

March 28, 2023

Via Certified and Electronic Mail

Michael Regan, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N. W.
Mail Code 1101A
Washington, D.C. 20460

Re: Notice of Intent to File Suit Under the Clean Air Act, 42 U.S.C. §§ 7604(b)(2) and 7410(k)(2)-(4), for Failure to Take Final Action on Regional Haze State Implementation Plans for the Second Planning Period.

Dear Administrator Regan,

Under Section 304(b)(2) of the Clean Air Act (“the Act”), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. part 54, Sierra Club, National Parks Conservation Association, Environmental Integrity Project, Public Citizen, and Earthjustice (the “Environmental Organizations”) provide notice of their intent to file suit against the Administrator of the U.S. Environmental Protection Agency (“EPA”) for the failure of the Administrator to perform acts or duties under the Act which are not discretionary. 42 U.S.C. § 7604(a)(2).¹ Specifically, and as explained in more detail below, the Administrator has violated, and is in violation of, his nondiscretionary duties under 42 U.S.C. § 7410(k)(2)-(4) by failing to take final action on State Implementation Plan (“SIP”) revisions submitted by Kansas, Massachusetts, New Jersey, New York, Ohio, Texas, Wisconsin, and Michigan under the Regional Haze Rule, 40 C.F.R. § 51.308.

To remedy those violations, EPA must determine whether those SIP submittals meet the substantive and procedural requirements of the Clean Air Act and the Regional Haze Rule, and take final action either approving, disapproving, or conditionally approving those state plans. Such final action is not only required by the Clean Air Act, but it will further this Administration’s promises to protect air quality in the national parks, wilderness areas, and in communities across the country where the largest sources of visibility impairing air pollutants are typically located.²

¹ This notice is provided to you in your official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”) as a prerequisite to bringing a civil action. 42 U.S.C. § 7604(b)(2); 40 C.F.R. part 54. As used herein, the term “EPA” means the Administrator.

² See Memo from Peter Tsirogotis to Regional Air Directors, Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, at 16 (July 8, 2021) (<https://www.epa.gov/visibility/clarifications-regarding-regional-haze-state-implementation-plans-second-implementation>) (urging the states and EPA regional offices to consider equity and

I. THE REGIONAL HAZE RULE

In 1977, to protect the “intrinsic beauty and historical and archeological treasures” of the national parks and wilderness areas,³ Congress directed EPA to ensure the development and implementation of Clean Air Act plans that ultimately eliminate all anthropogenic air pollution impairing the nation’s most iconic landscapes. 42 U.S.C. §§ 7491(a)(1), (b). After more than two decades of delay in implementing that mandate, in 1999, EPA finally issued the Regional Haze Rule, which requires the states (or EPA where a state fails to act) to periodically issue SIPs that contain “emission limits, schedules of compliance and other measures” to ensure reasonable progress toward eliminating visibility pollution in Class I national parks and wilderness areas by 2064. 64 Fed. Reg. 35,714, 35,727 (July 1, 1999); 40 C.F.R. §§ 51.308(d)(1), (d)(3). The first of those periodic SIPs were due in 2007. Despite that mandate—and nearly fifteen years after the deadline—several states still do not have fully approved Regional Haze plans for the first planning period.

In 2017, EPA revised the Regional Haze Rule to clarify and strengthen aspects of the Clean Air Act’s visibility program. Among other changes, the amended Regional Haze Rule required each state to “revise and submit its regional haze implementation plan revision to EPA by July 31, 2021, July 31, 2028, and every 10 years thereafter.” 40 C.F.R. § 51.308(f). The submittal is to be a “comprehensive SIP revision” that includes emission limits and other measures to fulfill the Clean Air Act’s reasonable progress requirements. 82 Fed. Reg. 3,078, 3,116; 40 C.F.R. § 51.308(f). Only a handful of states, including Kansas, Massachusetts, New Jersey, New York, Ohio, Texas, Wisconsin, and Michigan submitted SIPs for EPA review in 2021. As of March 28, 2023, however, EPA has yet to take final action on any of those submittals.

II. EPA IS IN VIOLATION OF ITS MANDATORY STATUTORY DUTY TO TAKE FINAL ACTION APPROVING OR DISAPPROVING THE REGIONAL HAZE SIP REVISIONS SUBMITTED BY KANSAS, MASSACHUSETTS, NEW JERSEY, NEW YORK, OHIO, TEXAS, WISCONSIN, AND MICHIGAN.

Under 42 U.S.C. § 7410(k)(1)(B), within six months of state’s submission of a SIP, EPA must determine whether the submittal meets the minimum completeness criteria established under 42 U.S.C. § 7410(k)(1)(A), and 40 C.F.R. part 51, appendix V. If EPA does not make a finding of incompleteness within six months of the SIP submittal, the plan is deemed complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA then has a nondiscretionary duty to take final action approving, disapproving, or conditionally approving a SIP submittal within twelve months of the submittal either being deemed, or found, administratively complete. *Id.* § 7410(k)(2).

As detailed below, EPA has violated, and is in violation of, its statutory duty to take final action on the Regional Haze SIP revisions submitted by Kansas, Massachusetts, New Jersey, New York, Ohio, Texas, Wisconsin, and Michigan.

environmental justice when developing their regional haze strategies for the second planning period).

