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EXECUTIVE SECRETARIAT

Via Certified Mail

April 21, 2014

Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N. W.
Washington, D.C. 20460

Re: Notice of intent to sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to issue a Federal Implementation Plan or approve a revised State Implementation Plan as required by 42 U.S.C. § 7410(c)(1)

Dear Administrator McCarthy,

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. part 54, Sierra Club hereby notifies you of our intent to sue for “a failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). Specifically, the Administrator of the Environmental Protection Agency (EPA) has violated 42 U.S.C. § 7410(c)(1) by failing to promulgate a Federal Implementation Plan (FIP) within two years of partially disapproving Arkansas’ revised Regional Haze (RH) and Interstate Transport State Implementation Plans (SIPs). *See* 77 Fed. Reg. 14,604 (Mar. 12, 2012).

A. Clean Air Act Requirements

“The CAA requires that states develop and implement SIPs to reduce the pollution that causes visibility impairment over a wide geographic area, known as Regional Haze (RH).” 77 Fed. Reg. at 14,604. That state implementation plan must also contain provisions prohibiting emissions from within the state from interfering with

another state's obligation to protect visibility. *See* 42 U.S.C. § 4710(a)(2)(D)(i)(II). This requirement is one of the CAA's "good neighbor" provisions. *See* 77 Fed. Reg. at 14,604.

After a state submits a SIP or SIP revisions to the EPA, EPA must make a finding within six months as to whether the SIP submittal complies with the requirements of 42 U.S.C. § 7410(a)(2), a determination known as the completeness finding. 42 U.S.C. § 7410(k)(1)(B). Once a submittal is deemed complete, EPA has a mandatory duty to take final action on the submittal within 12 months by approving in full, disapproving in full, or approving in part and disapproving in part. *Id.* § 7410(k)(2)–(3). If EPA disapproves a SIP submittal in whole or in part, it has a mandatory duty to promulgate a FIP within two years of its disapproval decision. *Id.* § 7410(c)(1).

B. EPA's Failure to Promulgate a FIP for Arkansas Regional Haze in Violation of 42 U.S.C. § 7410(c)(1)

Between 2008 and 2011, Arkansas submitted SIP revisions intended to address the CAA's regional haze and interstate transport requirements. *See* 77 Fed. Reg. at 14,604. Arkansas also submitted a "State RH Rule" to address the requirements of both its RH and Interstate Transport SIPs. *Id.* On March 12, 2012, EPA disapproved of Arkansas' State RH Rule because it found that Arkansas "did not satisfy all the regulatory and statutory requirements in making [its best available retrofit technology] determinations." *Id.* at 14,605. For this reason, among others, EPA partially disapproved Arkansas' RH and Interstate Transport SIPs. *Id.* at 14,604–05.

EPA's disapproval decision took effect on April 11, 2012, thereby triggering EPA's "mandatory FIP clock" to issue a FIP by April 11, 2014. *See* 77 Fed. Reg. at 14,604, 14,606; 42 U.S.C. § 7410(c)(1) (requiring EPA to issue a FIP within two years of disapproving a SIP in whole or in part). EPA has failed to issue a FIP within the two year deadline after partially disapproving Arkansas' RH and Interstate Transport SIPs and is thus in violation of its mandatory duty under 42 U.S.C. § 7410(c)(1). Nor has EPA

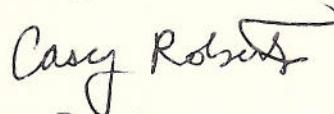
approved a revised plan submitted by Arkansas that corrects the deficiencies EPA identified on March 12, 2012.

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

Casey Roberts
Staff Attorney, Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5710
Email: casey.roberts@sierraclub.org

Sierra Club would prefer to resolve this matter without the need for litigation. Quickly and fairly resolving this matter would be a clear indication that EPA intends to respect the rule of law. Therefore, we look forward to EPA contacting the undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, we will assume that you are not interested in settling this matter, and we will file a complaint.

Sincerely,

A handwritten signature in black ink that reads "Casey Roberts". The signature is fluid and cursive, with a long horizontal stroke at the end of the last name.

Casey Roberts
Counsel for Sierra Club