

Law Office of Kathryn M. Amirpashaie, PLC
35934 Shrewsbury Court, Round Hill, Virginia 20141

Kathryn M. Amirpashaie

Telephone: 703.771.8394
E-Mail: kmalawoffice@gmail.com

July 10, 2019

VIA CERTIFIED MAIL

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
Mail code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Wheeler:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, based on your failure to perform a nondiscretionary duty set forth under the Clean Air Act. *See* 42 U.S.C. § 7604(a)(2). Specifically, Sierra Club intends to file suit over your failure to act within the express time frame required by 42 U.S.C. § 7410(k)(2), to find that certain states¹ failed to submit complete state implementation plans (“SIPs”) for the 2015 ozone national ambient air quality standards (“NAAQS” or “standards”) which address applicable interstate transport requirements of Clean Air Act section 110(a)(2)(D)(i), 42 U.S.C. § 7410(a)(2)(D)(i).

On October 1, 2015, EPA promulgated a revised and strengthened NAAQS for ozone to provide requisite protection of public health and welfare. Final Rule, National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292 (Oct. 26, 2015). In accordance with the Clean Air Act, states were required to adopt and submit to EPA by October 1, 2018 state-specific plans providing for implementation, maintenance, and enforcement of the 2015 ozone standard. 42 U.S.C. § 7410(a)(1). Among other provisions, Clean Air Act section 110(a)(2)(D)(i) requires that

¹ These states and areas are listed in Table 1, below.

SIPs for each new or revised NAAQS contain adequate provisions prohibiting “any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.” 42 U.S.C. §7410(a)(2)(D)(i). Twenty-five states and areas identified in Table 1, below, failed to submit plans which address the interstate transport requirements of 42 U.S.C. §7410(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

Table 1: Section 110(a)(2)(D)(i)(I): Interstate Transport for 110(a)(2) 2015 Ozone [as of 7/10/2019]			
State	Deadline	Submittal Date	EPA Completeness Action
American Samoa	10/01/2018		No
Arkansas	10/01/2018		No
Guam	10/01/2018		No
Hawaii	10/01/2018		No
Illinois	10/01/2018		No
Indiana	10/01/2018		No
Louisiana	10/01/2018		No
Maine	10/01/2018		No
Maryland	10/01/2018		No
Michigan	10/01/2018		No
Minnesota	10/01/2018		No
Mississippi	10/01/2018		No
Missouri	10/01/2018		No
New Mexico	10/01/2018		No
Northern Mariana Islands	10/01/2018		No
Ohio	10/01/2018		No
Pennsylvania	10/01/2018		No
Puerto Rico	10/01/2018		No
Rhode Island	10/01/2018		No
South Dakota	10/01/2018		No
U.S. Virgin Islands	10/01/2018		No
Utah	10/01/2018		No
Vermont	10/01/2018		No
Virginia	10/01/2018		No
Wisconsin	10/01/2018		No

Taken From: National Status of a 110(a)(2) Ozone (2015) SIP Infrastructure Requirement Requirement: Section 110(a)(2)(D)(i) - I Prong 1: Interstate transport - significant contribution, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110_a_2_ozone_2015_section_110_a_2_d_i_-_i_prong_1_interstate_transport_-_significant_contribution_inbystate.html.

For each required SIP submittal, the Clean Air Act imposes on the Administrator a nondiscretionary duty to determine, within a statutorily mandated timeframe, whether the plan is administratively complete and meets established minimum criteria. *See* 42 U.S.C. § 7410(k)(1)(B). Specifically, the Administrator must make this completeness finding within sixty days of receipt of a plan or plan revision from a state. *Id.* Where a state has failed to submit a required state implementation plan, the minimum criteria will not have been met and the Administrator must make a finding stating so no later than six months after the state's missed submittal deadline. *Id.* This is commonly referred to as a "finding of failure to submit." A finding of failure to submit a required plan then triggers EPA's nondiscretionary duty to promulgate a federal implementation plan ("FIP") "at any time within 2 years after the Administrator finds that a State has failed to make a required submission." 42 U.S.C. 7410(c)(1)(A).

As to the above-identified twenty-five states which have failed to submit plans addressing section 110(a)(2)(D)(i)(I) requirements, the Administrator has violated his mandatory duty to issue a finding of failure to submit the required interstate transport SIPs. The statutory deadline for states to submit such plans was October 1, 2018. Because these twenty-five states have failed to submit plans addressing the interstate transport requirements for the 2015 ozone NAAQS, their SIP submissions fail to meet EPA's minimum criteria for SIP completeness. By law, the Administrator was, therefore, required to make findings of failure to submit as to each of the states no later than six months after the October 1, 2018 state submission deadline, i.e. by April 1, 2019. *See* 42 U.S.C. 7410(k)(1)(B). Because the Administrator has failed to make the necessary findings of failure to submit, he is in violation of his nondiscretionary duty under 42 U.S.C. 7410(k)(1)(B).

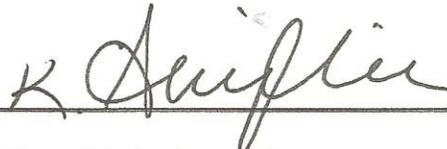
Section 304(a)(2) of the Clean Air Act provides that any person may sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary." 42 U.S.C. § 7604(a)(2). Section 110(k)(1)(B) of the Clean Air Act expressly provides that "[w]ithin 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met." 42 U.S.C. § 7410(k)(1)(B) (emphasis added). This provision imposes a clear nondiscretionary duty on the Administrator to act within six months of a missed deadline for a plan submission under this section. Thus, where the Administrator has failed to perform this nondiscretionary duty, citizens may bring suit to compel such action.

The Clean Air Act requires citizens to provide the Administrator with sixty days notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); *see also* 40 C.F.R.

54.2(a). Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA, under Clean Air Act section 304(a)(2) for failing to perform the nondiscretionary duties described above. If these violations remain unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. A court order compelling EPA and the Administrator to, within 60 days from the date of the order, publish a rule (or rules) finding that the above-referenced states have failed to make complete SIP submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2015 ozone NAAQS, thereby triggering a two-year deadline for the EPA to issue FIPs to address the good neighbor provisions for these states;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving this issue, please contact either of the undersigned counsel.



Kathryn M. Amirpashaie
Law Office of Kathryn M. Amirpashaie, PLC
35934 Shrewsbury Ct.
Round Hill, VA 20141
Tel: (703) 771-8394
kmalawoffice@gmail.com

Zachary M. Fabish
Senior Attorney
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009
Tel: (202) 675-7917
zachary.fabish@sierraclub.org

7016 2290 0001 6014 2025

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

WASHINGTON, DC 20420

OFFICIAL USE

Certified Mail Fee	\$3.50
Postage	\$0.55
Total Postage and Fees	\$8.85
Extra Services & Fees (check box, add fee as appropriate) <input type="checkbox"/> Return Receipt (hardcopy) \$2.80 <input type="checkbox"/> Return Receipt (electronic) \$0.00 <input type="checkbox"/> Certified Mail Restricted Delivery \$0.00 <input type="checkbox"/> Adult Signature Required \$0.00 <input type="checkbox"/> Adult Signature Restricted Delivery \$0.00	



Send to: **Administrator Wheeler EPA**

Street and Apt. No., or PO Box No.

City, State, and ZIP+4®: **(2015 Ozone) (transp014)**