

nonattainment SIP for the primary national ambient air quality standard (“NAAQS”) for sulfur dioxide (“SO₂”) as revised on June 2, 2010. *See* 42 U.S.C. §7410(k)(1)(B). Specifically, the Administrator has failed to perform this mandatory duty with regard to designated nonattainment areas in these 13 states.

2. Although it is now well more than 6 months beyond the date by which these 13 states were required to submit SIPs that meet the requirements of sections 172(c) and 191-192 of the Clean Air Act and provide for attainment of the NAAQS as expeditiously as practicable but no later than October 4, 2018, the Administrator has yet to make any findings of failure to submit the requisite NSIPs. The Administrator is, therefore, violating her nondiscretionary duties under the Clean Air Act and, as a result, delaying health and welfare protections to which Plaintiff’s members are entitled. Accordingly, Sierra Club seeks a declaration that the Administrator is in violation of the Clean Air Act and an order compelling the Administrator to issue the requisite findings of failure with regard to each of the outstanding nonattainment SIPs cited herein.

II. JURISDICTION

3. The instant action arises under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* *See* 42 U.S.C. § 7410(k)(1)(B). This Court has jurisdiction over Sierra Club’s claims pursuant to 42 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 1331, 1361. The relief requested by Plaintiff is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1361, 2201, and 2202.

III. NOTICE

4. By certified letter dated October 15, 2015, Sierra Club provided the Administrator with written notice of Sierra Club’s claim concerning EPA’s failure to issue the findings of failure to submit nonattainment area SIP submittals described herein and of Sierra Club’s intent to bring suit to remedy these Clean Air Act violations. Sierra Club provided notice pursuant to

42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.2, 54.3. A copy of this notice is provided as Exhibit A to this Complaint. More than 60 days have elapsed since Sierra Club gave such notice, and the Administrator has continued her failure to perform such nondiscretionary duties.

IV. VENUE

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). A substantial part of the events or omissions giving rise to Sierra Club's claim occurred in the District of Columbia. Defendant Gina McCarthy is an officer of the United States, sued for acts and omissions in her official capacity, and her official residence is in the District of Columbia. In addition, EPA has its principal office in the District of Columbia.

V. PARTIES

1. Plaintiff Sierra Club is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Sierra Club may commence a civil action under 42 U.S.C. § 7604(a).

2. Sierra Club is the oldest and largest grassroots environmental group in the United States, with over 628,900 members nationally, including over 2,300 members in the District of Columbia; 12,400 members in Arizona; 8,000 members in Indiana; 5,400 members in Iowa; 5,000 members in Kentucky; 2,900 members in Louisiana; 17,800 members in Michigan; 2,200 members in Montana; 3,800 members in New Hampshire; 17,500 members in Ohio; 24,100 members in Pennsylvania; 6,800 members in Tennessee; 2,000 members in West Virginia; and 14,200 members in Wisconsin. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club performs this mission through advocacy, litigation, and educational outreach to its members and

state chapters. Sierra Club and its members are greatly concerned about the effects of SO₂ pollution on human health and the environment and have a long history of involvement in activities related to air quality.

3. Sierra Club members live, work, recreate, and conduct other activities in areas throughout the nation that have been designated nonattainment for the 2010 SO₂ NAAQS. Sulfur dioxide pollution in such areas adversely affects or threatens the health and welfare of Plaintiff's members. The acts and omissions of EPA alleged herein cause injury to Plaintiff's members by prolonging air quality conditions that adversely affect or threaten their health and welfare, and by nullifying or delaying measures and procedures mandated by the Clean Air Act to protect their health and welfare from sulfur dioxide pollution in places where they live, work, recreate and conduct other activities. Accordingly, the health, recreational, aesthetic, and procedural interests of Plaintiff and its members have been and continue to be adversely affected by the acts and omissions of EPA alleged herein.

4. The acts and omissions of EPA alleged herein further deprive Plaintiff and its members of procedural rights and protections to which they would otherwise be entitled, including, but not limited to, the right to enforce requirements of the Clean Air Act for preparation and implementation of plans to remedy violations of the revised SO₂ standard in nonattainment areas and the right to comment on and judicially challenge such plans.