³ H.R. Rep. No. 95-294, at 203-04 (1977), *reprinted in* 1977 U.S.C.C.A.N 1077, 1282.

Table 1

State	Regional Haze SIP Submission Date	Completeness Date (no later than)	EPA's Deadline to Approve, Disapprove, or Conditionally Approve
Kansas	July 28, 2021	January 28, 2022	January 28, 2023
Massachusetts	July 26, 2021	January 26, 2022	January 26, 2023
New Jersey	May 12, 2020	November 12, 2020	November 12, 2021
New York	May 8, 2020	November 8, 2020	November 8, 2021
Ohio	July 30, 2021	January 30, 2022	January 30, 2023
Texas	July 20, 2021	January 20, 2022	January 20, 2023
Wisconsin	July 30, 2021	January 30, 2022	January 30, 2023
Michigan	August 24, 2021	February 24, 2022	February 24, 2023

First, as reflected in Table 1, Kansas submitted its Regional Haze SIP revision for the second planning period on July 28, 2021. That submittal was deemed complete by operation of law no later than January 28, 2022. As of the date of this letter, however, it has been more than twelve months since Kansas's Regional Haze SIP was deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve Kansas's SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Second, also as reflected in Table 1, Massachusetts submitted its Regional Haze SIP revision for the second planning period on July 26, 2021. That submittal was complete by operation of law no later than January 26, 2022. As of the date of this letter, however, it has been more than twelve months since Massachusetts's Regional Haze SIP was deemed or found administratively complete. Yet, EPA has not taken final action to approve, disapprove, or conditionally approve the SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Third, New Jersey submitted its Regional Haze SIP revision for EPA review on May 12, 2020. That submittal was deemed complete no later than November 12, 2020. As of the date of this letter, however, it has been more than twelve months since New Jersey's Regional Haze SIP was deemed or found administratively complete. Yet, EPA has not taken final action to approve, disapprove, or conditionally approve the SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Fourth, New York submitted its Regional Haze SIP revision for EPA review on May 8, 2020, and that submittal was deemed complete no later than November 8, 2020. As of the date of this letter, it has been more than twelve months since New York's Regional Haze SIP was deemed or found administratively complete. Yet, EPA has not taken final action to approve, disapprove, or conditionally approve the SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Fifth, Ohio submitted its Regional Haze SIP revision for the second planning period on July 30, 2021. That submittal was complete by operation of law no later than January 30, 2022. As of the date of this letter, however, it has been more than twelve months since Ohio's Regional Haze SIP was deemed or found administratively complete. EPA still has not taken final action to approve, disapprove, or conditionally approve Ohio's SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Sixth, Texas submitted its Regional Haze SIP revision for the second planning period for EPA review on July 20, 2021. That submittal was complete by operation of law no later than January 20, 2022. As of the date of this letter, it has been more than twelve months since the Regional Haze SIP for Texas was deemed or found administratively complete, but EPA has not taken final action to approve, disapprove, or conditionally approve that SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Seventh, Wisconsin submitted a Regional Haze SIP revision on July 30, 2021. That submittal was complete by operation of law no later than January 30, 2022. As of the date of this letter, it has been more than twelve months since that SIP was deemed or found administratively complete, but EPA has not taken final action to approve, disapprove, or conditionally approve that SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

Finally, Michigan submitted a Regional Haze SIP for EPA review on August 24, 2021. That submittal was complete by operation of law no later than February 24, 2022. As of the date of this letter, it has been more than twelve months since that SIP was deemed or found administratively complete, but EPA has not taken final action to approve, disapprove, or conditionally approve that SIP, as required under 42 U.S.C. § 7410(k)(2)-(4). EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act.

As noted, to remedy those violations, EPA must take final action either approving, disapproving, or conditionally approving the Regional Haze SIP revisions submitted by Kansas, Massachusetts, New Jersey, New York, Ohio, Texas, Wisconsin, and Michigan. Decades of delay in finalizing and implementing regulations to reduce visibility impairing haze in our parks and wilderness areas have deprived citizens of the enjoyment of these precious resources, and has caused visitors, employees, and wildlife to be unnecessarily exposed to harmful levels of air pollution. Indeed, the same pollutants that cause visibility impairment in Class I areas also harm public health. 82 Fed. Reg. 3,078, 3,081, 3,117 (Jan. 10, 2017). Thus, timely implementation of the Act's visibility requirements not only presents a significant opportunity to improve visibility in the nation's most treasured national parks, but to improve air quality in communities across the country where the largest sources of visibility impairing air pollutants are typically located.

III. NOTICE OF INTENT TO SUE

The above-listed Environmental Organizations hereby give notice of their intent to file suit in U.S. District Court after 60 days from the postmark of this letter to compel EPA to perform its overdue mandatory duties under the Clean Air Act as described above.

As required by 40 C.F.R. § 54.3, the persons providing this notice are:⁴

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Association
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Washington, DC 20001

Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

Public Citizen
215 Pennsylvania Avenue SE
Washington, D.C. 20003

Environmental Integrity Project
1000 Vermont Ave, NW
Suite 1100
Washington, DC 200

The Environmental Organizations would welcome the opportunity to meet with EPA to discuss the potential for promptly resolving this matter. If EPA is interested in pursuing discussions on the above matter, please contact the undersigned counsel.

Sincerely,



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⁴ While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Cc:

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