

## Law Office of Robert Ukeiley

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September 28, 2015

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 under 42 U.S.C. § 7410(c)(1) for Montana to Address Conflicts of Interest**

Dear Administrator McCarthy,

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, the Center for Biological Diversity, the Center for Environmental Health, and Neighbors for Clean Air notify you that they intend to file suit against you for "a failure to perform an[] act or duty under this chapter which is not discretionary with the Administrator". 42 U.S.C. § 7604(a)(2). Specifically, the Administrator of the Environmental Protection Agency ("EPA") is required to promulgate a Federal Implementation Plan for Montana's 2006 PM2.5 Infrastructure State Implementation Plan (SIP) to implement the conflict of interest provisions in the 42 U.S.C. § 7410(a)(2)(E)(ii) element but has failed to do so.

The Clean Air Act requires states to submit State Implementation Plans (SIPs) that provide for the "implementation, maintenance, and enforcement" of a new or revised National Ambient Air Quality Standard within three years of the standard's promulgation. 42 U.S.C. § 7410(a)(1). These SIPs are often referred to as Infrastructure SIPs. One element of the Infrastructure SIP is to ensure that states have enforceable provisions that require any board with permitting or enforcement authority be made up of a majority of members who do not primarily work for polluters and who serve the public interest. States must also require that board members and heads of pollution permitting agencies adequately disclose conflicts of interest. *See* 42 U.S.C. § 7410(a)(2)(E)(ii). If EPA disapproves a SIP submission in whole or part, such as the Montana 42 U.S.C. § 7410(a)(2)(E)(ii) provision, EPA has a mandatory duty to promulgate a Federal Implementation Plan (FIP) within 2 years of that disapproval. 42 U.S.C. § 7410(c)(1)(B).

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On July 30, 2013, EPA published notice of its disapproval of Montana's section 110(a)(2) (E)(ii) infrastructure element for the 2006 PM<sub>2.5</sub> NAAQS because the Montana SIP lacks the conflict of interest provisions required by Clean Air Act § 128. 78 Fed. Reg. 45,864, 45,865 (July 30, 2013). The effective date for the rule containing this disapproval was August 29, 2013. 78 Fed. Reg. at 45,864. Thus, EPA has a mandatory duty to promulgate a FIP for Montana's 2006 PM<sub>2.5</sub> Infrastructure SIP Element in 42 U.S.C. § 7410(a)(2)(E)(ii) by no later than August 29, 2015. However, as of the date of this letter, EPA has still not promulgated such a FIP. Therefore, EPA is in violation of its mandatory duty. *See* 42 U.S.C. § 7410(c)(1)(B).

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

The Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA. 94612  
Attn: Jonathan Evans  
Tel: (510) 844-7100 x318

The Center for Environmental Health  
2201 Broadway, #302  
Oakland, CA 94612  
Tel: (510) 655-3900

Neighbors for Clean Air  
P.O. Box 10544  
Portland, OR 97296

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

The Center for Biological Diversity, the Center for Environmental Health and Neighbors for Clean Air and their counsel would prefer to resolve this matter without the need for litigation. However, if we do not hear from EPA in 60 days, we will have to assume that you are not interested in settling this matter and file or amend a complaint.

Sincerely,



Robert Ukeiley  
Counsel for Center for Biological Diversity, Center for  
Environmental Health and Neighbors for Clean Air