



January 8, 2015

BY OVERNIGHT DELIVERY

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Notice of Intent to File Suit Over Failure to Review and Update National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production Facilities that are Area Sources

Dear Administrator McCarthy:

Pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(b)(2), WildEarth Guardians hereby notifies you of its intent to file suit against the U.S. Environmental Protection Agency (“EPA”) over the agency’s “failure...to perform [an] act or duty under [the] [Clean Air] Act which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). Specifically, the EPA has failed to review and revise as necessary national emission standards for hazardous air pollutants (“NESHAP”) for oil and natural gas facilities that are area sources, which were adopted in 2006. Under Section 112 of the Clean Air Act, the EPA is required to review and revise as necessary NESHAP every eight years. *See* 42 U.S.C. § 7412(d)(6).

Background

Pursuant to 42 U.S.C. § 7412(d), the EPA promulgated NESHAP for oil and natural gas production facilities that are area sources on December 21, 2006. *See* 72 Fed. Reg. 26 (Jan. 3, 2007). The rules adopted, for the first time, limits on toxic emissions from triethylene glycol dehydration units located at oil and natural gas production facilities emitting less than 10 tons per year of any hazardous air pollutant listed at 42 U.S.C. § 7412(b) or less than 25 tons per year of any combination of hazardous air pollutants. The rules amended 40 C.F.R. § 63, Subpart HH.

Under the Clean Air Act, the EPA must review and revise as appropriate standards promulgated under 42 U.S.C. § 7412(d) “no less often than every 8 years.” 42 U.S.C. § 7412(d)(6). Since the promulgation of the NESHAP for oil and natural gas production facilities that are area sources, the rules have not been reviewed and revised as necessary. It has now been more than eight years. Although EPA has reviewed and updated NESHAP for oil and natural gas production facilities that are major sources, the EPA made clear that that review and

update “[did] not impact [the] area source standards.” 76 Fed. Reg. 52,378, 52,743 (Aug. 23, 2011).

The EPA’s delay in reviewing and revising the NESHAP for oil and natural gas production facilities that are area sources is disconcerting as all signs indicate a dire need for stronger limits on toxic emissions from these sources. In the past eight years, there has been a surge in oil and gas development, fueled by hydraulic fracturing, or fracking, of shale formations. From coast to coast, fracking has taken over lands and communities, bringing unprecedented amounts of industrial oil and gas development. With oil and gas operations releasing significant amounts of air pollution, including toxic benzene, toluene, ethylbenzene, xylene, formaldehyde, and other harmful substances, the threats to clean air and public health are greater than ever.

Current area source standards for oil and natural production facilities are woefully outdated and inadequate to keep people safe and healthy. The standards apply only to triethylene glycol dehydrators, and even then only limit benzene emissions. Of concern is that the current area source rules fail to address toxic emissions from oil and gas production wells located in metropolitan areas or consolidated metropolitan statistical areas with a population in excess of 1 million.

In May of 2013, WildEarth Guardians and several other organizations petitioned the EPA to address the shortcomings in the current area source rules. *See* Petition for Listing and Rulemaking Under Section 112 of the Clean Air Act to Establish an Area Source Category for Oil and Gas Production Wells and Associated Equipment and to Set National Emission Standards for Hazardous Air Pollutant Emissions (May 13, 2014), available online at <http://earthjustice.org/sites/default/files/files/OilGasToxicWellsPetition51314.pdf>. In that petition, the groups noted that, in spite of the fact that oil and natural gas production operations release nearly 65,000 tons of hazardous air pollutants annually in the U.S., sources of toxic emissions, including oil wells, gas wells, hydraulically fracked gas and oil wells, and other equipment associated with wells that are area sources (with the exception of dehydrators), are not subject to regulation under Section 112 of the Clean Air Act. This petition was not yet been granted. In the meantime, EPA’s delay in meeting its eight year review deadline is allowing the risk of toxic emissions from oil and natural gas production facilities to grow, undermining public health and safety in communities throughout the nation.

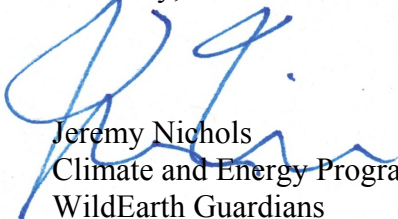
Failure to Perform a Nondiscretionary Duty

Under the Clean Air Act, the EPA was required to review and revise as necessary the NESHAP for oil and natural gas production facilities that are area sources by December 21, 2014 or alternatively by January 3, 2015 at the latest. *See* 42 U.S.C. § 7412(d)(6). This is a nondiscretionary duty under the Clean Air Act. As of the date of this letter, no such review or revision has occurred. In accordance with the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a)(2), we therefore intend to file suit after 60 days if the EPA has not followed through with this nondiscretionary duty.

WildEarth Guardians is a New Mexico-based nonprofit organization with offices in several western states. WildEarth Guardians is dedicated to protecting and restoring air quality and health throughout the American West and has thousands of members who are harmed by the failure of the EPA to follow through with its mandatory duties under the Clean Air Act. In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 516 Alto St., Santa Fe, NM 87501. For purposes of discussing this matter, please contact us at the information below.

WildEarth Guardians would prefer to resolve this matter without the need for litigation. Therefore we look forward to EPA contacting us to resolve this matter. Thank you.

Sincerely,



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cc: Janet McCabe, EPA, Assistant Administrator for Air and Radiation