

May 8, 2026

Via Certified Mail

Robert L. Quinn
Commissioner, N.H. Department of Safety
33 Hazen Drive
Concord, NH 03305

The Honorable Joseph D. Kenney
Councilor, N.H. Executive Council
P.O. Box 201
Union, NH 03887

Robert R. Scott
Commissioner, N.H. Department of
Environmental Services
29 Hazen Drive
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The Honorable Karen Liot Hill
Councilor, N.H. Executive Council
24 Messenger Street
Lebanon, NH 03766

John Marasco
Director, N.H. Division of Motor Vehicles
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The Honorable Janet Stevens
Councilor, N.H. Executive Council
P.O. Box 687
Rye, NH 03870

The Honorable Kelly Ayotte
Governor, State of New Hampshire
107 North Main Street
Concord, NH 03301

The Honorable John Stephen
Councilor, N.H. Executive Council
320 Currier Drive
Manchester, NH 03104

New Hampshire Executive Council
107 North Main Street
State House, Room 207
Concord, NH 03301

The Honorable David K. Wheeler
Councilor, N.H. Executive Council
523 Mason Road
Milford, NH 03055

Re: Notice of Intent to Commence Civil Action Pursuant to Clean Air Act Section 304

Dear Recipient:

I am writing on behalf of Gordon-Darby Holdings, Inc. (“Gordon-Darby”) to provide notice of Gordon-Darby’s intent to commence a civil action against the above-named addressees (referred to hereafter as the “State Officials”) in their official capacities under Section 304(a)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(1), for violations of emission standards or limitations under the CAA and New Hampshire’s federally approved state implementation plan (“SIP”). Pursuant to CAA Section 304(b)(1), 42 U.S.C. § 7604(b)(1), and 40 C.F.R. § 54.2, a copy of this notice is also being sent to Administrator Lee Zeldin of the U.S. Environmental Protection Agency (“EPA”) and Regional Administrator Mark Sanborn of EPA Region 1.

From 2004 until February 2026, Gordon-Darby’s subsidiary, Gordon-Darby NHOST Services, Inc., served as the New Hampshire Department of Safety’s (“NHDOS”) contractor retained to provide services essential to implementation of the emissions inspection requirements of New Hampshire’s vehicle inspection and maintenance (“I/M”) program. Gordon-Darby has valued its decades-long professional relationship with NHDOS and is proud of the parties’ cooperative efforts to fulfill all applicable requirements of New Hampshire’s SIP. Regrettably, in 2025 New Hampshire enacted legislation repealing the state laws underlying its I/M program effective January 31, 2026. Notwithstanding that the I/M program’s requirements remain in force under federal law as part of New Hampshire’s EPA-approved SIP, the State—acting through the responsible State Officials to whom this letter is addressed—has proceeded to dismantle the I/M program and cease its implementation and enforcement. Beginning no later than February 13, 2026, and continuing to the present, the State has been in violation of the I/M requirements in its SIP, which constitute “emission standard[s] or limitation[s]” under the CAA’s citizen suit provision.¹

Accordingly, in light of the State’s termination of the I/M program in direct contravention of its federal obligations under the CAA and New Hampshire’s federally enforceable SIP, this letter serves as notice of Gordon-Darby’s intent to commence a civil action under Section 304(a)(1) of the CAA, 42 U.S.C. § 7604(a)(1). If the State does not resume implementation and enforcement of the I/M program and continue such implementation and enforcement unless and until EPA approves a revised SIP altering that program, Gordon-Darby intends to file suit against each of the State Officials in their official capacities seeking declaratory and injunctive relief, as well as civil penalties, to compel compliance with the CAA and the requirements of New Hampshire’s SIP.

