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CMS.OEX@epamail.epa.gov

FW: Clean Air Act notice of intent to sue regarding Louisville, KY PSD SIP submittal

To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian

Sent: Thursday, February 22, 2018 5:51:42 PM (UTC+00:00) Monrovia, Reykjavik

To: CMS.OEX

Subject: FW: Clean Air Act notice of intent to sue regarding Louisville, KY PSD SIP submittal

From: Robert Ukeiley [mailto:RUkeiley@biologicaldiversity.org]

Sent: Thursday, February 22, 2018 11:38 AM

To: Pruitt, Scott <Pruitt.Scott@epa.gov>

Cc: Skinner-Thompson, Jonathan <Skinner-Thompson.Jonathan@epa.gov>; leslie.hill@usdoj.gov; Jonathan Evans <JEvans@biologicaldiversity.org>; Keri N Powell <kpowell@powellenvironmentallaw.com>

Subject: Clean Air Act notice of intent to sue regarding Louisville, KY PSD SIP submittal

Please see attached.



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

February 22, 2018

Scott Pruitt
Administrator
United States Environmental Protection Agency
William Jefferson Clinton 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 take final action under 42 U.S.C. § 7410(k)(2)-(4) for Louisville, KY state implementation plan

Dear Administrator Pruitt:

On behalf of the Center for Biological Diversity and the Center for Environmental Health, 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). As explained below, EPA has failed to take final action, which is a mandatory duty, with regard to the Regulation 2.05, Prevention of Significant Deterioration, portion of the December 21, 2016 Louisville, Kentucky state implementation plan (SIP) submittal.

EPA should remedy its violation of this mandatory duty to better protect the public from the harmful effects of air pollution, including 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—PM2.5 INCREMENTS ESTABLISHED BY THE 2010 NSR RULE IN MICROGRAMS PER CUBIC METER

	<u>Annual 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 PM2.5 increments by July 20, 2012. 75 Fed. Reg. at 64,898. See also 40 C.F.R. § 51.166(a)(6)(i).

II. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTAL FOR LOUISVILLE

The Clean Air Act requires that EPA must take final action on an administratively complete state implementation plan 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).

On behalf of the Commonwealth of Kentucky, on December 21, 2016, the Kentucky Energy and Environment Cabinet submitted a revision to the Jefferson County portion of the Kentucky SIP which is implemented by the Louisville Metro Air Pollution Control District. This submittal included Regulation 2.05, Prevention of Significant Deterioration of Air Quality, Version 11 (effective September 21, 2016). Regulation 2.05 includes the PM2.5 increments. On December 21, 2016, EPA determined that the Regulation 2.05, Prevention of Significant Deterioration, portion of the December 21, 2016 SIP submittal was administratively complete. Therefore, EPA has a mandatory duty to take final action on the Regulation 2.05 portion of the December 21, 2016 submittal by no later than December 21, 2017. 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to perform this 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

Administrator Pruitt
February 22, 2018
Page Four

While EPA regulations require this 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 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 or amend a complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Rt Uj", is centered on the page.

Robert Ukeiley
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Counsel for Center for Biological Diversity and Center
for Environmental Health