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State of North Carolina

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ROY COOPER
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Department of Justice
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August 2, 2013

2013 AUG -8 AM 11:27
OFFICE OF THE
EXECUTIVE SECRETARIAT
RECEIVED

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Bldg.
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Notice of Intent to Sue under the Federal Clean Air Act for Failure to Designate Areas for the 2010 SO2 National Ambient Air Quality Standard pursuant to 42 U.S.C. § 7407(d)(1)(B)(i)

Dear Administrator McCarthy:

The State of North Carolina, pursuant to 42 U.S.C. § 7604(b)(2), hereby gives notice of its intent to file suit against you in your official capacity as Administrator of the United States Environmental Protection Agency ("EPA") for failing to perform a nondiscretionary duty under the Clean Air Act ("CAA"). Specifically, you have failed to promulgate designations of areas as nonattainment, attainment, or unclassifiable for the revised primary national ambient air quality standard ("NAAQS") for sulfur dioxide (SO₂).

Section 107(d)(1)(A) of the CAA states that within one year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each State shall submit to the Administrator a list designating all areas (or portions thereof) in the State as nonattainment, attainment, or unclassifiable for that NAAQS. 42 U.S.C. §7407(d)(1)(A). Section 107(d)(1)(B) of the CAA provides that upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas submitted under §107(d)(1)(A) "as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised [NAAQS]." *Id.* § 7407(d)(1)(B)(i). The Administrator must publish a notice in the Federal Register promulgating such designations. *Id.* §7407(d)(2)(A). The deadline for promulgating these designations may be extended "for up to one year" in the event the Administrator determines that additional information is needed. *Id.*

On June 2, 2010, the EPA promulgated a revision of the primary NAAQS for SO₂. 75 Fed. Reg. 35,520 (June 22, 2010) ("revised SO₂ NAAQS"). This promulgation triggered the Administrator's nondiscretionary duty to promulgate designations for the revised SO₂ NAAQS for all areas pursuant to section 107(d)(1)(B) by no later than June 2, 2012, and to publish a notice in the Federal Register promulgating those designations. On August 3, 2012, the EPA

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announced in the Federal Register that it was using its authority under section 107(d)(1)(B)(i) of the CAA to extend the deadline for promulgating area designations for the revised SO₂ NAAQS by one year. 77 Fed. Reg. 46,295 (August 3, 2012). The notice stated that, “[w]ith this extension, the EPA is now required to complete initial designations for this NAAQS by June 3, 2013.” The June 3, 2013 deadline for EPA to promulgate designations of all areas for the revised SO₂ NAAQS and to publish a Federal Register notice promulgating such designations has passed. EPA has not promulgated designations for the revised SO₂ NAAQS for all areas in each state, including areas in North Carolina, or published a Federal Register notice promulgating such designations. Therefore, EPA is in violation of its nondiscretionary duties under sections 107(d)(1)(B) & (d)(2) of the CAA.

In accordance with the citizen suit provision of the CAA, 42 U.S.C. § 7604(a)(2), the State of North Carolina hereby provides notice of intent to sue seeking injunctive and declaratory relief to enforce the nondiscretionary duties described in this letter.

North Carolina is aware that the Sierra Club has also provided notice of intent to sue for EPA’s failure to designate areas pursuant to 107(d)(1)(B).

Please feel free to contact the undersigned counsel below should you have any questions or concerns regarding this communication.

Sincerely,



Kathleen M. Waylett
Senior Deputy Attorney General