

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-02748-RBJ-MJW

WILDEARTH GUARDIANS,

Plaintiff,

v.

GINA McCARTHY, in her official capacity as
Administrator of the United States Environmental
Protection Agency,

Defendant.

**AFFIDAVIT AND DECLARATION IN SUPPORT OF MOTION TO INTERVENE BY THE
STATE OF OKLAHOMA AND THE
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY**

BEFORE ME, the undersigned authority, personally appeared John Edward Terrill, and
being by me duly sworn on his oath states:

1. My name is John Edward Terrill. I am over 21 years of age and am fully
competent and duly authorized to make this Declaration. The facts contained in this Declaration
are based on personal knowledge and are true and correct.

2. I am employed by the Oklahoma Department of Environmental Quality
("ODEQ") as the Division Director of the Air Quality Division. ODEQ is the agency charged
with implementing and enforcing the State's various environmental regulatory programs. The
ODEQ oversees the State's various environmental programs, including Clean Air Act ("CAA")
programs to implement new and revised national ambient air quality standard ("NAAQS"). The
ODEQ oversees the State's permitting programs for stationary sources under Titles I and V of

the CAA, which includes the requirement that Oklahoma submit an infrastructure state implementation plan (“Infrastructure SIP”) that provides for the implementation, maintenance and enforcement of the revised nitrogen dioxide (“NO₂”) NAAQS.

3. An ambient standard establishing a new 1-hour limit on ambient NO₂ concentrations throughout the country was signed by the EPA Administrator on January 22, 2010, published in the Federal Register on February 9, 2010, and became effective on April 12, 2010 (the “1-hour NO₂ Standard”). 75 Fed. Reg. 6474 (February 9, 2010)

4. In accordance with CAA § 107(d), 42 U.S.C. § 7407(d), the Governor of the State of Oklahoma by letter dated January 3, 2011, submitted to the Administrator of the EPA the State’s NO₂ ambient monitoring data that demonstrates compliance in all areas of the State with the new 1-hour NO₂ NAAQS. *See* Ex. A. Oklahoma recommended to EPA that the entire State be designated as attainment for the 1-hour NO₂ NAAQS. The data relied upon by the State to make these designations came from its NO₂ network of air quality monitors.

5. On February 17, 2012, EPA published in the Federal Register NO₂ NAAQS designations for all areas within the United States. 77 Fed. Reg. 9532 (Feb. 17, 2012). In that final rule, EPA designated all areas of the nation as unclassifiable/attainment.

6. On September 13, 2013, nine months after Oklahoma was required to submit to EPA its Infrastructure SIP, EPA issued its “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” (“Infrastructure SIP Guidance”).

7. ODEQ learned in October 2013, that Plaintiff had submitted to EPA a Notice of Intent to file the present suit. In December 2013, ODEQ learned that Plaintiff filed the Complaint.

8. On January 15, 2014, ODEQ posted on its “What’s New In Air Quality?” website the Notice of Opportunity for Public Hearing and Comment on Oklahoma’s proposed Section 110 Infrastructure SIP Submittal for the 2010 Primary Nitrogen Dioxide (NO₂) NAAQS (“Notice”). See <http://www.deq.state.ok.us/AQDNEW/whatsnew/index.htm>; see also Ex. B. The Notice provides that the public will have a minimum of 30-days from January 15 in which to comment on the proposed SIP. If a member of the public requests a public hearing on the proposed Infrastructure SIP, ODEQ has scheduled that public hearing to occur at the close of the public comment period on February 19, 2014. Dependent upon the nature of the comments received, ODEQ anticipates forwarding the Infrastructure SIP to the Oklahoma Secretary of Energy and Environment for review and submission to EPA prior to March 15, 2014.

9. Because there had never been a 1-hour NO₂ Standard prior to EPA’s promulgation of the NO₂ NAAQS in 2010, Oklahoma’s Infrastructure SIP had to be revised in order to accommodate the new 1-hour Standard. It has been EPA’s practice to issue guidance for preparation of the Infrastructure SIP for each new or revised NAAQS promulgated ODEQ has consistently relied upon EPA’s guidance when evaluating how to proceed with developing Infrastructure SIPs. States depend on this guidance to ensure that the Infrastructure SIP revisions they submit to EPA will comply with EPA’s interpretation of the basic program elements set forth in section 110(a)(2)(A)-(M) for a particular NAAQS. In its final rule adopting the 1-hour NO₂ Standard, EPA committed to provide States guidance on their preparation of the 2010 Primary NO₂ NAAQS Infrastructure SIP. Oklahoma began developing and preparing its Infrastructure SIP for the 2010 NO₂ NAAQS long before the Infrastructure SIP Guidance was

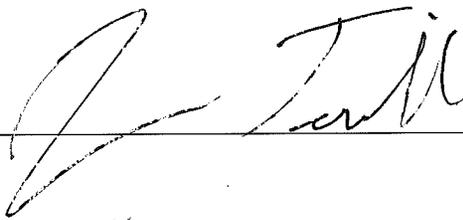
issued. However, the final development of the proposed Infrastructure SIP was delayed until after the Infrastructure SIP Guidance was issued in order to avoid making a submittal that would be considered incomplete or one that would contain unnecessary information. Oklahoma has invested many hours of time and State resources working on preparing its Infrastructure SIP and can speak to the benefits that its citizens will receive from its SIP.

