [EXTERNAL] RE: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

CUI//PRIVILEGE

Eric:

Thank you for sending this draft.
A couple of immediate quick points/questions.

Ex. 5 AC/AWP/DP

Please advise.

G

Controlled by U.S. Environmental Protection Agency

From: Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Sent: Wednesday, August 7, 2024 4:40 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; James, Corin <James.Corin01@epa.gov>
Cc: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: Draft Motion for Voluntary Remand in Texas v. EPA (5rh Cir.) (contingency measures)

[redacted] **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

EPA team,

I understand that a decision has been made **Ex. 5 AC/AWP/DP** **Ex. 5 AC/AWP/DP** As Ben is out on leave today and tomorrow, I am distributing for comment **Ex. 5 AC/AWP/DP** Could folks please review this and provide us with a consolidated set of agency comments by the end of the day tomorrow? We're aiming to finalize and file when Ben gets back on Friday afternoon, as this is time sensitive.

Thanks!

Eric Hostetler
Senior Counsel for Appellate Matters
Environmental Defense Section
United States Department of Justice
(202) 305-2326

Message

From: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]
Sent: 8/9/2024 8:46:07 PM
To: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]; Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: 23-60616 State of Texas v. EPA "Motion Filed on Behalf of Party remand case"
Attachments: 23-60616 - Texas v EPA - EPA Motion for Voluntary Remand.pdf

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

All –

Attached is the as-filed version of our Motion for Voluntary Remand. Thank you all for your hard work and careful attention on this!

Have a great weekend –

Ben

From: cmecf_caseprocessing@ca5.uscourts.gov <cmecf_caseprocessing@ca5.uscourts.gov>
Sent: Friday, August 9, 2024 4:44 PM
To: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: 23-60616 State of Texas v. EPA "Motion Filed on Behalf of Party remand case"

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United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 08/09/2024 at 3:43:39 PM Central Daylight Time and filed on 08/09/2024

Case Name:	State of Texas v. EPA
Case Number:	23-60616
Document(s):	Document(s)

Docket Text:
OPPOSED MOTION filed by Respondents EPA and Mr. Michael S. Regan to remand case to the Agency. Date of service: 08/09/2024 via email - Attorney for Amici Curiae: Carter, Kuryla, Streett; Attorney for Petitioners: Cole, Hulme, Snody; Attorney for Respondent: Grillot; Attorney for Intervenors: Johnson, Prothero; US mail - Attorney for Respondents: Garland, U.S. Attorney General, Kim, Prieto [23-60616] (Benjamin Grillot)

Notice will be electronically mailed to:

Mr. Aaron Michael Streett: aaron.streett@bakerbotts.com, jacqueline.curtis@bakerbotts.com, aaron-streett-6243@ecf.pacerpro.com
Mr. Matthew Lynn Kuryla: matthew.kuryla@bakerbotts.com
Mr. John Richard Hulme, Assistant Attorney General: john.hulme@oag.texas.gov, laura.courtney@oag.texas.gov, david.laurent@oag.texas.gov
Mr. William Francis Cole: william.cole@oag.texas.gov, brooke.jackson@oag.texas.gov, toni.shah@oag.texas.gov
Mr. Seth L. Johnson: sjohnson@earthjustice.org, vhuggett@earthjustice.org, dolazabal@earthjustice.org, bkilkenny@earthjustice.org
Ms. Erin Kathleen Snody, Assistant Attorney General: erin.snody@oag.texas.gov, laura.courtney@oag.texas.gov, david.laurent@oag.texas.gov
Mr. Christopher Beau Carter: beau.carter@bakerbotts.com, laura.natelson@bakerbotts.com
Mr. Benjamin Grillot: Benjamin.Grillot@usdoj.gov, jessica.o'donnell@usdoj.gov
Ms. Mary Prothero: mprothero@earthjustice.org

NOTICE WILL BE DELIVERED BY OTHER MEANS TO:

Mr. Todd Sunhwae Kim
U.S. Department of Justice
Environment & Natural Resources Division-Appellate Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Mr. Merrick Garland, U.S. Attorney General, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Mr. Jeffrey Prieto
Environmental Protection Agency
Office of General Counsel
Room 1448K
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Washington, DC 20460-0003

The following document(s) are associated with this transaction:
Document Description: Respondents' Motion for Voluntary Remand
Original Filename: ENV_DEFENSE-#1239725-v1-Texas_v_EPA_-_Remand_Motion_-_To_File.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105048708 [Date=08/09/2024] [FileNumber=10414374-0]
[098498c8deb2b03618f230864d509083d0eee110f492b94ea0310740eeef597b2f52b8f0c5e106490d44fd6871f
98d5a26b3c28feffdb14883ebc09858be58d8]]

Message

From: Grillot, Benjamin (ENRD) [Benjamin.Grillot@usdoj.gov]
Sent: 8/9/2024 8:47:07 PM
To: James, Corin [James.Corin01@epa.gov]
CC: Hostetler, Eric (ENRD) [Eric.Hostetler@usdoj.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: 23-60616 State of Texas v. EPA "Motion Filed on Behalf of Party remand case"
Attachments: 23-60616 - Texas v EPA - EPA Motion for Voluntary Remand.pdf

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Including Corin this time!

From: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Sent: Friday, August 9, 2024 4:46 PM
To: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Olszewski, Joshua <olszewski.joshua@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: FW: 23-60616 State of Texas v. EPA "Motion Filed on Behalf of Party remand case"

All –

Attached is the as-filed version of our Motion for Voluntary Remand. Thank you all for your hard work and careful attention on this!

Have a great weekend –

Ben

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Sent: Friday, August 9, 2024 4:44 PM
To: Grillot, Benjamin (ENRD) <Benjamin.Grillot@usdoj.gov>
Subject: 23-60616 State of Texas v. EPA "Motion Filed on Behalf of Party remand case"

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United States Court of Appeals for the Fifth Circuit

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Case Number:	23-60616
Document(s):	Document(s)

Docket Text:
OPPOSED MOTION filed by Respondents EPA and Mr. Michael S. Regan to remand case to the Agency. Date of service: 08/09/2024 via email - Attorney for Amici Curiae: Carter, Kuryla, Streett; Attorney for Petitioners: Cole, Hulme, Snody; Attorney for Respondent: Grillot; Attorney for Intervenors: Johnson, Prothero; US mail - Attorney for Respondents: Garland, U.S. Attorney General, Kim, Prieto [23-60616] (Benjamin Grillot)

Notice will be electronically mailed to:

Mr. Aaron Michael Streett: aaron.streett@bakerbotts.com, jacqueline.curtis@bakerbotts.com, aaron-streett-6243@ecf.pacerpro.com
Mr. Matthew Lynn Kuryla: matthew.kuryla@bakerbotts.com
Mr. John Richard Hulme, Assistant Attorney General: john.hulme@oag.texas.gov, laura.courtney@oag.texas.gov, david.laurent@oag.texas.gov
Mr. William Francis Cole: william.cole@oag.texas.gov, brooke.jackson@oag.texas.gov, toni.shah@oag.texas.gov
Mr. Seth L. Johnson: sjohnson@earthjustice.org, vhuggett@earthjustice.org, dolazabal@earthjustice.org, bkilkenny@earthjustice.org
Ms. Erin Kathleen Snody, Assistant Attorney General: erin.snody@oag.texas.gov, laura.courtney@oag.texas.gov, david.laurent@oag.texas.gov
Mr. Christopher Beau Carter: beau.carter@bakerbotts.com, laura.natelson@bakerbotts.com
Mr. Benjamin Grillot: Benjamin.Grillot@usdoj.gov, jessica.o'donnell@usdoj.gov
Ms. Mary Prothero: mprothero@earthjustice.org

NOTICE WILL BE DELIVERED BY OTHER MEANS TO:

Mr. Todd Sunhwae Kim
U.S. Department of Justice
Environment & Natural Resources Division-Appellate Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Mr. Merrick Garland, U.S. Attorney General, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Mr. Jeffrey Prieto
Environmental Protection Agency
Office of General Counsel
Room 1448K
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Washington, DC 20460-0003

The following document(s) are associated with this transaction:
Document Description: Respondents' Motion for Voluntary Remand
Original Filename: ENV_DEFENSE-#1239725-v1-Texas_v_EPA_-_Remand_Motion_-_To_File.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1105048708 [Date=08/09/2024] [FileNumber=10414374-0]
[098498c8deb2b03618f230864d509083d0eee110f492b94ea0310740eeef597b2f52b8f0c5e106490d44fd6871f98d5a26b3c28feffdb14883ebc09858be58d8]]

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 8/12/2024 12:40:04 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Case Alerts: Two Petitions to be Consolidated
Attachments: 24-1275_ AEP Generation Resources_ Inc._ et al v. EPA_ et al.PDF; 24-1276_ Electric Generators for Sensible CCR Regulation v. EPA_ et al.PDF

Good morning,

Please find the two attached docket files. These cases were opened, then sent for consolidation. Let us know if we can assist further.

Best,

Ann-Marie Bramer Stewart
Supervisory Librarian – Headquarters and Chemical Libraries
Contractor – ADS Agile Decision Sciences
202-566-0578

Message

From: Christenson, Kara (she/her/hers) [Christenson.Kara@epa.gov]
Sent: 8/12/2024 9:17:24 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: HD I/M deadline suit filed
Attachments: 2024-08-12 - CCAEJ v. EPA (HD IM) Complaint.pdf

Hi Abi – FYI – new deadline suit – R9 only.

Kara Christenson | Senior Counsel | U.S. EPA Region 9 | Office of Regional Counsel | 75 Hawthorne Street | San Francisco, CA 94105 | 415 972-3881 (desk) | 415 652-6330 (cell) | christenson.kara@epa.gov | she / her

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From: Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>
Sent: Monday, August 12, 2024 2:16 PM
To: Lo, Doris <Lo.Doris@epa.gov>; Buss, Jeffrey (he/him/his) <Buss.Jeffrey@epa.gov>
Cc: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>
Subject: HD I/M deadline suit filed

Hi Doris and Jeff – I'm attaching Brent Newell complaint re EPA failure to act on CARB's Heavy-Duty I&M submittal, filed today.

