EARTHJUSTICE
Because the earth needs a good lawyer

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA NEW YORK, NEW YORK OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

July 2, 2008

Stephen Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Notice of Intent to Sue Under the Clean Air Act for Failure to Review and Revise New Source Performance Standards for Crude Oil and Natural Gas Production, and Failure to Review and Revise National Emission Standards for Hazardous Air Pollutants and Promulgate Residual Risk Standards for Crude Oil and Natural Gas Production and Natural Gas Transmission and Storage.

Dear Administrator Johnson:

Rocky Mountain Clean Air Action, the Environmental Integrity Project, Natural Resources Defense Council, Oil and Gas Accountability Project, a project of Earthworks, Powder River Basin Resource Council, and San Juan Citizens Alliance[1] hereby provide notice, pursuant to Section 304(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(b), of their intent to file suit against you and the Environmental Protection Agency (collectively "EPA") for EPA's failure to timely review, revise and promulgate air pollution standards applicable to oil and natural gas production, processing, transmission and storage operations. Specifically, we intend to file suit for EPA's failure to: (1) timely review and, if appropriate, revise the New Source Performance Standards ("NSPS") for the Crude Oil and Natural Gas Production source category, as required by CAA § 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B); (2) timely review and, if necessary, revise the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories, as required by CAA § 112(d)(6), 42 U.S.C. § 7412(d)(6); and (3) promulgate

[1] The full names and addresses of the persons giving this notice are: (1) Rocky Mountain Clean Air Action, Attention Jeremy Nichols, Director, 1536 Wynkoop, Suite 302, Denver, CO 80202; (2) Environmental Integrity Project, Attention Eric Schaeffer, Executive Director, 1920 L St. NW, Suite 800, Washington, D.C. 20036; (3) Natural Resources Defense Council, Attention Sharon Buccino, Director, Land Program, 1200 New York Ave. NW, Suite 400, Washington, D.C. 20005; (4) Oil and Gas Accountability Project, a project of Earthworks, Attention Renee Lewiz-Kosnik, 8361/2 Main Avenue, Durango CO 81302; (5) Powder River Basin Resource Council, Attention Shannon Anderson, 934 N. Main St., Sheridan, WY 82801; and (6) San Juan Citizens Alliance, Attention Mark Pearson, 1022 ½ Main Ave., Durango, CO 81302. These organizations have individual members who have been and continue to be injured by EPA's failure to perform the nondiscretionary duties that are the subject of this letter.

1400 GLENARM PLACE, #300 DENVER, CO 80202-5050
T: 303.623.9466 F: 303.623.8083 E: eajusco@earthjustice.org W: www.earthjustice.org

"residual risk standards" for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories or determine that such standards are not necessary as required by CAA § 112(f)(2), 42 U.S.C. § 7412 (f)(2).

The existing standards for the source categories that EPA has failed to review and revise that are the subject of this notice include the standards listed in Table 1.

We intend to file suit under CAA § 304(b) sixty days from the date of this letter, or shortly thereafter, for EPA's failure to perform acts or duties under CAA §§ 111(b)(1)(B), 112(d)(6), and 112(f)(2) that are not discretionary. The suit will seek declaratory and injunctive relief, costs of litigation, including attorneys' fees, and other relief as may be necessary. A detailed overview of the non-discretionary duties EPA has failed to perform is discussed below.

Table 1. New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Which the Administrator has Failed to Timely Review and Revise.

Standard	Date Promulgated	Federal Register Cite	Code of Federal Regulations
New Source Performance Standards for Equipment Leaks of VOCs from Onshore Natural Gas Processing Plants	24-Jun-85	50 Fed. Reg. 26122	40 CFR Part 60, Subpart KKK
New Source Performance Standards for Onshore Natural Gas Processing: SO2 Emissions	1-Oct-85	50 Fed. Reg. 40158	40 CFR Part 60, Subpart LLL
National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities, Major Sources	17-Jun-99	64 Fed. Reg. 32610	40 CFR Part 63, Subpart HH
National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities, Major Sources	17-Jun-99	64 Fed. Reg. 32610	40 CFR Part 63, Subpart HHH

1. Crude Oil and Natural Gas Production NSPS.

In Section 111 of the CAA, 42 U.S.C. § 7411, Congress directed EPA to establish, review and update standards of performance for new and modified sources of air pollution. Section 111(b)(1)(A) requires EPA to publish a list of categories of stationary sources which, in the judgment of the Administrator, "cause[], or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." For each source category listed by EPA pursuant to § 111(b)(1)(A), EPA must publish regulations establishing standards of performance for new and modified sources within the source category. CAA § 111(b)(1)(B). The standards must reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such

reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." ("Best Demonstrated Technology" or "BDT"). CAA § 111(a)(1). In order to ensure that the standards continue to impose BDT as emission control technologies evolve, Congress mandated that EPA "shall, at least every 8 years, review and, if appropriate, revise such standards." CAA § 111(b)(1)(B).

