



April 6, 2016

Via Certified and Electronic Mail
Return Receipt Requested

The Hon. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
E: McCarthy.Gina@epa.gov

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator McCarthy:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (“the Act”). As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k)(2) of the Act¹ to issue a full or partial approval or a disapproval of the State of Alaska’s state implementation plan (“SIP”) submission addressing the Fairbanks North Star Borough 24-hour fine particulate matter nonattainment area “[w]ithin 12 months of a determination by the Administrator . . . that a State has submitted a plan . . . that meets the minimum criteria.”² The Agency “determined that [Alaska’s] SIP submission satisfie[d] the completeness criteria” on February 18, 2015,³ but has still not issued a determination with respect to approval or disapproval of the SIP submission.

Inhalable airborne particles present serious air quality problems in many areas of the United States. Numerous scientific studies have linked particle pollution exposure, especially exposure to fine particles (particles, such as those found in smoke and haze, that are 2.5 micrometers in diameter or smaller, hereinafter “PM_{2.5}”), to a variety of problems, including premature death in people with heart or lung disease, non-fatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways,

¹ 42 U.S.C. § 7410(k)(2).

² *Id.*

³ Letter from Kate Kelly, Director, Office of Air, Waste & Toxics, EPA, to Alice Edwards, Dir., Alaska Dep’t of Env’tl. Conservation, Div. of Air Quality at 1 (Feb. 18, 2015).

coughing, or difficulty breathing,⁴ as well as possibly cancer, and reproductive and developmental harms.⁵ Of all previously designated nonattainment areas for PM_{2.5}, measured by 2012-2014 design values, Fairbanks is the most polluted, with levels almost double the next most-polluted area, at 397% of the 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS).⁶

In 1997, EPA established a 24-hour NAAQS for PM_{2.5} that was revised by the agency in 2006 to provide increased protection for public health and welfare.⁷ EPA established its air quality designations for the 24-hour PM_{2.5} NAAQS on November 13, 2009, identifying the Fairbanks North Star Borough as a “nonattainment area” for the revised standard.⁸ At the time, EPA declared that, “[f]or those areas designated nonattainment, states must develop a [SIP].”⁹ The State of Alaska missed the statutory deadline to submit a plan for addressing the PM_{2.5} violations to EPA.¹⁰ On April 24, 2014, Citizens for Clean Air and the Sierra Club initiated a citizen suit under the Act to compel EPA to take the statutorily required action of making a finding under the Act that the State of Alaska failed to submit a SIP.¹¹ On December 31, 2014, the State of Alaska submitted a SIP addressing the Fairbanks PM_{2.5} nonattainment to EPA¹² and, on January 29, 2015, supplemented this SIP submission by transmitting final regulations related to the SIP.¹³ In accordance with 42 U.S.C. § 7410(k)(1)(B), on February 18, 2015, EPA Office of Air, Waste

⁴ See EPA, *Particulate Matter (PM)* (Feb. 23, 2016), available at <http://www.epa.gov/particles/health.html>.

⁵ See Am. Lung Ass’n, *State of the Air 2015* at 31, available at http://www.stateoftheair.org/2015/assets/ALA_State_of_the_Air_2015.pdf (citing EPA, *Integrated Science Assessment for Particulate Matter*, EPA 600/R-08/139F (2009)).

⁶ See EPA, *Areas Previously Designated Nonattainment for the 2006 PM_{2.5} 24-hour NAAQS*, available at https://www3.epa.gov/airtrends/pdfs/PM25_DesignValues_20122014_FINAL_08_19_15.xlsx.

⁷ See 71 Fed. Reg. 61,144, 61,144, 61,147 (Oct. 17, 2006).

⁸ 74 Fed. Reg. 58,688, 58,702 (Nov. 13, 2009).

⁹ *Id.* at 59,689.

¹⁰ See 42 U.S.C. § 7502(b).

¹¹ Compl., *Citizens for Clean Air et al., v. McCarthy et al.*, Case No. 2:14-cv-00610, Doc. 1 at 1 (W.D. Wash. Apr. 24, 2014).

¹² See Letter from Larry Hartig, Comm’r, Alaska Dep’t of Env’tl. Conservation, to Dennis McLerran, Reg’l Adm’r, EPA Region 10 (Dec. 31, 2014), available at http://dec.alaska.gov/air/anpms/comm/docs/fbxSIPpm2-5/FNSB_PM25_EPA_transmittal_letter.pdf.

¹³ See Letter from Larry Hartig, Comm’r, Alaska Dep’t of Env’tl. Conservation, to Dennis McLerran, Reg’l Adm’r, EPA Region 10 (Jan. 29, 2015), available at https://dec.alaska.gov/air/anpms/comm/docs/fbxSIPpm2-5/FNSB_PM25_EPA_transmittal_letter_01-29-15.pdf.

and Toxics Director Kate Kelly determined that the State of Alaska's submission was complete, and thus, that the EPA would proceed to consider the SIP for approval.¹⁴

Under section 110(k) of the Act, EPA shall approve in whole or in part or disapprove the State's submittal "[w]ithin 12 months of a determination by the Administrator . . . that a State has submitted a plan . . . that meets the minimum [completeness] criteria."¹⁵ Since EPA's completeness determination was rendered on February 18, 2015, EPA's approval decision was due on February 18, 2016. This deadline has now passed, but EPA has issued no approval decision with respect to the SIP submission. Thus, EPA has been in violation of section 110(k) of the Act since February 19, 2016.

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to approve in whole or in part or disapprove the State of Alaska's submittal addressing the Fairbanks North Star Borough unless EPA has fully performed this duty within 60 days of the postmark date of this letter. As required by 40 C.F.R. § 54.3(a), this notice letter is submitted on behalf of the following organizations:

Citizens for Clean Air, a project of Alaska Community Action on Toxics
505 West Northern Lights Blvd., Suite 205
Anchorage, Alaska 99503
T: 907.222.7714

Sierra Club
85 Second St., 2nd Floor
San Francisco, CA 94105
T: 415.977.5500

Citizens for Clean Air (CCA) is a coalition of local community members and citizens groups in Fairbanks, Alaska who are committed to cleaning up the air while keeping everyone warm in the winter. CCA is a project of Alaska Community Action on Toxics (ACAT), a non-profit environmental health research and advocacy organization whose mission is to assure justice by advocating for environmental and community health. The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 2.1 million members and supporters nationwide including in Fairbanks, Alaska.

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to discuss further the basis for this claim or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to me using the contact information indicated below.

¹⁴ Letter from Kate Kelly, Director, Office of Air, Waste & Toxics, EPA, to Alice Edwards, Dir., Alaska Dep't of Env'tl. Conservation, Div. of Air Quality at 1 (Feb. 18, 2015).

¹⁵ 42 U.S.C. § 7410(k)(2)–(3).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Erik Grafe', is positioned above the typed name.

Erik Grafe
EARTHJUSTICE
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Anchorage, AK 99501
T: 907.792.7102
E: egrafe@earthjustice.org

cc via e-mail:

Dennis McLerran, Regional Administrator, Region 10, mclerran.dennis@epa.gov

Lorie Schmidt, Air and Radiation Law Office, Office of General Counsel,
schmidt.lorie@epa.gov