JESSE LUEDERS
Assistant Regional Counsel
U.S. EPA Region 9
75 Hawthorne Street, 12th Floor
San Francisco, CA 94105
415.972.3174
lueders.jesse@epa.gov

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Message

From: Lueders, Jesse (he/him/his) [Lueders.Jesse@epa.gov]
Sent: 8/12/2024 9:21:46 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Christenson, Kara (she/her/hers) [Christenson.Kara@epa.gov]; Wehling, Jefferson [Wehling.Jefferson@epa.gov]
Subject: RE: Copy of 6/11/2024 NOI on HD I/M?
Attachments: 2024-08-12 - CCAEJ v. EPA (HD IM) Complaint.pdf

… and right on time, they've now filed the complaint. That's attached—can you pass along as appropriate? Thanks.

(I'll be taking R9 assignment on the litigation.)

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, August 8, 2024 12:59 PM
To: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>; Wehling, Jefferson <Wehling.Jefferson@epa.gov>
Cc: Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>
Subject: RE: Copy of 6/11/2024 NOI on HD I/M?

Thank you! I just shared the NOI with our paralegal.

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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From: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>
Sent: Thursday, August 8, 2024 3:57 PM
To: Wehling, Jefferson <Wehling.Jefferson@epa.gov>
Cc: Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Copy of 6/11/2024 NOI on HD I/M?

Yes – Jesse is tracking the NOI and potential litigation.

Kara Christenson | Senior Counsel | U.S. EPA Region 9 | Office of Regional Counsel | 75 Hawthorne Street | San Francisco, CA 94105 | 415 972-3881 (desk) | 415 652-6330 (cell) | christenson.kara@epa.gov | she / her

This email, including attachments, may contain information that is confidential and/or protected by the attorney/client or other privileges. If you are not an intended recipient, please delete this email, including attachments, and notify me by email or at (415) 972-3881.

From: Wehling, Jefferson <Wehling.Jefferson@epa.gov>
Sent: Thursday, August 8, 2024 11:34 AM
To: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>
Cc: Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: FW: Copy of 6/11/2024 NOI on HD I/M?

Kara:

I assume that Jesse will be the ORC lead in the SIP deadline case for the HD I/M SIP submission (assuming a complaint is filed, of course). Is that correct?

Jeff Wehling
U.S. EPA, Region IX, ORC-2
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3901

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Thursday, August 8, 2024 11:26 AM
To: Wehling, Jefferson <Wehling.Jefferson@epa.gov>
Cc: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>; Oconnor, Karina (she/her/hers) <OConnor.Karina@epa.gov>; Mays, Rory <Mays.Rory@epa.gov>; Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>
Subject: RE: Copy of 6/11/2024 NOI on HD I/M?

Hi Jeff,

Nice to hear from you – ah, the reason why it wasn't posted to the website is on me, I neglected to pass it on to our paralegal who coordinates the web posting. I will do that now, and it should make it online pretty quickly (like, within a day or two). If CARB wants to see it sooner, I think it's fine to share separately as we're concurrently working on getting it posted.

Relatedly, the internal process here for posting involves having an attorney tagged as the lead for the NOI. As any case stemming from this NOI would involve an R9-only claim, would someone from ORC be able to take the lead and I can pass that name on to our paralegal now when I forward her the NOI? Please let me know, thanks!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Wehling, Jefferson <Wehling.Jefferson@epa.gov>
Sent: Thursday, August 8, 2024 2:16 PM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>; Oconnor, Karina (she/her/hers) <OConnor.Karina@epa.gov>; Mays, Rory <Mays.Rory@epa.gov>; Lueders, Jesse (he/him/his) <Lueders.Jesse@epa.gov>
Subject: FW: Copy of 6/11/2024 NOI on HD I/M?

Abi:

I hope all is well with you. CARB has asked us for a copy of this NOI that we received back in June. Our understanding is that we are generally supposed to wait to share NOIs with states until EPA posts them on our NOI website, but this particular NOI is not yet posted. Is there some reason why we should not provide CARB with a copy? Thanks.

Jeff Wehling
U.S. EPA, Region IX, ORC-2

75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3901

From: Lee, Anita (she/her/hers) <Lee.Anita@epa.gov>
Sent: Thursday, August 8, 2024 11:06 AM
To: Mays, Rory <Mays.Rory@epa.gov>
Cc: Wehling, Jefferson <Wehling.Jefferson@epa.gov>; Oconnor, Karina (she/her/hers) <OConnor.Karina@epa.gov>; Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>
Subject: RE: Copy of 6/11/2024 NOI on HD I/M?

Here you go!

From: Mays, Rory <Mays.Rory@epa.gov>
Sent: Thursday, August 8, 2024 10:36 AM
To: Lee, Anita (she/her/hers) <Lee.Anita@epa.gov>
Cc: Wehling, Jefferson <Wehling.Jefferson@epa.gov>; Oconnor, Karina (she/her/hers) <OConnor.Karina@epa.gov>; Christenson, Kara (she/her/hers) <Christenson.Kara@epa.gov>
Subject: Copy of 6/11/2024 NOI on HD I/M?

Hi Anita,
In our regulatory workload tracker there is a note about a 6/11/2024 NOI for failure to act on the HD I/M SIP submission of late 2022. *Do you have a copy of that NOI?* If so, could you please reply all with a copy? (Sylvia asked that we share a copy with her/CARB… it's just neither me, Jeff, or Karina have a copy in hand!) Jeff thought the letter is from Brent Newell et al. Thanks!
-Rory

Rory M. Mays
Geographic Strategies and Modeling Section, Air and Radiation Division, Region 9
U.S. Environmental Protection Agency
mays.rory@epa.gov, 415-972-3227

Message

From: James, Corin [James.Corin01@epa.gov]
Sent: 8/13/2024 4:48:17 PM
To: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Talbert, Stephanie [Talbert.Stephanie@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Boydston, Michael [Boydston.Michael@epa.gov]
Subject: RE: Contingency Measures Disapprovals
Attachments: 10. Texas v EPA - 28j re Loper.pdf; 12. Texas v EPA - EPA Motion for Voluntary Remand.pdf

CUI//PRIVILEGE

Here are the two filings I mentioned I'd send along.

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Monday, August 12, 2024 10:03 AM
To: Talbert, Stephanie <Talbert.Stephanie@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>
Subject: RE: Contingency Measures Disapprovals

CUI//PRIVILEGE

SJT:

Yes. But there will no doubt be questions posed to you all, and we want to read you in to the details.

G

Controlled by U.S. Environmental Protection Agency

From: Talbert, Stephanie <Talbert.Stephanie@epa.gov>
Sent: Monday, August 12, 2024 9:28 AM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>
Subject: RE: Contingency Measures Disapprovals

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Friday, August 9, 2024 4:43 PM
To: Fulton, Abby <Fulton.Abby@epa.gov>
Cc: James, Corin <James.Corin01@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Talbert, Stephanie <Talbert.Stephanie@epa.gov>
Subject: RE: Contingency Measures Disapprovals

CUI//PRIVILEGE

Abby:

Yes, I have on this with Corin and Abi. DOJ just filed the remand motion COB today.

Ex. 5 AC/AWP/DP

G

Controlled by U.S. Environmental Protection Agency

From: Fulton, Abby <Fulton.Abby@epa.gov>
Sent: Friday, August 9, 2024 3:55 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Subject: Contingency Measures Disapprovals

Hi Geoff,

Ex. 5 AC/AWP/DP

Abby L. Fulton
Planning & Regulatory Section Supervisor
Air Quality Planning & Analysis Branch
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
fulton.abby@epa.gov
(303) 312-6563

Message

From: OGCLibrary [OGCLibrary@epa.gov]
Sent: 8/13/2024 4:52:06 PM
To: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Hogan, Stephanie (she/her/hers) [Hogan.Stephanie@epa.gov]; Lee, Michael (he/him/his) [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Docket Alert for 3:24cv5042, Center For Community Action And Environmental Justice V. U.S.
Attachments: US_DIS_CAND_3_24cv5042_d193213888e322_COMPLAINT_against_Martha_Guzman_Michael_Regan_U_S_.pdf; Center For Community Action And Environmental Justice V. U.S. Environmental Protection Agency Et Al.pdf

Good afternoon,

Attached is a Docket Alert for 3:24cv5042, Center For Community Action And Environmental Justice V. U.S. Environmental Protection Agency Et Al.

April Gips, MLS
Information Architecture Librarian – Headquarters and Chemical Libraries
Contractor, ASRC Federal / Agile Decision Sciences (ADS)
EPA Headquarters, Washington, DC
Gips.April@epa.gov

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/13/2024 5:23:00 PM
To: Sasser, Erika [Sasser.Erika@epa.gov]; Wesson, Karen [Wesson.Karen@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Hagan, Nicole [Hagan.Nicole@epa.gov]; Perlmutt, Lars [perlmutt.lars@epa.gov]
Subject: one last (?) edit to PM NAAQS brief re: 2010 ozone reconsideration decision
Attachments: PM_NAAQS_Draft_Brief_Edits post FOreview+EPA.docx

All—

Ex. 5 AC/AWP/DP

Thanks!

Industry brief—

Indeed, the only other time EPA attempted a NAAQS "reconsideration," EPA did not finalize the reconsideration due to cost considerations. At the President's "instruct[ion]," the Administrator of the White House Office of Information and Regulatory Affairs (OIRA) returned the draft rule to EPA, based in part on principles of reasoned agency decision-making, including the need to "minimize regulatory and burdens." In his concurrent statement, President Obama pointed specifically to "the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." This precedent not only supports the analysis above, but it also makes EPA's current effort to ignore costs an unexplained departure from past practice. See Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221-22 (2016). EPA has incorrectly suggested that this prior rejection was not "made by the EPA," RTC 120, JA__, but the agency acceded to and incorporated this rejection into its next section 109(d) review, 80 Fed. Reg. 65,292, 65,297 (Oct. 26, 2015).

New paragraph:

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/13/2024 8:08:35 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: PM NAAQS - 2011 Ozone Decision
Attachments: PM_NAAQS_Draft_Brief_Edits post FOreview.DOCX

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 2:26 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Attaching a draft that incorporates your changes for you to share with your management.

Ex. 5 AC/AWP/DP

Best,
Alex

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 13, 2024 1:46 PM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 2011 Ozone Decision

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Also, the attached draft includes a couple more comments (2 typos someone may have caught and one very minor comment you can feel free to disregard if you want).

Thanks again,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 10:58 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: PM NAAQS - 2011 Ozone Decision

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Ex. 5 AC/AWP/DP

Take a look at let me know what you think! If it would be easier, I am happy to hop on a call to discuss and am pretty open today between 11:30 and 3.

