Law Office of Robert Ukeiley

507 Center Street ▫ Berea, Kentucky 40403 ▫ tel.859-986-5402

Robert Ukeiley
rukeiley@igc.org

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

January 9, 2014

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Notice of intent to sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to promulgate a Federal Implementation Plan pursuant to 42 U.S.C. § 7410(c)(1) for Infrastructure SIP elements for Alaska, Iowa, Puerto Rico and Washington for the 2006 fine particulate matter National Ambient Air Quality Standard

Dear Administrator McCarthy,

On behalf of the Center for Biological Diversity, I write to inform you that it intends to file suit against you for "a failure of the Administrator [of the United States Environmental Protection Agency ("EPA")] to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. § 7410(c)(1) EPA must promulgate Federal Implementation Plans ("FIP") for various Infrastructure State Implementation Plans (SIP) elements listed below for Alaska, Iowa, Puerto Rico and Washington for the 2006 fine particulate matter ("PM2.5") National Ambient Air Quality Standard ("NAAQS"). As explained below, EPA has failed to perform this mandatory duty.

EPA should remedy its violation of this mandatory duty to better protect the public from the harmful effects of PM2.5. PM2.5 is "produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants," thus "[s]ources of fine particles include… motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning." 71 Fed. Reg. 61,144, 61146 (Oct. 17, 2006). The effects of PM2.5 on humans are profound. For example, long-term exposure has been associated "with an array of health effects, notably premature mortality, increased respiratory symptoms and illnesses (*e.g.* bronchitis and cough in children), and reduced lung function." 62 Fed. Reg. 38,653, 38,668 (July 18, 1997).

Moreover, PM2.5 adversely affects our natural surroundings. For example, PM2.5 adversely impacts wildlife. EPA has explained "a number of animal toxicologic . . . studies had reported health effects associations with high concentrations of numerous fine particle components[.]" 71 Fed. Reg. 2,620, 2,643 – 2644 (Jan. 17, 2006). PM2.5 also causes direct foliar injury to vegetation. *Id.* at 2,682. As to broader ecosystem impacts, EPA has explained that the nitrogen and sulfur "containing components of PM have been associated with a broad spectrum of terrestrial and aquatic ecosystem impacts that result from either the nutrient or acidifying characteristics of the deposited compounds." *Id.* These impacts include nitrogen saturation which "causes 1) Decreased productivity, increased mortality, and/or shifts in terrestrial plant community composition, often leading to decreased biodiversity in many natural habitats wherever atmospheric [reactive nitrogen] deposition increases significantly and critical thresholds are exceeded; (2) leaching of excess nitrate and associated base cations from terrestrial soils into streams, lakes and rivers and mobilization of soil aluminum; and (3) alteration of ecosystem processes such as nutrient and energy cycles through changes in the functioning and species composition of beneficial soil organisms (Galloway and Cowling 2002)." *Id.* EPA has described this impacts on terrestrial ecosystems as "profound and adverse[.]" *Id.* EPA has also determined that PM2.5 adversely impacts aquatic ecosystems via excess nutrient inputs and acid and acidifying deposition. 71 Fed. Reg. at 2,682 – 2,683. "Data from existing deposition networks in the U.S. demonstrate that N and S compounds are being deposited in amounts known to be sufficient to affect sensitive terrestrial and aquatic ecosystems over time." 71 Fed. Reg. at 2683.

Moreover, PM2.5 adversely affects the aesthetics of our natural surroundings. For example, Regional haze is caused in part by particulates in the air scattering sunlight. EPA, Haze- How Air Pollution Affects the View (available at http://www.epa.gov/ttn/oarpg/t1/fr_notices/haze.pdf). It is vital that EPA take the required action in order to strengthen protection of public health and welfare against PM2.5.

Under the Clean Air Act, EPA "shall promulgate a Federal implementation plan at any time within 2 years after" it "(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [42 U.S.C. § 7410(k)(1)(A)] . . . ." 42 U.S.C. § 7410(c)(1). EPA's mandatory duty to promulgate a FIP is relieved only if "the State corrects the deficiency, *and the Administrator approves the plan or plan revision*" before the FIP is promulgated. *Id.* (emphasis added).

In 2006, EPA promulgated a National Ambient Air Quality Standard for particulate matter. 71 Fed. Reg. 61,144 (Oct. 17, 2006). States, as that term is used in the Clean Air Act which includes Puerto Rico, were required to submit Infrastructure SIPs addressing the 2006 PM2.5 NAAQS within 3 years, that is no later than October 17, 2009. 42 U.S.C. § 7410(a)(1). *See also* 76 Fed. Reg. 55,577, 55,578 (Sept. 8, 2011). On September 8, 2011, EPA found that the following states had failed to submit the following elements of their 2006 PM2.5 Infrastructure SIP:

Puerto Rico failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);

Iowa failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M);

Alaska failed to submit for section 110(a)(2)(A)–(C), (E)–(H) and (J)–(M);

Washington failed to submit for section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

76 Fed. Reg. at 55,579. Since this finding, EPA has not yet approved any state implementation plan or revision from any of these states addressing these requirements. Accordingly, EPA has a mandatory duty to promulgate a FIP addressing the requirements for the 2006 PM2.5 NAAQS for the above listed states by no later than October 11, 2013. EPA has failed to perform this mandatory duty.

As required by 40 C.F.R. § 54.3, the person providing this notice is:

The Center for Biological Diversity
351 California Street, Suite 600
San Francisco, California 94104
Attn: Jonathan Evans
Tel: (415) 436-9682 x318

While EPA regulations require this information, please direct all communications regarding this matter to the undersigned counsel.

The Center for Biological Diversity and its counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting the undersigned counsel within 60 days. If you do not do so, however, we will have to file or amend a complaint.

Sincerely,

Robert Ukeiley
Counsel for the Center for Biological Diversity