In 1979, EPA listed Crude Oil and Natural Gas Production on its "priority list" of source categories which it determined "cause[], or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 44 Fed. Reg. 49222 (August 21, 1979) (codified at 40 C.F.R. § 60.16). EPA listed Crude Oil and Natural Gas Production as No. 29 on its prioritized list of 59 source categories slated for NSPS development. 44 Fed. Reg. 49225-26. The Crude Oil and Natural Gas Production Source category encompasses a wide range of equipment and associated emission units located at wellheads, gas processing plants and intermediate locations, including tanks, pumps, compressors, pneumatic devices, dehydrators, sweetening units, sulfur recovery units, and separators. This equipment and associated emission units emit significant amounts of a numerous air pollutants, including volatile organic compounds ("VOCs"), nitrogen oxides, sulfur dioxide, methane, carbon dioxide, and a number of hazardous air pollutants ("HAPs") discussed below.

By listing Crude Oil and Natural Gas Production as a source category under § 111(b)(1)(A), EPA triggered the requirement to promulgate NSPSs for sources within the source category. CAA § 111(b)(1)(B). In 1985 EPA promulgated NSPSs for a limited number of the air pollutants emitted by a limited subset of the emissions units included in the Crude Oil and Natural Gas Production source category. Specifically, EPA promulgated NSPSs for Equipment Leaks of VOCs From Onshore Natural Gas Processing Plants, 50 Fed. Reg. 26122 (June 24, 1985) (codified at 40 C.F.R. Part 60, Subpart KKK), and for Onshore Natural Gas Processing SO2 Emissions, 50 Fed. Reg. 40158 (October 1, 1985) (codified at 40 C.F.R. Part 60, Subpart LLL). These standards apply only to VOC emissions from leaking equipment and emissions of SO2 from natural gas processing plants. EPA has never established NSPSs for operatioins within the Crude Oil and Natural Gas Production source category that are not located at natural gas processing plants, including emissions from well-head emission units. Nor has EPA promulgated NSPSs for the numerous other air pollutants emitted by the Crude Oil and Natural Gas Production source category.

Although required to do so "at least every 8 years," (CAA § 111(b)(1)(B)), EPA has not reviewed or revised its NSPSs for the Crude Oil and Natural Gas Production source category within the last 8 years or at any other time since originally promulgating the limited requirements for natural gas processing plant VOC and SO2 emissions in 1985. Referencing the NSPS at 40 CFR Part 60, Subparts KKK and LLL, EPA admitted in response to a Freedom of Information Act ("FOIA") request that "We have not initiated review of the NSPS." See Letter from Stephen D. Page, Dir., Office of Air Quality Planning and Standards, U.S. EPA (April 15, 2008), attached as Exhibit 1.

Section 111(b)(1)(B) provides that EPA need not conduct a review if it determines that "such review is not appropriate in light of readily available information on the efficacy of such standard." However, EPA has never made such a determination for the NSPSs for the Crude Oil

and Natural Gas Production source category. Nor could EPA lawfully make such a determination today. Indeed, EPA's failure to review and revise the NSPSs has resulted in outdated standards that do not reflect BDT today and fail to control emissions from numerous emission units. For example, with regard to the NSPS at 40 CFR Part 60, Subpart KKK, newer technologies enable operators of natural gas processing plants to more effectively limit equipment leaks of VOCs. More effective leak screening techniques, including the use of infrared imaging technology, can enable operators to more frequently inspect for leaks and achieve lower emissions. See "Directed Inspection and Maintenance and Infrared Leak Detection," U.S. EPA Natural Gas STAR Program, (April 29, 2008), attached as Exhibit 2. In addition, numerous uncontrolled pneumatic devices at gas processing plants and other locations emit massive amounts of VOCs into the air despite the ready availability of a number of control technologies that some operators have found economically beneficial to install. See "Options for Reducing Methane Emissions from Pneumatic Devices in the Natural Gas Industry," U.S. EPA Natural Gas STAR Program (July 2003), attached as Exhibit 3. Uncontrolled VOC emissions from condensate, crude oil, and other hydrocarbon storage tanks can also be controlled in a cost-effective manner. See "Installing Vapor Recovery Units on Crude Oil Storage Tanks," U.S. EPA Natural Gas STAR Program (October 2003), attached as Exhibit 4. Further, massive amounts of VOCs are routinely released during well-completions, despite the availability of readily-available control technology. See "Green Completions," U.S. EPA Natural Gas STAR Program (September 2004), attached as Exhibit 5. The NSPSs also fail to establish VOC emission limits from other operations, including, but not limited to, glycol dehydrators, blowdowns, pigging operations, and fugitive emissions from equipment not located at natural gas processing plants.

