

Law Office of Robert Ukeiley

255 Mountain Meadows Road, Boulder, CO 80302 Tel: 303.442.4033

Robert Ukeiley
rukeiley@igc.org

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 6, 2016

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Clean Air Act Notice of intent to sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to promulgate Federal Implementation Plan for Kentucky Good Neighbor provision

Dear Administrator McCarthy:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Sierra Club is notifying you that they intend to file suit against you for "a failure of the Administrator [of the United States Environmental Protection Agency ("EPA")] to perform an[] act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Clean Air Act. 42 U.S.C. § 7604(a)(2). Specifically, EPA is required to promulgate Federal Implementation Plans (FIPs) within two years of disapproving a state implementation plan submittal or finding that a state has failed to submit a state implementation plan submittal for the 2008 ozone NAAQS infrastructure state implementation plan by the required deadline. 42 U.S.C. § 7410(c)(1). As explained below in detail, EPA has violated this mandatory duty.

Public health and welfare protection from the harmful impacts of ground-level ozone, often referred to as smog, will be closer to the protection envisioned by Congress once EPA remedies these violations of its mandatory duties. Ozone has numerous harmful effects on human respiratory systems which include inducing asthma attacks in asthmatics and aggravating chronic lung diseases like emphysema and bronchitis. EPA, Smog—Who Does it Hurt?, 2-3 (available at <http://www.epa.gov/air/ozonepollution/pdfs/smog.pdf>). Long-term exposure to ozone may result in the permanent scarring of lung tissue. EPA, Ozone and Your Health, U.S.

Environmental Protection Agency (available at <http://www.epa.gov/air/ozonepollution/pdfs/health.pdf>).

Ozone can be particularly harmful to adolescents as exposure to ozone can also lead to “chronic, adverse effects on lung development in children from the age of 10 to 18 years....” See Gauderman, W. James, *et al.*, *The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age*, N. Engl. J. Med. 351:11, at 1057 (Sept. 9, 2004). However, the greatest harm “may occur later in life, since reduced lung function is a strong risk factor for complications and death during adulthood.” *Id.* at 1063.

Moreover, ozone’s detrimental effects are not limited to human health. Ozone also interferes with the ability of vegetation to properly function, damaging commercial crops and natural ecosystems alike. See 62 Fed. Reg. 38855, 38875 (July 18, 1997). Thus, it is imperative that EPA remedy its failure to perform its mandatory duties in order to strengthen protection of public health and welfare against ozone.

On March 27, 2008, EPA published promulgation of an 8-hour national ambient air quality standard (“NAAQS”) for ozone. 73 Fed. Reg. 16,436 (March 27, 2008). The Clean Air Act requires states to submit state implementation plans that provide for the “implementation, maintenance, and enforcement” of a new or revised NAAQS within three years of the standard’s promulgation. 42 U.S.C. § 7410(a)(1). These are known as “infrastructure” state implementation plans. States were required to submit these 2008 ozone NAAQS infrastructure SIPs by no later than March 27, 2011.

If EPA disapproves a SIP submittal, EPA must promulgate a Federal Implementation Plan to take the place of the disapproved SIP submittal within two years of the disapproval. 42 U.S.C. § 7410(c)(1). Similarly, if EPA finds that a state has failed to submit a SIP by the required deadline, EPA must promulgate a Federal Implementation Plan to fill in the gap of the missing SIP submittal within two years of the finding of failure to submit.

FAILURE TO PROMULGATE FIP

On March 7, 2013, EPA published notice of its disapproval of Kentucky’s 2008 ozone Infrastructure SIP covering 42 U.S.C. § 7410(a)(2)(D)(i)(I). 78 Fed. Reg. 14,681 (March 7, 2013). This rule was effective April 8, 2013. Therefore, by no later than April 8, 2015, EPA had a mandatory duty to promulgate a FIP for this element. EPA has failed to do so in violation of its mandatory duty. 42 U.S.C. § 7410(c)(1). On June 1, 2015, we sent EPA a notice of intent to sue covering this violation.

However, EPA is under the mistaken belief that the FIP “clock” for the Kentucky Good Neighbor provision, that is CAA § 110(a)(2)(D)(i)(I), did not begin to run until the Supreme Court issued its Judgment in *EPA v. EME Homer City Generation*, 134 S.Ct. 1584 (2014) on June 2, 2014. We are therefore providing this additional notice of intent to sue to avoid spending resources litigating the issue of when the Kentucky Good Neighbor FIP clock began to run. Even if EPA’s incorrect assertion that the Kentucky Good Neighbor FIP clock did not begin to

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run until June 2, 2014, two years have passed. Yet EPA has not promulgated a Good Neighbor FIP in violation of EPA's mandatory duty.

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

Sierra Club

Joshua Berman

85 Second St. 2nd Floor

San Francisco, CA 94105

Phone: (415) 977-5500

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ukeiley". The signature is written in a cursive, flowing style.

Robert Ukeiley
Counsel for Sierra Club