

Eco Green Generation LLC

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719-208-4674

January 20, 2020

The Hon. Andrew Wheeler

Acting Administrator U.S. Environmental Protection Agency

1200 Pennsylvania Avenue

NW Washington, D.C. 20460

E: wheeler.andrew@epa.gov

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

Dear Acting Administrator Wheeler: 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 U.S. Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (the “Act”).

1. The document submitted on November 19, 2019 by the Alaska Department of Environmental Conservation to the U.S. Environmental Protection Agency does not by its own terms achieve statutory pollution compliance within 10 years, if ever. As such, as a matter of law, it is not even a state implementation plan (“SIP”).
2. The boundaries of the Serious Nonattainment Zone in the Fairbanks North Star Borough do not include all areas with documented actual serious levels of PM 2.5 (fine particles 2.5 micrometers in diameter or smaller) pollution. As such, such areas are *prima facie* required to be included in any state implementation plan. See Appendix ‘A’.
3. As a matter of law, a state implementation plan responding to “Serious” nonattainment that omits a complete discussion of Best Available Control Technology (“BACT”) cannot be determined under law as either a complete or satisfactory plan. The current proposed SIP contains an incomplete discussion of gaseous fuels and engines as “BACT”, therefore it omits another *prima facie* required element.

The definition states that BACT "means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility."

As further specified below, you have failed to carry out your nondiscretionary duty under Section 110(k)(1) of the Act.¹ You, as a matter of law, cannot issue a completeness determination regarding the state of Alaska's proposed state implementation plan per the three issues mentioned above that were required to address requirements triggered by EPA's designation of the Fairbanks North Star Borough ("Fairbanks" or the "Borough") as a 2006 24-hour fine particulate matter "Serious" nonattainment area.

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 to a variety of problems, including cognitive impairment in children 0 to 8 years, premature death, heart attacks, aggravated asthma, and other respiratory issues.² EPA has also concluded that PM_{2.5} pollution may cause cancer and developmental and reproductive harm.³ Of all designated nonattainment areas for PM_{2.5}, as measured by their 2015-2017 design values, Fairbanks has the worst episodic pollution, with pollution levels more than twice federal limits. The entire history of Alaska and Fairbanks's noncompliance with federal air quality standards spans over two decades. Fairbanks has some of the worst air pollution in the country with occasional air-quality readings "twice as bad as Beijing's." ^{4,5}

EPA and the state of Alaska have failed to meet their basic obligations under the Clean Air Act. In 1997, EPA established a 24-hour National Ambient Air Quality Standard (NAAQS) for PM_{2.5} and made these standards more stringent in 2006. ⁶ and ⁷. On November 13, 2009, EPA identified Fairbanks as a "nonattainment area" for the revised 2006 standard, which became effective in December 14, 2009. ⁸

1. 42 U.S.C. § 7410(k)(1)(B).

2 See EPA, Integrated Science Assessment for Particulate Matter (Final Report) 6:1-7:114 (Dec. 2009); EPA, Health and Environmental Effects of Particulate Matter (PM), <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last visited Oct. 9, 2018).

3 American Lung Association, Particle Pollution, <http://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/particle-pollution.html> (last visited Oct. 9, 2018) (citing EPA, Integrated Science Assessment for Particulate Matter (Final Report) (Dec. 2009)).

4 EPA, PM_{2.5} Design Values, 2017 at tbl. 1b ("24hr Std NAA Status") (July 24, 2018), <https://www.epa.gov/air-trends/air-quality-design-values> (containing data for nonattainment areas of the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard ("NAAQS")).

5 Kim Murphy, Fairbanks Area, Trying to Stay Warm, Chokes on Wood Stove Pollution, L.A. Times (Feb. 16, 2013), <http://articles.latimes.com/2013/feb/16/nation/la-na-fairbanks-airpollution-20130217>.

EPA later promulgated a rule in 2014 acknowledging that Fairbanks had been a “Moderate” nonattainment area “by operation of law” since the date of the Borough’s nonattainment designation in December 2009.⁹ Fairbanks’s deadline as a “Moderate.” nonattainment area to meet the 2006 24-hour standard for PM_{2.5} was December 31, 2015.¹⁰ The deadline expired without the Borough reaching the standard. Pursuant to the requirements of the Clean Air Act,¹¹ EPA proposed in December 2016 to determine that Fairbanks was still in nonattainment with the 2006 24-hour PM_{2.5} standard and to reclassify the Borough as a “Serious” nonattainment area.¹² The EPA finalized this determination in May 2017.¹³ In light of Fairbanks’s “Serious” nonattainment designation, Alaska was required to submit a new proposed SIP no later than December 31, 2017, addressing the more stringent requirements of that designation.¹⁴ EPA, in turn, was required to make a completeness determination regarding Alaska’s SIP submission (or failure to submit) by June 30, 2018. ¹⁵

6 62 Fed. Reg. 38,652 (July 18, 1997).

7 71 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. pt. 50.13).

8 74 Fed. Reg. 58,688, 58,696, 58,702 (Nov. 13, 2009).

9 79 Fed. Reg. 31,566, 31,567 (June 2, 2014); 42 U.S.C. § 7513(a) (“Every area designated nonattainment for PM₁₀ . . . shall be classified at the time of such designation, by operation of law, as a moderate PM₁₀ non-attainment area.”); see also *Natural Res. Def. Council v. EPA*, 706 F.3d 428, 434-37 (D.C. Cir. 2013) (Because PM_{2.5} pollution is a subset of PM₁₀ pollution, the Clean Air Act’s regulatory requirements for PM₁₀ apply to PM_{2.5}).

