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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 1, 2016

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to perform mandatory duties for PM2.5

Dear Administrator McCarthy,

On behalf of the Center for Biological Diversity (CBD) and the Center for Environmental Health (CEH), I am writing to inform you that CBD and CEH intend 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). As explained below, EPA has failed to perform multiple mandatory duties with regard to particulate matter less than 2.5 microns in diameter (“PM2.5”).

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of PM2.5. PM2.5 is “produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants,” thus “[s]ources of fine particles include... motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning.” 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006). The effects of PM2.5 on human health are profound. For example, long-term exposure has been associated “with an array of health effects, notably premature mortality, increased respiratory symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” 62 Fed. Reg. 38,653, 38,668 (July 18, 1997).

PM2.5 also adversely impacts wildlife. EPA has explained “a number of animal toxicologic . . . studies had reported health effects associations with high concentrations of numerous fine particle components[.]” 71 Fed. Reg. 2,620, 2,643 – 2644 (Jan. 17, 2006). PM2.5 also causes direct foliar injury to vegetation. *Id.* at 2,682. As to broader ecosystem impacts,

EPA has explained that the nitrogen and sulfur “containing components of PM have been associated with a broad spectrum of terrestrial and aquatic ecosystem impacts that result from either the nutrient or acidifying characteristics of the deposited compounds. *Id.* These impacts include nitrogen saturation which “causes 1) Decreased productivity, increased mortality, and/or shifts in terrestrial plant community composition, often leading to decreased biodiversity in many natural habitats wherever atmospheric [reactive nitrogen] deposition increases significantly and critical thresholds are exceeded; (2) leaching of excess nitrate and associated base cations from terrestrial soils into streams, lakes and rivers and mobilization of soil aluminum; and (3) alteration of ecosystem processes such as nutrient and energy cycles through changes in the functioning and species composition of beneficial soil organisms (Galloway and Cowling 2002).” *Id.* EPA has described this impacts on terrestrial ecosystems as “profound and adverse[.]” *Id.* EPA has also determined that PM_{2.5} adversely impacts aquatic ecosystems via excess nutrient inputs and acid and acidifying deposition. 71 Fed. Reg. at 2,682 – 2,683. “Data from existing deposition networks in the U.S. demonstrate that N and S compounds are being deposited in amounts known to be sufficient to affect sensitive terrestrial and aquatic ecosystems over time.” 71 Fed. Reg. at 2,683.

Moreover, PM_{2.5} adversely affects the aesthetics of our natural surroundings. For example, Regional haze is caused in part by particulates in the air scattering sunlight. EPA, Haze- How Air Pollution Affects the View (available at http://www.epa.gov/ttn/oarpg/t1/fr_notices/haze.pdf). It is vital that EPA take the required actions in order to strengthen protection of public health and welfare against PM_{2.5}.

I. PM_{2.5} INCREMENTS

On October 20, 2010, EPA published the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” 75 Fed. Reg. 64,864 (Oct. 20, 2010). This rule established several components for making PSD permitting determinations for PM_{2.5}, including a system of “increments” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

TABLE 1—PM_{2.5} INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	Annual <u>arithmetic</u>	<u>24-hour max</u>
Class I	1	2
Class II	4	9
Class III	8	18

EPA required that states submit a SIP amendment including these PM_{2.5} increments by July 20, 2012. 75 Fed. Reg. at 64,898. *See also* 40 C.F.R. § 51.166(a)(6)(i).

A. FAILURE TO ISSUE FINDINGS OF FAILURE TO SUBMIT

EPA is required to determine whether a state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has failed to submit any required state implementation plan, there is no submittal that may be deemed administratively complete, and EPA must make a determination stating that the state failed to submit the required state implementation plan. *Id.* This is referred to as a “finding of failure to submit.” Therefore, EPA has a mandatory duty to make a finding of failure to submit PM2.5 increments by no later than January 20, 2013. Iowa, Arizona and Kentucky, with regard to the following local air agencies, have failed to submit PM2.5 increment SIP amendments as of the date of this letter yet EPA has not made a finding of failure to submit for these local air agencies in violation of its mandatory duty to do so:

Maricopa, AZ Local Air Agency

Pima, AZ Local Air Agency

Polk County, IA Local Air Agency

Louisville Metro Air Pollution Control District (LMAPCD) Jefferson County, KY¹

B. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS

The Clean Air Act also requires that if, six months after a state submits a SIP submittal, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA must take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the completeness finding. 42 U.S.C. § 7410(k)(2) - (4).

The North Sonoma County Air Pollution Control District in California had Rules 130, 200, 220, 230, 240 submitted on December 11, 2014. *See* 81 Fed. Reg. 31,567 (May 19, 2016). That submittal was administratively complete by no later than June 11, 2015. 42 U.S.C. § 7410(k)(1)(B). Therefore, EPA has a mandatory duty to take final action on this submittal by no later than June 11, 2016. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory duty.

Oklahoma submitted a SIP submittal to address PM2.5 increments on February 6, 2012. *See* 81 Fed. Reg. 42,587 (June 30, 2016) (“Revisions to OAC 252:100–3–4 effective June 15, 2005 and July 1, 2011, to maintain consistency with federal requirements and adopt and implement the PSD PM2.5 increments promulgated by the EPA on October 20, 2010.”). This submittal was deemed complete by no later than August 6, 2012. 42 U.S.C. § 7410(k)(1)(B).

¹ LMAPCD’s SIP is also missing the PM10 increments. Therefore, we petition EPA for a SIP Call to require LMAPCD to add the PM10 increments to its SIP.

