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July 8, 2013

Administrator, U.S. Environmental Protection Agency  
Attention: Bob Perciasepe, Acting Administrator  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Van H. Beckwith  
TEL +1 214.953.6505  
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**Re: Notice of Intent to File Citizen Suit**

Dear Acting Administrator Perciasepe:

The BCCA Appeal Group hereby respectfully submits this Notice of Intent to Sue pursuant to section 304(b)(2) of the federal Clean Air Act, 42 U.S.C. § 7604(b)(2), and in accordance with 40 C.F.R. Part 54. After the expiration of 60 days from the date of this letter, we intend to file suit in U.S. District Court to address EPA's failure to promulgate designations of areas for the 1-hour national ambient air quality standard for sulfur dioxide ("SO2"), 40 C.F.R. § 50.17.

The statute provides that EPA "shall promulgate" designations for all areas within 2 years of issuing or revising an ambient air quality standard. EPA may extend this deadline by "up to one year in the event the Administrator has insufficient information to promulgate the designations." 42 U.S.C. § 7407(d)(1)(B)(i). The agency has acknowledged that these provisions, considered together, mean that the "deadline for EPA to promulgate designations for the 2010 primary SO2 NAAQS is June 3, 2013." 77 Fed. Reg. 46,295 (Aug. 3, 2012).

EPA must designate areas on this schedule, even if it lacks comprehensive air quality information. An area should be designated "unclassifiable" if it "cannot be classified on the basis of available information as meeting or not meeting" the relevant air quality standard. 42 U.S.C. § 7407(d)(1)(A)(iii).

We are giving this notice because EPA has not promulgated the SO2 designations consistent with this mandatory timeframe and has indicated that designations are not forthcoming. For example, Regional Administrator Curry's February 7, 2013 letter to Texas Governor Rick Perry (copy attached) indicated that EPA will not timely designate areas in Texas for SO2.

For any discussion or correspondence regarding this notice, please contact BCCA Appeal Group's undersigned representative at the address shown on this letter. However, for purposes of 40 C.F.R. § 54.3(a), this notice is given by BCCA Appeal Group, a Texas non-profit corporation with the following mailing address: 1221 McKinney Street, Suite 700, Houston, TX 77010

Despite this notice, BCCA Appeal Group would welcome an opportunity to discuss this matter further with you. We believe such a discussion could lead to a positive conclusion without the need to file suit. For example, BCCA Appeal Group would welcome an immediate promulgation by EPA of designations for the SO2 standard for all areas in Texas, consistent with Governor Perry's April 20, 2012 recommendation (copy attached). We note that EPA need not give 120 days' notice before designating unless EPA intends to depart from the state's recommended designations. While EPA gave such notice for areas in other states, it gave no such notice for Texas. Accordingly, designations consistent with the Governor's recommendation are now timely.

Sincerely,

A handwritten signature in black ink, appearing to read "Van H. Beckwith". The signature is written in a cursive, somewhat stylized font.

Van H. Beckwith

Attachments (2)

cc: Ron Curry, Regional Administrator, EPA Region VI  
Stephanie Bergeron Perdue, Special Counsel, TCEQ



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TEXAS 75202 - 2733

Office of the Regional Administrator

February 7, 2013

The Honorable Rick Perry  
Governor of Texas  
Post Office Box 12428  
Austin, Texas 78711

Dear Governor Perry:

Thank you for your recommendations dated June 2, 2011, and April 20, 2012, on air quality designations for the state of Texas for the 2010 revision to the primary National Ambient Air Quality Standard for sulfur dioxide. Reducing levels of sulfur dioxide pollution is an important part of the U. S. Environmental Protection Agency's commitment to a clean, healthy environment. Exposure to SO<sub>2</sub> can cause a range of adverse health effects, including narrowing of the airways which can cause difficulty breathing and increased asthma symptoms. This letter is to notify you of the EPA's preliminary intentions regarding your recommended designations.


On June 3, 2010, the EPA strengthened the health-based or "primary" standard for SO<sub>2</sub> by establishing a standard for 1-hour average SO<sub>2</sub> concentrations at a level of 75 parts per billion. The Clean Air Act requires the EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to one year. On July 27, 2012, the EPA announced that it had insufficient information to complete the designations for the 1-hour SO<sub>2</sub> standard within two years and extended the designations deadline to June 3, 2013.

