



January 19, 2011

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

RE: Notice of citizen suit under section 304 of the Clean Air Act regarding violation of nondiscretionary duties with respect to regional haze state implementation plans

Dear Administrator:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Pt. 54, we hereby give notice on behalf of the organizations named below of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “you,” “her,” or “EPA”) for failing to perform certain nondiscretionary duties under the Clean Air Act (“CAA” or “the Act”). As further specified below, you have failed to carry out your nondiscretionary duty under CAA § 110(k)(2) to either approve or disapprove each regional haze state implementation plan (“SIP” or “plan”) submittal within 12 months after the plan was determined or deemed to be complete pursuant to CAA § 110(k)(1)(B). 42 U.S.C. § 7410(k). The Act and EPA rules required the states to submit such plans by December 17, 2007. 42 U.S.C. § 7407(d)(7)(A); 40 C.F.R. §§ 51.308 & 51.309.

Congress long ago directed the agency to take action to achieve the goal of restoring pristine air to our nation’s parks and wilderness areas. Delay of action deprives our nation’s citizens of the enjoyment of these precious resources, and exposes visitors, employees, and wildlife to harmful particulates and ground level ozone. EPA must meet its statutory responsibilities to approve or disapprove state plans to ensure prompt implementation of those plans that are adequate, and prompt corrective action for those that are not.

In § 169A of the Act, Congress established a national goal of preventing any future, and remedying any existing visibility impairment in mandatory Class I areas which impairment results from manmade air pollution. Sections 169A and 169B of the Act further provide for adoption of SIPs to prevent and remedy such visibility impairment (“haze SIPs”). The Act and rules adopted by EPA pursuant to the Act further required each state to submit haze SIPs to EPA

by December 17, 2007. 42 U.S.C. § 7407(d)(7)(A); 40 C.F.R. §§ 51.308(b), .309(c) (2007).<sup>1</sup> These haze SIPs must meet requirements set out in the Act and in 40 C.F.R. §§ 51.308 & 51.309.

Section 110(k)(1)(B) of the Act requires the Administrator to determine, within 60 days of receipt of a plan or plan revision, whether the plan or plan revision meets the minimum criteria (“completeness criteria”) for plan submissions promulgated under CAA § 110(k)(1)(A). 42 U.S.C. § 7410(k)(1)(B). If, by the date six months after receiving a plan or revision from a state, the Administrator has made no finding as to whether a plan or plan revision meets the completeness criteria, the plan or plan revision shall be deemed by operation of law to meet such criteria – i.e., to be “complete.”<sup>2</sup> *Id.* The Act further imposes a nondiscretionary duty on the Administrator to act on a plan or plan revision in accordance with CAA § 110(k)(3) (i.e., to approve or disapprove the submission) within 12 months after the submission is determined by Administrator, or deemed by operation of law, to meet the completeness criteria. 42 U.S.C. § 7410(k)(2), (3). Thus, at the absolute outside, the Administrator has a nondiscretionary duty to take final action on a SIP submission within 18 months of EPA’s receipt of such submission, except where the Administrator finds by the date six months after receipt that the submission is incomplete.

EPA received haze SIP submissions from the following states (and one region) more than 18 months ago and made no finding within six months of receipt that any such submissions were incomplete:

<b>State</b>	<b>Received by EPA (on or about)</b>	<b>Complete by operation of law (on or about)</b>	<b>EPA Approval/Disapproval Action Required (on or about)</b>
Alabama	7/15/2008	1/15/2009	1/15/2010
Albuquerque, NM	9/11/2008	3/11/2009	3/11/2010
Arkansas	9/24/2008	3/24/2009	3/24/2010
Delaware	9/26/2008	3/26/2009	3/26/2010
Iowa	3/25/2008	9/25/2008	9/25/2009
Louisiana	6/13/2008	12/13/2008	12/13/2009
Mississippi	9/24/2008	3/24/2009	3/24/2010
Missouri	3/13/2008; revised 8/2009	9/13/2008	9/13/2009
North Carolina	12/17/2007	6/17/2008	6/17/2009
South Carolina	12/17/2007	6/17/2008	6/17/2009

<sup>1</sup> Section 107(d)(7)(A) of the Act required each State to submit its haze SIP “not later than 3 years after the date on which Administrator promulgates the designations referred to” in § 107(d)(6)(B) – that is, designations for the July 1997 PM<sub>2.5</sub> national ambient air quality standards. EPA promulgated those designations on December 17, 2004. *See* 70 Fed. Reg. 944, 951 (2005). By rule, EPA expressly directed states to submit their haze SIPs not later than December 17, 2007. 40 C.F.R. §§ 51.308(b), .309(c) (2007).

<sup>2</sup> For ease of reference, plans that meet the completeness criteria are referred to herein as “complete,” and plans that do not meet the completeness criteria are referred to as “incomplete.”

Tennessee	4/4/2008	10/4/2008	10/4/2009
West Virginia	7/8/2008	1/8/2009	1/8/2010

Further, the Administrator has not acted on any of these submissions in accordance with CAA § 110(k)(3). The Administrator is therefore in violation of her above-described nondiscretionary duty under CAA § 110(k)(2) to act on each of the above-referenced haze SIP submissions in accordance with CAA § 110(k)(3) within 18 months of her receipt of such submissions. EPA’s failure to take action on these SIPs in accordance with CAA § 110(k)(3) constitutes a failure to perform a duty that is not discretionary with the Administrator within the meaning of § 304(a)(2) of the Act..

This notice letter is submitted on behalf of the following organizations (“Noticing Parties”):

National Parks Conservation Association  
1300 19th Street NW, Suite 300  
Washington, DC 20036

Montana Environmental Information Center  
PO Box 1184  
Helena, MT 59624

Environmental Defense Fund  
257 Park Avenue South  
New York, NY 10010

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

Grand Canyon Trust  
2601 N. Fort Valley Rd  
Flagstaff, AZ 86001

San Juan Citizens Alliance  
P.O. Box 2461  
1022 1/2 Main Avenue  
Durango, Colorado 81302

Our Children's Earth Foundation  
3701 Sacramento St. #194  
San Francisco, CA 94118

Plains Justice  
2606 Montana Avenue  
Billings, Montana 59101

Powder River Basin Resource Council  
934 N. Main St.  
Sheridan, WY 82801

WildEarth Guardians  
312 Montezuma Avenue  
Santa Fe, NM 87501

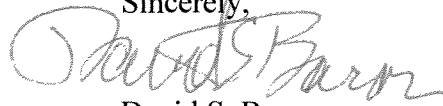
The above-named organizations intend to commence a civil action to enforce the nondiscretionary duties described in this letter unless EPA has fully performed these duties within sixty days of the postmark date of this letter.

The Noticing Parties have retained counsel to represent them in this matter. Their names and addresses are as follows:

David Baron  
Managing Attorney  
Earthjustice  
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Washington, DC 20036  
(202) 667-4500 Ext. 203

Reed Zars  
Attorney at Law  
910 Kearney Street  
Laramie, WY 82070  
(307) 745-7979

We would be happy to discuss the concerns raised in this letter with you. Please contact above-named counsel if you would like to pursue such discussions.

Sincerely,  
  
David S. Baron  
Attorney