5. For all the foregoing reasons, Sierra Club's interests and its members' interests have been, are being, and will continue to be, harmed by the Clean Air Act violations alleged in this Complaint. Granting the relief requested in this lawsuit would redress these injuries.

6. Defendant Gina McCarthy is the Administrator of the United States Environmental Protection Agency. In that role, Administrator McCarthy has been charged by Congress with the

duty to administer the Clean Air Act, including the mandatory duties at issue in this case. Gina McCarthy is sued in her official capacity.

VI. LEGAL BACKGROUND

7. The Clean Air Act is, at its core, a directive to protect the public from harmful air pollution and enhance the public health and public welfare of the nation. *See* 42 U.S.C. § 7401(b)(1). Pursuant to this mandate, EPA is required to establish primary and secondary NAAQS for criteria pollutants in order to protect public health and welfare. 42 U.S.C. § 7409. Criteria pollutants are those pollutants that “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare” and are emitted by “numerous or diverse mobile or stationary sources.” 42 U.S.C. §§ 7408(a)(1)(A)-(B). The NAAQS establish maximum allowable concentrations in the air of these pollutants, including SO₂.

8. EPA must establish primary NAAQS at a level “requisite to protect the public health” with “an adequate margin of safety.” 42 U.S.C. § 7409(b)(1). Once EPA has established NAAQS for criteria pollutants, the agency is obligated to review and revise the relevant NAAQS “at five-year intervals[.]” 42 U.S.C. § 7409(d)(1).

9. The Act requires the Governor of each state to submit to the EPA, not later than one year after promulgation or revision of a NAAQS, 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). A nonattainment area is “any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the [NAAQS] for the pollutant.” *Id.* at § 7407(d)(1)(A)(i). An attainment area is “any area . . . that meets the [NAAQS] for the pollutant.” *Id.* at § 7407(d)(1)(A)(ii). An unclassifiable area is “any area that cannot be

classified on the basis of available information as meeting or not meeting the [NAAQS] for the pollutant.” *Id.* at § 7407(d)(1)(A)(iii).

10. EPA must promulgate the designations of all areas (or portions thereof) “as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised [NAAQS].” 42 U.S.C. § 7407(d)(1)(B)(i). “Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.” *Id.* If the Governor of a state “fails to submit the list” of designations required by 42 U.S.C. §7407(d)(1)(A) in whole or in part, 42 U.S.C. § 7407(d)(1)(B)(ii) requires the Administrator, to (as part of the action required by 42 U.S.C. §7407(d)(1)(B)(i)) promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State. 42 U.S.C. § 7407.

11. Thus, at the outside, EPA must promulgate designations for all areas of every state within three years after the promulgation of a new or revised NAAQS. 42 U.S.C. § 7407(d)(1)(B). Within the same time frame, the Administrator must publish notice in the Federal Register promulgating the designations required by 42 U.S.C. § 7407(d)(1)(B)(i)&(ii). 42 U.S.C. §§ 7407(d)(1)(B)(i), 7407(d)(2)(A).

12. Promulgation of nonattainment designations triggers deadlines for states to submit plans for attaining the new or revised NAAQS for which the designations are made. For SO₂, states must submit such nonattainment SIPs for areas designated nonattainment within 18 months of the designation, and those plans must provide for attainment of the NAAQS as expeditiously as practicable, but no later than 5 years from the date of a nonattainment designation. 42 U.S.C. §§ 7514(a), 7514a(a).

13. Within 60 days of the Administrator's receipt of a nonattainment SIP, but no later than 6 months after the date, by which a State is required to submit the plan or revision, the Administrator must determine whether the minimum criteria established pursuant to Clean Air Act section 110(k)(1)(A) have been met. 42 U.S.C. § 7410(k)(1)(B). Where a state fails to submit a required nonattainment SIP, the minimum criteria cannot have been met and EPA must make a "finding of failure to submit" determination stating so within six months of the submittal due date. *Id.*

14. A finding of failure to submit a required plan then triggers an obligation for EPA to promulgate a Federal implementation plan ("FIP") "at any time within 2 years after the Administrator finds that a State has failed to make a required submission." 42 U.S.C. 7410(c)(1)(A).

