

Thu Aug 03 16:06:58 EDT 2017
Hope.Brian@epamail.epa.gov
FW: Clean Air Act notice of intent to sue regarding the 2012 PM2.5 nonattainment SIPs
To: CMS.OEX@epamail.epa.gov

From: Robert Ukeiley [mailto:rukeiley@igc.org]
Sent: Thursday, August 03, 2017 11:33 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Cc: Smith, Kristi <Smith.Kristi@epa.gov>
Subject: Clean Air Act notice of intent to sue regarding the 2012 PM2.5 nonattainment SIPs

Please see attached.

Robert Ukeiley

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

August 3, 2017

Scott Pruitt
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 make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B) for 2012 PM2.5 NAAQS nonattainment areas state implementation plans

Dear Administrator Pruitt,

On behalf of the Center for Biological Diversity, the Center for Environmental Health, and Clean Air Council, I am writing to inform you that they 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). Specifically, under 42 U.S.C. § 7410(k)(1)(B), EPA must issue a finding of failure to submit nonattainment area state implementation plan (SIP) elements, and publish notice of that action in the Federal Register for the 2012 particulate matter less than 2.5 microns in diameter (PM2.5) national ambient air quality standards (NAAQS). This duty is required for the nonattainment areas and elements listed in Table 1. As explained in more detail below, EPA has failed to perform these mandatory duties.

EPA should remedy its violation of these mandatory duties to better protect the public and native ecosystems from PM2.5’s harmful effects. 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. 61144, 61146 (Oct. 17, 2006).

The effects of PM_{2.5} on humans 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. 38652, 38668 (July 18, 1997).

PM_{2.5} 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. 2620, 2643 – 2644 (Jan. 17, 2006). PM_{2.5} also causes direct foliar injury to vegetation. *Id.* at 2682. 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 2682 – 2683. “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 2683.

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 action in order to strengthen protection of public health and welfare against PM_{2.5}.

I. FAILURE TO MAKE FINDING OF FAILURE TO SUBMIT

EPA is required to determine whether a state implementation plan (SIP) 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 SIP submittal, 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 SIP submittal. *Id.* This determination is referred to as a “finding of failure to submit.”

EPA’s nonattainment designations for the 2012 PM_{2.5} NAAQS were effective for most areas of the United States no later than April 15, 2015. *See* 80 Fed. Reg. 2,206 (Jan. 15, 2015). EPA designated all of the areas listed in Table 1 as moderate nonattainment areas for the 2012

PM2.5 NAAQS. *Id.* All elements of the nonattainment SIP were due by no later than the dates listed in Table 1. 40 C.F.R. § 51.1003(a)(2). *See also* https://www3.epa.gov/airquality/urbanair/sipstatus/reports/pm-2.5__2012_en.html. EPA has a mandatory duty to make a completeness finding under 42 U.S.C. § 7410(k)(1)(B) by no later than six months after the due dates for the submittals. The States in Table 1 have failed to submit nonattainment SIPs for the areas and elements listed in Table 1 as of the date of this letter. Yet, more than six months have passed since the submittal due dates and EPA has failed to issue a finding of failure to submit, as required under 42 U.S.C. § 7410(k)(1)(B), regarding the nonattainment SIPs for the areas and elements listed in Table 1.

TABLE 1

AREA & ELEMENT(S)	SUBMITTAL DEADLINE (No later than)
Imperial County, CA: Emission Inventory, Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT), Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
San Joaquin Valley, CA: Emission Inventory, RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
West Silver Valley, ID: Emission Inventory, RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
Cleveland, OH: Emission Inventory, RACM/RACT, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
Allegheny County, PA: Emission Inventory, RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016

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Delaware County, PA: Emission Inventory, Nonattainment New Source Review.	10/15/2016
Lebanon County, PA: Emission Inventory, RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
Plumas County, CA: Nonattainment New Source Review.	10/15/2016

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

Clean Air Council
135 S.19th Street, Suite 300
Philadelphia, PA 19103
Attn: Christopher D. Ahlers
Telephone: 215-567-4004, ext. 125

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

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The Center for Biological Diversity, the Center for Environmental Health, Clean Air Council and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file or amend a complaint.

Sincerely,

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

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