

February 14, 2023

By Certified Mail, Return Receipt Requested

Michael S. Regan, Administrator
Mail Code 1101A
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Notice of Citizen Suit: Pennsylvania Regional Haze

Dear Administrator Regan:

This letter provides notice under 42 U.S.C. § 7604(b) that the National Parks Conservation Association and the Sierra Club intend to file a citizen suit against the United States Environmental Protection Agency and its Administrator (collectively “EPA”) for failing to perform nondiscretionary duties under the Clean Air Act (the Act). Specifically, EPA has failed to promulgate a federal implementation plan as the Act requires within two years following its 2009 finding that Pennsylvania failed to submit a regional haze implementation plan as required under the Act and EPA rules.

The regional haze program under the Act, 42 U.S.C. §§ 7491-7492, seeks to prevent and remedy the impairment of visibility in Class I national parks and wilderness areas. The reduction in pollutants that cause visibility impairment (including nitrogen oxides, sulfur dioxide, and particulate matter) also produces important public health benefits.

The Act requires states containing Class I areas or containing air pollution sources whose emissions impact Class I areas in other states to submit implementation plans setting emission limits and compliance schedules to prevent and remedy visibility problems in the affected Class I areas. 42 U.S.C. § 7491(b)(2). Among other things, the plans must require that certain large sources of air pollution that started operating between 1962 and 1977 install best available retrofit technology, or BART, to limit haze-causing emissions. *Id.*

EPA must approve or disapprove these plans based on whether they meet applicable requirements of the Act. 42 U.S.C. § 7410(k), (l). If EPA finds that a state has failed to timely submit a required implementation plan or disapproves a submitted plan, EPA must promulgate a federal implementation plan (FIP) within two years of the finding of failure to submit or disapproval unless the state submits and EPA approves a plan before the two year deadline. 42 U.S.C. § 7410(c)(1). Any delay in EPA’s action deprives our nation’s citizens of the full

enjoyment of parks and wilderness areas, and exposes visitors and employees to harmful particulates and ground level ozone.

Regarding the Pennsylvania plan, EPA found in 2009 that Pennsylvania had failed to submit the regional haze plan (including BART provisions) that was due December 17, 2007 under EPA's haze rules. 74 Fed. Reg. 2392, 2393 (Jan. 15, 2009). That finding triggered the two-year clock for EPA to promulgate a haze FIP for the state, a deadline EPA did not meet. In subsequent litigation to compel EPA to issue a haze FIP for Pennsylvania and other states, EPA agreed to promulgate such a plan for Pennsylvania by June 15, 2012, unless EPA fully approved a Pennsylvania state plan by then. *Nat'l Parks Conservation Ass'n v. EPA*, No. 1:11-cv-01548-ABJ, Doc. 21 at 4-5 (D.D.C. March 30, 2012), as amended Doc. 38 at 2 (June 8, 2012).

In 2012, EPA issued a limited approval of a state implementation plan for Pennsylvania. 77 Fed. Reg. 41,279, July 13, 2012 (signed June 15, 2012). However, after environmental groups petitioned for review in the Third Circuit, EPA sought, and received, a voluntary remand to provide "a more detailed and complete explanation of the decision being challenged in this case." *Nat'l Parks Conservation Ass'n v. EPA*, No. 12-3534, Doc. 003111402979 (3d. Cir. Sept. 27, 2013).

In 2014, EPA reissued its limited approval of Pennsylvania's state implementation plan. 79 Fed. Reg. 24,340 (April 30, 2014). After environmental groups again filed a petition for review, the Third Circuit vacated and remanded EPA's approval of Pennsylvania's source-specific BART plan, finding that despite identifying a "host of problems" with Pennsylvania's technology analysis, EPA had failed to "provide a sufficient explanation as to why it overlooked those problems and approved" Pennsylvania's plan. *Nat'l Parks Conservation Ass'n v. EPA*, 803 F.3d 151, 167 (3d Cir. 2015).

The Third Circuit's vacatur of EPA's limited approval of Pennsylvania's BART SIP restored a state of affairs in which the state's SIP was not approved and EPA's duty to promulgate a BART FIP for the state was unfulfilled. That duty remains unfulfilled. Since the Third Circuit's vacatur and remand in 2015, EPA has neither approved a state-submitted plan for Pennsylvania, nor issued a federal plan satisfying the BART plan requirements that were due December 17, 2007. Therefore, EPA has failed to discharge its nondiscretionary duty to promulgate a BART FIP for Pennsylvania under 42 U.S.C. § 7410(c)(1) resulting from its original 2009 finding that Pennsylvania failed to timely submit a haze plan satisfying the Best Available Retrofit Technology requirements of the Act. Accordingly, EPA is subject to citizen suit under 42 U.S.C. § 7604(a)(2) to compel performance of that nondiscretionary duty, and we intend to commence such a suit.

Additionally, while EPA's inaction as described herein plainly constitutes failure to perform a nondiscretionary duty within the meaning of 42 U.S.C. 7604(a)(2), we further notify EPA in the alternative that EPA's failure to promulgate a FIP as described in this letter constitutes agency action unreasonably delayed within the meaning of 42 U.S.C. 7604(a), and we intend to file suit to compel performance of that unreasonably delayed action.

This notice letter is submitted on behalf of the following organizations:

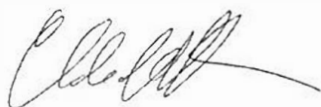
National Parks Conservation Association
777 6th Street NW, Suite 700
Washington, DC 20001-3723

Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

These groups intend to commence a civil action to enforce and compel performance of the duties described in this letter.

If EPA would like to discuss the matters raised in this letter, please contact the undersigned.

Sincerely,



Charles McPhedran
Earthjustice
1617 JFK Boulevard, Suite 2020
Philadelphia, PA 19103
(215) 206-0352
cmcphedran@earthjustice.org

Zachary M. Fabish
Senior Attorney
50 F Street, NW - 8th Floor
Washington, DC 20001
(650) 388 8446
zachary.fabish@sierraclub.org