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March 17, 2016

Via Federal Express

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N. W.
Washington, D.C. 20460

Ron Curry
Administrator, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

Guy Donaldson
Section Chief
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Re: Amended Notice of Intent to File Suit Under Section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), for Failure to Issue a Federal Implementation Plan or Approve a Revised State Implementation Plan as Required by 42 U.S.C. § 7410(c)(1)

Dear Administrator McCarthy,

On March 17, 2015, Sierra Club provided you with notice of intent to file suit under Section 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2), for the failure to promulgate a Federal Implementation Plan ("FIP") within two years of partially disapproving Louisiana's June 13, 2008 Regional Haze State Implementation Plan ("SIP"), as required by 42 U.S.C. § 7410(c)(1)(B). That notice of intent cited the U.S.

Environmental Protection Agency's ("EPA's") July 3, 2012 partial disapproval of Louisiana's Regional Haze SIP, 77 Fed. Reg. 39425, which concluded that Louisiana's plan did not satisfy the Clean Air Act's regional haze rule requirements. In particular, EPA noted that the Louisiana plan failed to make proper "best available retrofit" ("BART") determinations for certain major sources of visibility impairing pollutants, including electric generating units ("EGUs"). 77 Fed. Reg. at 39427; *see also* 77 Fed. Reg. 11841 (proposed rule). As a result of the remand of EPA's Clean Air Interstate Rule ("CAIR"), EPA further concluded that Louisiana "must submit and the EPA must approve a revised SIP submittal to address both NO_x and SO₂ BART for EGUs." 77 Fed. Reg. at 39427. EPA also noted that any revised plan would be required to include source-specific SO₂ BART for EGUs, and must consider whether EGUs previously covered by CAIR, "whether subject to BART or not, should be controlled to ensure reasonable progress." *Id.*

This letter amends Sierra Club's March 17, 2015 letter to provide notice of intent to file suit against the Administrator under 42 U.S.C. § 7604(a)(2) for the failure to promulgate a FIP within two years of EPA's separate final action disapproving the Louisiana Regional Haze SIP's reliance on CAIR to satisfy the regional haze rule's BART requirements for EGUs. *See* 77 Fed. Reg. 33642, 33654 (June 7, 2012). EPA's failure to promulgate a FIP within two years that addresses all of the deficiencies in Louisiana's Regional Haze SIP, including source-specific BART and reasonable progress determinations for Louisiana EGUs, constitutes a violation 42 U.S.C. § 7410(c)(1). *See* 77 Fed. Reg. 33642 (June 7, 2012); 77 Fed. Reg. 39425 (July 3, 2012). This letter reasserts and incorporates the alleged violations in Sierra Club's March 17, 2015 notice of intent.

A. The Clean Air Act's Visibility Requirements

In the 1977 amendments to the Clean Air Act, Congress determined that air quality in our national parks, wilderness areas, and treasured "Class I" federal areas should enjoy the highest level of protection, and it set a national goal of eliminating all human-caused visibility impairment at these areas. 42 U.S.C. § 7491(a)(1). EPA set a goal of achieving natural visibility conditions at every Class I area by 2064, and the agency directed states to make incremental, reasonable progress toward that goal. 40 C.F.R. § 51.308(d)(1)(i)(B), (d)(1)(ii). States and EPA are to make reasonable progress toward the 2064 natural visibility goal by issuing regional haze plans that improve visibility at a pace sufficient to eliminate human-caused visibility impairment at each Class I area by 2064. *See id.*

To that end, the CAA requires states to develop and implement SIPs that reduce the pollution that causes visibility impairment over a wide geographic area, known as Regional Haze, and ensure "reasonable progress" toward the goal of achieving natural visibility conditions in those areas. *Id.* at § 7491(b)(2). As one means of achieving that goal, the states must also impose best available retrofit pollutant control technologies ("BART") at many of the largest and oldest individual sources of pollution affecting the Nation's designated Class I parks and wildernesses.

After a state submits a SIP or SIP revisions to the EPA, EPA must make a finding within six months as to whether the SIP submittal complies with the requirements of 42 U.S.C. § 7410(a)(2), a determination known as the completeness finding. 42 U.S.C. § 7410(k)(1)(B). Once a submittal is deemed complete, EPA has a mandatory duty to take final action on the submittal within 12 months by approving in full, disapproving in full, or approving in part and disapproving in part. *Id.* § 7410(k)(2)–(3). If EPA disapproves a SIP submittal in whole or in part, it has a mandatory duty to promulgate a FIP within two years of its disapproval decision. *Id.* § 7410(c)(1)(B).

B. EPA Failed to Timely Promulgate a FIP for Louisiana Regional Haze in Violation of 42 U.S.C. § 7410(c)(1)

On June 13, 2008, Louisiana submitted a SIP intended to address the state's obligations under the Regional Haze Rule. *See* 77 Fed. Reg. at 11839. On June 7, 2012, and again on July 3, 2012, EPA issued final rules partially disapproving portions of the Louisiana Regional Haze SIP because, among other flaws, Louisiana failed to properly satisfy its obligation to make BART determinations for certain sources of SO₂, NO_x, and other visibility impairing pollutants, including electric generation units (“EGUs”). 77 Fed. Reg. 33654 (final rule disapproving Louisiana's reliance on the Clean Air Interstate Rule to satisfy the regional haze rule's BART requirements); *see also* 77 Fed. Reg. at 39427 (final rule partially disapproving Louisiana's Regional Haze SIP and concluding that any revised plan must address both NO_x and SO₂ BART for EGUs and evaluate whether EGUs, “whether subject to BART or not, should be controlled to ensure reasonable progress”).

EPA's final disapproval decisions each took effect on August 6, 2012, thereby triggering EPA's mandatory duty to issue a FIP or approve a revised SIP addressing all of the deficiencies in Louisiana's Regional Haze SIP, including source-specific BART and reasonable progress determinations for Louisiana EGUs, by August 6, 2014. 77 Fed. Reg. at 33654; 77 Fed. Reg. at 39426; *see also* 42 U.S.C. § 7410(c)(1)(B) (requiring EPA to issue a FIP within two years of disapproving a SIP in whole or in part). EPA has failed to issue a FIP within two years of partially disapproving Louisiana's Regional Haze SIP. Nor has EPA approved a revised Regional Haze plan submitted by Louisiana that corrects the deficiencies EPA identified in its June 7, 2012, or July 3, 2012 final rules partially disapproving Louisiana's Regional Haze plan. Consequently, EPA is in violation of its mandatory duty to promulgate a Regional Haze FIP for Louisiana under 42 U.S.C. § 7410(c)(1).

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

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Sierra Club would prefer to resolve this matter without the need for litigation. Quickly and fairly resolving this matter would be a clear indication that EPA intends to respect the rule of law. Therefore, we look forward to EPA contacting the undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, we will assume that you are not interested in settling this matter, and we will file a complaint.

Sincerely,



Joshua Smith
Counsel for Sierra Club

Cc:

Sue Chen, U.S. Department of Justice

Matthew Marks, U.S. Environmental Protection Agency