15. If EPA fails to perform a non-discretionary duty, such as the duty to make a finding of failure to submit no later than 6 months after the date by which a State is required to submit a requisite nonattainment SIP, 42 U.S.C. § 7410(k)(1)(B), the Clean Air Act authorizes any person to bring suit to compel EPA to perform its duty. 42 U.S.C. § 7604(a)(2).

VII. FACTUAL BACKGROUND

16. SO₂ has numerous harmful effects on human respiratory systems, including narrowing of the airways that can constrict breathing (bronchoconstriction) and increased asthma symptoms. Short-term exposure to SO₂ has also been linked to increased hospital and emergency room admissions for respiratory illness, particularly among children, the elderly, and asthmatics.

17. Based on scientific evidence that the pre-existing SO₂ NAAQS did not adequately protect people's health, on June 2, 2010, EPA promulgated a revision of that standard. Primary

National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35,520 (signed June 2, 2010, published June 22, 2010) (to be codified at 40 C.F.R. pts. 50, 53, and 58). Specifically, EPA established a new one-hour SO₂ standard at a level of 75 parts per billion. 40 C.F.R. § 50.17(a).

18. EPA has estimated that implementation of the revised SO₂ NAAQS would annually prevent up to 5,900 premature deaths, 3,900 nonfatal heart attacks, 54,000 cases of asthma exacerbation, and 290,000 work loss days.

19. Promulgation of the revised SO₂ NAAQS triggered the Administrator's nondiscretionary duty to promulgate and publish designations under the revised standard for all areas of every state pursuant to 42 U.S.C. §§ 7407(d)(1)(B)(i) and 7407(d)(2) as expeditiously as practicable, but not later than June 2, 2012, two years from promulgation of the revised SO₂ NAAQS on June 2, 2010.

20. On August 3, 2012, EPA announced that it was using its authority under 42 U.S.C. § 7407(d)(1)(B)(i) to extend by one year the deadline for promulgating area designations for the June 2010 SO₂ NAAQS, stating that "[w]ith this extension, the EPA is now required to complete initial designations for this NAAQS by June 3, 2013." Extension of Deadline for Promulgating Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard, 77 Fed. Reg. 46,295 (August 3, 2012).

21. On August 5, 2013, EPA published in the Federal Register its final air quality designations for a handful of areas in the United States for the 2010 primary SO₂ NAAQS. Air Quality Designations for the Revised SO₂ NAAQS, 78 Fed. Reg. 47,191 (August 5, 2013) (to be codified at 40 C.F.R. pt. 81). Specifically, EPA made area designations for only 29 areas in only

16 states, finding those areas to be in nonattainment for the standard based on monitored air quality data. 78 Fed. Reg. at 47,193.

22. The nonattainment designations for those 29 areas became effective on October 4, 2013. 78 Fed. Reg. at 47,197. In accordance with the Clean Air Act, the affected 16 states were, thus, required to submit nonattainment SIPs that meet the requirements of sections 172(c) and 191-192 of the Clean Air Act and provide for attainment of the NAAQS as expeditiously as practicable but no later than October 4, 2018, to EPA within 18 months of the effective date of these designations: by April 6, 2015. 78 Fed. Reg. at 47,193.

23. Despite this clear mandate, most of the 16 states with designated nonattainment areas for the 2010 SO₂ NAAQS have failed entirely to submit the required nonattainment SIPs by the statutorily mandated deadline of April 6, 2015. *See* National Status of State SIP Requirements, http://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2__2010_so2_nonattainment_nsr_enbystate.html. This failure to submit requisite nonattainment SIPs on the part of Arizona, Indiana, Iowa, Kentucky, Louisiana, Michigan, Montana, New Hampshire, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin continues as of the date of filing of this lawsuit. *See id.*

