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## By Certified Mail

January 25, 2013

Administrator Lisa Jackson  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

AK-13-00-1225

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RECEIVED  
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### Re: Notice of Intent to File Citizen Suit

Dear Administrator Jackson:

On behalf of the BCCA Appeal Group ("Petitioner"), we respectfully submit this Notice of Intent to Sue pursuant to Section 304(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(b)(2) and in accordance with 40 C.F.R. Part 54. After the expiration of sixty days from the date of this letter, Petitioner intends to file suit in U.S. District Court to address EPA's failure to perform the non-discretionary duty of acting on Texas State Implementation Plan ("SIP") submittals relating to air quality permitting. See 42 U.S.C. § 7410(k). The CAA provides for this 60-day period before suit is filed to give EPA time to comply with the law voluntarily or to negotiate a settlement.

The BCCA Appeal Group was incorporated in January 2001 with the purpose of advancing the common interests of its members with respect to their mutual goals of clean air and a strong economy in Texas. The group has been a leading advocate in the development of the Texas air quality plans, and has consistently brought forward insights and input that strengthened those plans.

The CAA requires EPA to determine within a six-month period whether state implementation plan submittals meet minimum criteria, and to approve or disapprove such submittals within 12 months of the initial determination of completeness. 42 U.S.C. § 7410(k)(1)(B) and (k)(2). The State of Texas submitted its Flexible Permits program as a SIP revision on November 29, 1994, and its Pollution Control Project Standard Permit regulations as a SIP revision on February 1, 2006.

After sixteen-year and three-year delays, respectively, EPA disapproved these revisions in 2010. The United States Court of Appeals for the Fifth Circuit has since vacated those disapprovals. See *State of Texas v. EPA*, 690 F.3d 670, 673 (5th Cir. 2012); *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir 2012). The Fifth Circuit's vacatur of EPA rulemaking restores EPA's pre-existing obligations. As a result, EPA's mandatory duty to act on these SIP revisions remains unsatisfied.

Petitioner felt compelled to give notice of its intent to file suit because of EPA's indication that, as a result of its earlier rulemakings, there is no deadline to respond to the Fifth

Circuit's vacatur of those rulemakings. Petitioner sees this position as inconsistent with the Fifth Circuit's instruction to "expeditiously" reconsider the submittals in light of the prolonged delay between initial submittal and the Agency's 2010 actions. *See Luminant Generation Co.*, 675 F.3d at 932. Additional delay constitutes a further failure to perform a nondiscretionary duty and causes continued uncertainty for the regulated community in Texas.

In addition to the Flexible Permit and Pollution Control Project Standard Permit SIP submittals, EPA has also failed to act within the statutory period on the following Texas SIP revisions and BCCA hereby provides notice of its intent to file suit for EPA's failure to act on these submittals:

- Qualified Facilities (30 Tex. Admin. Code § 116.17 et seq) — submitted October 5, 2010;
- Public Participation (30 Tex. Admin. Code § 39.402 et seq) — submitted June 18, 2010;
- Definitions to Implement PM2.5 National Ambient Air Quality Standards (30 Tex. Admin. Code § 101.1(25), (75), (76) and (78)) — submitted May 19, 2011;
- Title V Stringency Determinations (30 Tex. Admin. Code § 101.28) — submitted December 17, 1999;
- Chapter 116 Definitions (BACT Definition at 30 Tex. Admin. Code § 116.10(3); Permit By Rule Cross-Reference at § 116.10(9)(A)) — submitted October 5, 2010;
- Standard permit provisions (30 Tex. Admin. Code § 116.601(a)(1)) — submitted March 11, 2011; and
- Permit application review schedule (30 Tex. Admin. Code § 116.114(a)(2)) — submitted October 25, 1999.

Despite this notice, we hope to continue a productive dialogue with EPA towards full and final program approval. We believe discussion will be beneficial to both Petitioners and EPA, and we look forward to reaching a positive conclusion without the need to file suit.

This Notice is submitted on behalf of Petitioners by:

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Best regards,



Van H. Beckwith

cc: Ron Curry, Regional Administrator, EPA Region VI  
Stephanie Bergeron Perdue, Deputy Director, Legal Services, TCEQ