

Law Office of Robert Ukeiley

507 Center Street • Berea, Kentucky 40403 • tel.859-986-5402 • fax.866-618-1017

Robert Ukeiley
rukeiley@igc.org

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

February 27, 2014

Gina McCarthy
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 take final action on certain state implementation plan submittals and failure to “bump up” the Dallas-Fort Worth, TX 1997 8-hour ozone nonattainment area

Dear Administrator McCarthy,

On behalf of Sierra Club, I write to inform you that Sierra Club intends 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, pursuant to 42 U.S.C. § 7410(k)(2) - (4) EPA must take final action, and publish notice of that action in the Federal Register, on submittals by Texas for certain requirements of Dallas-Fort Worth “nonattainment” areas for the 1997 8-hour ozone national ambient air quality standard (“NAAQS”) listed in Table 1 below. In addition, under 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA must determine by no later than December 15, 2013 whether the Dallas 1997 8-hour ozone NAAQS serious nonattainment attained the 1997 8-hour ozone NAAQS by the applicable attainment date. 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 December 15, 2013 identifying whether the area attainment or not and for each area that failed to attain, the reclassification of such area. Dallas has a 2010-2012 design value of 87 parts per billion (ppb) and thus failed to attain. See <http://www.epa.gov/airtrends/values.html>, ozone detailed information, Table 1b. As explained in detail below, EPA has failed to perform these mandatory duties by the statutorily-created deadlines.

This notice involves EPA’s failure to timely implement the 1997 national ambient air quality standard for ground-level ozone, the principle component of what people commonly refer

to as smog. *See* 62 Fed. Reg. 38,856 (July 18, 1997) (EPA established national ambient air quality standard of 0.08 parts per million). According to EPA, based on exhaustive 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 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.*

Under the Clean Air Act, EPA is required to determine whether a state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). *Id.* If six months after a state submits a state implementation plan submittal, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. *Id.* EPA must take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the completeness finding. 42 U.S.C. § 7410(k)(2) - (4).

EPA has failed to take final action on Texas’s state implementation plan submittals addressing the 1997 8-hour ozone NAAQS nonattainment area requirements in Table 1 for the Dallas-Fort Worth area. Each of these submittals was deemed administratively complete, either by EPA or operation of law, on the dates listed in the column labeled “Completeness Determination Date,” and more than 12 months has passed since that completeness determination:

TABLE 1

	<u>SIP Requirement</u>	<u>Completeness Determination Date</u>	<u>Deadline for EPA Approval or Disapproval</u>
1	Contingency Provisions for RFP Milestones 182(c)(9)	7/24/2012	7/24/2013
2	Ozone Attainment Demonstration – Serious	7/19/2012	7/19/2013
3	Clean Fuels for Fleets 182(c)(4)	7/19/2012	7/19/2013
4	RACT NOx for Major Sources	12/15/2007	12/15/2008
5	Enhanced Monitoring (PAMS)	7/24/2012	7/24/2013
6	RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings	7/19/2012	7/19/2013

7	RACT VOC CTG Fiberglass Boat Manufacturing Materials	7/19/2012	7/19/2013
8	RACT VOC CTG Large Appliance Coatings	7/19/2012	7/19/2013
9	RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials	7/19/2012	7/19/2013
10	RACT VOC CTG Metal Furniture coatings	7/19/2012	7/19/2013
11	RACT VOC CTG Miscellaneous Industrial Adhesives	7/19/2012	7/19/2013
12	RACT VOC CTG Miscellaneous Metal Products Coatings	7/19/2012	7/19/2013
13	RACT VOC CTG Plastic Parts Coatings	7/19/2012	7/19/2013
14	RFP VOC and NOX - Serious	7/24/2012	7/24/2013

See http://www.epa.gov/air/urbanair/sipstatus/reports/tx_elembypoll.html#ozone-8hr__1997__631 (last viewed February 17, 2014).

In addition, when EPA bumped the Dallas Ft. Worth nonattainment area up to a serious nonattainment area, EPA set its attainment date as June 15, 2013. 75 Fed. Reg. 79,302 (Dec. 20, 2010). Under 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 December 15, 2013 whether the Dallas 1997 8-hour ozone NAAQS serious nonattainment attained the 1997 8-hour ozone NAAQS by the June 15, 2013 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 December 15, 2013 identifying whether the Dallas Ft. Worth nonattainment area attained the 1997 8-hour ozone NAAQS. EPA has failed to fulfill both these mandatory duties. It is critical that EPA act promptly on this as the Dallas Ft. Worth nonattainment area failed to attain by its attainment date because it has a 2010-2012 design value of 87 parts per billion (ppb). See <http://www.epa.gov/airtrends/values.html>, ozone detailed information, Table 1b.

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

Sierra Club
85 Second St. 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5500

Administrator Gina McCarthy

February 27, 2014

Page 4

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

Sierra Club and its 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, we will have to file a complaint.

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