24. This present lawsuit concerns 13 states containing designated nonattainment areas under the 2010 SO₂ NAAQS, as set forth in the table below:

| State | Nonattainment Area Name |
|---------------|--------------------------------|
| Arizona | Hayden |
| Arizona | Miami |
| Indiana | Indianapolis |
| Indiana | Morgan County |
| Indiana | Southwest Indiana |
| Indiana | Terre Haute |
| Iowa | Muscatine |
| Kentucky | Campbell-Clermont Counties |
| Kentucky | Jefferson County |
| Louisiana | St. Bernard Parish |
| Michigan | Detroit |
| Montana | Billings |
| New Hampshire | Central New Hampshire |
| Ohio | Campbell-Clermont Counties |
| Ohio | Lake County |
| Ohio | Muskingum River |
| Ohio | Steubenville |
| Pennsylvania | Allegheny |
| Pennsylvania | Beaver |
| Pennsylvania | Indiana |
| Pennsylvania | Warren |
| Tennessee | Sullivan County |
| West Virginia | Marshall |
| West Virginia | Steubenville |
| Wisconsin | Rhineland |

See EPA Final Nonattainment Areas for the 2010 SO₂ Standards Round 1 - July 2013, <http://www3.epa.gov/so2designations/pdfs/july2013SO2nonattainmentcounties.pdf>.

25. The 13 states identified above have, to date, failed to submit the required nonattainment SIPs to EPA. On October 6, 2015, the statutory six month deadline for EPA to

make a finding of failure to submit passed, and to date EPA has made no determinations that any states have failed to submit the required state implementation plan.

26. The Administrator was required by law to make findings of failure to submit the required complete SIPs to meet the requirements of the Clean Air Act for attaining the 2010 SO₂ NAAQS for the nonattainment areas in the 13 states identified above no later than six months after the April 6, 2015 date by which the states were required to submit their nonattainment SIPs, and to publish Federal Register notices of such findings of failure to submit. *See* 42 U.S.C. 7410(k)(1)(B).

27. Because the Administrator has failed to make findings of failure to submit nonattainment SIPs that meet the requirements of sections 172(c) and 191-192 of the Clean Air Act and provide for attainment of the NAAQS as expeditiously as practicable but no later than October 4, 2018 for the above-identified nonattainment areas within 6 months of April 6, 2015—i.e. by October 6, 2015—and to publish notice of such findings of failure to submit, the Administrator is in violation of her nondiscretionary duty under 42 U.S.C. 7410(k)(1)(B).

VIII. CLAIM FOR RELIEF

28. Sierra Club incorporates the allegations in all preceding paragraphs of this Complaint as if set forth in full herein.

29. The Administrator had a mandatory duty to make a finding of failure to submit nonattainment SIPs for nonattainment areas in 13 States—Arizona, Indiana, Iowa, Kentucky, Louisiana, Michigan, Montana, New Hampshire, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin—to meet the requirements of the Clean Air Act for attaining the 2010 SO₂ NAAQS no later than 6 months after the April 6, 2015 SIP submittal deadline, i.e. by October 6, 2015. *See* 42 U.S.C. § 7410(k)(1)(B) (“Within 60 days of the Administrator’s receipt of a plan

or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met.”).

30. It is now more than 6 months beyond the April 6, 2015 deadline for these 13 states to submit their nonattainment SIPs to EPA. *See* 78 Fed. Reg. at 57,193 (“The CAA directs states to submit these SIPs to the EPA within 18 months of the effective date of these designations, i.e., by April 6, 2015.”)

31. As of the date of filing this Complaint, the Administrator has neither issued findings of failure to submit nonattainment SIPs required for the 2010 SO₂ NAAQS with regard to the aforementioned 13 states, nor has she published notice in the Federal Register of such findings.

32. Therefore, the Administrator has violated, and continues to violate, the Clean Air Act, 42 U.S.C. § 7410(k)(1)(B).

33. For all the foregoing reasons, this Clean Air Act violation constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” within the meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a). EPA’s violations are ongoing, and will continue unless remedied by this Court.

34. Accordingly, an order from this Court is warranted declaring that the Administrator has failed to perform the above-referenced nondiscretionary acts and duties, and directing her to perform such acts and duties forthwith.

