



February 4, 2014

**Via Certified and Electronic Mail**  
**Return Receipt Requested**

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
E: McCarthy.Gina@epa.gov

**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit**

Dear Administrator McCarthy:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (“the Act”). As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), to issue a “finding of failure to submit” addressing the State of Alaska’s failure to develop and submit a nonattainment state implementation plan (“SIP”) to combat persistent violations of the 24-hour national ambient air quality standard for fine particulate matter (“24-hour PM<sub>2.5</sub> NAAQS”) in the Fairbanks North Star Borough, Alaska.

Inhalable airborne particles present serious air quality problems in many areas of the United States, including in the Fairbanks North Star Borough. Numerous scientific studies have linked particle pollution exposure, especially exposure to PM<sub>2.5</sub>, to a variety of problems, including premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.<sup>1</sup> A recent report released by the American Lung Association ranked Fairbanks as the ninth dirtiest U.S. city for 24-hour PM<sub>2.5</sub> pollution.<sup>2</sup>

As you are aware, EPA established a 24-hour national ambient air quality standard for PM<sub>2.5</sub> in 1997 that was revised by the agency in 2006 to provide increased protection for public health and welfare. 71 Fed. Reg. 61,144 (Oct. 17, 2006). EPA established its air quality designations for

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<sup>1</sup> See U.S. EPA, Health and Environmental Effects of Particulate Matter (PM), *available at* <http://www.epa.gov/particles/health.html> (last viewed Feb. 3, 2014).

<sup>2</sup> See American Lung Association, State of the Air 2013 at 13, *available at* <http://www.stateoftheair.org/2013/assets/ala-sota-2013.pdf> (last visited Feb. 3, 2014).

the 24-hour PM<sub>2.5</sub> NAAQS on November 13, 2009, identifying the Fairbanks North Star Borough as a “nonattainment area” for the revised standard. 74 Fed. Reg. 58,688, 58,702 (Nov. 13, 2009). At the time, EPA declared that, “[f]or those areas designated nonattainment, states must develop a State Implementation Plan (SIP) . . . *no later than three years from the effective date*” of the agency’s designations to provide for attainment of the standard. *Id.* at 59,689 (citing section 172(b) of the Act, 42 U.S.C. § 7502(b)) (emphasis added). EPA’s 24-hour PM<sub>2.5</sub> NAAQS designations were effective December 14, 2009, *id.* at 58,688, meaning that a nonattainment SIP for the Fairbanks North Star Borough was due no later than December 14, 2012. This deadline has passed but Alaska state officials have yet to propose a SIP to address the unhealthy 24-hour levels of PM<sub>2.5</sub> pollution in the Fairbanks North Star Borough, let alone secure the final state and EPA approval required for such provisions to take the force of law.<sup>3</sup>

As you also are aware, if a state fails to develop a required SIP, section 110(k)(1)(B) requires the Administrator to make a so-called “finding of failure to submit” no later than six months after the SIP submission deadline. 42 U.S.C. § 7410(k)(1)(B). EPA’s nondiscretionary obligation to make a “finding of failure to submit” within six months of the SIP submission deadline reflects Congress’s goal to establish “statutory teeth” to enforce the deadline. *NRDC v. EPA*, 22 F.3d 1125, 1131 (D.C. Cir. 1994). Because December 14, 2012, was the deadline for the State of Alaska to submit a nonattainment SIP for the 24-hour PM<sub>2.5</sub> NAAQS, you were required to issue a “finding of failure to submit” for the Fairbanks North Star Borough no later than June 14, 2013. Having not issued the mandatory finding, EPA has been in violation of section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), since June 15, 2013.<sup>4</sup>

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue a “finding of failure to submit” addressing the Fairbanks North Star Borough unless EPA

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<sup>3</sup> The State of Alaska lacks EPA-approved SIP provisions that address PM<sub>2.5</sub> pollution in any way, even though the NAAQS was first adopted in 1997—more than 15 years ago. *See* 73 Fed. Reg. 62,902, 62,903 (Oct. 22, 2008); 77 Fed. Reg. 16,785, 16,786 (Mar. 22, 2012). In the face of the current nonattainment of the 24-hour PM<sub>2.5</sub> NAAQS, it is imperative that EPA abide by the Act’s substantive provisions and deadline requirements intended to improve air quality and protect public health.

<sup>4</sup> In 2009, EPA established a three-year deadline for submission of 24-hour PM<sub>2.5</sub> nonattainment SIPs—but this deadline was incorrect as a matter of law. The D.C. Circuit recently ruled that EPA unlawfully has been promulgating regulations to implement the various PM<sub>2.5</sub> NAAQS pursuant to the more lenient implementation provisions of Subpart 1 of Part D of Title I of the Act, 42 U.S.C. §§ 7501–7509a (Subpart 1), instead of the stricter, particulate-matter-specific provisions of Subpart 4 of Part D of Title I, *id.* §§ 7513–7513b (Subpart 4). *NRDC v. EPA*, 706 F.3d 428, 429, 434–36 (D.C. Cir. 2013). Per Subpart 4, nonattainment SIPs for the 24-hour PM<sub>2.5</sub> NAAQS were due no later than “18 months after the designation as nonattainment,” not three years after designation. 42 U.S.C. § 7513a(2)(B); *see also* EPA, *Strategies for Reducing Residential Wood Smoke* at 32 (revised Mar. 2013) (“Areas designated as nonattainment for the PM<sub>2.5</sub> NAAQS are required to develop a SIP within 18 months of the effective date of the designations.”). In other words, Alaska’s nonattainment SIP for the 24-hour PM<sub>2.5</sub> NAAQS was actually due June 14, 2011. As far overdue as a nonattainment SIP for Fairbanks is, there is no justification for EPA to continue to delay issuance of a “finding of failure to submit.”

has fully performed this duty within 60 days of the postmark date of this letter. As required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

Citizens for Clean Air, a project of Alaska Community Action on Toxics  
505 West Northern Lights Blvd., Suite 205  
Anchorage, Alaska 99503  
T: 907.222.7714

Sierra Club  
85 Second St., 2nd Floor  
San Francisco, CA 94105  
T: 415.977.5500

Citizens for Clean Air (CCA) is a coalition of local community members and citizens groups in Fairbanks, Alaska who are committed to cleaning up the air while keeping everyone warm in the winter. CCA is a project of Alaska Community Action on Toxics (ACAT), a non-profit environmental health research and advocacy organization whose mission is to assure justice by advocating for environmental and community health. The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 2.1 million members and supporters nationwide including in Fairbanks, Alaska.

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to further discuss the basis for this claim or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to me using the contact information indicated below.

Sincerely,

/s Colin C. O'Brien  
Colin C. O'Brien  
Earthjustice  
441 W. 5th Ave., Suite 301  
Anchorage, AK 99501  
T: 907.792.7103  
E: [cobrien@earthjustice.org](mailto:cobrien@earthjustice.org)

cc via e-mail:

Dennis McLerran, Regional Administrator, Region 10, [mclerran.dennis@epa.gov](mailto:mclerran.dennis@epa.gov)  
Sara Schneeberg, Air and Radiation Law Office, Office of General Counsel,  
[schneeberg.sara@epa.gov](mailto:schneeberg.sara@epa.gov)