Best,
Alex

Alex St. Romain (she/her)
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
202-532-3284
alexandra.st.romain@usdoj.gov

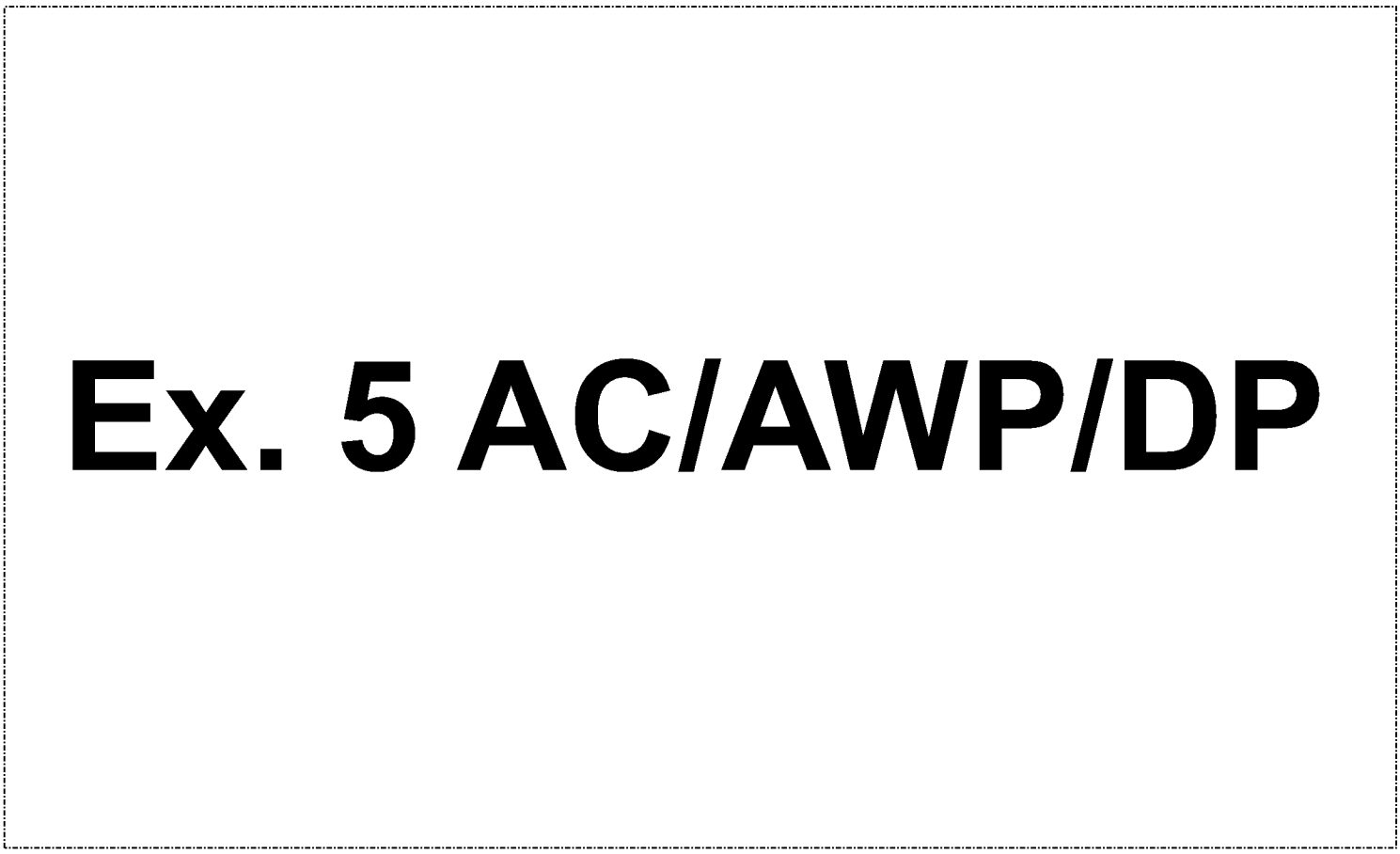
Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/15/2024 1:42:41 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: FW: PM NAAQS - 2011 Ozone Decision
Attachments: PM_NAAQS_Draft_Brief_Edits post FOreview 8-15.docx

FYI

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Thursday, August 15, 2024 9:42 AM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision



Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 2:26 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Attaching a draft that incorporates your changes for you to share with your management.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Best,
Alex

From: Orlin, David <Orlin.David@epa.gov>
Sent: Tuesday, August 13, 2024 1:46 PM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 2011 Ozone Decision

Ex. 5 AC/AWP/DP

Also, the attached draft includes a couple more comments (2 typos someone may have caught and one very minor comment you can feel free to disregard if you want).

Thanks again,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 10:58 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: PM NAAQS - 2011 Ozone Decision

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Hi David,

Ex. 5 AC/AWP/DP

Take a look at let me know what you think! If it would be easier, I am happy to hop on a call to discuss and am pretty open today between 11:30 and 3.

Best,
Alex

Alex St. Romain (she/her)
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
202-532-3284
alexandra.st.romain@usdoj.gov

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/16/2024 1:29:48 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Wesson, Karen [Wesson.Karen@epa.gov]
CC: Perlmutt, Lars [perlmutt.lars@epa.gov]; Hagan, Nicole [Hagan.Nicole@epa.gov]
Subject: FW: PM NAAQS -- final brief for filing
Attachments: PM NAAQS Brief_Aug16 compare.docx

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Friday, August 16, 2024 9:23 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Ex. 5 AC/AWP/DP

Please let us know if we have EPA's final approval to file this version on Monday.

Best,
Alex

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, August 15, 2024 10:44 AM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 2011 Ozone Decision

That's great, thanks!

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel

(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Thursday, August 15, 2024 10:05 AM
To: Orlin, David <Orlin.David@epa.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

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Ex. 5 AC/AWP/DP

From: St. Romain, Alexandra (ENRD)
Sent: Thursday, August 15, 2024 9:55 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

Thanks, David. Those changes make good sense to me and I will incorporate them.

Ex. 5 AC/AWP/DP

From: Orlin, David <Orlin.David@epa.gov>
Sent: Thursday, August 15, 2024 9:42 AM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 2011 Ozone Decision

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 2:26 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: RE: PM NAAQS - 2011 Ozone Decision

> **Caution:** This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Attaching a draft that incorporates your changes for you to share with your management.

Ex. 5 AC/AWP/DP

Best,
Alex

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Sent: Tuesday, August 13, 2024 1:46 PM
To: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: [EXTERNAL] RE: PM NAAQS - 2011 Ozone Decision

Ex. 5 AC/AWP/DP

Also, the attached draft includes a couple more comments (2 typos someone may have caught and one very minor comment you can feel free to disregard if you want).

Thanks again,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Sent: Tuesday, August 13, 2024 10:58 AM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: PM NAAQS - 2011 Ozone Decision

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David,

Ex. 5 AC/AWP/DP

Take a look at let me know what you think! If it would be easier, I am happy to hop on a call to discuss and am pretty open today between 11:30 and 3.

Best,
Alex

Alex St. Romain (she/her)
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
202-532-3284
alexandra.st.romain@usdoj.gov

Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/19/2024 9:01:32 PM
To: Wesson, Karen [Wesson.Karen@epa.gov]; Perlmutt, Lars [perlmutt.lars@epa.gov]; Hagan, Nicole [Hagan.Nicole@epa.gov]; Sacks, Jason (he/him/his) [Sacks.Jason@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Coffman, Evan [Coffman.Evan@epa.gov]
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Appellee/Respondent Brief Filed" (EPA-89FR16202)
Attachments: PM NAAQS _ Filed Brief.pdf

Ex. 5 AC/AWP/DP

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Sent: Monday, August 19, 2024 4:53 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: St. Romain, Alexandra (ENRD) <Alexandra.St.Romain@usdoj.gov>
Subject: FW: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Appellee/Respondent Brief Filed" (EPA-89FR16202)

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Hi David –

Brief filed! Thanks for all your help on this. We are very happy with the final product and could only have gotten here with your patient advice and insights.

Sarah

From: ecfnoticing@cadc.uscourts.gov <ecfnoticing@cadc.uscourts.gov>
Sent: Monday, August 19, 2024 4:47 PM
To: Buckley, Sarah (ENRD) <Sarah.Buckley@usdoj.gov>
Subject: 24-1050 Commonwealth of Kentucky, et al v. EPA, et al "Appellee/Respondent Brief Filed" (EPA-89FR16202)

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for District of Columbia Circuit

Notice of Docket Activity

The following transaction was entered on 08/19/2024 at 4:46:49 PM Eastern Daylight Time and filed on 08/19/2024

Case Name:	Commonwealth of Kentucky, et al v. EPA, et al
Case Number:	24-1050
Document(s):	Document(s)

Docket Text:
RESPONDENT BRIEF [2070774] filed by EPA and Michael S. Regan in 24-1050, 24-1051, 24-1052, 24-1073, 24-1091 [Service Date: 08/19/2024] Length of Brief: 19,356 words. [24-1050, 24-1051, 24-1052, 24-1073, 24-1091] (Buckley, Sarah)

Notice will be electronically mailed to:

Mr. Henry Charles Whitaker, Attorney: henry.whitaker@myfloridalegal.com, jenna.hodges@myfloridalegal.com
Lucinda Minton Langworthy: clangworthy@huntonak.com, caapleadings@huntonak.com, sfisher@huntonak.com
Christopher Gene King, Assistant Corporation Counsel: cking@law.nyc.gov
Mr. John DuVal Walke: jwalke@nrdc.org, edavis@nrdc.org, mavalos@nrdc.org
Mr. David Michael Flannery: dave.flannery@steptoe-johnson.com
Mr. Christopher C. Horner, Attorney: chris@chornerlaw.com
Michael J. Myers, Assistant Attorney General: michael.myers@ag.ny.gov
Mrs. Kathy G. Beckett, Attorney: kathy.beckett@steptoe-johnson.com
Mr. Andrew R. Varcoe: avarcoe@uschamber.com
Edward Louis Kropp: skipp.kropp@steptoe-johnson.com
Mr. Elbert Lin, Partner: ELin@hunton.com, johnsont@hunton.com
Mr. Patrick J. Morrisey: patrick.morrisey@wvago.gov
Seth L. Johnson: sjohnson@earthjustice.org, vhuggett@earthjustice.org, dolazabal@earthjustice.org, bkilkenny@earthjustice.org
Mr. Nicholas J. Bronni, Deputy Solicitor General: nicholas.bronni@arkansasag.gov
Emily C. Schilling: ecschilling@hollandhart.com, sahay@hollandhart.com, intaketeam@hollandhart.com
Jonathan Andrew Wiener: jonathan.wiener@doj.ca.gov, han.truong@doj.ca.gov
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Appointment