IX. REQUEST FOR RELIEF

WHEREFORE, Sierra Club respectfully requests that this Court enter judgment providing the following relief:

- A) A declaration that the Administrator is in violation of the Clean Air Act with regard to her failure to perform the mandatory duties listed above to issue and publish findings of failure to submit nonattainment SIPs required for the 2010 SO₂ NAAQS as to the 13 states identified herein (i.e. Arizona, Indiana, Iowa, Kentucky, Louisiana, Michigan, Montana, New Hampshire, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin);
- B) An order compelling the Administrator to perform her mandatory duties by an expeditious certain date;
- C) An order retaining jurisdiction over this matter until such time as the Administrator has complied with her non-discretionary duties under the Clean Air Act;
- D) An order awarding Sierra Club its costs of litigation, including reasonable attorneys' fees; and
- E) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 29, 2015

/s/ Zachary M. Fabish

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October 15, 2015

VIA CERTIFIED MAIL

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Gina McCarthy:

This letter provides notice that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, for “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. § 7410(k)(1)(B), the Administrator has a nondiscretionary duty to issue a finding of failure to submit nonattainment area state implementation plan (SIP) submittals, and publish notice of that action in the Federal Register no later than 6 months after the date by which a state is required to submit a nonattainment SIP for the primary national ambient air quality standard (“NAAQS”) for sulfur dioxide (“SO₂”), as revised on June 2, 2010. This duty is required for the 14 states containing nonattainment areas listed in Table 1 of this letter who have failed to submit nonattainment SIPs to EPA.¹ As explained in more detail below, EPA has failed to perform this mandatory duty. This notice is provided pursuant to 42 U.S.C. § 7604(b).

¹ Specifically: Arizona, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Montana, New Hampshire, Ohio, Pennsylvania, Tennessee, West Virginia, and Wisconsin.

I. Failure to Make Finding of Failure to Submit

Under Clean Air Act section 110, EPA is required to determine whether a state implementation plan submittal is administratively complete and meets established minimum criteria within a statutorily mandated timeframe. *See* 42 U.S.C. § 7410(k)(1)(B). Specifically, the Administrator must make this determination within 60 days of receipt of a plan or plan revision from a state. *Id.* Where a state fails to submit a required state implementation plan, the minimum criteria cannot have been met and EPA must make a determination stating so within six months of the submittal due date. *Id.* This is commonly referred to as a finding of failure to submit. A finding of failure to submit a required plan then triggers an obligation for EPA to promulgate a Federal implementation plan (“FIP”) “at any time within 2 years after the Administrator finds that a State has failed to make a required submission.” 42 U.S.C. 7410(c)(1)(A). As explained below, EPA has violated its mandatory duty to make a finding of failure to submit nonattainment SIPs for the 2010 SO₂ NAAQS with regard to areas in 14 states identified in Table 1 of this letter.

On June 2, 2010, EPA promulgated a revision of the primary NAAQS for SO₂, issuing a new one-hour standard set at 75 parts per billion (ppb). Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35,520 (June 22, 2010). Section 107(d)(1)(B) of the CAA provides that upon promulgation or revision of a NAAQS, the Administrator shall promulgate designations of all areas (or portions thereof) as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised NAAQS. 42 U.S.C. § 7407(d)(1)(B)(i). On August 3, 2012, EPA announced in the Federal Register that it was using its authority under section 107(d)(1)(B)(i) of the Act to extend by one year the deadline for promulgating initial area designations for the June 2010 SO₂ NAAQS. Extension of Deadline for Promulgating Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard, 77 Fed. Reg. 46,295 (August 3, 2012).

Subsequently, on August 5, 2013, EPA published initial nonattainment designations for the 2010 SO₂ standard for areas in 16 states based solely on available ambient air quality monitoring data for the years 2009 – 2011 that showed these areas were violating the standard. Air Quality Designations for the Revised SO₂ NAAQS, 78 Fed. Reg. 47191 (August 5, 2013). These nonattainment designations became effective on October 4, 2013, *id.* at 47197, and EPA set the due date for states to submit necessary nonattainment SIPs within 18 months of the effective date, i.e. no later than April 6, 2015. *Id.* at 47193. Yet, as of the date of this letter, the states in Table 1 have failed to submit nonattainment SIPs for their designated nonattainment areas.