I. Relationship to Prior Citizen Suit by Gordon-Darby

On October 8, 2025, Gordon-Darby previously served a notice of intent to sue the Commissioners of NHDOS and the New Hampshire Department of Environmental Services (“NHDES”) under the CAA’s citizen suit provision. Following the expiration of the required 60-day notice period, Gordon-Darby proceeded to commence a civil action against the Commissioners under Section 304(a)(1) in the U.S. District Court for the District of New Hampshire on December 8, 2025, and filed a motion for preliminary injunction the next day.² On January 27, 2026, the district court granted Gordon-Darby’s motion and issued a preliminary injunction ordering that the Commissioners be “[e]njoined from taking or directing any action to terminate, suspend, or otherwise cease implementation or enforcement of” the I/M program codified in New Hampshire’s SIP unless and until EPA approves a revised SIP removing or

¹ 42 U.S.C. § 7604(a)(1), (f)(3).

² Complaint, *Gordon-Darby Holdings, Inc. v. N.H. Dep’t of Safety, Comm’r*, No. 1:25-cv-00508-LM-AJ (D.N.H. Dec. 8, 2025); Motion for Preliminary Injunction, *Gordon-Darby Holdings*, No. 25-cv-00508-LM-AJ (D.N.H. Dec. 9, 2025).

amending that program, and ordering the Commissioners to “take all steps necessary to resume and ensure the continued implementation and enforcement” of the I/M program.³

Notwithstanding the district court’s order, New Hampshire proceeded to terminate the I/M program anyway while appealing the preliminary injunction to the U.S. Court of Appeals for the First Circuit. On April 30, 2026, the First Circuit granted the Commissioners’ motion to stay the preliminary injunction pending that appeal.⁴ In granting the stay, the First Circuit found that the Commissioners were likely to succeed in their appeal on procedural grounds, holding that the CAA does not authorize citizen suits “predicated on purely prospective violations” and finding that Gordon-Darby had not shown that the Commissioners were “in violation” of an emission standard or limitation at the time the complaint was filed.⁵ Given the First Circuit’s ruling, Gordon-Darby voluntarily dismissed its previous citizen suit against the Commissioners without prejudice on May 7, 2026, which also rendered moot the proceedings in the First Circuit.⁶

It is indisputable, however, that New Hampshire is no longer implementing or enforcing its I/M program and is therefore presently in violation of an emission standard or limitation under the CAA. At the conclusion of the required 60-day period after service of this notice letter, if New Hampshire has not resumed implementation and enforcement of the I/M program codified in its federally enforceable SIP, Gordon-Darby intends to commence a new citizen suit against the State Officials in their official capacities under 42 U.S.C. § 7604(a)(1).

II. Persons Giving Notice

This notice is being sent on behalf of Gordon-Darby Holdings, Inc., a corporation duly incorporated and in good standing in the State of Delaware. Gordon-Darby Holdings, Inc. is the sole owner of Gordon-Darby NHOST Services, Inc. Its registered agent is CSC, located at 251 Little Falls Drive, Wilmington, DE 19808. For purposes of this notice letter, Gordon-Darby Holdings, Inc. may be contacted through its counsel at:

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³ *Gordon-Darby Holdings, Inc. v. N.H. Dep’t of Safety, Comm’r*, 817 F. Supp. 3d 82, 108 (D.N.H. 2026).

⁴ *Gordon-Darby Holdings, Inc. v. Quinn*, No. 26-1209, 2026 WL 1179043, at *5 (1st Cir. Apr. 30, 2026).

⁵ *Id.* at *3.

⁶ Notice of Voluntary Dismissal, *Gordon-Darby Holdings*, No. 1:25-cv-00508-LM-AJ (D.N.H. May 7, 2026).

III. Persons Receiving Notice

This notice is being sent to all of the parties for whom service is required under CAA Section 304(b)(1)(A), 42 U.S.C. § 7604(b)(1)(A), and 40 C.F.R. § 54.2.

Specifically, pursuant to 40 C.F.R. § 54.2(a), this notice is being sent by certified mail to EPA Administrator Lee Zeldin. Because this notice relates to violation of an emission standard or limitation in New Hampshire, a copy of this notice is also being mailed to Regional Administrator Mark Sanborn of EPA Region 1.

