



March 26, 2026

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Submitted via the Federal eRulemaking Portal at <https://www.regulations.gov>

Subject: Docket ID No. EPA-HQ-OGC-2024-0557; Prior Notice of Citizen Suits

The Association of Air Pollution Control Agencies (AAPCA)¹ submits these comments regarding the U.S. Environmental Protection Agency's (EPA) proposed rule, "Prior Notice of Citizen Suits."² State and local air agencies serve as co-regulators with U.S. EPA under the federal Clean Air Act (CAA), and AAPCA appreciates the opportunity to convey state and local agency member input.

CAA section 304(b), 42 U.S.C. § 7604(b), provides that any notice of intent (NOI) for a CAA citizen suit "shall be given in such manner as the Administrator shall prescribe by regulation." By that authority, U.S. EPA has significant latitude to update and refresh its notice procedures under 40 CFR Part 54, which haven't been updated since 1971. Proposed revised section 54.2 would specify giving an electronic "copy" of the notice to the Regional Administrators. We request that courtesy copy notice concept be expanded, specifically with the following as additional proposed language for insertion in Section 54.2:

Where notice relates to an alleged failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, and the act or duty concerns a particular State, a copy of such notice shall be sent electronically to the Regional Administrator of the Environmental Protection Agency for the Region and the authorized representative(s) of the State agency and local agencies who are charged with air pollution control in the State(s) or part(s) of the State at issue via the procedures identified at www.epa.gov/ogc.

This would be a justified and overdue change. Recent, wide-reaching cases illustrate how it is not sensible to exclude State and local air pollution authorities from such NOIs. For example, an NOI from September 2025 alleges overdue State Implementation Plan (SIP) elements for ten different states, spanning multiple U.S. EPA regions; the NOI provides no indication that copies of the notice to air quality agency representatives of the States were provided or ever contemplated. Similarly, an NOI from July

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. Created in 2012, AAPCA represents 53 state and local air pollution control agencies, and senior officials from 21 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of [The Council of State Governments](http://www.councilofstategovernments.org). More about AAPCA is at: www.cleanairact.org.

² [91 FR 8810](https://www.federalregister.gov/documents/2026/02/24/91-fr-8810) (February 24, 2026).

2025 had alleged overdue SIP elements for over a dozen California local air districts, but air districts only learned of this NOI from news reporting that a suit had already been filed in the U.S. District Court. The 2022 Memorandum of U.S. EPA Administrator Regan entitled *Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency*,³ had committed U.S. EPA to go beyond the requirements of law and past practice to post new NOIs and complaints to Office of General Counsel (OGC) website for public awareness, but U.S. EPA has, to date, overlooked doing so for this case and perhaps unknown others.

Prospective citizen suit plaintiffs should know and expect that a State would be interested in potential litigation regarding CAA requirements and implementation in the State. Examples may include litigation over one of the State's Title V permits (e.g., for an alleged failure under 42 U.S.C. 7661d(b)(2)), or its SIP requirements (e.g., for an alleged failure under 42 U.S.C. § 7410(k)(2)), or U.S. EPA's alleged duties to make attainment determinations for part of the State. In all these cases, it would be fair and sensible for state and local air quality authorities (as well as any relevant U.S. EPA regional offices) to receive a courtesy copy of any NOI concerning or affecting the work of the State programs.

Using the framework of proposed section 54.2, U.S. EPA can simply require as part of its intended OGC-posted procedure that prospective citizen suit plaintiffs will have to provide some form of copy to the chief executive or chief legal counsel for affected State and local air quality agencies. Simply expecting mailed or emailed notices would be reasonable and not credibly impede or burden any citizen suit plaintiffs. Any arguable deficiencies in providing the "copies" of the notice under Section 54.2(a) should not be a jurisdictional barrier to initiating suit (although non-adherence may be relevant to a court for possibly reducing any fees awarded under 42 U.S.C. § 7604(d)).

Thank you for your consideration of these comments. If you have any questions, please contact Ms. Morgan Dickie, Executive Director, at mdickie@csg.org or (859) 244-8042.

Sincerely,



Morgan Dickie
Executive Director, AAPCA

³ See U.S. EPA [memorandum](#) "Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency" (March 18, 2022).