10. For the reasons stated in Paragraph 9 above, Oklahoma chose not to proceed with finalizing its Infrastructure SIP until after EPA issued the Infrastructure SIP Guidance.

11. The interests of Oklahoma are directly at issue in the matter of *WildEarth Guardians v. McCarthy*. Plaintiff's claims against the EPA Administrator directly affect when and potentially how EPA will proceed with taking action on Oklahoma's Infrastructure SIP. As such, Oklahoma's interests will be harmed if it is not permitted to intervene in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

FURTHER AFFIANT SAYETH NOT.



Subscribed and sworn to before me on this 28th day of January, 2014, by

[John Terrill] in Oklahoma County, Oklahoma.

Witness my hand and official seal.

Deb Carter
Notary Public

My commission expires: 6/2/17



Exhibit A

RECEIVED - EPOL
AIR PLANNING SEC.
11 JAN 13 PM 6:10



Received
JAN 10 2011
COX A

Brad Henry
Governor

January 3, 2011

6RA...*copy*.....6EN.....
6DRA...*copy*.....6WQ.....
6MD.....6SF.....
6OEJ.....6RC.....
6PD...*original*...6XA...*3 copies*...
control

Dr. Alfredo Armendariz, Regional Administrator
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Subject: Designation Recommendation for 2010 Nitrogen Dioxide NAAQS

Dear Dr. Armendariz:

On January 22, 2010, the U.S. Environmental Protection Agency (EPA) promulgated a new health-based National Ambient Air Quality Standard for nitrogen dioxide (NO₂). The final rule, published in the Federal Register on February 9, 2010 (75 FR 6474), set a new 1-hour NO₂ NAAQS of 100 parts per billion (ppb). As required by Section 107 (d)(1)(A) of the federal Clean Air Act, I would like to provide for EPA's consideration my recommendations for Oklahoma's initial designations under the new NO₂ standard.

This recommendation is based on an evaluation performed by the Department of Environmental Quality (DEQ) of monitoring data collected in Oklahoma from 2008 through 2010 as specified in 40 CFR § 50.11 and in EPA guidance. Monitored data collected in Oklahoma indicates no violations of the new 1-hour NO₂ standard. As the new near-road monitoring network requirements associated with the revised NO₂ NAAQS are not effective until January 2013, I recommend a designation of attainment for all counties in Oklahoma.

Sincerely,

Brad Henry
Governor

Cc: J.D. Strong, Secretary of the Environment
Steven Thompson, Executive Director, Oklahoma Department of Environmental Quality
Eddie Terrill, Director of Air Quality

Exhibit B

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
Notice of Opportunity for Public Hearing and Comment Oklahoma's
Section 110 Infrastructure SIP Certification
2010 Primary Nitrogen Dioxide (NO₂) NAAQS

The Oklahoma Department of Environmental Quality (DEQ) hereby announces an opportunity to comment on and request a public hearing on the proposed certification that Oklahoma has adequate resources and authority to implement, maintain, and enforce the 2010 Primary Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS). The hearing, if one is requested, will be held on Wednesday, February 19, 2014 from 10:00 a.m. to 12:00 noon in the 1st Floor Multipurpose Room of the DEQ, 707 North Robinson Avenue, Oklahoma City, OK 73102. **NOTE:** If no request for a public hearing is received by 4:30 p.m., Friday, February 14, 2014 (the close of the minimum 30-day notice period), the hearing will be cancelled, and a notice announcing that the hearing has been cancelled will be posted on the DEQ web site (<http://www.deq.state.ok.us/aqdnew/RulesAndPlanning/index.htm>) at least 24 hours prior to the scheduled time for the hearing. You may call (405) 702-4100 to find out if the hearing has been cancelled.

Under the Oklahoma Clean Air Act (27A OS §§ 2-5-101 thru 117), DEQ is given the primary responsibility and authority to prepare and implement Oklahoma's air quality management plan, compiled in 40 CFR Part 52, Subpart LL. The DEQ prepared the proposed certification to comply with the requirements contained in Section 110 of the federal Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This certification was prepared for submittal to the U.S. Environmental Protection Agency (EPA) under EPA's Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), issued 9/13/2013.

All persons interested in these matters are invited to submit written comments prior to the scheduled close of the public hearing (*i.e.*, 12:00 noon on Wednesday, February 19, 2014) and/or provide oral comments at the public hearing (if a hearing is requested and held). Persons planning to comment at the hearing may submit a written statement and/or additional information relevant to this matter for inclusion in the record of proceedings of the public hearing. The hearing officer may limit the length of oral presentations to allow all those who wish to provide oral comments an opportunity to do so.

The proposed certification is available on the DEQ website at <http://www.deq.state.ok.us/aqdnew/RulesAndPlanning/index.htm>. Copies may also be obtained from the Department by contacting Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100 or Cheryl.Bradley@deq.ok.gov.

Written comments and/or a public hearing request regarding the proposed 2010 Primary Nitrogen Dioxide (NO₂) NAAQS §110 Infrastructure SIP Certification should be emailed to Ms. Bradley at Cheryl.Bradley@deq.ok.gov or mailed to:

Department of Environmental Quality, Air Quality Division
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677
ATTN: Cheryl E. Bradley

Comments may be submitted by fax to the Air Quality Division, ATTN: Cheryl E. Bradley, at (405) 702-4101.

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.