Pursuant to 40 C.F.R. § 54.2(c), notice is being given to the alleged violators by certified mail. The alleged violators are the following State Officials, each of whom is responsible for some aspect of implementing the I/M program as codified in New Hampshire's SIP:

- Commissioner Robert L. Quinn, New Hampshire Department of Safety
- Commissioner Robert R. Scott, New Hampshire Department of Environmental Services
- Director John Marasco, New Hampshire Division of Motor Vehicles
- The Honorable Kelly Ayotte, Governor, State of New Hampshire
- The New Hampshire Executive Council, by and through its individual Councilors
- The Honorable Joseph D. Kennedy, Councilor, New Hampshire Executive Council
- The Honorable Karen Liot Hill, Councilor, New Hampshire Executive Council
- The Honorable Janet Stevens, Councilor, New Hampshire Executive Council
- The Honorable John Stephen, Councilor, New Hampshire Executive Council
- The Honorable David K. Wheeler, Councilor, New Hampshire Executive Council

Finally, 40 C.F.R. § 54.2(b) requires that a copy of this notice be sent by certified mail to NHDES Commissioner Robert R. Scott as the authorized representative of the state agency charged with responsibility for air pollution control in New Hampshire, with a copy sent to New Hampshire Governor Kelly Ayotte. Because Commissioner Scott and Governor Ayotte are included among the State Officials to whom this notice is directed as alleged violators of the CAA and to whom notice was provided by certified mail under 40 C.F.R. § 54.2(c), the requirements of 40 C.F.R. § 54.2(b) have been met.

IV. Basis for Notice

Gordon-Darby is giving notice of its intent to sue the State Officials in their official capacities under Section 304(a)(1) of the CAA for violations of “an emission standard or limitation under” the CAA.⁷ As described further below, beginning no later than February 13, 2026, the State Officials have ceased implementing and enforcing the I/M program set forth in New Hampshire's federally approved and enforceable SIP. As a result, the State Officials are currently “in violation” of numerous “condition[s] or requirement[s] under [New Hampshire's] applicable implementation plan relating to ... vehicle inspection and maintenance programs,”

⁷ 42 U.S.C. § 7604(a)(1).

and will remain in violation until the State Officials resume implementation and enforcement of the I/M program codified in its SIP.⁸

Multiple provisions of the CAA require New Hampshire to implement an I/M program in portions of the state. First, under Section 182(b)(4), a state's SIP must include a basic I/M program for any "moderate" or higher nonattainment areas for the ozone national ambient air quality standards ("NAAQS").⁹ The New Hampshire portion of the Boston-Manchester-Portsmouth area was formerly classified as moderate nonattainment for the 1997 ozone NAAQS, including portions of Hillsborough, Merrimack, Rockingham, and Strafford Counties.

Second, under Section 182(c)(3) of the CAA, a state's SIP must include an enhanced I/M program for any "serious" nonattainment areas for the ozone NAAQS with a 1980 population of 200,000 or more.¹⁰ Portions of Hillsborough and Rockingham counties in New Hampshire were formerly designated as part of a serious nonattainment area for the 1979 one-hour ozone NAAQS and otherwise fit the criteria of Section 182(c).

Third, Congress explicitly included New Hampshire in the Ozone Transport Region ("OTR") established in CAA Section 184.¹¹ As a member of the OTR, New Hampshire must include an enhanced vehicle I/M program in its SIP that applies to each metropolitan statistical area in the state with a population of 100,000 or more.¹²

In light of these statutory requirements, New Hampshire has adopted (and EPA has approved) an enhanced vehicle I/M program into its federally enforceable SIP.¹³ New Hampshire's vehicle I/M program was first formalized in 1998, when New Hampshire and EPA reached an agreement regarding the contours of a decentralized I/M program with statewide applicability. NHDES submitted a SIP revision to EPA presenting the I/M program for approval on September 4, 1998, and EPA formally approved the program as part of New Hampshire's SIP on January 10, 2001.¹⁴

In 2011, NHDES submitted a SIP revision to EPA reflecting various amendments to the state's vehicle I/M program, including the incorporation of an On-Board Diagnostics ("OBD") inspection program.¹⁵ As described by NHDES, the basic framework of the State's I/M program

⁸ *Id.* §§ 7604(a)(1), (f)(3).

⁹ *Id.* § 7511a(b)(4).

