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VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

April 21, 2014

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 take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals and failure to make finding of failure to submit

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 take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals identified below within 12 months after each was deemed administratively complete. 42 U.S.C. § 7410(k)(2) and (3). 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 violation of its mandatory duty. 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 duty in order to strengthen protection of the public’s health and welfare against ozone.

On March 27, 2008, EPA promulgated 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.

Under the Clean Air Act, if a state submits a SIP submittal and six months after that submittal, EPA has not made a completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). *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) and (3).

FAILURE TO TAKE FINAL ACTION

EPA has failed to take final action on Alabama’s infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. On December 14, 2012, either EPA or operation of law deemed Alabama’s state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively complete. See EPA, Status of State SIP Infrastructure Requirements— Alabama (available at http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than December 14, 2013. See 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Arizona’s infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. On January 3, 2013, either EPA or operation of law deemed Arizona’s state implementation plan submittal that included the infrastructure

requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Arizona (available at http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than Jan. 3, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Colorado’s infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. On January 2, 2013, either EPA or operation of law deemed Colorado’s state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Colorado (available at http://www.epa.gov/air/urbanair/sipstatus/reports/co_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 2, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Connecticut’s infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. By no later than January 3, 2013, either EPA or operation of law deemed Connecticut’s state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Illinois’ infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. On January 2, 2013, either EPA or operation of law deemed Illinois’ state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Illinois (available at http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 2, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Maryland’s infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(H), (J)-(M) elements. On Jan. 2, 2013, either EPA or operation of law deemed Maryland’s state implementation plan submittal

that included the infrastructure requirements under 110(a)(2)(A)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Maryland (available at http://www.epa.gov/air/urbanair/sipstatus/reports/md_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by Jan. 2, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Mississippi's infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(H), (J)-(M) elements. On December 18, 2012, either EPA or operation of law deemed Mississippi's state implementation plan submittal that included the infrastructure requirements under 110(a)(2)(A)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by December 18, 2013. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on North Carolina's infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(H), (J)-(M) elements. On Nov. 15, 2012, either EPA or operation of law deemed North Carolina's state implementation plan submittal that included the infrastructure requirements under 110(a)(2)(A)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—North Carolina (available at http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by Nov. 15, 2013. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on New Hampshire's infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. By no later than January 3, 2013, either EPA or operation of law deemed New Hampshire's state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—New Hampshire (available at http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014)). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Ohio's infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(H), (J)-(M) elements. On Jan. 3, 2013, either EPA or operation of law deemed Ohio's state implementation plan submittal that included the infrastructure requirements under 110(a)(2)(A)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Ohio (available at http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by Jan. 3, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Rhode Island's infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS. By no later than January 3, 2013, either EPA or operation of law deemed Rhode Island's state implementation plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Rhode Island (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ri_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Texas' infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(H), (J)-(M) elements. On December 20, 2012, either EPA or operation of law deemed Texas' state implementation plan submittal that included the infrastructure requirements under 110(a)(2)(A)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Texas (available at http://www.epa.gov/air/urbanair/sipstatus/reports/tx_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by December 20, 2013. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

EPA has failed to take final action on Virginia' infrastructure state implementation plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2) (D)(I)(i) and (ii)(Prong 3 PSD only) elements. On December 10, 2012, either EPA or operation of law deemed Virginia's state implementation plan submittal that included the infrastructure requirements under 110(a)(2)(D)(I)(i) and (ii)(Prong 3 PSD only) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Virginia (available at http://www.epa.gov/air/urbanair/sipstatus/reports/va_infrabypoll.html#x110_a__2__ozone__2008_ (last viewed April 21, 2014). Under the Clean Air Act, EPA is required to take final action on this submittal that addresses these infrastructure requirements by approving in full, disapproving in full, or approving in part and disapproving in part by December 10, 2013. *See* 42 U.S.C. § 7410(k)(2) and (3). EPA has failed to do so in violation of its mandatory duty.

Administrator Gina McCarthy

April 21, 2014

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

Sierra Club

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.

Sierra Club and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, however, we will have to assume that you are not interested in settling this matter and file or amend 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