From: Svingen, Eric [Svingen.Eric@epa.gov]
Sent: 8/20/2024 3:38:20 AM
To: Ahuja, Anupa [ahuja.anupa@epa.gov]; Deabler, Gabrielle [Deabler.Gabrielle@epa.gov]; Devkota, Om [devkota.om@epa.gov]; Letterly, Aaron [Letterly.Aaron@epa.gov]; Nguyen, Khoi (she/her/hers) [Nguyen.Khoi@epa.gov]; Shahin, Emad [Shahin.Emad@epa.gov]; Lewis, Adam [Lewis.Adam@epa.gov]; Schluter, Catherine (she/her/hers) [Schluter.Catherine@epa.gov]; Taveras, Fausto (he/him/his) [Taveras.Fausto@epa.gov]; Aburano, Douglas (he/him/his) [aburano.douglas@epa.gov]; Adams, Evan (he/him/his) [adams.evan@epa.gov]; Akers, Brad (he/him/his) [Akers.Brad@epa.gov]; Arra, Sarah (she/her/hers) [Arra.Sarah@epa.gov]; Bean, Clayton (he/him/his) [bean.clayton@epa.gov]; Becoat, Gregory [becoat.gregory@epa.gov]; Belk, Ellen (she/her/hers) [Belk.Ellen@epa.gov]; Bell, Tiereny [Bell.Tiereny@epa.gov]; Benjamin, Lynorae [benjamin.lynorae@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Bigioni, Neil (he/him/his) [bigioni.neil@epa.gov]; Biton, Leiran (he/him/his) [biton.leiran@epa.gov]; Bonifacino, Gina [Bonifacino.Gina@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Bradley, Twunjala [Bradley.Twunjala@epa.gov]; Brimmer, Amanda (she/her/hers) [Brimmer.Amanda@epa.gov]; Bunte, Laura [Bunte.Laura@epa.gov]; Calcinore, Sara [calcinore.sara@epa.gov]; Chen, Alexander [Chen.Alex@epa.gov]; Childers, Pat (he/him/his) [Childers.Pat@epa.gov]; Chow, Alice [chow.alice@epa.gov]; Coryell, Mark [coryell.mark@epa.gov]; Crispell, Emily [crispell.emily@epa.gov]; D'Agostino, Kathleen [dagostino.kathleen@epa.gov]; Damberg, Rich [Damberg.Rich@epa.gov]; Davidson, Olivia (she/her/hers) [Davidson.Olivia@epa.gov]; Dickinson, David [Dickinson.David@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Fernandez, Cristina (she/her/hers) [Fernandez.Cristina@epa.gov]; Ferreira, Nicholas (he/him/his) [ferreira.nicholas@epa.gov]; Frizzell, Gretchen (she/her/hers) [Frizzell.Gretchen@epa.gov]; Fulton, Abby [Fulton.Abby@epa.gov]; Garcia, Ariel [Garcia.Ariel@epa.gov]; Garver, Daniel [Garver.Daniel@epa.gov]; Garwood, Ben [Garwood.Ben@epa.gov]; Gong, Kevin (he/him/his) [Gong.Kevin@epa.gov]; Graham, AshleyR (she/her/hers) [Graham.AshleyR@epa.gov]; Hemby, James [Hemby.James@epa.gov]; Hong, Jeanhee [Hong.Jeanhee@epa.gov]; Hou, James [Hou.James@epa.gov]; Hunt, Jeff [Hunt.Jeff@epa.gov]; Jackson, Scott (he/him/his) [Jackson.Scott@epa.gov]; Jay, Michael [Jay.Michael@epa.gov]; Johnson, Terry [Johnson.Terry@epa.gov]; Kapichak, Rudolph [kapichak.rudolph@epa.gov]; Keas, Ashley [keas.ashley@epa.gov]; Kelly, Johnj (he/him/his) [Kelly.Johnj@epa.gov]; Kelly, ThomasP [Kelly.ThomasP@epa.gov]; Kemp, Lachala [Kemp.Lachala@epa.gov]; Krabbe, Stephen (he/him/his) [Krabbe.Stephen@epa.gov]; Laurita, Matthew [Laurita.Matthew@epa.gov]; Law, Nicole [Law.Nicole@epa.gov]; Lawrence, Laura (she/her/hers) [Lawrence.Laura@epa.gov]; Lee, Andrew [Lee.Andrew.C@epa.gov]; Lee, Anita (she/her/hers) [Lee.Anita@epa.gov]; Leers, Ben (he/him/his) [Leers.Ben@epa.gov]; Leslie, Michael (he/him/his) [leslie.michael@epa.gov]; Ling, Michael [Ling.Michael@epa.gov]; Lingard, Robert (he/him/his) [Lingard.Robert@epa.gov]; Lo, Doris [Lo.Doris@epa.gov]; Longo, Linda (she/her/hers) [Longo.Linda@epa.gov]; Loutan, Reema (she/her/hers) [Loutan.Reema@epa.gov]; Andrews, Suzanne (she/her/hers) [Andrews.Suzanne@epa.gov]; Mackintosh, David [Mackintosh.David@epa.gov]; Maietta, Anthony (he/him/his) [maietta.anthony@epa.gov]; McConnell, Robert [mcconnell.robert@epa.gov]; McHale, Mary [McHale.Mary@epa.gov]; McKinley, Gobeail [McKinley.Gobeail@epa.gov]; McWilliams, Anne K. 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Subject: Ozone Implementation Workgroup Monthly Call
Attachments: August 2024 ozone implementation workgroup agenda.docx
Location: Microsoft Teams Meeting

Start: 8/21/2024 5:00:00 PM
End: 8/21/2024 6:00:00 PM
Show Time As: Tentative

Recurrence: Monthly
the third Wednesday of every 1 month(s) from 12:00 PM to 1:00 PM

Required Attendees: Ahuja, Anupa; Deabler, Gabrielle; Devkota, Om; Letterly, Aaron; Nguyen, Khoi (she/her/hers); Shahin, Emad; Lewis, Adam; Schluter, Catherine (she/her/hers); Taveras, Fausto (he/him/his); Aburano, Douglas (he/him/his); Adams, Evan (he/him/his); Akers, Brad (he/him/his); Arra, Sarah (she/her/hers); Bean, Clayton (he/him/his); Becoat, Gregory; Belk, Ellen; Bell, Tiereny; Benjamin, Lynorae; Bianco, Karen; Bigioni, Neil (he/him/his); Biton, Leiran (he/him/his); Bonifacino, Gina; Brachtl, Megan; Bradley, Twunjala; Brimmer, Amanda (she/her/hers); Bunte, Laura; Calcinore, Sara; Chen, Alexander; Childers, Pat (he/him/his); Chow, Alice; Coryell, Mark; Crispell, Emily; D'Agostino, Kathleen; Damberg, Rich; Davidson, Olivia (she/her/hers); Dickinson, David; Donaldson, Guy; Feldman, Michael; Fernandez, Cristina; Ferreira, Nicholas (he/him/his); Frizzell, Gretchen (she/her/hers); Fulton, Abby; Garcia, Ariel; Garver, Daniel; Garwood, Ben; Gong, Kevin (he/him/his); Graham, AshleyR (she/her/hers); Hemby, James; Hong, Jeanhee; Hou, James; Hunt, Jeff; Jackson, Scott; Jay, Michael; Johnson, Terry; Kapichak, Rudolph; Keas, Ashley; Kelly, Johnj (he/him/his); Kelly, ThomasP; Kemp, Lachala; Krabbe, Stephen (he/him/his); Laurita, Matthew; Law, Nicole; Lawrence, Laura (she/her/hers); Lee, Andrew; Lee, Anita (she/her/hers); Leers, Ben (he/him/his); Leslie, Michael (he/him/his); Ling, Michael; Lingard, Robert (he/him/his); Lo, Doris; Longo, Linda (she/her/hers); Loutan, Reema (she/her/hers); Andrews, Suzanne; Mackintosh, David; Maietta, Anthony (he/him/his); McConnell, Robert; McHale, Mary; McKinley, Gobeail; McWilliams, Anne K.; Medina, Dayana; Millar, Emily; Mills, Derek; Morton, Michael; Moser, Mallory (she/her/hers); Mullen, Kathleen (she/her/hers); Murray, Beth; Oconnor, Karina (she/her/hers); Olszewski, Joshua; Paige, Carrie; Patulski, Meg; Pepple, Karl; Pitre, Randy; Possiel, Norm (he/him/his); Prentice, Amanda; Puplampu, William; Rackauskas, Eric; Rehn, Brian; Riha, Kristin; Riley, Jeffrey; Rogan, John (he/him/his); Ruvo, Richard (he/him/his); Salem, Nevine; Schulingkamp, Joseph; Senter, Stephen; Shar, Alan; Simcox, Alison; Simon, Heather; Singh, Amrita; Snyder, Doug; Snyder, Erik; South, Mia (she/her/hers); Spann, Jane; Spenillo, Justin; Sutton, Lisa; Svendsgaard, Dave; Talley, David; Timin, Brian; Ting, Kaytrue; Tonnesen, Gail; Travia, Donna; Vagenas, Ginger; Vaupel, Claudia; Vijayan, Abi; Viswanathan, Krishna; Wells, Benjamin; Wickersham, Lindsay (she/her/hers); Wieber, Kirk; Winkelmann, Joe (Joseph); Withey, Charlotte (she/her/hers); Wong, Richard; Yoshimura, Gwen (she/her/hers); Pettit, Elizabeth (Libby); Lang, Matthew; Chen, Eugene; Naber, Nicole; Kilgour, Delaney

Optional Attendees: Ledezma, Andrew (he/him/his); Williams, Melina; Kosin, Michele; Dorantes, Michael (he/him/his); Castro, Marina (she/her/hers); Pagan-Incle, Keila; Wortman, Eric (he/him/his); Leffert, Kaitlyn (she/her/hers); Lin, Stephanie; Magee, Melanie; Goold, Megan (she/her/hers); O'Kelly, Jeremy; Kay, Rynda (she/her/hers); LaRocca, Sarah; Freund,

Weston (he/him/his); James, Corin; Perez, Idalia (she/her/hers); Rutherford, Robert; McEathron, Kimberly (she/her/hers); Lillis, Patrick; Gallegos, Jacob; Oggeri, Francis (he/him/his); Lowder, Erin (she/her/hers); McGuire, Philip (he/him/his); Neiswinter, Ian; Williams, Jennifer; HertzWu, Sara; Hillis, Berkley (she/her/hers); Leo, Julia

---

Microsoft Teams meeting

Ex. 6 Personal Privacy (PP)

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Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 8/20/2024 7:52:46 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Smith, Isabella [Smith.Isabella@epa.gov]
CC: Marks, Matthew [Marks.Matthew@epa.gov]
Subject: RE: TX SO2 Designations Case - En Banc Petition - Order for
Attachments: Fuels Supp brief.pdf; Texas Supp brief.pdf

Ex. 5 AC/AWP/DP

++++++++++++++++
(202) 695-6287
he/him/his

From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Tuesday, August 20, 2024 11:55 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: TX SO2 Designations Case - En Banc Petition - Order for

(+ Matt and Gautam for awareness)

Ex. 5 AC/AWP/DP

Thanks team, really hate that this saga continues…

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Tuesday, August 20, 2024 11:40 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>
Subject: TX SO2 Designations Case - En Banc Petition - Order for

Ex. 5 AC/AWP/DP

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

From: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Sent: Tuesday, August 20, 2024 11:21 AM
To: Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: RE: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

And Ohio v. EPA as well.