¹⁰ *Id.* § 7511a(c)(3).

¹¹ *Id.* § 7511c(a).

¹² *Id.* § 7511c(b)(1)(A).

¹³ 40 C.F.R. § 52.1520.

¹⁴ 66 Fed. Reg. 1868 (Jan. 10, 2001).

¹⁵ See NHDES, "State of New Hampshire: Motor vehicle Inspection and Maintenance State Implementation Plan Revision" (Nov. 1, 2011), available at <https://www.regulations.gov/document/EPA-R01-OAR-2012-0149-0005> ("2011 SIP Revision").

for emissions primarily consists of three elements: (1) annual OBD testing for eligible vehicles; (2) an enhanced safety inspection; and (3) a roadside diesel opacity testing program.¹⁶ The 2011 SIP Revision set forth the specific program elements and supporting statutory and regulatory authority necessary to satisfy the EPA's regulations at 40 C.F.R. Part 51, Subpart S establishing the requirements for state I/M programs, including but not limited to: the type of program; applicability requirements; adequacy of funding and personnel; testing equipment; quality control and program evaluation requirements; provisions for requiring and enforcing compliance by motorists, inspectors and inspection stations; data collection and reporting; and inspector training and certification.¹⁷

EPA approved the 2011 SIP Revision on January 25, 2013, and that submission (including the narrative and statutory and regulatory authorities cited therein) was incorporated into New Hampshire's SIP as a matter of federal law.¹⁸ Since that time, EPA has subsequently approved additional updates to the state's SIP reflecting updates to NHDOS regulations at Chapter Saf-C 3200 implementing the I/M program. Most recently, EPA approved a SIP revision on April 25, 2024, incorporating the entirety of Chapter Saf-C 3200 by reference into the Code of Federal Regulations, with the exception of isolated provisions governing state enforcement provisions.¹⁹ That April 2024 SIP approval action incorporated both the safety and emissions portions of New Hampshire's I/M program as federally enforceable requirements of its SIP.

Despite the explicit requirements of the CAA, EPA's regulations, and New Hampshire's SIP, in June 2025 the New Hampshire General Court enacted legislation as part of House Bill 2 ("HB2") purporting to eliminate the state's federally approved and enforceable I/M program.²⁰ HB2 repealed the key statutory provisions that underlie New Hampshire's I/M regulations at Chapter Saf-C 3200 and that were incorporated into and approved by EPA as part of New Hampshire's SIP. These include the provisions authorizing NHDOS to require motor vehicle inspections and establishing the frequency and timing of such inspections,²¹ establishing the fee for inspection stickers,²² providing for enforcement against motorists and inspection stations,²³ and specifying inspection requirements for emission control equipment.²⁴ HB2 also abolished the

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 7-23; *see* 40 C.F.R. §§ 51.350-373.

¹⁸ 78 Fed. Reg. 5292 (Jan. 25, 2013); 40 C.F.R. § 52.1520(e) (identifying "SIP Narrative associated with New Hampshire Vehicle Inspection and Maintenance Program SIP Revision" as part of state's SIP).

¹⁹ 89 Fed. Reg. 33,232 (Apr. 29, 2024); 40 C.F.R. § 52.1520(c).

²⁰ 2025 N.H. Laws Ch. 141, §§ 141:244-141:256.

²¹ *Id.* § 141:253(IV) (repealing RSA 266:1).

²² *Id.* § 141:253(VII) (repealing RSA 266:2).

²³ *Id.* § 141:253(III, V, XI) (repealing RSA 260:6-b, 266:1-a, 266:5).