The NSPSs for the Oil and Natural Gas Production source category also fail to establish limits for other pollutants, including carbon dioxide and methane, the two most significant greenhouse gasses contributing to global warming. According to EPA, natural gas systems are the nation's second largest source of methane emissions, and methane is more than twenty times as potent a greenhouse gas as carbon dioxide. See http://epa.gov/methane/ and http://epa.gov/methane/sources.html. Technology to control methane emissions, which numerous operators have found it cost effective to install, is readily available. See Exhibits 2, 3, 4, and 5.

EPA's failure to comply with its mandatory statutory duty under CAA § 111(b)(1)(B) to review, and, as appropriate, revise the NSPSs for the Crude Oil and Natural Gas Production Source category has caused the NSPSs to fail to serve their technology-forcing purpose, and has resulted in excessive emissions of air pollutants that may reasonably be anticipated to endanger the public health and welfare. Natural gas operations are continuing to proliferate at an unprecedented pace throughout the Rocky Mountain West. These operations are among the Region's primary sources of air pollution contributing to high ozone levels that have adverse impacts on people's health. With increased natural gas development, pollution levels and health impacts that have historically affected the Region's large metropolitan areas, are now spreading to more rural areas, including Sublette County, Wyoming and San Juan County, New Mexico. Further, the industry recently has expressed significant interest in expanding operations into new areas of the East's Appalachian Mountain Region, including New York's Catskill Mountains. EPA must comply with its mandatory duty to review and revise its NSPSs to ensure that the best

demonstrated technology is deployed to reduce air pollution from the oil and gas industry's expanding operations, thereby preventing unnecessary public health and global warming impacts.

2. Oil and Natural Gas Production and Natural Gas Transmission and Storage Major Source NESHAPs.

Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate regulations requiring control of emissions of HAPs from major sources. In § 112(b), Congress established an initial list of HAPs, which EPA must periodically review and revise. Section 112(c)(1) requires EPA to publish a list of all categories and subcategories of major sources of the HAPs included in the § 112(b) list. EPA must establish emission standards under § 112(d) for each category and subcategory of major sources of HAPs listed by EPA under § 112(c)(1). §§ 112(c)(2), (d); 42 U.S.C. 7412(c)(2), (d). The required emission standards "shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to [Section 112] (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory . . . ." § 112(d)(2); 42 U.S.C. § 7412(d). ("Maximum Achievable Control Technology" or "MACT"). Section 112(g) mandates that EPA "shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under [Section 112] no less often than every 8 years."

In 1992, EPA included "Oil and Natural Gas Production" in its initial list of categories of major sources of HAPs promulgated under § 112(c)(1). 57 Fed. Reg. 31576 (July 16, 1992). EPA subsequently divided the original Oil and Natural Gas Production major source category into two separate major source categories—Oil and Natural Gas Production and the newly created Natural Gas Transmission and Storage major source category. 63 Fed. Reg. 7155 (February 12, 1998). Significant quantities of HAPs, including benzene, toluene, ethyl-benzne, mixed xylenes and n-hexane are emitted by operations included in these major source categories. 64 Fed. Reg. 32610. Benzene is a known human carcinogen, and, each of these HAPs causes serious adverse impacts on human health. Id. at 32610, 32611.

On June 17, 1999, EPA promulgated under § 112(d) its NESHAPs for the Oil and Natural Gas Production, and Natural Gas Transmission and Storage major source categories. 64 Fed. Reg. 32610 (June 17, 1999) (codified at 40 CFR Part 63, Subparts HH and HHH).[2] The

[2] Section 112 requires regulations for both major and area sources of hazardous air pollutants. A major source of hazardous air pollutants is defined as:

> [A]ny stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.

