



January 29, 2015

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W. (Mailcode 1101A)
Washington, DC 20460

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Intent to Sue Under the Clean Air Act, 42 U.S.C. § 7604(b)(2), for Failure of the Administrator to Promulgate Regional Haze FIP for Utah

Dear Administrator McCarthy:

This letter constitutes notice under the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54, that HEAL Utah, National Parks Conservation Association, and Sierra Club (collectively, “Conservation Organizations”) intend to file a citizen suit under 42 U.S.C. § 7604(a)(2) to address the Environmental Protection Agency’s (“EPA”) failure to perform the nondiscretionary duty of promulgating a regional haze plan for Utah by January 14, 2015. Decades of delay in finalizing a plan to reduce emissions of haze-causing nitrogen oxides (“NOx”) and particulate matter from Utah’s major sources of these pollutants has deprived visitors to the state’s spectacular national parks—including Arches, Canyonlands, Zion, Capitol Reef, and others—of full enjoyment of these precious resources. Furthermore, it has caused residents of and visitors to Utah to be exposed to unnecessarily high levels of these pollutants that harm human health. To bring an end to this delay, the Conservation Organizations intend to sue EPA to compel it to develop a regional haze federal implementation plan (“FIP”) for Utah’s Hunter and Huntington coal-fired power plants as required by the Clean Air Act.

In 1977, Congress declared as the nation’s goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas”—primarily, national parks and wilderness areas. 42 U.S.C. § 7491(a)(1). To meet this goal, each state is required to design an implementation plan to reduce, and ultimately eliminate, haze from air pollution sources within its borders that cause or contribute to visibility impairment in national parks and wilderness areas. In creating and implementing the plan, a state has an unparalleled opportunity to protect and restore regional air quality in some of its most treasured places by curbing visibility impairing emissions from some of its oldest and most polluting facilities. One mechanism for achieving this goal is the requirement for certain haze-causing sources to install the “best available retrofit technology” (“BART”). *Id.* § 7491(b)(2)(A). In Utah, Units 1 and 2 at the Hunter and Huntington coal-fired power plants are subject to BART. Emissions from these coal-fired units contribute significantly to visibility impairment at national parks in Utah and beyond.

Adequate plans to reduce regional haze are important for all states, but compliance with the haze program is especially crucial for Utah. Utah's national parks, which host millions of visitors each year, were established specifically to protect the scenic landscapes and spectacular views afforded by the unique red rock country. For example, Congress established Canyonlands National Park—the Class I area Utah identified as experiencing the greatest impairment due to Hunter and Huntington—“to preserve an area in the State of Utah possessing superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public.” 16 U.S.C. § 271. These same “inspiration[al]” attributes are those marred by regional haze.

Although states were required to submit SIPs addressing regional haze no later than December 17, 2007, 40 C.F.R. § 51.308(b), Utah for the first time submitted a regional haze SIP that included BART determinations for Hunter and Huntington's NO_x and particulate matter emissions on May 26, 2011. On December 14, 2012, EPA properly rejected Utah's 2011 determinations because they were not based on a valid five-factor BART analysis as required by EPA regulations, 40 C.F.R. § 51.308(e)(1). Final Rule, Utah Regional Haze, 77 Fed. Reg. 74,355, 74,357 (Dec. 14, 2012). More than two years later, Utah still has not proposed an adequate SIP and EPA has not promulgated a FIP to govern in the absence of a legitimate state planning effort.

The Clean Air Act requires the EPA Administrator to promulgate a FIP within two years of a finding that a state has failed to make a required a SIP submittal. 42 U.S.C. § 7410(c). Specifically:

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(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 section 110(k)(1)(A).

Id.

EPA's December 14, 2012 rejection of the NO_x and particulate matter BART elements of Utah's SIP triggered EPA's nondiscretionary duty under 42 U.S.C. §7410(c)(1)(A) to promulgate a regional haze FIP for Utah addressing these elements no later than January 14, 2015—two years after the effective date of EPA's rejection of the Utah SIP. Unfortunately, EPA failed to meet the January 14, 2015 deadline. Accordingly, the Administrator is in violation of her nondiscretionary duty.

After the expiration of sixty (60) days from the postmark date of this notice, the Conservation Organizations intend to file suit against EPA and the EPA Administrator in federal court for failing to comply with the non-discretionary duty to promulgate a regional haze FIP for Utah by January 14, 2015.

As required by 40 C.F.R. § 54.3, the names and addresses of the Conservation Organizations are as follows:

HEAL Utah
824 South 400 West, #B-111
Salt Lake City, UT 84101

National Parks Conservation Association
1300 19th Street NW, Suite 300
Washington DC 20036

Sierra Club
85 Second St., 2nd Floor
San Francisco, CA 94105

The Conservation Organizations have retained counsel to represent them in this matter. Their names and addresses are as follows:

Jenny Harbine
Earthjustice
313 East Main Street
Bozeman, Montana 59715
(406) 586-9699
jharbine@earthjustice.org

John Barth
Attorney at Law
P.O. Box 409
Hygiene, Colorado 80533
(303) 774-8868
barthlawoffice@gmail.com

Please contact us should you wish to discuss the legal violation addressed in this letter.

Sincerely,

Jenny Harbine