²⁴ *Id.* § 141:253(XIV) (repealing RSA 266:59-b).

funding source for the motor vehicle air pollution abatement fund administered by NHDES, which is used to help fund administration of the SIP's I/M program.²⁵

HB2 purports to eliminate the state's I/M program without first obtaining EPA approval of a revised SIP. The legislation does require NHDES to submit "an amendment to the state implementation plan to alter the emissions testing program consistent with" HB2 to EPA within 180 days.²⁶ But each of HB2's repeal provisions take effect regardless of whether EPA approves or disapproves that submission.²⁷ On December 24, 2025, NHDES submitted to EPA a proposed SIP revision that would remove all I/M program requirements from the SIP, along with a petition seeking to remove New Hampshire from the OTR under CAA Section 176A, 42 U.S.C. § 7506a. EPA has not yet taken any proposed or final action on either submission, and unless and until EPA both grants the State's petition for removal from the OTR *and* approves its revised SIP, New Hampshire must continue complying with its current SIP obligations. Moreover, EPA *cannot* approve a revised SIP that eliminates New Hampshire's I/M program as set forth in HB2. As discussed above, the plain terms of the CAA explicitly require New Hampshire to include such a program in the state's SIP.²⁸ New Hampshire's December 24, 2025 submissions also suffer from significant legal and technical defects that render them unapprovable under the CAA.

EPA warned New Hampshire that HB2's repeal of the I/M program is impermissible under the CAA. By letter dated April 25, 2025, EPA Regional Administrator Mark Sanborn responded to a request from NHDES for technical assistance related to the draft repeal legislation that would later be largely incorporated into HB2.²⁹ That letter spelled out the applicable provisions of federal law and stated in no uncertain terms that "[i]f this legislation passes, New Hampshire will not meet the CAA requirements for I/M programs." Moreover, Regional Administrator Sanborn explained that if New Hampshire were to carry out the I/M program repeal called for by HB2, it would expose the state to a potential finding by EPA that the I/M requirements of New Hampshire's SIP are "not being implemented" under CAA Section 179(a)(4), 42 U.S.C. § 7509(a)(4). Such a finding would expose New Hampshire to imposition of sanctions, including loss of federal highway funding and additional emission offset requirements.

Indeed, NHDES itself has independently recognized that repeal of the state's I/M program is inconsistent with the CAA. By letter dated February 10, 2025, Commissioner Scott advised the members of the Transportation Committee of the state's I/M obligations under federal law.³⁰ Commissioner Scott warned the Committee that "[s]hould New Hampshire repeal

²⁵ *Id.* § 141:253(I) (repealing RSA 125-S:4); *see* 2011 SIP Revision at 12.

²⁶ 2025 N.H. Laws Ch. 141, § 141:254.

²⁷ *Id.* § 141:256.

²⁸ *See* 42 U.S.C. §§ 7511a(c)(3), 7511c(a), (b)(1)(A).

²⁹ Letter from Mark Sanborn, Regional Adm'r, EPA Region 1, to Robert Scott, Commissioner, NHDES (Apr. 25, 2025) (attached as Exhibit 1).

³⁰ Letter from Robert R. Scott, Commissioner, NHDES, to Thomas Walsh, Chair, Transportation Committee (Feb. 10, 2025) (attached as Exhibit 2); *see also* Letter from Robert R. Scott,

or even alter the program requirements without obtaining EPA approval it could, if not rectified, subject the state to federal sanctions[] up to and including loss of federal highway funds as provided under the CAA.”³¹ The letter also noted that EPA could take enforcement action or impose more stringent I/M requirements on the state.³² Presciently, Commissioner Scott even emphasized the potential for “citizen lawsuits under CAA section 304” of the kind that Gordon-Darby previously brought against the Commissioners and is serving notice of here.³³

Finally, the New Hampshire Department of Justice has repeatedly acknowledged that the State’s termination of its I/M program constitutes a violation of the CAA. In the course of the previous litigation between Gordon-Darby and the Commissioners, counsel for the State repeatedly conceded to both the U.S. District Court for the District of New Hampshire and the Court of Appeals for the First Circuit that New Hampshire’s termination of the I/M program violated federal law.³⁴ Likewise, at the February 4, 2026 special meeting of the New Hampshire Governor and Executive Council, Attorney General Formella told the Governor and Council that “we will be out of compliance with the Clean Air Act the minute we don’t have an operable [I/M] program.”³⁵ Attorney General Formella also recognized that violation of the SIP’s I/M requirements could subject the State to potential sanctions and civil penalties.³⁶

