

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

February 14, 2017

Catherine McCabe
Acting Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to make “bump up” determinations for Philadelphia and Washington D.C. marginal nonattainment areas for the 2008 ozone NAAQS

Dear Acting Administrator McCabe,

On behalf of the Center for Biological Diversity and the Center for Environmental Health, I write to inform 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 any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA must determine by no later than January 20, 2017 whether the 2008 ozone National Ambient Air Quality Standard (NAAQS) marginal nonattainment areas which got a one year extension on their attainment date have attained the 2008 ozone NAAQS. Pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA is then required to publish notice in the Federal Register of those determinations and the reclassification of those areas which failed to attain. As explained in detail below, EPA has failed to perform this mandatory duty for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and Washington, DC-MD-VA nonattainment areas.

This notice involves EPA’s failure to timely implement the 2008 national ambient air quality standard for ground-level ozone, the principle component of what people commonly refer to as smog. According to EPA, based on extensive scientific review, ozone pollution causes decreased lung function, increased respiratory symptoms, emergency department visits, hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008). Those most at risk from ozone pollution are children; active people, *e.g.*, runners and people who do

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manual labor outside; people with pre-existing lung and heart diseases such as asthma; and older people. *Id.* at 16,440. Ozone also damages vegetation, both native and commercial crops. *Id.* at 16,485-16,486. Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life sustaining services that ecosystems provide to people for free, such as clean air, clean water and carbon sequestration. *Id.*

The attainment date for areas designated as marginal nonattainment areas for the 2008 ozone NAAQS was originally July 20, 2015. 80 Fed. Reg. 51,992 (Aug. 27, 2015). However, for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE and Washington, DC-MD-VA nonattainment areas, EPA extended the attainment date to July 20, 2016. 81 Fed. Reg. 26,697, 26,700 – 26,701 (May 4, 2016).

Pursuant to 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA must determine by no later than six months after the attainment date, that is January 20, 2017, whether the 2008 ozone NAAQS marginal nonattainment areas which got one year extensions attained the 2008 ozone NAAQS by the July 20, 2016 attainment date. Furthermore, pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA is required to publish notice in the Federal Register no later than January 20, 2017 identifying whether the nonattainment areas attained the 2008 ozone NAAQS by their attainment date. EPA has failed to fulfill both these mandatory duties for the Philadelphia and Washington, D.C. nonattainment areas.

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

Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA. 94612
Attn: Jonathan Evans
Tel: (510) 844-7100 x318

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Caroline Cox
Tel: (510) 655-3900

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

The Center for Biological Diversity, the Center for Environmental Health, and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file a complaint.

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Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ukeiley", is centered within a light gray rectangular box.

Robert Ukeiley
Counsel for CBD and CEH