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June 25, 2013

VIA CERTIFIED MAIL

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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RE: Notice of Intent to Sue under the Federal Clean Air Act for Failure to Designate Under 42 U.S.C. § 7407(d)(1)(B)(i) areas for the 2010 SO₂ National Ambient Air Quality Standard

Dear Administrator:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Pt. 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency ("Administrator," "EPA," or "you") for failing to perform certain nondiscretionary duties under the Clean Air Act ("the Act"). As further specified below, you have failed to carry out your nondiscretionary duty under section 107(d) of the Act, 42 U.S.C. §7407(d), to promulgate designations of all areas throughout the nation as nonattainment, attainment, or unclassifiable for the primary national ambient air quality standard ("NAAQS") for sulfur dioxide ("SO₂"), as revised on June 2, 2010, and published in the Federal Register on June 22, 2010.

Section 107(d)(1)(A) of the Act requires that by such date as the Administrator may reasonably require, but not later than one year after promulgation of a new or revised NAAQS for any pollutant under section 109 of the Act, the Governor of each State shall submit to the Administrator a list designating all areas (or portions thereof) in the State as nonattainment, attainment, or unclassifiable for that NAAQS. 42 U.S.C. §7407(d)(1)(A). Section 107(d)(1)(B) of the Act provides that upon promulgation or revision of a NAAQS, the Administrator shall

promulgate the designations of all areas (or portions thereof) submitted under §107(d)(1)(A)¹ as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised NAAQS. *Id.* § 7407(d)(1)(B)(i). Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations. *Id.* Pursuant to section 107(d)(2)(A) of the Act, the Administrator must publish a notice in the Federal Register promulgating any designations under § 107(d)(1). *Id.* § 7407(d)(2)(A).

On June 2, 2010, the Administrator promulgated a revision of the primary NAAQS for SO₂. 75 Fed. Reg. 35,520 (June 22, 2010) (“June 2010 SO₂ NAAQS” or “revised SO₂ NAAQS”). That promulgation triggered the Administrator’s nondiscretionary duty to promulgate designations for the revised SO₂ NAAQS for all areas pursuant to section 107(d)(1)(B) as expeditiously as practicable, but not later than June 2, 2012, and to publish a notice in the Federal Register promulgating those designations pursuant to section 107(d)(2). On August 3, 2012, EPA announced in the Federal Register that it was using its authority under section 107(d)(1)(B)(i) of the Act to extend by one year the deadline for promulgating initial area designations for the June 2010 SO₂ NAAQS. 77 Fed. Reg. 46,295 (August 3, 2012). The notice stated that, “[w]ith this extension, the EPA is now required to complete initial designations for this NAAQS by June 3, 2013.”

EPA did not meet the June 3, 2013 deadline for promulgating designations for the 2010 SO₂ NAAQS for all areas in each state as required by section 107(d)(1)(B) of the Act, or for publishing a Federal Register notice promulgating such designations as required by section 107(d)(2) of the Act. Accordingly, on June 4, 2013, the organizations listed below served a letter on the Administrator pursuant to 42 U.S.C. § 7604 notifying him of his failure to perform his nondiscretionary duties under sections 107(d)(1)(B) & (d)(2) of the Act to promulgate designations for the June 2010 SO₂ NAAQS by June 3, 2013, and to publish a Federal Register notice promulgating such designations by June 3, 2013.²

We are providing this supplemental notice in the event an argument is made that the time frame allowed for SO₂ designations under CAA section 107(d)(1)(A) here should be measured from the date of Federal Register publication of the revised SO₂ NAAQS, rather than from the date the Administrator signed that revised NAAQS. As noted above, the Administrator

¹ If the Governor of a state fails to submit the list in whole or in part, as required under § 107(d)(1)(A), then §107(d)(1)(B)(ii) requires the Administrator to promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

² Although the Administrator signed the final rule promulgating the revised SO₂ NAAQS on June 2, 2010, EPA’s August 3, 2012 Federal Register notice took the position that the NAAQS revision was not promulgated until June 3, 2010 because it was not publicly disseminated until June 3, 2010. 77 Fed. Reg. at 46,295 n.1. We believe that June 2, 2010 constituted the promulgation date for purposes of calculating the deadline for designations. In this regard we note that EPA itself took the position in the June 2010 SO₂ NAAQS that EPA’s initial area designations under the revised NAAQS were due by June 1, 2012 (since June 2, 2012 would be on a Saturday). 75 Fed. Reg. at 35,585. However, EPA failed to complete the required designations by either June 2 or June 3, 2013. Accordingly, for the sake of simplicity, the June 4, 2013 notice letter referred to the deadline as June 3, 2013.

signed the promulgation of the revised SO₂ NAAQS on June 2, 2010, but notice of that promulgation was not published in the Federal Register until June 22, 2010. If the three year time frame provided for SO₂ designations here was measured from June 22, 2010, then SO₂ designations for all areas would be due June 22, 2013. Even if this later date were the applicable deadline for all SO₂ designations rather than June 3, 2013 (and we reiterate that it is not), the Administrator has failed to meet a June 22, 2013 deadline as well. As of the date of this letter, the Administrator has not promulgated designations for the revised SO₂ NAAQS for all areas in each state as required by section 107(d)(1)(B) of the Act, or published a Federal Register notice promulgating such designations as required by section 107(d)(2) of the Act. Accordingly, even if the applicable deadline were June 22, 2013, the Administrator has failed to perform his nondiscretionary duties under sections 107(d)(1)(B) & (d)(2) of the Act to promulgate designations for the revised SO₂ NAAQS for all areas in each state by June 22, 2013, and to publish a Federal Register notice promulgating such designations by June 22, 2013.

As required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

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

Natural Resources Defense Council
40 West 20th Street
New York, NY 10011
Phone: (212) 727-2700

These parties intend to commence a civil action to enforce the nondiscretionary duties described in this letter unless EPA has fully performed these duties within sixty days of the postmark date of this letter.

The undersigned are acting as legal counsel for the above-named organizations in this matter. We would be happy to discuss the concerns raised in this letter with you. Any communications should be addressed to undersigned at the addresses indicated below.

Sincerely,

/s Kathryn Amirpashaie

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cc via E-mail. Bob Perciasepe, Acting Administrator and Deputy Administrator,
U.S. Environmental Protection Agency (perciasepe.bob@epa.gov)
Sara Schneeberg, Air and Radiation Law Office, Office of General Counsel,
U.S. Environmental Protection Agency (schneeberg.sara@epa.gov)

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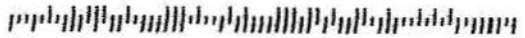
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