The well-founded legal concerns expressed by the federal and state officials above reflect the basic principle that as a matter of federal law, New Hampshire cannot unilaterally repeal its I/M program once it has been incorporated into a federally approved SIP. The Supremacy Clause of the United States Constitution establishes that federal law is the supreme law of the land and preempts any conflicting provisions of state law.³⁷ Under the CAA, once EPA approves a state’s SIP, the provisions of that SIP are incorporated into federal law and become federally enforceable.³⁸ Crucially, it is the version *submitted to and approved by EPA* that applies as

Commissioner, NHDES, to Daniel Innis, Chair, Senate Commerce Committee (Mar. 31, 2025) (attached as Exhibit 3) (emphasizing that “[a]ny revisions that change a requirement of the approved I/M program will require federal review and approval of a revised SIP”).

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.* at 3 (footnote omitted).

³⁴ Transcript of Preliminary Injunction Hearing Before the Honorable Landya B. McCafferty at 23:10-24:18, *Gordon-Darby Holdings*, No. 25-cv-508-LM-AJ (D.N.H. Jan. 22, 2026); Appellants’ Motion to Stay Order Pending Appeal at 12, *Gordon-Darby Holdings, Inc. v. Quinn*, No. 26-1209 (1st Cir. Mar. 19, 2026) (noting termination “puts New Hampshire out of compliance with federal law”).

³⁵ Recording of Special Meeting of Governor and Executive Council (Feb. 4, 2026), *available at* <https://www.sos.nh.gov/administration/governor-executive-council/meetings> (statement by General Formella at 11:37-11:42).

³⁶ *Id.* at 10:00-11:50, 13:45-15:04.

³⁷ U.S. Const. art. VI, cl. 2.

³⁸ *See, e.g., Clean Air Council v. Mallory*, 226 F. Supp. 2d 705 (E.D. Penn. 2002).

federal law, regardless of whether the state subsequently amends or repeals the state laws or regulations underlying its SIP.³⁹ Even where the state has submitted a revised SIP for review by EPA, as New Hampshire has done, the approved version of the SIP remains in effect and federally enforceable unless and until EPA approves the revision in a final rule.⁴⁰ Accordingly, notwithstanding enactment of HB2 and New Hampshire's submission of a revised SIP to EPA for review, the I/M requirements of New Hampshire's federally-approved SIP continue to apply as a matter of federal law.

Nonetheless, the State has ceased implementation and enforcement of its I/M program without the EPA approval required under the CAA. New Hampshire, acting through the State Officials, has been in violation of an emission standard or limitation under the CAA beginning no later than February 13, 2026. But the State Officials began taking steps to terminate the I/M program before that date. On September 16, 2025, NHDOS sent a letter to Gordon-Darby NHOST Services, Inc. giving notice of its intent to terminate the state's contract for services related to the I/M program.⁴¹ In that letter, NHDOS asserted that "[i]n practice, on January 31, 2026, registered vehicles in New Hampshire will no longer be required to have annual safety inspections or OBD testing" and terminated its contract with Gordon-Darby effective as of January 31, 2026.⁴² Likewise, on November 19, 2025, New Hampshire Division of Motor Vehicles ("DMV") Director John Marasco sent a letter to licensed inspection stations advising them that after January 31, 2026, they "will no longer be authorized or required to perform vehicle safety or emissions inspections."⁴³ The letter also directed inspection stations to return inspection stickers purchased directly from the DMV by February 28, 2026.

On January 27, 2026, the U.S. District Court for the District of New Hampshire issued a preliminary injunction prohibiting the Commissioners from "taking or directing any action to terminate, suspend, or otherwise cease implementation or enforcement of" the I/M program and ordering them to "take all steps necessary to resume and ensure the continued implementation and enforcement" of that program.⁴⁴ Despite the court's preliminary injunction, NHDOS did not withdraw or otherwise amend its letter terminating its vendor contract with Gordon-Darby NHOST Services. Nor did NHDOS or the DMV withdraw or amend its November 19, 2025 letter to inspection stations revoking their authority to conduct inspections after January 31, 2025, and directing them to return inspection stickers. Instead, NHDOS granted Gordon-Darby NHOST Services limited authorization to "continue to operate the State's program and continue

³⁹ *General Motors Corp. v. United States*, 496 U.S. 530 (1990); *Sweat v. Hull*, 200 F. Supp. 2d 1162 (D. Ariz. 2001).