| Table 1: Initial 2010 SO₂ NAAQS Nonattainment Areas | | | |
|---|----------------------------|-----------------|-----------------------|
| State | Area Name | Deadline | Submittal Date |
| Arizona | Hayden | 04/06/2015 | |
| Arizona | Miami | 04/06/2015 | |
| Illinois | Lemont | 04/06/2015 | |
| Illinois | Pekin | 04/06/2015 | |
| Indiana | Indianapolis | 04/06/2015 | |
| Indiana | Morgan County | 04/06/2015 | |
| Indiana | Southwest Indiana | 04/06/2015 | |
| Indiana | Terre Haute | 04/06/2015 | |
| Iowa | Muscatine | 04/06/2015 | |
| Kentucky | Campbell-Clermont Counties | 04/06/2015 | |
| Kentucky | Jefferson County | 04/06/2015 | |
| Louisiana | St. Bernard Parish | 04/06/2015 | |
| Michigan | Detroit | 04/06/2015 | |
| Montana | Billings | 04/06/2015 | |
| New Hampshire | Central New Hampshire | 04/06/2015 | |
| Ohio | Campbell-Clermont Counties | 04/06/2015 | |
| Ohio | Lake County | 04/06/2015 | |
| Ohio | Muskingum River | 04/06/2015 | |
| Ohio | Steubenville | 04/06/2015 | |
| Pennsylvania | Allegheny | 04/06/2015 | |
| Pennsylvania | Beaver | 04/06/2015 | |
| Pennsylvania | Indiana | 04/06/2015 | |
| Pennsylvania | Warren | 04/06/2015 | |
| Tennessee | Sullivan County | 04/06/2015 | |
| West Virginia | Marshall | 04/06/2015 | |
| West Virginia | Steubenville | 04/06/2015 | |
| Wisconsin | Rhineland | 04/06/2015 | |

Taken From: National Status of State SIP Requirements,

http://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2__2010_so2_nonattainment_nsr_enbystate.html.

In light of the failure of these 14 states to submit nonattainment SIPs for the above-identified nonattainment areas, the Administrator was required by law to make findings of failure to submit no later than six months after the April 6, 2015 date by which the states were required to submit their nonattainment SIPs for the 2010 SO₂ NAAQS. 42 U.S.C. 7410(k)(1)(B). On October 6, 2015, the statutory six month deadline passed, yet EPA has made no mandatory completeness determination as to whether the states identified above have met the minimum

criteria established pursuant to subparagraph (A), as required by section 110(k)(1)(B) of the Act. Clearly, without a submittal addressing the requisite nonattainment SIP elements, the minimum criteria cannot be met. Accordingly, EPA was required to issue a finding of failure to submit as to each of the states above. Because it failed to do so, EPA is in violation of its nondiscretionary duty under 42 U.S.C. 7410(k)(1)(B) to make a finding of failure to submit no later than six months after the date by which these states were required to submit nonattainment SIPs for the 2010 SO₂ NAAQS. Accordingly, the Sierra Club intends to commence a civil action to enforce this nondiscretionary duty as to each of the states identified above, unless EPA has fully performed these duties within 60 days of the postmark date of this letter.

II. Citizens May Sue EPA for Failure to Timely Make a Finding of Failure to Submit

Section 304(a)(2) of the CAA provides that any person can sue the Administrator of the EPA “where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary.” 42 U.S.C. § 7604(a)(2). Section 110(k)(1)(B) of the CAA expressly provides that “[W]ithin 60 days of the Administrator’s receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met.” 42 U.S.C. § 7410(k)(1)(B) (emphasis added). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within six months of a missed deadline for a plan submission under this section. Accordingly, in the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action.

III. Sierra Club Intends to File a Citizen Suit

As stated above, the Administrator had six months—until October 6, 2015—to make a finding of failure to submit with regard to each of the states identified in Table 1, above. See 42 U.S.C. § 7410(k)(1)(B). As of today, October 15, 2015, the Administrator has not yet made any such finding. Therefore, the Administrator has failed to perform her nondiscretionary duty to determine whether the minimum criteria established pursuant to subparagraph (A) have been met with regard to nonattainment SIPs for the 2010 SO₂ NAAQS for each of the areas identified above in the 14 states which failed to submit and is, therefore, in violation of 42 U.S.C. § 7410(k)(1)(B).