10 42 U.S.C. § 7513(c)(1) (“[T]he attainment dates for [Moderate] PM-10 nonattainment areas shall be . . . no later than the end of the sixth calendar year after the area's designation as nonattainment [here, December 14, 2009].”); see also 79 Fed. Reg. at 31,570 (Areas identified as Moderate under the rule “are subject to a Moderate area attainment deadline under subpart 4 [of Section 188 of the Clean Air Act] of no later than December 31, 2015.”).

11 42 U.S.C. § 7513(b)(2) (“Within 6 months following the applicable attainment date for a PM₁₀ area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date...the area shall be reclassified by operation of law as a Serious Area.”); see also *WildEarth Guardians v. EPA*, 830 F.3d 529, 532 (D.C. Cir. 2016) (citing 42 U.S.C. § 7513(b)(2)(A)) (“Should an area fail to attain the requisite standard by the moderate-area attainment date, it is ‘reclassified by operation of law as a serious area.’”).

12 81 Fed. Reg. 91,088, 91,089 (Dec. 16, 2016).

13 82 Fed. Reg. 21,711, 21,712 (May 10, 2017).

These deadlines came and went. Eventually Alaska was ordered to submit a qualified SIP by December 31, 2019. As previously alleged, nothing resembling a qualified SIP has been served on the U.S. Environmental Protection Agency and EPA has not made a completeness determination as required by law. The EPA has therefore been in violation of Section 110(k) of the Clean Air Act. The Eco Green Generation LLC and Mr. Rhodes intend to commence a civil action to enforce your nondiscretionary duty to issue a completeness determination regarding Alaska's failure to submit a new proposed SIP unless EPA fully performs this duty within 60 days of the postmark date of this letter as required under 40 C.F.R. § 54.3(a).

This notice letter is supported by the following (who may or may not be eventual parties to litigation of this matter):

Name:

Address

(see attached)

(see attached)

Please 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 above.

Sincerely,

/S/ William Rhodes

A handwritten signature in black ink, appearing to read "W. Rhodes", with a long, sweeping horizontal flourish extending to the right.

William Rhodes, manager of Eco Green Generation LLC and individually as a citizen

14 40 C.F.R. pt. 51.1003(b)(2)(ii). In one preliminary draft document, Alaska states that its SIP is not due until 18 months after the effective date of EPA's reclassification, in December 2018. See Alaska Dep't of Env'tl. Conservation, Preliminary Draft Fairbanks Serious Area SIP 24-hour PM2.5 Technical Analysis Protocol 1 (Mar. 22, 2018). This is incorrect. "For any nonattainment area reclassified to Serious . . . , the state(s) shall submit to the EPA a Serious area attainment plan . . . within 18 months from the effective date of reclassification, or 2 years before the attainment date, whichever is earlier." 40 C.F.R. pt. 51.1003(b)(2)(ii) (emphasis added). As EPA explicitly found in its May 2017 determination, the Borough's "attainment date" is December 31, 2019; the serious area attainment plan was therefore due two years before that date, on December 31, 2017. 82 Fed. Reg. at 21,712; see also id. (EPA concluding that "Serious area attainment plan submissions for the areas reclassified in this action [including Fairbanks] will be due by December 31, 2017.").

15 42 U.S.C. § 7410(k)(1)(B) ("[N]o later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall" make a completeness determination.).

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APPENDIX A:

Moose Creek legal property description:

Eielson AFBI:

In support of this Notice to Sue:

David S. Weissman Fairbanks 99709
Richard Seifert . Fairbanks 99712
John M. Davies 1898 . Fairbanks 99709
Mary Ann Nickles 1035 Kellum St. #26 Fairbanks 99701 (signing on individually-later she signs as co-coordinator of CCA
Larry J Fogleson Fairbanks 99709
Ronald Gregory Hill Fairbanks 99709
Avalon K. Lee-. Fairbanks 9971
Dr. Jeanne Olson DVM-North Pole Alaska
Patrice Lee Coordinator Citizen Science Air Quality Monitoring-Fairbanks, AK
Nicole Stewart- Fairbanks 99709
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William J. Stringer Fairbanks
Richard Theilmann Fairbanks
Philip A. Wight Fairbanks
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John Collette Fairbanks
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Rayma Reynolds Fairbanks
Stephanie Clymer Fairbanks
Greg Egan Fairbanks
Geri McCraw Fairbanks
Edward An Fairbanks
Mike Munich Fairbanks
Paul Pecock, Fairbanks
Duane Taylor Fairbanks
Edward A. Rouleau Fairbanks
Jyllyen G. Ballard Fairbanks
Glenn Taylor Fairbanks
Brian Starhahn Fairbanks
Madeline Arima Fairbanks
Simon Gatsby Fairbanks
Mark Claypole Fairbanks

Organizations:

Alaska Community Action on Toxins, Pamela Miller
Citizens for Clean Air Fairbanks, Mary Ann Nickles coordinator and Jeanne Olson co-coordinator

cc. Chris Hladick, director EPA Region 10 of EPA, sent via email: hladick.christopher@epa.gov

Jason W. Brune, commissioner Alaska Department of Environmental Conservation, sent via email dec.commissioner@alaska.gov

Cindy Heil, program manager Air Nonpoint and Mobile Sources DEC, sent via email: cindy.heil@alaska.gov