⁴⁰ As discussed above, EPA cannot approve a SIP revision for New Hampshire that removes the enhanced vehicle I/M program because the CAA requires New Hampshire to have such a program as part of its SIP. *See* 42 U.S.C. §§ 7511a(c)(3), 7511c(a), (b)(1)(A).

⁴¹ Letter from Robert L. Quinn, Commissioner, NHDOS, to Robert Tefft, President, Gordon-Darby NHOST Services, Inc. (Sept. 16, 2025) (attached as Exhibit 4).

⁴² *Id.*

⁴³ Letter from John C. Marasco, Director, DMV (Nov. 19, 2025) (attached as Exhibit 5).

⁴⁴ *Gordon-Darby Holdings, Inc.*, 817 F. Supp. 3d at 108.

to work with licensed inspection stations [beyond the January 31, 2026 vendor contract termination date] until such time that the Governor and Council votes on” a forthcoming request from NHDOS to retroactively revise that termination date.⁴⁵ The State also issued public guidance stating that as a result of the preliminary injunction, the I/M program “will continue after January 31, 2026” but with a pause on enforcement, extending the inspection deadline to April 10, 2026, for “any vehicle with an inspection expiring prior to March 2026.”⁴⁶

On February 3, 2026, NHDOS submitted a request to the New Hampshire Governor and Executive Council for retroactive authorization to “amend the Department’s September 16, 2025 notice of intent to terminate its agreement” with Gordon-Darby NHOST by “extending the termination date by 60 days from January 31, 2026 to April 1, 2026.”⁴⁷ On February 4, 2026, the Governor and Executive Council held a special meeting to consider NHDOS’s request to extend the termination date for Gordon-Darby NHOST’s contract. The Executive Council voted 3-2 to deny NHDOS’s request.⁴⁸ As a result, the State’s contract with Gordon-Darby NHOST was terminated and the State no longer had an approved vendor to administer its I/M program as required by the SIP.

On February 13, 2026, the New Hampshire Department of Justice and NHDOS issued public guidance stating that as a result of the Executive Council’s action, the State lacked an approved vendor to operate the I/M program and “the vehicle inspection program is suspended until further notice.”⁴⁹ The notice also stated that licensed inspection stations “will no longer be authorized to issue state inspection stickers and vehicles will not be required to obtain an annual state inspection at this time.”⁵⁰ On that same date, the New Hampshire DMV posted a letter to licensed inspection stations on its website stating that those stations “are no longer authorized to perform State mandated motor vehicle inspections at this time” and must immediately “cease to offer ‘State’ inspections and shall not issue state inspection stickers.”⁵¹ The letter also directed inspection stations to return any inspection stickers purchased directly from the DMV by April 30, 2026.⁵² Finally, NHDOS sent a letter to Gordon-Darby NHOST confirming that its vendor

⁴⁵ Letter from Robert L. Quinn, Comm’r, NHDOS, to Robert Tefft (Jan. 30, 2026) (attached as Exhibit 6).

⁴⁶ News Release, “Public Guidance on Vehicle Inspection Program Status” (Jan. 30, 2026) (attached as Exhibit 7).

⁴⁷ Memorandum from Robert L. Quinn, Comm’r, NHDOS, to Gov. Kelly A. Ayotte and N.H. Executive Council (Feb. 3, 2026) (attached as Exhibit 8).

⁴⁸ Governor and Executive Council Minutes (Feb. 4, 2026) (attached as Exhibit 9).

⁴⁹ News Release, “Vehicle Inspection Program Public Guidance” (Feb. 13, 2026) (attached as Exhibit 10).

⁵⁰ *Id.*

⁵¹ Letter from John C. Marasco, Director, New Hampshire DMV (Feb. 13, 2026) (attached as Exhibit 11).

⁵² *Id.*

contract had been terminated.⁵³ New Hampshire has not resumed implementation or enforcement of its I/M program since the time of these communications.

