

## Law Office of Robert Ukeiley

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507 Center Street • Berea, Kentucky 40403 • tel.859-986-5402

Robert Ukeiley  
[rukeiley@igc.org](mailto:rukeiley@igc.org)

### **VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

February 10, 2014

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 take final action on 2010 sulfur dioxide NAAQS infrastructure state implementation plan submittal and failure to make finding of failures to submit**

Dear Administrator McCarthy:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Sierra Club is notifying 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 an[] act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Clean Air Act. 42 U.S.C. § 7604(a)(2). Specifically, EPA has failed to find that multiple States, the District of Columbia and Puerto Rico (collectively "States") have failed to submit State Implementation Plans ("SIPs") to meet various requirements under Section 110(a) of the Clean Air Act with regards to the 2010 National Ambient Air Quality Standards ("NAAQS") for sulfur dioxide (SO<sub>2</sub>). These States were required to submit such SIPs within three years of the promulgation of the 2010 SO<sub>2</sub> NAAQS, or by no later than June 2, 2013. EPA is also required to take final action on a 2010 SO<sub>2</sub> NAAQS infrastructure state implementation plan submittal for Illinois within 12 months after it was deemed administratively complete. 42 U.S.C. § 7410(k)(2) - (4). As explained below in detail, EPA has violated these mandatory duties.

EPA should remedy these violations of its mandatory duties to better provide protection from the harmful impacts of SO<sub>2</sub>. SO<sub>2</sub> has numerous harmful effects on human respiratory systems, including bronchoconstriction and increased asthma symptoms. EPA, Health effects of

SO<sub>2</sub> Pollution (available at <http://www.epa.gov/airquality/sulfurdioxide/health.html>). Short-term exposure to SO<sub>2</sub> has also been linked to increased hospital and emergency room admissions for respiratory illness, particularly among children, the elderly, and asthmatics. *Id.* Thus, it is imperative that EPA remedy its failure to perform its mandatory duties in order to strengthen protection of the public's health and welfare against SO<sub>2</sub>.

On June 2, 2010, the Administrator promulgated a primary NAAQS for SO<sub>2</sub>. 75 Fed. Reg. 35,520 (June 22, 2010) (2010 SO<sub>2</sub> NAAQS). The Clean Air Act requires states to submit state implementation plans that provide for the "implementation, maintenance, and enforcement" of a new or revised NAAQS within three years of the standard's promulgation. 42 U.S.C. § 7410(a)(1). These are known as "infrastructure" state implementation plans. States were required to submit these 2010 SO<sub>2</sub> NAAQS infrastructure SIPs by no later than June 2, 2013. *See also* [http://www.epa.gov/air/urbanair/sipstatus/reports/ak\\_infrabypoll.html#x110\\_a\\_2\\_so2\\_2010](http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html#x110_a_2_so2_2010) (deadline is 06/02/2013)(last visited 1/19/14).

Under the Clean Air Act, the Administrator has a mandatory duty to make a finding as to whether a State has submitted the required SIP no later than six months after the date by which the State was required to submit such a SIP. *See* 42 U.S.C. § 7410(k)(1)(B). These are commonly referred to as "findings of failure to submit." Six months after the state's due date for the 2010 SO<sub>2</sub> NAAQS Infrastructure SIPs was December 2, 2013.

Also under the Clean Air Act, if a state does submit a SIP submittal and six months after that submittal, EPA has not made a 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). *Id.* 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).

## **FAILURE TO MAKE A FINDING OF FAILURE TO SUBMIT**

As noted above, Infrastructure SIPs for the 2010 SO<sub>2</sub> NAAQS were due June 2, 2013. Thus, EPA's mandatory duty to make a finding of failure to submit for states which have not submitted was December 2, 2013. December 2, 2013 has passed but the following states have not made 2010 SO<sub>2</sub> NAAQS Infrastructure SIP submittals:

Alaska, Alabama (Sections 110(a)(2)(D)(i)(I), 110(a)(2)(D)(i)(II)(Prong 4 – visibility), Arkansas, Arizona (Sections 110(a)(2)(D)(i)(I)), California, Colorado (Sections 110(a)(2)(D)(i)(I)), District of Columbia, Florida (Sections 110(a)(2)(D)(i)(I)), Georgia (Sections 110(a)(2)(D)(i)(I)), Hawaii, Iowa, Idaho (Sections 110(a)(2)(D)(i)(I)), Indiana, Kentucky (Sections 110(a)(2)(D)(i)(I)), Maine, Michigan, Minnesota, Mississippi (Sections 110(a)(2)(D)(i)(I)), North Carolina, Nebraska, New Hampshire (Section 110(a)(2)(D)(i)(I)(Prong 1 significant contribution), New Jersey, New Mexico, Ohio, Oklahoma, Oregon (Sections 110(a)(2)(D)(i)(I)), Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah (Sections 110(a)(2)(D)(i)(I)), Virginia,

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Vermont, Washington, Wisconsin, West Virginia (Sections 110(a)(2)(D)(i)(I)), and Wyoming

See [http://www.epa.gov/air/urbanair/sipstatus/reports/map\\_i.html](http://www.epa.gov/air/urbanair/sipstatus/reports/map_i.html) (last visited February 7, 2014). Thus, for these states, EPA is in violation of its mandatory duty to make a finding of failure to submit.

### **FAILURE TO TAKE FINAL ACTION**

EPA has failed to take final action on Illinois' infrastructure state implementation plan submittal for the 2010 SO<sub>2</sub> NAAQS. On January 9, 2013, either EPA or operation of law deemed Illinois' state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A)-(H), (J)-(M) administratively complete. See EPA, Status of State SIP Infrastructure Requirements— Illinois (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/il\\_infrabypoll.html#x110\\_a\\_\\_2\\_\\_so2\\_\\_2010\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a__2__so2__2010_) (last viewed February 7, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 9, 2014. See 42 U.S.C. § 7410(k)(2) - (4). EPA has failed to do so in violation of its mandatory duty.

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

Sierra Club  
85 Second St. 2<sup>nd</sup> Floor  
San Francisco, CA 94105  
Phone: (415) 977-5500

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

Sierra Club and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, however, we will have to assume that you are not interested in settling this matter and file or amend a complaint.

Sincerely,



Robert Ukeiley  
Counsel for Sierra Club