From: Vargas, Aaron <Vargas.Aaron@epa.gov>
Sent: Tuesday, August 20, 2024 10:20 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

Brooke found the link! Attached PDF of the order requesting letter briefings on significance of Loper Bright decision.

Aaron H. Vargas

From: Vargas, Aaron
Sent: Tuesday, August 20, 2024 10:15 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: FW: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

FYI... letter briefing requested...? Will send the document when Lexis Nexis actually works.

Aaron H. Vargas

From: LexisNexisDelivery@lexisnexis.com <LexisNexisDelivery@lexisnexis.com>
Sent: Tuesday, August 20, 2024 10:12 AM
To: Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Alerts

New activity occurred in docket

SO2 Big 3 Nonattainment Designation

Track Details

Information requested by: Aaron Vargas

Client ID: -None-

Monitor: Everything

Delivery: Hourly

Description: No description available

Note: No note available

Manage Alerts

View all alerts in **Lexis®**.

Unsubscribe from this alert**. If you have not personally set up this alert, please contact Customer Support to unsubscribe**

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* This is an automated email. Please do not reply to this email address or forward this email.

Message

From: Thrift, Mike [thrift.mike@epa.gov]
Sent: 8/21/2024 4:04:43 PM
To: Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
CC: Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]
Subject: RE: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence
Attachments: Billings SO2 FIP FRN 2008.pdf

Ex. 5 AC/DP

From: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Sent: Wednesday, August 21, 2024 8:07 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>
Cc: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Subject: FW: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Ex. 5 AC/DP

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Wednesday, August 21, 2024 11:02 AM
To: Adams, Darryl <Adams.Darryl@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: RE: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Darryl,

Ex. 5 AC/DP

Ex. 5 AC/DP

Adam

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Wednesday, August 21, 2024 6:28 AM
To: Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,
I was able to review your determination request. I also read your draft NPRM in EAMS.

Ex. 5 AC/DP

Darryl

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Friday, August 16, 2024 5:43 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi All – I've attached the draft non-significance determination request. Let me know if you have any comments or suggestions before I have Aaron submit it through EAMS. I few additional questions before submitting the request;

Aaron, can you retrieve the RIN # for this NPRM at this stage, or is it yet to be generated?

Also, do I need to generate a cover page like that in the R9 example Darryl provided, or is that generated through EAMS?

Thanks!

Adam

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Sent: Thursday, August 15, 2024 12:51 PM
To: Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

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Darryl

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Sent: Thursday, August 15, 2024 2:42 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly

<Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Darryl, that's very helpful. Regarding your previous email, Ex. 5 AC/DP

Ex. 5 AC/DP

Adam

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Thursday, August 15, 2024 12:40 PM
To: Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,
Go ahead and send a draft if you like. My schedule is limited but Stephanie and Lilly should have time to give a quick look. I've attached a NS request for a FIP from EAMS. There's other requests in EAMS as well for FIPs from regions 8, 9 and 10.
Darryl

Darryl Adams
(In phased retirement, working Tuesday, Wed (am), Thursday)
Regulatory Management Division
Office of Policy, U.S.EPA
202-564-6569
Mail code 1803A

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 2:29 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Darryl. I'll get going on the non-significance determination request. Would it be alright if I send a draft of the document to you, Stephanie and Lilly before I have Aaron submit it in the OMB Determination Milestone in EAMS? I don't want to make more work for you all, but since this is my first attempt at preparing such a document I want to make sure I haven't missed the mark on what you all would need to see. If you'd prefer I not send a draft, that's completely fine too, as the guidance is pretty specific.

Thanks,

Adam

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Thursday, August 15, 2024 12:02 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>

Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Kimerly. I'm including Stephanie (who's working determination requests) and Lilly who's now has the lead with regional actions signed by the administrator. Thanks for attaching the link from our ADP library.
Darryl

Darryl Adams
(In phased retirement, working Tuesday, Wed (am), Thursday)
Regulatory Management Division
Office of Policy, U.S.EPA
202-564-6569
Mail code 1803A

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 1:53 PM
To: Clark, Adam <Clark.Adam@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

If you'd like to pursue the Non-significance determination, I recommend reaching out to Darryl Adams from the AO, cc'd on this email. The process for a non-significance determination takes some time but I'm not sure of any faster way but please work with Darryl on the exact process needed to satisfy the requirements.

Thanks,

Kim

Here's the link from adp-library for the template for non-significant requests:
https://work.epa.gov/sites/default/files/2023-07/EPA%20request%20of%2012866%20Nonsignificance-2023.07.docx

---

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 1:39 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>

Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Kim. In the scope of regional FIPs this one would definitely be on the non-significant end, so that's good to know. Do I need to go to the trouble of preparing a non-significant request or can I just go forward on the assumption that it's non-significant and so satisfies EO 12866?

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 11:35 AM
To: Clark, Adam <Clark.Adam@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

In my experience and what I've heard from OAR reg team on this, regional FIPs rarely trigger OMB review and are typically determined to be non-significant.

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

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From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 1:29 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Kim,

Aaron and I have side-barred and are discussing how much to change the action in EAMS. One key factor is the OMB piece. Ex. 5 AC/DP

Ex. 5 AC/DP

I honestly don't have any experience with OMB review, so your input would be really helpful. Thanks!

Adam

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 11:26 AM
To: Clark, Adam <Clark.Adam@epa.gov>

Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Aaron and Adam.

Aaron, if you could also update the date for the NPRM stage admin signature date that would be helpful as a target for OAR-IO to aim for (to ensure the final signature date will be met).

Thanks,

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 12:51 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Kim - **Ex. 5 AC/DP** Not sure we'll make that but it's what we're pushing for.

Aaron, could you update the EAMS entry to reflect that? Here's what I think is the relevant EAMS info; EAMS - Tiering Approval Submission: "Air Plan Approval; Montana; Revisions to the Federal Implementation Plan for the Billings/Laurel, MT, Sulfur Dioxide Area" (SAN 11571 / R8 / Tier 3)

Adam

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 10:32 AM
To: Clark, Adam <Clark.Adam@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

Thanks for keeping me in the loop on this. What is the admin signature date for this action? I just looked in EAMS and looks like its listed as June 2025? I could very well be not reading this right as I'm new to the system. I meet with OAR-IO every Thursday afternoon the discuss upcoming FIPs for admin signature and this will likely come up.

Thanks,

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Friday, August 9, 2024 11:43 AM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Lawrence, Sydney <lawrence.sydney@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Subject: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hello all,

Per the FIP Process Guide for obtaining the Administrator's signature on FIP actions, Region 8 is submitting the following for OAQPS (Scott) and OGC (Abi) review and email concurrence:

- Draft proposed rule
- Action memo
- Action information/Fact sheet
- Communication plan

Let me know if you have any questions.

Thank you!

Adam Clark
Air Planning and Regulatory Section
EPA Region 8

Message

From: Thrift, Mike [thrift.mike@epa.gov]
Sent: 8/21/2024 4:12:50 PM
To: Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]; Adams, Darryl [Adams.Darryl@epa.gov]; Clark, Adam [Clark.Adam@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]; Vetter, Cheryl [Vetter.Cheryl@epa.gov]; Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]
CC: Zull, Aaron [zull.aaron@epa.gov]; Brown, Stephanie N. [Brown.StephanieN@epa.gov]; Boyd, Lilly [Boyd.Lilly@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: RE: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence
Attachments: Detroit 2010 SO2 FIP_NFR_Signed_Pre-Publication_Copy.pdf

Ex. 5 AC/DP

From: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Sent: Wednesday, August 21, 2024 8:14 AM
To: Adams, Darryl <Adams.Darryl@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
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Subject: RE: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi folks,

Ex. 5 AC/DP

Thanks,
Seth

Seth Nolbaum (Buchsbaum) (he/him)
Office of General Counsel
202-564-2484

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Wednesday, August 21, 2024 11:09 AM
To: Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>; Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
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Subject: Question on: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

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Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

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Darryl

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Sent: Thursday, August 15, 2024 2:42 PM
To: Adams, Darryl <Adams.Darryl@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

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Ex. 5 AC/DP

Adam

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Sent: Thursday, August 15, 2024 12:40 PM
To: Clark, Adam <Clark.Adam@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
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Darryl

Darryl Adams
(In phased retirement, working Tuesday, Wed (am), Thursday)
Regulatory Management Division
Office of Policy, U.S.EPA
202-564-6569
Mail code 1803A

From: Clark, Adam <Clark.Adam@epa.gov>
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Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Darryl. I'll get going on the non-significance determination request. Would it be alright if I send a draft of the document to you, Stephanie and Lilly before I have Aaron submit it in the OMB Determination Milestone in EAMS? I don't want to make more work for you all, but since this is my first attempt at preparing such a document I want to make sure I haven't missed the mark on what you all would need to see. If you'd prefer I not send a draft, that's completely fine too, as the guidance is pretty specific.

Thanks,

Adam

From: Adams, Darryl <Adams.Darryl@epa.gov>
Sent: Thursday, August 15, 2024 12:02 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>; Clark, Adam <Clark.Adam@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Brown, Stephanie N. <Brown.StephanieN@epa.gov>; Boyd, Lilly <Boyd.Lilly@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Kimerly. I'm including Stephanie (who's working determination requests) and Lilly who's now has the lead with regional actions signed by the administrator. Thanks for attaching the link from our ADP library.
Darryl

Darryl Adams

(In phased retirement, working Tuesday, Wed (am), Thursday)
Regulatory Management Division
Office of Policy, U.S.EPA
202-564-6569
Mail code 1803A

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 1:53 PM
To: Clark, Adam <Clark.Adam@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

If you'd like to pursue the Non-significance determination, I recommend reaching out to Darryl Adams from the AO, cc'd on this email. The process for a non-significance determination takes some time but I'm not sure of any faster way but please work with Darryl on the exact process needed to satisfy the requirements.