As a result, since no later than February 13, 2026, New Hampshire (acting through the State Officials) has been in violation of an emission standard or limitation under the CAA due to its failure to implement and enforce the I/M program as codified in its applicable SIP and as required by the CAA. This decision to cease complying with the I/M requirements of New Hampshire's federally approved SIP, prior to approval of a revised SIP by EPA, is in direct violation of the State's obligations under federal law. These CAA violations are occurring where the State Officials conduct business in Concord, New Hampshire, and commenced no later than February 13, 2026, and have continued since that time. The State Officials will remain in violation until they resume implementing and enforcing the I/M program as codified in New Hampshire's applicable SIP. The CAA's citizen suit provision at Section 304(a)(1), 42 U.S.C. § 7604(a)(1), allows "any person," including Gordon-Darby, to commence a civil action against the State Officials for enforcement as a result of these violations.

In particular, this includes violations of the State's obligations to administer and enforce the I/M program set forth in the EPA-approved SIP. These obligations are reflected most prominently in the NHDOS Commissioner's duty to "[c]arr[y] out a program of inspection and testing of all modes of transportation," and in the duties and obligations assigned to the Commissioner of NHDOS and the Director of the DMV under the numerous statutes and regulations they are charged with administering in connection with the I/M program.⁵⁴ Each of these statutes and regulations are incorporated in the State's SIP and, having been approved by EPA under the CAA, remain in effect and enforceable as a matter of federal law notwithstanding the enactment of HB2.

Additionally, the actions of the State Officials violate numerous requirements of the state statutes and regulations that are incorporated into the Code of Federal Regulations by reference and that require specific actions be taken by them. These requirements include, but are not limited to, obligations to: provide necessary enforcement resources for state troopers; issue certificates of appointment and approval cards for inspection stations and mechanics that meet regulatory requirements; provide mechanic training sessions; provide counter service for inspection sticker purchases and to accept the return of unused stickers; to report tampering to EPA; to act on waiver applications; and to maintain a "contracted vendor" for the automated safety/emissions inspection program.⁵⁵ These regulations are incorporated in the State's SIP and remain in effect and enforceable as a matter of federal law notwithstanding enactment of HB2.

⁵³ Letter from Robert L. Quinn, Comm'r, NHDOS, to Robert Tefft (Feb. 13, 2026) (attached as Exhibit 12).

⁵⁴ See RSA 125-C:6(XII), 266:1, 266:1-a, 266:2, 266:5, 266:6, 260:6-a, 260:6-b.

⁵⁵ See RSA 266:1-a(II); N.H. Admin. Code §§ Saf-C 3202.23, Saf-C 3205.01-3205.06, Saf-C 3205.10, Saf-C 3209.02(a), Saf-C 3222.04(c), Saf-C 3222.08(g)-(h), Saf-C 3222.09(g)-(h), Saf-C 3209.01(d).

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As discussed above, New Hampshire must maintain an enhanced I/M program under the plain terms of the CAA, and EPA cannot approve a revised SIP that eliminates this program as set forth in HB2. But at a minimum, the State Officials have an obligation to continue implementing and enforcing New Hampshire's federally approved I/M program unless and until EPA approves such a revised SIP. For that reason, Gordon-Darby requests that New Hampshire, acting through the responsible State Officials, take immediate steps to resume implementation and enforcement of the I/M program codified in the State's applicable SIP and provide for its continued implementation and enforcement until such time as EPA approves a SIP providing for the amendment or repeal of that program. In the event that New Hampshire does not take such action, Gordon-Darby may, without further notice at any time after the 60th day from service of this letter, commence a civil action against the State Officials in their official capacities seeking any and all forms of relief as the court may find just and proper under the CAA, including declaratory and injunctive relief, as well as civil penalties, to compel New Hampshire through its responsible State Officials to comply with the requirements of its applicable SIP.

Sincerely,



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cc: (by certified mail)
Lee Zeldin, Administrator, U.S. Environmental Protection Agency
Mark Sanborn, Regional Administrator, EPA Region 1
John Formella, New Hampshire Attorney General (courtesy copy)