



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

4/4 246 03 PM  
AZ-13-000-3940

Bob Perciasepe  
Acting Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Bldg.  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

OFFICE OF THE  
EXECUTIVE SECRETARIAT

2013 APR -4 PM 2:36

REC'D

Sent via Certified Mail this date:  
# 7010 0780 0000 2641 7825 et ✓

March 29, 2013

**Re: Notice of Intent to File Suit Over Failure of EPA to Promulgate a Federal Implementation Plan After Finding that Arizona Failed to Submit a State Implementation Plan Required by Section 189(d) of the Clean Air Act**

Dear Acting Administrator Perciasepe:

Pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(b)(2), the Center for Biological Diversity ("Center") hereby notifies you of its intent to file suit against the U.S. Environmental Protection Agency ("EPA" or "Agency") over the Agency's "failure...to perform [an] act or duty under [the] [Clean Air] Act which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2).

Specifically, the EPA has failed to promulgate a federal implementation plan ("FIP") within two years after finding that the State of Arizona failed to submit a state implementation plan ("SIP") to attain national ambient air quality standards ("NAAQS") for particulate matter less than 10 microns in diameter ("PM<sub>10</sub>") in Maricopa County in accordance with Section 189(d) of the Clean Air Act. This finding, which was issued pursuant to Section 179(a) of the Clean Air Act, was published in the Federal Register on February 14, 2011. See 76 Fed. Reg. 8300-8303 (Feb. 14, 2011). This finding triggered a nondiscretionary duty for the EPA to promulgate a FIP within two years in accordance with Section 110(c)(1) of the Clean Air Act. As the EPA acknowledged in its 2011 finding:

CAA [Clean Air Act] section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

76 Fed. Reg. 8301. It has been more than two years since the EPA found that Arizona failed to make the required SIP submission and the EPA has not promulgated a FIP or approved a SIP. Therefore, you are in violation of a nondiscretionary duty under the Clean Air Act.

The Center for Biological Diversity is a non-profit, public interest conservation organization with over 500,000 members and online activists, dedicated to the conservation of imperiled species and their threatened habitats through science, policy, and environmental law. The Center has members in Arizona who are harmed by the failure of the Administrator and the EPA to follow through with duties under the Clean Air Act to ensure that clean air plans, including SIPs and FIPs, are timely promulgated to ensure adequate protection of air quality and public health and welfare.

### **Background**

Maricopa County, where Phoenix is located, has been struggling to attain the PM<sub>10</sub> NAAQS for years. After failing to attain the NAAQS as required by the Clean Air Act, Arizona was required to submit a SIP by December 31, 2007. That SIP submission was required to meet the requirements of Section 189(d) of the Clean Air Act, a section that deals specifically with assuring chronic violators of the PM<sub>10</sub> NAAQS bring air quality into compliance. Specifically, Section 189(d) requires that States adopt a SIP that:

[P]rovides for attainment of the PM<sub>10</sub> air quality standard and, from the date of such submission until attainment, for an annual reduction in PM<sub>10</sub> or PM<sub>10</sub> precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

42 U.S.C. § 7513a(d). Although Arizona made a SIP submission by December 31, 2007 that supposedly complied with Section 189(d), the State ultimately withdrew the SIP on January 25, 2011. Shortly after, pursuant to Section 110(k) of the Clean Air Act, the EPA issued a finding that Arizona failed to make the SIP submission required by Section 189(d).

In accordance with Section 110(c)(1)(A) of the Clean Air Act, this “finding of failure to submit” triggered a two-year deadline by which EPA was either required to either promulgate a FIP to meet Section 189(d) of the Clean Air Act or fully approve a SIP that was consistent with Section 189(d). *See* 42 U.S.C. § 7410(c)(1)(A). This duty was explicitly acknowledged in the Agency’s February 14, 2011 finding of failure to submit.

### **The Failure to Perform a Nondiscretionary Duty**

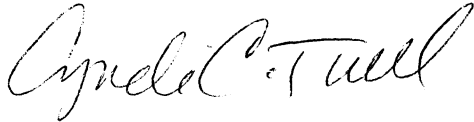
The EPA has failed to promulgate a FIP or approve a SIP to ensure that the State of Arizona attains the PM<sub>10</sub> NAAQS in Maricopa County. In accordance with Section 110(c)(1), the EPA was required to promulgate a FIP or approve a SIP by February 14, 2013. The Agency has failed to promulgate a FIP or approve a SIP by the date of this letter and is therefore in violation of a nondiscretionary duty under the Clean Air Act. In accordance with the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a)(2), we therefore intend to file suit after 60 days if the EPA has not followed through with its nondiscretionary duty.

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is Center for Biological Diversity, P.O. Box 710, Tucson, Arizona 85702. For purposes of discussing this matter, please contact us at the information below.

The Center would prefer to resolve this matter without the need for litigation. We look forward to EPA contacting us to resolve this matter. Thank you.

Sincerely,

Cyndi Tuell  
Southwest Conservation Advocate



cc: Jared Blumenfeld, EPA Region 9 Administrator, 75 Hawthorne St., San Francisco, CA  
94105  
certified mail # 7011 0470 0001 6721 0755 CT ✓