Thanks,

Kim

Here's the link from adp-library for the template for non-significant requests:
https://work.epa.gov/sites/default/files/2023-07/EPA%20request%20of%2012866%20Nonsignificance-2023.07.docx

---

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 1:39 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Kim. In the scope of regional FIPs this one would definitely be on the non-significant end, so that's good to know. Do I need to go to the trouble of preparing a non-significant request or can I just go forward on the assumption that it's non-significant and so satisfies EO 12866?

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 11:35 AM
To: Clark, Adam <Clark.Adam@epa.gov>

Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

In my experience and what I've heard from OAR reg team on this, regional FIPs rarely trigger OMB review and are typically determined to be non-significant.

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 1:29 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Kim,

Aaron and I have side-barred and are discussing how much to change the action in EAMS. One key factor is the OMB piece. Do you think this is an action that would require OMB review? **Ex. 5 AC/DP**

Ex. 5 AC/DP

I honestly don't have any experience with OMB review, so your input would be really helpful. Thanks!

Adam

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 11:26 AM
To: Clark, Adam <Clark.Adam@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Thanks Aaron and Adam.

Aaron, if you could also update the date for the NPRM stage admin signature date that would be helpful as a target for OAR-IO to aim for (to ensure the final signature date will be met).

Thanks,

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Thursday, August 15, 2024 12:51 PM
To: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Cc: Zull, Aaron <zull.aaron@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Kim - **Ex. 5 AC/DP** Not sure we'll make that but it's what we're pushing for.

Aaron, could you update the EAMS entry to reflect that? Here's what I think is the relevant EAMS info; EAMS - Tiering Approval Submission: "Air Plan Approval; Montana; Revisions to the Federal Implementation Plan for the Billings/Laurel, MT, Sulfur Dioxide Area" (SAN 11571 / R8 / Tier 3)

Adam

From: McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Sent: Thursday, August 15, 2024 10:32 AM
To: Clark, Adam <Clark.Adam@epa.gov>
Subject: RE: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hi Adam,

Thanks for keeping me in the loop on this. What is the admin signature date for this action? I just looked in EAMS and looks like its listed as June 2025? I could very well be not reading this right as I'm new to the system. I meet with OAR-IO every Thursday afternoon the discuss upcoming FIPs for admin signature and this will likely come up.

Thanks,

Kim

Kimberly McEathron *(she/her)*
OAR Lead Region Coordinator (FY24-25)
US EPA Region 2
Air & Radiation Division
290 Broadway, New York, NY 10007
Office: (212) 637-4228
Work Cell: (631) 565-9391

Regional Air Program Contacts

OAR Lead Region News: Subscribe or Unsubscribe

From: Clark, Adam <Clark.Adam@epa.gov>
Sent: Friday, August 9, 2024 11:43 AM
To: Pettit, Elizabeth (Libby) <pettit.elizabetha@epa.gov>; Lawrence, Sydney <lawrence.sydney@epa.gov>
Cc: Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Vetter, Cheryl <Vetter.Cheryl@epa.gov>; Mathias, Scott <Mathias.Scott@epa.gov>; Fulton, Abby <Fulton.Abby@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; McEathron, Kimberly (she/her/hers) <McEathron.Kimberly@epa.gov>
Subject: Billings SO2 FIP Revision (SSM) PR For OAQPS and OGC Concurrence

Hello all,

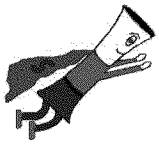
Per the FIP Process Guide for obtaining the Administrator's signature on FIP actions, Region 8 is submitting the following for OAQPS (Scott) and OGC (Abi) review and email concurrence:

- Draft proposed rule
- Action memo
- Action information/Fact sheet
- Communication plan

Let me know if you have any questions.

Thank you!

Adam Clark
Air Planning and Regulatory Section
EPA Region 8



Message

From: Panos, Christos [Panos.Christos@epa.gov]
Sent: 8/21/2024 6:52:30 PM
To: Abrahamian, Tanya (she/her/hers) [abrahamian.tanya@epa.gov]; Becoat, Gregory [becoat.gregory@epa.gov]; Benjamin, Lynorae [benjamin.lynorae@epa.gov]; Chen, Eugene [Chen.Eugene@epa.gov]; Deese, William [deese.william@epa.gov]; Dobrahner, Jaslyn [Dobrahner.Jaslyn@epa.gov]; Dorantes, Michael (he/him/his) [Dorantes.Michael@epa.gov]; Fradkin, Kenneth [Fradkin.Kenneth@epa.gov]; Freund, Weston (he/him/his) [Freund.Weston@epa.gov]; Gallegos, Jacob [Gallegos.Jacob@epa.gov]; Garcia, Ariel [Garcia.Ariel@epa.gov]; Gesualdo, Matthew (he/him/his) [Gesualdo.Matthew@epa.gov]; Gordon, Michael [Gordon.Mike@epa.gov]; Goudeau, Charlotte [Goudeau.Charlotte@epa.gov]; Hall, Jeremiah [hall.jeremiah@epa.gov]; Hall, Kristin [Hall.Kristin@epa.gov]; Hunt, Jeff [Hunt.Jeff@epa.gov]; Kelly, Johnj (he/him/his) [Kelly.Johnj@epa.gov]; LaRocca, Sarah [Larocca.Sarah@epa.gov]; Longo, Linda (she/her/hers) [Longo.Linda@epa.gov]; McDowell, Jaron [McDowell.Jaron@epa.gov]; McIntyre, Gerald [McIntyre.Gerald@epa.gov]; Mohr, Ashley [Mohr.Ashley@epa.gov]; Morgan, Ruthw [morgan.ruthw@epa.gov]; Neiswinter, Ian [Neiswinter.Ian@epa.gov]; Ogbodo, Ndubisi [Ogbodo.Ndubisi@epa.gov]; Olszewski, Joshua [olszewski.joshua@epa.gov]; Paige, Carrie [Paige.Carrie@epa.gov]; Panos, Christos [Panos.Christos@epa.gov]; Parke, Nicolas [Parke.Nicolas@epa.gov]; Puplampu, William [puplampu.william@epa.gov]; Ruan-Lei, Karolina [ruan-lei.karolina@epa.gov]; Ruddick, Randall [ruddick.randall@epa.gov]; Schmitt, Ellen (she/her/hers) [Schmitt.Ellen@epa.gov]; Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Spann, Jane [Spann.Jane@epa.gov]; Stevens, Arnold [stevens.arnold@epa.gov]; Sutton, Lisa [Sutton.Lisa@epa.gov]; Suzuki, Debra [Suzuki.Debra@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]; Vaupel, Claudia [Vaupel.Claudia@epa.gov]; Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Wang, Mae [Wang.Mae@epa.gov]; Wiley, Adina [Wiley.Adina@epa.gov]; Williams-Miles, Pearlene [WilliamsMiles.Pearlene@epa.gov]; Withey, Charlotte (she/her/hers) [Withey.Charlotte@epa.gov]; Wolkins, Jed (he/him/his) [wolkins.jed@epa.gov]; Yannayon, Laura [Yannayon.Laura@epa.gov]; Zull, Aaron [zull.aaron@epa.gov]
CC: National SIP Processing Workgroup [NatlSIPProcessingWG@epa.gov]; Arra, Sarah (she/her/hers) [Arra.Sarah@epa.gov]; Brachtl, Megan [Brachtl.Megan@epa.gov]; Kornylak, Vera S. [Kornylak.Vera@epa.gov]; Lowder, Erin (she/her/hers) [Lowder.Erin@epa.gov]; McEathron, Kimberly (she/her/hers) [McEathron.Kimberly@epa.gov]; McQuilkin, Wendy [Mcquilkin.Wendy@epa.gov]; Morris, Stephanie [Morris.Stephanie@epa.gov]; Reddick, Lorraine [Reddick.Lorraine@epa.gov]; Saltman, Tamara [Saltman.Tamara@epa.gov]; South, Mia (she/her/hers) [South.Mia@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Washington, Stephanie [Washington.Stephanie@epa.gov]
Subject: RE: August Agenda - National SIP Processing Workgroup Conference Call
Attachments: 2024-08-22_Agenda.docx; SIP EJ EO template - final - 2023-02-07-july-2024.docx

Microsoft Teams meeting

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Ex. 6 Personal Privacy (PP)

Draft Agenda National SIP Processing Workgroup Conference Call
Thursday, August 22, 2024 12:00 PM to 1:00 PM ET

Ex. 6 Personal Privacy (PP)

SIP Workgroup SharePoint site

Region 9 will take meeting minutes (action items – if needed).

Discussion Items

1. EJ Template / EJ in SIPs
2. Additional Questions/Comments from the Regions

Attached Files: (please do not share outside the Agency)

1) 2024-08-22_Agenda.docx
2) SIP EJ EO template - final - 2023-02-07-july-2024.docx

++++++++++++++++++++++++++

Chris Panos | EPA Region 5 | Air and Radiation Division (AR-18J) | (312) 353-8328 | panos.christos@epa.gov

-----Original Appointment-----
From: National SIP Processing Workgroup <NatlSIPProcessingWG@epa.gov>
Sent: Thursday, January 18, 2024 2:53 PM
To: National SIP Processing Workgroup; Panos, Christos; Becoat, Gregory; Bell, Tiereny; Benjamin, Lynorae; Deese, William; Dobrahner, Jaslyn; Dorantes, Michael; Fradkin, Kenneth; Freund, Weston (he/him/his); Gallegos, Jacob; Garcia, Ariel; Gordon, Michael; Goudeau, Charlotte; Hall, Jeremiah; Hall, Kristin; Hunt, Jeff; Kelly, Johnj (he/him/his); LaRocca, Sarah; Longo, Linda (she/her/hers); McIntyre, Gerald; Mohr, Ashley; Morgan, Ruthw; Ogbodo, Ndubisi; Olszewski, Joshua; Puplampu, William; Ruan-Lei, Karolina; Ruddick, Randall; Schmitt, Ellen (she/her/hers); Schoellkopf, Lynde (she/her/hers); Spann, Jane; Spenillo, Justin; Stevens, Arnold; Sutton, Lisa; Suzuki, Debra; Vargas, Aaron; Vaupel, Claudia; Wang, Mae; Weinelt, Eva; Wiley, Adina; Williams-Miles, Pearlene; Yannayon, Laura; Zull, Aaron; Parke, Nicolas; Villegas, Brooke (she/her/hers)
Cc: Arra, Sarah (she/her/hers); Brachtl, Megan; Lowder, Erin (she/her/hers); McEathron, Kimberly (she/her/hers); McQuilkin, Wendy; Morris, Stephanie; Reddick, Lorraine; Saltman, Tamara; South, Mia (she/her/hers); Vijayan, Abi; Washington, Stephanie; Senter, Stephen; Bartley, Richard; Przyborski, Jay; Neiswinter, Ian
Subject: National SIP Processing Workgroup Conference Call
When: Thursday, August 22, 2024 11:00 AM-12:00 PM (UTC-06:00) Central Time (US & Canada).
Where: Microsoft Teams Meeting

Agenda to follow.
Please reply to panos.christos@epa.gov if you no longer wish to be on this distribution list.