Thus, EPA has a mandatory duty to take final action on this submittal by no later than August 6, 2013. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory duty.

Vermont submitted a SIP revision addressing the PM2.5 increment requirements for the state on July 25, 2014, which EPA determined was complete on August 1, 2014. Thus, EPA has a mandatory duty to take final action on this SIP submittal by no later than August 1, 2015. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory duty.

Maine submitted a SIP revision addressing the PM2.5 increment requirements for the state on February 14, 2013. It was deemed complete by no later than August 14, 2013. 42 U.S.C. § 7410(k)(1)(B). Thus, EPA has a mandatory duty to take final action on this SIP submittal by no later than August 14, 2014. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this mandatory duty.

II. 2012 PM2.5 NAAQS GOOD NEIGHBOR PROVISION

On December 14, 2012, the then EPA Administrator Lisa Jackson signed a new annual PM2.5 NAAQS of 12 ug/m3. 78 Fed. Reg. 3,086, 3,276 (Jan. 15, 2013). The promulgation of the 2012 PM2.5 NAAQS created a requirement that states submit an Infrastructure SIP for the 2012 PM2.5 NAAQS within three years, that is by December 14, 2015. *See* 42 U.S.C. § 7410(a)(1).

A. FAILURE TO ISSUE FINDINGS OF FAILURE TO SUBMIT

EPA has a mandatory duty to make a finding of failure to submit for 2012 PM2.5 NAAQS Infrastructure SIP Good Neighbor provisions, that is 42 U.S.C. § 7410(a)(2)(D)(i)(Prongs 1-4), by no later than six months after the deadline for state SIP submittals, that is June 14, 2016. EPA has failed to make findings of failure to submit for the following states and following prongs of the 2012 PM2.5 NAAQS Infrastructure SIP Good Neighbor provision.

STATE	PRONGS OF GOOD NEIGHBOR PROVISION
Alabama	Prongs 1 - 4
Arkansas	Prongs 1 - 4
Arizona	Prongs 1 - 4
Delaware	Prongs 1 - 4
Florida	Prongs 1 - 4
Georgia	Prongs 1 - 4
Iowa	Prongs 1 - 4
Illinois	Prongs 1 - 4
Indiana	Prongs 1 - 4
Kansas	Prongs 1 - 4

Kentucky	Prongs 1 - 4
Louisiana	Prongs 1 & 2 only
Massachusetts	Prongs 1 - 4
Maryland	Prongs 1 - 4
Maine	Prongs 1 - 4
Michigan	Prongs 1 - 4
Minnesota	Prongs 1- 3 only
Missouri	Prongs 1 - 4
Mississippi	Prongs 1 & 2 only
North Carolina	Prongs 1 & 2 only
Nevada	Prongs 1 - 4
New York	Prongs 1 - 4
Ohio	Prongs 1 - 4
Oklahoma	Prongs 1 - 4
Pennsylvania	Prongs 1 & 2 only
Rhode Island	Prongs 1 - 4
South Carolina	Prongs 1 - 3
Tennessee	Prongs 1 - 4
Virginia	Prongs 1 & 2 only
Washington	Prongs 1 & 2
Wisconsin	Prongs 1 - 4
West Virginia	Prongs 1 - 4

B. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS

As explained above, EPA has a mandatory duty to take final action on an administratively complete SIP submittal within one year of the SIP submittal being deemed complete. 42 U.S.C. § 7410(k)(2) - (4). New Jersey submitted its 2012 PM2.5 Infrastructure SIP Good Neighbor provision, prongs 1 – 4 by no later than October 17, 2014. EPA deemed this submittal administratively complete no later than October 24, 2014. Thus, EPA has a mandatory duty to take final action on this submittal by no later than October 24, 2015. EPA has failed to perform this mandatory duty.

III. 2006 PM2.5 NAAQS NONATTAINMENT AREA “BUMP UP”

Moderate 2006 PM2.5 nonattainment areas have an attainment date of December 31, 2015. Therefore, EPA has a mandatory duty to determine if they attained by their attainment date and publish notice of such a finding by no later than June 30, 2016. 42 U.S.C. §§ 7509(c)(2), 7513(b)(2). EPA has failed to perform this mandatory duty for the following 2006 PM2.5 nonattainment areas:

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Fairbanks, AK,
Nogales, AZ,
West Central Pinal, AZ,
Chico, CA,
Imperial, CA,
Sacramento, CA,
San Francisco Bay Area, CA
Logan, UT-Idaho,
Liberty-Clairton, PA,
Knoxville-Sevierville-La Follette, TN,
Logan, UT,
Provo, UT,
Salt Lake City, UT

IV. FAILURE TO ISSUE 1997 AND 2006 PM_{2.5} INFRASTRUCTRE FIP FOR WYOMING

EPA has a mandatory duty to promulgate a Federal Implementation Plan (FIP) no later than two years after disapproving a SIP submittal. 42 U.S.C. § 7410(c)(1). EPA disapproved section 110(a)(2)(E)(ii) infrastructure element, related to CAA section 128 (State Boards), for the 1997 and 2006 PM_{2.5} NAAQS for Wyoming. *See* 78 Fed. Reg. 73,445, 73,447 (Dec. 6, 2013). This rule was effective January 6, 2014. Thus, EPA's FIP was due no later than January 6, 2016. EPA has not promulgated a FIP and thus is in violation of its mandatory duty.

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

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

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Caroline Cox
Tel: (510) 655-3900

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

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CBD, CEH and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will have to file a complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ukeiley". The signature is written in a cursive, flowing style.

Robert Ukeiley
Counsel for CBD & CEH