At this time, the EPA is proceeding with designating as nonattainment most areas in locations where existing monitoring data from 2009-2011 indicate violations of the 1-hour SO<sub>2</sub> standard. The EPA intends to address the designations for all other areas in separate future actions. With input from a diverse group of stakeholders, the EPA has developed a comprehensive implementation strategy for these future actions that focuses resources on identifying and addressing unhealthy levels of SO<sub>2</sub>. The strategy is available at: <http://www.epa.gov/airquality/sulfurdioxide/implement.html>. The EPA will continue to work closely with you and our other partners at the state, tribal and local levels to ensure health-protective, commonsense implementation of the 1-hour SO<sub>2</sub> standard.

The EPA's review of the most recent monitored air quality data from 2009-2011 shows no violations of the 2010 SO<sub>2</sub> standard in any areas in Texas. Consequently, the EPA is not yet prepared to propose designation action in Texas and is therefore currently deferring action to designate areas in Texas. The EPA expects to be able to proceed with designation action in Texas once additional data are gathered pursuant to our comprehensive implementation strategy. In a separate future action or actions the EPA will notify you of our intended designations for these areas, and seek public comment on these actions, no later than 120 days prior to promulgating any final designations.

We look forward to a continued dialogue with you and your staff as we work together to implement the 2010 primary SO<sub>2</sub> standard. For additional information regarding initial designations on the SO<sub>2</sub> standard, please visit our website at [www.epa.gov/so2designations](http://www.epa.gov/so2designations). Should you have any questions, please do not hesitate to call me at (214) 665-2100, or have your staff contact Mr. Guy Donaldson of my staff at (214) 665-7242, or via email at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov).

Sincerely,



Ron Curry  
Regional Administrator

cc: Mr. Bryan W. Shaw, Ph.D.  
Chairman, Texas Commission on Environmental Quality

Mr. Zak Covar  
Executive Director, Texas Commission on Environmental Quality

Mr. Steve Hagle, P.E.,  
Deputy Director, Air, Texas Commission on Environmental Quality



**OFFICE OF THE GOVERNOR**

RICK PERRY  
GOVERNOR

April 20, 2012

Al Armendariz, Ph.D.  
Regional Administrator  
U.S. Environmental Protection Agency (EPA), Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Dear Dr. Armendariz:

Pursuant to the requirements in Section 107(d)(1)(A) of the Federal Clean Air Act, enclosed is a revised recommendation for designation of areas in Texas with regard to the 2010 National Ambient Air Quality Standard for one-hour sulfur dioxide (SO<sub>2</sub>) of 75 parts per billion (ppb). The most recent monitoring data show that Jefferson County is now in attainment of the standard. I am requesting to revise my recommendation to reflect this change.

The Texas Commission on Environmental Quality (TCEQ) developed the enclosed revision to the June 2011 Texas recommendation, considering the latest available, certified regulatory monitoring data for Jefferson County from the 2009 – 2011 period. This revised recommendation reflects the improved air quality in Jefferson County, which has a 2009 – 2011 design value of 68 ppb. In accordance with the EPA Office of Air Quality Planning and Standards' Director Stephen Page's March 24, 2011, SO<sub>2</sub> area designations memorandum, the commission understands that EPA intends to accept the most recently certified three years (2009 – 2011) of monitoring data as the basis for modifying previously submitted state designations.

If you have any questions or need additional information, please feel free to contact TCEQ Chairman Dr. Bryan Shaw at (512) 239-5510.

Sincerely,

A handwritten signature in black ink that reads "Rick Perry". The signature is written in a cursive, slightly slanted style.

Rick Perry  
Governor

RP:trp

Enclosure

cc: Bryan W. Shaw, Ph.D.

State of Texas  
 2010 One-Hour Sulfur Dioxide (SO<sub>2</sub>) Standard  
 Revised Designation Recommendation

Based on the 2011 design values, each county listed below should be designated attainment. All the rest of the counties in Texas should be designated unclassifiable.

<b>County</b>	<b>2010 Design Value*</b>	<b>2011 Design Value**</b>
Jefferson	77	68
Gregg	66	NA
Ellis	57	NA
Harris	56	NA
Galveston	41	NA
Nueces	28	NA
Kaufman	14	NA
El Paso	11	NA
Dallas	9	NA
McLennan	6	NA

\* 2010 design values are calculated using 2008 through 2010 certified monitoring data.

\*\* 2011 design values are calculated using 2009 through 2011 certified monitoring data. Only Jefferson County data have been certified by the TCEQ for 2011 on an expedited basis.

NA = not available