Conference calls are the fourth Thursday of the month except for the **third Thursday of the month for November and December** because of Thanksgiving and Christmas Holidays. Times below are Eastern Time Zone.

Fourth Thursday of the Month.

		Start Time	*End Time*
January	01/25/2024	12:00 pm	01:00 pm
February	02/22/2024	12:00 pm	01:00 pm
March	03/28/2024	12:00 pm	01:00 pm
April	04/25/2024	12:00 pm	01:00 pm
May	05/23/2024	12:00 pm	01:00 pm
June	06/27/2024	12:00 pm	01:00 pm
July	07/25/2024	12:00 pm	01:00 pm
August	08/22/2024	12:00 pm	01:00 pm
September	09/26/2024	12:00 pm	01:00 pm
October	10/24/2024	12:00 pm	01:00 pm

Third Thursday of the Month.

		Start Time	*End Time*

November	11/21/2024	12:00 pm	01:00 pm
December	12/19/2024	12:00 pm	01:00 pm

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Ex. 6 Personal Privacy (PP)

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Message

From: Thrift, Mike [thrift.mike@epa.gov]
Sent: 8/21/2024 9:49:46 PM
To: McNerney, Matthew [McNerney.Matthew@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"
Attachments: hondecision.pdf

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 2:00 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Thanks, Geoff, and Seth for flagging this provision in a separate message.

Ex. 5 AC/AWP/DP

Thanks,
Matt

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 21, 2024 12:38 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

MM:

Here is a semi-similar example for you.

Ex. 5 AC/AWP/DP

Not sure if this is in your ballpark or not, but thought I would mention it.

G

Controlled by U.S. Environmental Protection Agency

From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 11:28 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Cc: Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: ISO - rulemakings and cases discussing the term "as necessary"

Hi all,

Ex. 5 AC/AWP/DP

I appreciate any thoughts or examples folks can provide on the use of this term in related contexts under the CAA, and am happy to discuss this question further if it would be helpful to provide more context.

Thanks,
Matt

Matthew McNerney (Matt) (he/him)
Attorney-Advisor
Air and Radiation Law Office
U.S. EPA Office of General Counsel
(202) 564-1049

Message

From: Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]
Sent: 8/21/2024 9:58:30 PM
To: Thrift, Mike [thrift.mike@epa.gov]; McNerney, Matthew [McNerney.Matthew@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Lea Anderson (she/her/hers)
(202) 564-5571

Controlled by U.S. Environmental Protection Agency

From: Thrift, Mike <thrift.mike@epa.gov>
Sent: Wednesday, August 21, 2024 5:50 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Controlled by U.S. Environmental Protection Agency

From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 2:00 PM

To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Thanks, Geoff, and Seth for flagging this provision in a separate message.

Ex. 5 AC/AWP/DP

Thanks,
Matt

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 21, 2024 12:38 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

MM:

Here is a semi-similar example for you.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

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G

Controlled by U.S. Environmental Protection Agency

From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 11:28 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Cc: Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Hi all,

Ex. 5 AC/AWP/DP

Thanks,
Matt

Matthew McNerney (Matt) (he/him)
Attorney-Advisor

Air and Radiation Law Office
U.S. EPA Office of General Counsel
(202) 564-1049

Controlled by U.S. Environmental Protection Agency

Message

From: Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]
Sent: 8/22/2024 1:43:38 AM
To: McNerney, Matthew [McNerney.Matthew@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"
Attachments: for MM Catawba County v. EPA_ 571 F.3d 20.pdf

CUI//PRIVILEGE

M2:

Ex. 5 AC/AWP/DP

G

Controlled by U.S. Environmental Protection Agency

From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 5:00 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Thanks, Geoff, and Seth for flagging this provision in a separate message.

Ex. 5 AC/AWP/DP

Thanks,
Matt

Controlled by U.S. Environmental Protection Agency

From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 21, 2024 12:38 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

MM:

Here is a semi-similar example for you.

Ex. 5 AC/AWP/DP

Not sure if this is in your ballpark or not, but thought I would mention it.

G

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From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 11:28 AM

To: OGC ARLO <OGC_ARLO@epa.gov>
Cc: Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Hi all,

Ex. 5 AC/AWP/DP

Thanks,
Matt

Matthew McNerney (Matt) (he/him)
Attorney-Advisor
Air and Radiation Law Office
U.S. EPA Office of General Counsel
(202) 564-1049

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Message

From: McNerney, Matthew [McNerney.Matthew@epa.gov]
Sent: 8/22/2024 11:40:19 AM
To: Thrift, Mike [thrift.mike@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Nolbaum, Seth (he/him/his) [Nolbaum.Seth@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Perez Ortiz, Yasmin [perez-ortiz.yasmin@epa.gov]; Anderson, Lea (she/her/hers) [anderson.lea@epa.gov]
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

Best,
Matt

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From: Thrift, Mike <thrift.mike@epa.gov>
Sent: Wednesday, August 21, 2024 5:50 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>; Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Ex. 5 AC/AWP/DP

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From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 2:00 PM
To: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>

Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Thanks, Geoff, and Seth for flagging this provision in a separate message.

Ex. 5 AC/AWP/DP

Thanks,
Matt

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From: Wilcox, Geoffrey <wilcox.geoffrey@epa.gov>
Sent: Wednesday, August 21, 2024 12:38 PM
To: McNerney, Matthew <McNerney.Matthew@epa.gov>
Cc: Vijayan, Abi <Vijayan.Abi@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Perez Ortiz, Yasmin <perez-ortiz.yasmin@epa.gov>; Nolbaum, Seth (he/him/his) <Nolbaum.Seth@epa.gov>
Subject: RE: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

MM:

Here is a semi-similar example for you.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Not sure if this is in your ballpark or not, but thought I would mention it.

G

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From: McNerney, Matthew <McNerney.Matthew@epa.gov>
Sent: Wednesday, August 21, 2024 11:28 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Cc: Anderson, Lea (she/her/hers) <anderson.lea@epa.gov>
Subject: ISO - rulemakings and cases discussing the term "as necessary"

CUI//PRIVILEGE

Hi all,

Ex. 5 AC/AWP/DP

Thanks,
Matt

Matthew McNerney (Matt) (he/him)
Attorney-Advisor
Air and Radiation Law Office

U.S. EPA Office of General Counsel
(202) 564-1049

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Message

From: Orlin, David [Orlin.David@epa.gov]
Sent: 8/22/2024 10:01:45 PM
To: Leiter, Amanda [Leiter.Amanda@epa.gov]
CC: Vijayan, Abi [Vijayan.Abi@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Siegal, Tod [Siegal.Tod@epa.gov]
Subject: NOx SOx PM - Option Selection Slides
Attachments: OptionsSel-NOxSOxPM 2ndary NAAQS Briefingfor Admin-Aug15-2024.pptx; Friends of the Santa Clara River v. United States Army Corps of Eng_rs_ 887 F.3d 906.pdf; CBD v. EPA Opening Brief Final ECF stamped.docx.pdf

Amanda,

Ex. 5 AC/DP

Thanks,

David Orlin (he/him)
US EPA, Office of General Counsel
(202) 564-1222

From: Tennant, Ginger <Tennant.Ginger@epa.gov>
Sent: Tuesday, August 20, 2024 1:47 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Greaver, Tara <Greaver.Tara@epa.gov>; Linker, Lewis <Linker.Lewis@epa.gov>; Heninger, Brian <Heninger.Brian@epa.gov>; Pordesimo, Kristine <Pordesimo.Kristine@epa.gov>; Long, Russell <Long.Russell@epa.gov>; Benner, Tim <Benner.Tim@epa.gov>; Lamson, Amy (she/her/hers) <Lamson.Amy@epa.gov>; Wesson, Karen <Wesson.Karen@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Murphy, Deirdre <Murphy.Deirdre@epa.gov>
Subject: NOx SOx PM Workgroup Update - Option Selection Slides

Hello. Here is a copy of the Option Selection slide deck for the Administrator briefing now scheduled for Monday afternoon. Please note that the next steps slide (slide 15) has some dates that are still undetermined. I will get those dates to you as soon as possible. Please let me know if you have any questions.

Thanks!
Ginger

Message

From: Rosen, Perry (ENRD) [Perry.Rosen@usdoj.gov]
Sent: 8/27/2024 10:13:55 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]
CC: Villegas, Brooke (she/her/hers) [Villegas.Brooke@epa.gov]; Vargas, Aaron [Vargas.Aaron@epa.gov]; Schoellkopf, Lynde (she/her/hers) [Schoellkopf.Lynde@epa.gov]; Smith, Isabella [Smith.Isabella@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]
Subject: RE: Filing Requested in Texas v. EPA (SO2 case)
Attachments: ENV_DEFENSE-#1243655-v1-Texas_v__EPA_(SO2)_Ltr_Brief_re_Loper_&_Ohio.DOCX

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Abi and Hali,

Enclosed is the draft letter brief on Loper and Ohio. It is right at the limit of 10 pages. Please note that I am still working on cleaning up cites but that should not interfere with your review. Given the tight time frame we are working on, I would like to get your collective comments by tomorrow night or, if that will not work, by Noon on Thursday, so that I can address them and then get it to Matt Littleton for his review. The same time I send it to Matt I will send it to you, so you can forward the revised draft to your front office. To move things along, if there are any points or issues you want to discuss, I am available all day tomorrow.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

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Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Monday, August 26, 2024 1:35 PM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: [EXTERNAL] RE: Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

Thanks Perry, safe to assume that our FO can review at the same time as DAAG Matt Littleton? When are you expecting Matt to turn around comments to you by? I am just trying to pin down when the EPA FO's review should happen so I can relay as much at a standing meeting we have with them here tomorrow. Thanks!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, August 26, 2024 11:48 AM
To: Vijayan, Abi <Vijayan.Abi@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: RE: Filing Requested in Texas v. EPA (SO2 case)

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Hi Abi, we are looking to get the draft DAAG Matt Littleton by COB on Thursday.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section

P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

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Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

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From: Vijayan, Abi <Vijayan.Abi@epa.gov>
Sent: Monday, August 26, 2024 11:20 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: [EXTERNAL] RE: Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

Hi Perry,

Could you please let us know what you're thinking for a review schedule/timeline as well? Our front office is interested in reviewing this one so we'll need to provide them with the estimated review timeline. Thanks!

