1/23 117 3C DAT

WILDEARTH GUARDIANS
A FORCE FOR NATURE

AC-13-000-0930

RECEIVED
2013 JAN 23 PM 1:01
OFFICE OF THE EXECUTIVE SECRETARIAT

January 15, 2013

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Notice of Intent to File Suit, Failure to Act on Clean Air Act State Implementation Plan Submissions from Region 8 States

Dear Administrator Jackson:

This letter is to inform you that WildEarth Guardians intends to filed suit against the U.S. Environmental Protection Agency ("EPA") over the agency's failure to take action on several Clean Air Act State Implementation Plan ("SIP") submissions from the States of Colorado, South Dakota, and Utah, as required by Section 110(k)(2) of the Clean Air Act. 42 U.S.C. § 7410(k)(2). We intend to bring a suit 60 days from the date of this letter, or shortly thereafter, under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, against you for your failure to perform a nondiscretionary duty set forth in 42 U.S.C. § 7410(k)(2).

The SIP submissions at issue, which were provided to WildEarth Guardians by EPA Region 8 in a list, include the following:

Colorado	
SIP submission/description	**Date submitted**
Greenhouse Gas Tailoring Rule	May 25, 2011
PM10 Maintenance Plan (2nd) - Aspen	May 25, 2011
Regulation 3, PM2.5 defined as a regulated pollutant; excluded ethanol production as a major source	May 25, 2011

South Dakota	
SIP submission/description	**Date submitted**
General Rule and NSR Permitting Changes	June 14, 2010
NSR Permitting Revisions	June 20, 2011
Greenhouse Gas Tailoring Rule	June 20, 2011
Utah	
SIP submission/description	**Date submitted**
R307-110-17, Section IX Control Measures for Area and Point Sources, Part H, Emission Limits (Kennecott Utah Copper)	July 14, 2011

Under the Clean Air Act, states are required to submit SIPs to the EPA to implement, maintain, and enforce the NAAQS. *See* 42 U.S.C. § 7410(a). The Clean Air Act further requires the Administrator to fully or partially approve or disapprove a SIP submission within 12 months after such submission has been deemed complete, either by the Administrator or as a matter of law. *See* 42 U.S.C. § 7410(k)(2). If the EPA does not make a completeness finding, SIP submissions are deemed complete by operation of law six months of submissions. *See* 42 U.S.C. § 7410(k)(1)(B). Therefore, at most, EPA had 18 months within which to take final action to approve, disapprove, or partially approve or disapprove the aforementioned SIPs from the States of Colorado, South Dakota, and Utah.

For the Colorado SIP submissions, EPA was required to take action by November 25, 2012. For the South Dakota SIP submissions, EPA was required to take action by December 14, 2011 and December 20, 2012. For the Utah SIP submission, EPA was required to take action by January 14, 2013. EPA has not taken action to fully or partially approve or disapprove the aforementioned SIP submissions as of the date of this letter. We therefore intend to bring suit 60 days from the date of this letter over your failure to perform a nondiscretionary duty required by the Clean Air Act, 42 U.S.C. § 7410(k)(2).

WildEarth Guardians is a New Mexico-based nonprofit organization with offices in Denver and Phoenix. WildEarth Guardians is dedicated to protecting and restoring the American West and has members who are harmed by the failure of the Administrator and the EPA to follow through with duties under the Clean Air Act to ensure that SIPs are timely acted upon to ensure adequate protection of air quality and public health and welfare.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 516 Alto St., Santa Fe, NM 87501. For purposes of discussing this matter, please contact us at the information below. Thank you.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
1536 Wynkoop, Suite 301
Denver, CO 80202
(303) 573-4898 x 1303
jnichols@wildearthguardians.org

cc: Carl Daly, Director, EPA Region 8 Air and Radiation Program