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July 14, 2004

Kathleen Hartnett White, Chairman *VIA CERTIFIED MAIL/RRR*  
Office of Commissioners  
Texas Commission on Environmental Quality – MC 100  
P.O. Box 13087  
Austin, TX 78711-3087

R. B. “Ralph” Marquez, Commissioner *VIA CERTIFIED MAIL/RRR*  
Office of Commissioners  
Texas Commission on Environmental Quality – MC 100  
P.O. Box 13087  
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Larry R. Soward, Commissioner *VIA CERTIFIED MAIL/RRR*  
Office of Commissioners  
Texas Commission on Environmental Quality – MC 100  
P.O. Box 13087  
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Glenn Shankle, Acting Executive Director *VIA CERTIFIED MAIL/RRR*  
Texas Commission on Environmental Quality – MC 109  
P.O. Box 13087  
Austin, TX 78711-3087

**Re: 42 U.S.C. § 7604(b) NOTICE OF INTENT TO SUE TCEQ FOR  
FAILURE TO IMPLEMENT HOUSTON-GALVESTON SIP**

Dear Chairman White, Commissioners Marquez and Soward, and Mr. Shankle:

This letter is a formal notice of intent to sue pursuant to 42 U.S.C. § 7604(b) as required for actions under the Clean Air Act. By this letter, Galveston Bay Conservation and Preservation Association (GBPCA) is notifying the Texas Commission on Environmental Quality (TCEQ) of its intent to file suit against the TCEQ under the ‘Citizen Suits’ provision of the Clean Air Act. 42 U.S.C. § 7604. Section 7604(a)(1)(B) provides that any person may commence a civil action against a state governmental agency that is in violation of an order issued by the U.S. Environmental Protection Agency (EPA) with respect to a schedule or timetable of compliance with the Clean Air Act. § 7604(f).

GBPCA intends to file suit against TCEQ (1) for failure to adopt and submit the mid-course review SIP revision for the Houston-Galveston Ozone Non-Attainment Area by May 1, 2004, (2) failure to adopt and submit measures for the needed additional NOx reductions by the deadline of May 1, 2004, and (3) failure to expeditiously adopt rules needed for the additional NOx reductions in violation of the order of the EPA. EPA's final rule on the Texas SIP was published in 66 *Fed. Reg.* 57,160 *et seq.* The relevant pages of this publication are attached hereto.

Ozone is a pollutant for which a National Ambient Air Quality Standard (NAAQS) has been set. The Houston-Galveston Region has been out of attainment with the one-hour ozone standard since the passage of the Clean Air Act of 1970. The State of Texas through its environmental agency has failed to attain the national standard after 34 years. 34 years is enough time. By now, we should have a plan in place that would demonstrate achievement of the one-hour ozone standard yet we do not. That is unacceptable and violates the law.

Acting for the State of Texas, the Texas Natural Resource Conservation Commission (now TCEQ) filed the *Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution* for the Houston/Galveston Ozone Nonattainment Area on December 6, 2000. This is the plan that should by now be in place, improving the air quality of the region. This TCEQ filing contained a proposal for an enforceable commitment to complete the mid-course review process by May 1, 2004. It also contained proposals for enforceable commitments to adopt and submit measures for the remaining needed additional NO<sub>x</sub> reductions by May 1, 2004, and to expeditiously adopt the required rules for the additional NO<sub>x</sub> reductions. The EPA fully approved the Texas SIP and included these three enforceable commitments in the final rule published on November 14, 2001. 66 *Fed. Reg.* 57,160-161.

“The State's enforceable commitment to perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with any recommended mid-course corrective actions, to the EPA by May 1, 2004.”

“An enforceable commitment to adopt and submit to EPA by May 1, 2004 measures for the remaining needed additional NO<sub>x</sub> reductions.”

“An enforceable commitment that the rules needed for the additional NO<sub>x</sub> reductions will be adopted as expeditiously as practicable and the compliance dates will be expeditious.”

May 1, 2004 has come and gone. TCEQ has not adopted or submitted the mid-course review as required in the rule. TCEQ has not adopted or submitted the additional required NO<sub>x</sub> reduction measures as required by the rules. TCEQ has not adopted rules needed for the additional NO<sub>x</sub> reductions and therefore failed to act expeditiously. Such action is a violation of the Clean Air Act and GBCPA is hereby giving notice of its intent to sue to enforce compliance with a binding rule or order under the citizen suit provisions of the Clean Air Act.

TCEQ is the agency clearly responsible for carrying out these sections of the EPA final rule. The agency and the commissioners themselves are responsible for these violations of the EPA order. These violations occurred and are continuing to occur in Austin, Texas. The first violation occurred on May 2, 2004, and each day beyond that date is another continuing violation.

This notice of intent to sue is issued on behalf of the Galveston Bay Conservation and Preservation Association. GBCPA's address is P.O. Box 323, Seabrook, Texas 77586. The GBCPA telephone number is 281-326-3343, and fax number is 281-326-3312. GBCPA can also be reached through Jim Blackburn, Chair and Counsel, 2900 Wesleyan, Suite 400, Houston TX 77027, phone number 713-524-1012 and fax number 713-524-5165.

GBCPA has numerous members who reside in the Houston-Galveston non-attainment area and will suffer from continued exposure to ozone air pollution. Many of these members reside in the eastern section of Harris County and are subjected to some of the higher levels of ozone exposure within the nonattainment area. GBCPA has been opposing the construction of the Bayport container port by the Port of Houston Authority over the last several years. The Bayport project was found by the U.S. Army Corps of Engineers in the Bayport Environmental Impact Statement to be in compliance with the SIP for the Houston-Galveston non-attainment area based upon the assumption that the State of Texas would comply with the SIP requirements and based upon assurances from the TCEQ. That assumption is clearly not true and the determination that the Bayport facility would be in compliance with a legal SIP is not true.

The deficiencies of the State of Texas in its attempt to comply with the SIP are substantial. Among other things, the State of Texas has failed to complete computer modeling demonstrating attainment of the ozone standard and has failed to adopt binding regulations that address the NOx deficiency identified in earlier filings with the agency. At this time, computer modeling used by the TCEQ does not incorporate all of the known sources of reactive hydrocarbon emissions and cannot provide a realistic basis for decision-making. In short, the compliance efforts by the TCEQ are not in keeping with the legal and moral responsibilities that the agency bears.

It is the intent of GBCPA to file suit after the expiration of 60 days as set forth in 42 U.S.C. § 7604(b)(1)(A). Additionally, GBPCA intends to seek attorney's fees pursuant to 42 U.S.C. § 7604(d).

If you have any questions or concerns, please do not hesitate to contact me at 2900 Wesleyan, Suite 400, Houston, Texas 77027, or by telephone at 713-524-1012

Sincerely,

BLACKBURN CARTER, P.C.

/s/

by \_\_\_\_\_  
James B. Blackburn, Jr.

c: Governor Rick Perry  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

***Via Certified Mail/RRR***

Michael O. Leavitt, Administrator  
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Richard E. Greene, Regional Administrator  
United States Environmental Protection Agency – Region 6  
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***Via Certified Mail/RRR***

John Ashcroft, Attorney General  
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