The CAA requires citizens to provide the Administrator with 60 days notice prior to bringing an action under Section 304(a)(2). 42 U.S.C. § 7604(b)(2); see also 40 C.F.R. 54.2(a). Accordingly, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA, under CAA section 304(a)(2) for failing to

perform the nondiscretionary duties described above. If these violations remain unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. An order compelling EPA and the Administrator to issue findings of failure to submit with regard to nonattainment SIPs for the 2010 SO₂ NAAQS for those areas identified in Table 1 of this letter within 60 days from the date of the order;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving these issues, please contact Sierra Club attorney Zachary Fabish directly at zachary.fabish@sierraclub.org or (202) 675-7917.

Sincerely,

/s Kathryn M. Amirpashaie

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| | | |
|--|--------------------|---|
| Certified Mail Fee | \$3.45 | 0116 08 Postmark Here 8666-51E  |
| Extra Services & Fees (check box, add fee as appropriate) | | |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ 0.00 | |
| <input type="checkbox"/> Return Receipt (electronic) | \$ 0.00 | |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ 0.00 | |
| <input type="checkbox"/> Adult Signature Required | \$ N/A | |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ N/A | |
| Postage | \$0.71 | |
| Total Postage and Fees | \$4.16 | |

Sent To **NOI SO 2 NATAS**
 Street and Apt. No., or PO Box No.
 City, State, ZIP+4® **Failure to issue
 finding of failure: NSIPS**

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 0640 0000 4961 9341



USPS Tracking®



[Customer Service >](#)
Have questions? We're here to help.



[Get Easy Tracking Updates >](#)
Sign up for My USPS.

Tracking Number: 7015064000049619341

Updated Delivery Day: Monday, October 19, 2015

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail™

Available Actions

| DATE & TIME | STATUS OF ITEM | LOCATION |
|--|---------------------------------|----------------------|
| October 19, 2015 , 11:52 am | Delivered | WASHINGTON, DC 20460 |
| Your item was delivered at 11:52 am on October 19, 2015 in WASHINGTON, DC 20460. | | |
| October 19, 2015 , 9:04 am | Sorting Complete | WASHINGTON, DC 20460 |
| October 19, 2015 , 7:59 am | Arrived at Unit | WASHINGTON, DC 20018 |
| October 18, 2015 , 9:50 am | Arrived at USPS Facility | WASHINGTON, DC 20018 |
| October 16, 2015 , 4:33 am | Departed USPS Facility | MERRIFIELD, VA 22081 |
| October 15, 2015 , 7:42 pm | Arrived at USPS Origin Facility | MERRIFIELD, VA 22081 |
| October 15, 2015 , 5:42 pm | Departed Post Office | ALEXANDRIA, VA 22315 |
| October 15, 2015 , 11:19 am | Acceptance | ALEXANDRIA, VA 22315 |

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

[Sign up for My USPS >](#)



| | | | |
|--|--|---|--|
| <input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee | <input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)* | <input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)* | <input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education | <input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act) |

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Failure to perform nondiscretionary duty to make findings of failure to submit nonattainment plans under the Clean Air Act

| | | | |
|-------------------------------------|--|------------------------------|--|
| VII. REQUESTED IN COMPLAINT | CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> | DEMAND \$ _____ | JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/> |
| VIII. RELATED CASE(S) IF ANY | (See instruction) | YES <input type="checkbox"/> | NO <input checked="" type="checkbox"/> If yes, please complete related case form |

| | |
|-------------------------|----------------------------------|
| DATE: <u>12/29/2015</u> | SIGNATURE OF ATTORNEY OF RECORD: |
|-------------------------|----------------------------------|

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as
Administrator of the United States Environmental
Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gina McCarthy, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Zachary M. Fabish
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as
Administrator of the United States Environmental
Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Channing D. Phillips
United States Attorney for the District of Columbia
c/o Civil Process Clerk
United States Attorney's Office
555 4th Street NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Zachary M. Fabish
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia



Sierra Club

Plaintiff(s)

v.

Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Loretta E. Lynch U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue NW Washington, DC 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Zachary M. Fabish The Sierra Club 50 F Street NW, Eighth Floor Washington, DC 20009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