NESHAPs limit HAP emission from some but not all of the points of emissions of hazardous air pollutants at major sources of HAPs within the two source categories. Specifically, the NESHAPs limit emissions from certain: (1) process vents on glycol dehydration units; (2) storage vessels with flash emissions; and (3) equipment leaks at natural gas processing plants. See 64 Fed. Reg. 9-16. The NESHAPs do not limit emissions from other points of emissions of hazardous air pollutants within the two major source categories, including pneumatic devices.

Although required to do so "no less often than every eight years" (CAA § 112(d)(6)), EPA has failed to review and revise the NESHAPs for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories in the approximately 9 years since promulgation of the NESHAPs in June 1999.[3] EPA's failure to review and revise as necessary the NESHAPs for these major source categories violates nondiscretionary duties set forth at CAA § 112(d)(6), 42 U.S.C. § 7412(d)(6).

EPA's failure to comply with its mandatory duties to review, and, if necessary, revise the NESHAPs raises significant concerns that oil and natural gas production facilities and natural gas transmission and storage facilities are not meeting air pollution emission standards that constitute MACT. Indeed, with regards to the NESHAP at 40 CFR Part 63, Subpart HH, newer technologies enable operators of oil and gas natural gas production facilities that are major sources to more effectively limit HAPs from a greater number of sources. For example, current technologies enable affected sources to reduce HAP emissions from pneumatic controllers, which are not currently addressed by 40 CFR Part 63, Subpart HH. See Ex. 3, attached.

3. Oil and Natural Gas Production and Natural Gas Transmission and Storage Major Source Residual Risk Standards.

Section 112(f)(2) of the CAA, 42 U.S.C. § 7412(f)(2), requires EPA to promulgate standards in addition to the standards promulgated under CAA § 112(d) for each category or subcategory of sources if required to provide an "ample margin of safety to protect public health" or "to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect." The EPA must either promulgate such standards, known as residual risk standards, or determine that residual risk standards are not necessary "within 8 years after promulgation" of a standard under § 112(d). See CAA § 112(f)(2)(A), 42 USC § 7412(f)(2)(A).[4]

---

42 USC § 7412(a)(1). As discussed above, EPA promulgated NESHAPs for oil and gas facilities that are major sources of HAPs in 1999. The EPA promulgated a NESHAP for Oil and Natural Gas Production area sources in 2007. See, 72 Fed. Reg. 26-43. This Notice of Intent addresses only the major source NESHAPs.

[3] Although EPA has indicated it has "initiated review" of 40 CFR Part 63, Subparts HH and HHH, it has not completed such review or revised, as necessary, the NESHAP. See Exhibit 1.

[4] Specifically, EPA is required to promulgate a residual risk standard within eight years after the promulgation of a standard at Section 112(d) if Congress fails to act on any recommendation of EPA submitted pursuant to Section 112(f)(1). Section 112(f)(1) provides that EPA shall report to and provide recommendations on any need for legislation to reduce the risk of hazardous air pollutant exposure above and beyond what is already required by Section 112(d). Congress has

As explained above, the § 112(d) NESHAPs for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories were promulgated in June 1999, approximately nine years ago. Since that time, EPA has not promulgated any residual risk standards for those major source categories. Nor has EPA determined that such standards are not necessary. The EPA's failure to either promulgate residual risk standards under § 112(f) for the Oil and Natural Gas Production and Natural Gas Transmission and Storage major source categories, or to determine that such standards are not necessary violates nondiscretionary duties under § 112(f)(2)(A).

We intend to bring suit sixty days from the date of this letter, or shortly thereafter, under Section 304 of the federal Clean Air Act, 42 USC § 7604, against EPA for its failure to perform the non-discretionary duties set forth in 42 USC § 7411(b)(1)(B), 42 USC § 7412(d)(6), and 42 USC § 7412(f)(2) described above. If you have any questions regarding this notice, believe any of the statements in this notice letter to be in error, or wish to discuss a possible resolution of this matter, please contact me at 303 996-9617. Thank you.

Sincerely,

Nicholas F. Persampieri

---

not acted on any of EPA's recommendations submitted pursuant to Section 112(f)(1). Thus EPA is bound by Section 112(f)(2) to promulgate a residual risk standard in a timely manner.