



March 17, 2015

Via Federal Express

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
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U.S. Environmental Protection Agency
1445 Ross Avenue,
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Guy Donaldson
Section Chief
U.S. Environmental Protection Agency
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Re: 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,

Pursuant to Section 304(b)(2) of the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. part 54, I hereby provide notice of Sierra Club's intent to file suit against the Administrator of the U.S. Environmental Protection Agency ("EPA") for the "failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). Specifically, the Administrator has

violated 42 U.S.C. § 7410(c)(1) by failing to promulgate a Federal Implementation Plan (“FIP”) within two years of partially disapproving Louisiana’s June 13, 2008 Regional Haze State Implementation Plan (“SIP”). *See* 77 Fed. Reg. 39,425 (July 3, 2012).

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 11,839. On July 3, 2012, EPA issued a final rule partially disapproving the Louisiana Regional Haze SIP because it found, among other flaws, that Louisiana did not properly satisfy its obligation to make BART determinations for certain sources of SO₂, NO_x, and other visibility impairing pollutants. 77 Fed. Reg. 39,425, 39,427 (adopting proposed rule with one minor exception relevant to the state’s BART determination for the Rhodia Sulfuric Acid Plant); *see also* 77 Fed. Reg. 11,841. EPA further concluded that Louisiana would be required to reconsider whether reductions of SO₂ from EGUs, whether subject to BART or not,

are appropriate for ensuring reasonable progress. *Id.* For this reason, among others, EPA partially disapproved Louisiana's Regional Haze SIP. 77 Fed. Reg. 39,425.

EPA's disapproval decision took effect on August 6, 2012, thereby triggering EPA's "mandatory FIP clock" to issue a FIP by August 6, 2014. 77 Fed. Reg. at 39,426; 77 Fed. Reg. at 11,841; 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 the two year deadline after 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 proposed February 28, 2012 partial disapproval, or its final July 3, 2012 disapproval. 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