Abi Vijayan (she/her/hers) | US EPA | Office of General Counsel | Air and Radiation Law Office | Mail Code 2344A | phone: (202) 564-3178

Pronunciation of first name: uh-be
(no emphasis on either syllable, cadence like and rhymes with "cubby")

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From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Monday, August 26, 2024 11:13 AM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: RE: Filing Requested in Texas v. EPA (SO2 case)

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Hali,

Barring unforeseen circumstances, I should be able to get you a draft by the end of the day tomorrow.

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
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P.O. Box 7611
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perry.rosen@usdoj.gov

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Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Monday, August 26, 2024 11:11 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: [EXTERNAL] RE: Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

Hi Perry,

I hope you had a nice weekend. We are just wondering about the schedule here. Some of us will be out of the office at the end of this week for the long weekend (e.g., I will be out Thursday afternoon through Monday) and we want to make sure we have plenty of time to get this ready for filing next Tuesday.

Thanks so much!
Hail

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

Controlled by U.S. Environmental Protection Agency

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Thursday, August 22, 2024 2:56 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: RE: Filing Requested in Texas v. EPA (SO2 case)

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Thanks Hali. **Ex. 5 AC/AWP/DP**

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

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Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

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From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Thursday, August 22, 2024 11:16 AM
To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: [EXTERNAL] RE: Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

Thanks Perry. We will look out for an estimated timeline for a draft.

Ex. 5 AC/AWP/DP

Thanks again,
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

Controlled by U.S. Environmental Protection Agency

From: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Sent: Wednesday, August 21, 2024 4:23 PM
To: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: RE: Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

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Hi Hali,

Yes, we are sticking with the 9/3 deadline for now. I will get you the draft next week. Hopefully by Monday I will have a better estimate of when during the week I will get you the draft. Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Perry

Perry M. Rosen
Senior Attorney
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
202-353-7792
perry.rosen@usdoj.gov

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Environment & Natural Resources Div.
Environment Defense Section
4 Constitution Square
150 M Street, NE
Suite 2.900
Washington, DC 20002

Controlled by U.S. Environmental Protection Agency

From: Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>
Sent: Wednesday, August 21, 2024 3:32 PM

To: Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Cc: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>; Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>
Subject: [EXTERNAL] Filing Requested in Texas v. EPA (SO2 case)

CUI//PRIVILEGE

Hi Perry,

We've had the chance to briefly touch base with our management in OGC about this, and are wondering what you think about timeline here. Does 9/3 work for you as a due date on this letter brief?

Ex. 5 AC/AWP/DP

Happy to discuss! Thanks!
Hali

Hali Kerr (she/hers)
Attorney-Advisor, EPA OGC
(202) 564-2286 (office & telework)

Controlled by U.S. Environmental Protection Agency

From: Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Sent: Tuesday, August 20, 2024 11:21 AM
To: Vargas, Aaron <Vargas.Aaron@epa.gov>; Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>
Subject: RE: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

And Ohio v. EPA as well.

From: Vargas, Aaron <Vargas.Aaron@epa.gov>
Sent: Tuesday, August 20, 2024 10:20 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: RE: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

Brooke found the link! Attached PDF of the order requesting letter briefings on significance of Loper Bright decision.

Aaron H. Vargas

From: Vargas, Aaron
Sent: Tuesday, August 20, 2024 10:15 AM
To: Schoellkopf, Lynde (she/her/hers) <Schoellkopf.Lynde@epa.gov>; Kerr, Hali (she/her/hers) <Kerr.Hali@epa.gov>; Smith, Isabella <Smith.Isabella@epa.gov>; Thrift, Mike <thrift.mike@epa.gov>; Rosen, Perry (ENRD) <Perry.Rosen@usdoj.gov>; Villegas, Brooke (she/her/hers) <Villegas.Brooke@epa.gov>
Subject: FW: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

FYI... letter briefing requested...? Will send the document when Lexis Nexis actually works.

Aaron H. Vargas

From: LexisNexisDelivery@lexisnexis.com <LexisNexisDelivery@lexisnexis.com>
Sent: Tuesday, August 20, 2024 10:12 AM
To: Vargas, Aaron <Vargas.Aaron@epa.gov>
Subject: Updates for Track alert 'SO2 Big 3 Nonattainment Designation'

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Alerts

New activity occurred in docket

SO2 Big 3 Nonattainment Designation

Track Details

Information requested by: Aaron Vargas

Client ID: -None-

Monitor: Everything

Delivery: Hourly

Description: No description available

Note: No note available

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Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 8/28/2024 6:30:22 PM
To: Vijayan, Abi [Vijayan.Abi@epa.gov]
Subject: Srinivasan, Gautam replied to a comment in "ENV_DEFENSE-#1243655-v1-Texas_v__EPA_(SO2)_Ltr_Brief_re_Loper_Ohio+EPA"

-->

-->

ENV_DEFENSE-#1243655-v1-Texas_v__EPA_(SO2)_Ltr_Brief_re_Loper_Ohio+EPA.docx

VA **You** left a comment

Ex. 5 AC/AWP/DP

SG **Srinivasan, Gautam** replied

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Go to comment

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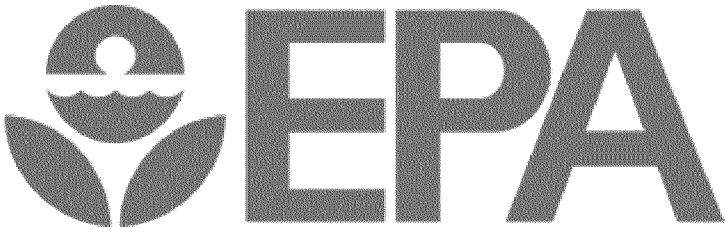
Notification Settings



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Message

From: Brashear, Angelina (she/her/hers) [Brashear.Angelina@epa.gov]
Sent: 8/29/2024 5:16:35 PM
To: Hunt, Jeff [Hunt.Jeff@epa.gov]; Bonifacino, Gina [Bonifacino.Gina@epa.gov]; Dugan, Brett [Dugan.Brett@epa.gov]
CC: Mataway-Novak, Dylan (he/him/his) [Mataway-Novak.Dylan@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Senter, Stephen [Senter.Stephen@epa.gov]; Oggeri, Francis (he/him/his) [oggeri.francis@epa.gov]; Hawes, Todd [Hawes.Todd@epa.gov]; Tillerson, Clint [Tillerson.Clint@epa.gov]; Porter, Matthew [Porter.Matthew@epa.gov]; Kerr, Hali (she/her/hers) [Kerr.Hali@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Smith, Isabella [Smith.Isabella@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]
Subject: RESPONSE RE: HQ SIP Portal: Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area Due 2024-08-29
Attachments: FR-12159-01-R10_WA SO2 redesignation_HQ.docx

Hi all,

Thank you for your patience and the opportunity to review this action. Attached is the HQ version with our edits and comments within. We do not need to see this again.

Please don't hesitate to reach out if you have any questions or concerns.

Kindest regards,
Alina

From: Brashear, Angelina (she/her/hers)
Sent: Thursday, August 15, 2024 1:24 PM
To: Hunt, Jeff <Hunt.Jeff@epa.gov>; Bonifacino, Gina <Bonifacino.Gina@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Senter, Stephen <Senter.Stephen@epa.gov>; Oggeri, Francis (he/him/his) <oggeri.francis@epa.gov>
Subject: RE: HQ SIP Portal: Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area Due 2024-08-29

Just following up to confirm that HQ can meet the requested deadline.

Thank you,
Alina

From: Brashear, Angelina (she/her/hers)
Sent: Wednesday, August 14, 2024 2:50 PM
To: Hunt, Jeff <Hunt.Jeff@epa.gov>; Bonifacino, Gina <Bonifacino.Gina@epa.gov>; Dugan, Brett <Dugan.Brett@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>; Senter, Stephen <Senter.Stephen@epa.gov>; Oggeri, Francis (he/him/his) <oggeri.francis@epa.gov>
Subject: RE: HQ SIP Portal: Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area Due 2024-08-29

Hi all,

We have received your submission. I'll reach back out once I can confirm the review deadline in HQ.

Thank you,
Alina

From: Microsoft Power Apps and Power Automate <microsoft@powerapps.com>
Sent: Wednesday, August 14, 2024 2:04 PM
To: Senter, Stephen <Senter.Stephen@epa.gov>; Brashear, Angelina (she/her/hers) <Brashear.Angelina@epa.gov>; Lowder, Erin (she/her/hers) <Lowder.Erin@epa.gov>; Oggeri, Francis (he/him/his) <oggeri.francis@epa.gov>; Millar, Emily <Millar.Emily@epa.gov>; Deabler, Gabrielle <Deabler.Gabrielle@epa.gov>
Cc: Mataway-Novak, Dylan (he/him/his) <Mataway-Novak.Dylan@epa.gov>; Vijayan, Abi <Vijayan.Abi@epa.gov>
Subject: HQ SIP Portal: Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area Due 2024-08-29

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A new item titled "Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area" has been submitted by Region 10 to the HQ SIP Portal. Please visit the link below to view the item:

Ex. 6 Personal Privacy (PP)

Title: Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO2 Nonattainment Area
State: WA
Region: 10
Standard: SO2 (2010)
Area: Ferndale/Whatcom County
Document Category: Other
Date Submitted to HQ: 2024-08-14
HQ Due Date: 2024-08-29
Reason for Review: National Consistency
Requested Review Office: OAQPS & OGC
Region Comments:
Regional Manager(s): Bonifacino, Gina;
Regional Staff Lead(s): Hunt, Jeff;
ORC Staff Lead(s): Dugan, Brett;
OAQPS Staff Involved: Lawrence, Sydney;
OGC Staff Involved: Thrift, Mike;
ORC Reviewed Before Submission to HQ: Yes
Link to Files:

Ex. 6 Personal Privacy (PP)

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