

Law Office of Robert Ukeiley

507 Center Street • Berea, Kentucky 40403 • tel.859-986-5402 • fax.866-618-1017

Robert Ukeiley
rukeiley@igc.org

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

May 23, 2013

Bob Perciasepe
Acting 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 make a finding under 42 U.S.C. § 7410(k)(1)(B) of failure to submit a serious state implementation plan submittal for the Metro-Baltimore 1997 8-hour ozone nonattainment area

Dear Acting Administrator Perciasepe,

On behalf of Sierra Club, I write to inform you that Sierra Club 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(k)(1)(B), EPA must issue a finding of failure to submit a state implementation plan (SIP) addressing the Baltimore 1997 ozone national ambient air quality standard (NAAQS) serious nonattainment area. As explained in detail below, EPA has failed to perform this mandatory duty by the statutorily-created deadline.

EPA should remedy this violation of its mandatory duty to better provide protection from the harmful impacts of ground-level ozone, often referred to as smog. Ozone has numerous harmful effects on human respiratory systems which include inducing asthma attacks in asthmatics and aggravating chronic lung diseases like emphysema and bronchitis. EPA, Smog—Who Does it Hurt? 2-3 (available at <http://www.epa.gov/air/ozonepollution/pdfs/smog.pdf>). Long-term exposure may result in the permanent scarring of lung tissue. EPA, Ozone and Your Health, U.S. Environmental Protection Agency (available at <http://www.epa.gov/air/ozonepollution/pdfs/health.pdf>). Exposure to ozone can also lead to “chronic, adverse effects on lung development in children from the age of 10 to 18 years....”

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See Gauderman, W. James, et al., *The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age*, N. Engl. J. Med. 351:11, at 1057 (Sept. 9, 2004). However, the greatest harm “may occur later in life, since reduced lung function is a strong risk factor for complications and death during adulthood.” *Id.* at 1063. Thus, it is imperative that EPA remedy its failure to perform its mandatory duty in order to strengthen protection of public health and welfare.

Under the Clean Air Act, EPA is required to determine whether a state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If a state fails to submit a required state implementation plan, the minimum criteria cannot have been met and EPA must make a determination stating so within six months of the submittal due date. *Id.* This is commonly referred to as a finding of failure to submit. As explained in more detail below, EPA has violated the mandatory duty to make a finding of failure to submit for the Baltimore serious nonattainment SIP.

On February 1, 2012, EPA published notice that the Baltimore 1997 8-hour ozone nonattainment area did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) by Baltimore’s moderate nonattainment date. 77 Fed. Reg. 4901 (Feb. 1, 2012). EPA explained that as a result of failing to attain by its attainment date, Baltimore was reclassified, that is “bumped up,” to a 1997 8-hour ozone serious nonattainment area. *Id.* EPA set the due date for Maryland to submit necessary SIP revisions to create a serious nonattainment SIP as no later than September 30, 2012. *Id.* However, Maryland has not yet submitted a serious nonattainment SIP. *See*

http://www.epa.gov/air/urbanair/sipstatus/reports/md_elembypoll.html#ozone-8hr_1997_602.

See also

http://mde.maryland.gov/programs/Air/AirQualityPlanning/Pages/programs/airprograms/air_planning/index.aspx.

EPA has a mandatory duty to make a finding by no later than six months after the Maryland serious nonattainment SIP was due, that is March 30, 2013, whether Maryland failed to submit its serious nonattainment SIP. *See* 42 U.S.C. § 7410(k)(1)(B). However, EPA has failed to make such a finding. Thus, EPA is in violation of this mandatory duty.

While making such a finding takes a minimal amount of effort and resources on EPA part, the consequences are significant for failure to advance ozone protection measures. Baltimore has at least 2 ambient air monitors with 2010 – 2012 design values above 85 parts per billion (ppb). Edgewood Chemical Biological Center’s monitor has a design value of 93 ppb. Several other monitors are just barely below 85 ppb. This means that Metro-Baltimore has a troubling ozone problem. It also means that Baltimore is going to be “bumped up” to a severe ozone nonattainment area as its attainment date is June 15, 2013.

There are readily available local ozone precursor reductions which Maryland continues to fail to avail itself of. For example, 3 of the 6 coal-burning power plant units in the nonattainment area still do not have a Selective Catalytic Reduction (SCR) control, despite the fact that SCR NOx reduction technology has been around for decades and EPA has repeatedly found it to be cost effective. The time is long past for major sources to ozone precursors in the Baltimore

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serious ozone nonattainment area to at least have the best 20th century control technology installed and operated.

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

Sierra Club
85 Second St. 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5500

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

Sierra Club and its counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA promptly contacting the undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, however, we will have to assume that you are not interested in promptly settling this matter and file a complaint.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Ukeiley".

Robert Ukeiley
Counsel for Sierra Club