



October 10, 2018

Via Certified and Electronic Mail, Return Receipt Requested

The Hon. Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
E: wheeler.andrew@epa.gov

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

Dear Acting Administrator Wheeler:

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 U.S. 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) of the Act.¹ You have yet to make a completeness determination regarding the state of Alaska’s failure to timely submit a proposed state implementation plan (“SIP”) addressing requirements newly triggered by EPA’s designation of the Fairbanks North Star Borough (“Fairbanks” or the “Borough”) as a 2006 24-hour fine particulate matter “Serious” nonattainment area.

Inhalable airborne particles present serious air quality problems in many areas of the United States. Numerous scientific studies have linked particle pollution exposure, especially exposure to fine particles (those that are 2.5 micrometers in diameter or smaller, hereinafter “PM_{2.5}”), to a variety of problems, including premature death, heart attacks, aggravated asthma, and other respiratory issues.² EPA has also concluded that PM_{2.5} pollution may cause cancer and developmental and reproductive harm.³

¹ 42 U.S.C. § 7410(k)(1)(B).

² See EPA, *Integrated Science Assessment for Particulate Matter (Final Report)* 6:1-7:114 (Dec. 2009); EPA, *Health and Environmental Effects of Particulate Matter (PM)*, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last visited Oct. 9, 2018).

³ American Lung Association, *Particle Pollution*, <http://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/particle-pollution.html> (last visited Oct. 9, 2018) (citing EPA, *Integrated Science Assessment for Particulate Matter (Final Report)* (Dec. 2009)).

Of all designated nonattainment areas for PM_{2.5}, as measured by their 2015-2017 design values, Fairbanks has the worst episodic pollution, with pollution levels more than twice federal limits.⁴ The entire history of Alaska and Fairbanks's noncompliance with federal air quality standards spans over two decades. Although Fairbanks has some of the worst air pollution in the country—with occasional air-quality readings “twice as bad as Beijing’s”⁵—EPA and the state of Alaska have failed to meet their basic obligations under the Clean Air Act. Our clients have filed three lawsuits in the last four years to enforce the mandatory deadlines set forth by law. We are now prepared to bring a fourth.

The actions and deadlines directly relevant to this notice letter follow below:

In 1997, EPA established a 24-hour National Ambient Air Quality Standard (NAAQS) for PM_{2.5}⁶ and made these standards more stringent in 2006.⁷ On November 13, 2009, EPA identified Fairbanks as a “nonattainment area” for the revised 2006 standard, which became effective in December 14, 2009.⁸ EPA later promulgated a rule in 2014 acknowledging that Fairbanks had been a “Moderate” nonattainment area “by operation of law” since the date of the Borough’s nonattainment designation in December 2009.⁹ Fairbanks’s deadline as a “Moderate”

⁴ EPA, *PM_{2.5} Design Values, 2017* at tbl. 1b (“24hr Std NAA Status”) (July 24, 2018), <https://www.epa.gov/air-trends/air-quality-design-values> (containing data for nonattainment areas of the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (“NAAQS”)).

⁵ Kim Murphy, *Fairbanks Area, Trying to Stay Warm, Chokes on Wood Stove Pollution*, L.A. Times (Feb. 16, 2013), <http://articles.latimes.com/2013/feb/16/nation/la-na-fairbanks-air-pollution-20130217>.

⁶ 62 Fed. Reg. 38,652 (July 18, 1997).

⁷ 71 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. pt. 50.13).

⁸ 74 Fed. Reg. 58,688, 58,696, 58,702 (Nov. 13, 2009).

⁹ 79 Fed. Reg. 31,566, 31,567 (June 2, 2014); 42 U.S.C. § 7513(a) (“Every area designated nonattainment for PM₁₀ . . . shall be classified at the time of such designation, by operation of law, as a moderate PM₁₀ non-attainment area.”); *see also Natural Res. Def. Council v. EPA*, 706 F.3d 428, 434-37 (D.C. Cir. 2013) (Because PM_{2.5} pollution is a subset of PM₁₀ pollution, the Clean Air Act’s regulatory requirements for PM₁₀ apply to PM_{2.5}).

nonattainment area to meet the 2006 24-hour standard for PM_{2.5} was December 31, 2015.¹⁰ The deadline expired without the Borough reaching the standard.

Pursuant to the requirements of the Clean Air Act,¹¹ EPA proposed in December 2016 to determine that Fairbanks was still in nonattainment with the 2006 24-hour PM_{2.5} standard and to reclassify the Borough as a “Serious” nonattainment area.¹² The EPA finalized this determination in May 2017.¹³ In light of Fairbanks’s “Serious” nonattainment designation, Alaska was required to submit a new proposed SIP no later than December 31, 2017, addressing the more stringent requirements of that designation.¹⁴ EPA, in turn, was required to make a completeness determination regarding Alaska’s SIP submission (or failure to submit) by June 30, 2018.¹⁵

¹⁰ 42 U.S.C. § 7513(c)(1) (“[T]he attainment dates for [Moderate] PM-10 nonattainment areas shall be . . . no later than the end of the sixth calendar year after the area's designation as nonattainment [here, December 14, 2009.]”); *see also* 79 Fed. Reg. at 31,570 (Areas identified as Moderate under the rule “are subject to a Moderate area attainment deadline under subpart 4 [of Section 188 of the Clean Air Act] of no later than December 31, 2015.”).

¹¹ 42 U.S.C. § 7513(b)(2) (“Within 6 months following the applicable attainment date for a PM-10 area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date . . . the area shall be reclassified by operation of law as a Serious Area.”); *see also WildEarth Guardians v. EPA*, 830 F.3d 529, 532 (D.C. Cir. 2016) (citing 42 U.S.C. § 7513(b)(2)(A)) (“Should an area fail to attain the requisite standard by the moderate-area attainment date, it is ‘reclassified by operation of law as a serious area.’”).

¹² 81 Fed. Reg. 91,088, 91,089 (Dec. 16, 2016).

¹³ 82 Fed. Reg. 21,711, 21,712 (May 10, 2017).

¹⁴ 40 C.F.R. pt. 51.1003(b)(2)(ii). In one preliminary draft document, Alaska states that its SIP is not due until 18 months after the effective date of EPA’s reclassification, in December 2018. *See* Alaska Dep’t of Env’tl. Conservation, Preliminary Draft Fairbanks Serious Area SIP 24-hour PM-2.5 Technical Analysis Protocol 1 (Mar. 22, 2018). This is incorrect. “For any nonattainment area reclassified to Serious . . . , the state(s) shall submit to the EPA a Serious area attainment plan . . . within 18 months from the effective date of reclassification, or 2 years before the attainment date, *whichever is earlier.*” 40 C.F.R. pt. 51.1003(b)(2)(ii) (emphasis added). As EPA explicitly found in its May 2017 determination, the Borough’s “attainment date” is December 31, 2019; the serious area attainment plan was therefore due two years before that date, on December 31, 2017. 82 Fed. Reg. at 21,712; *see also id.* (EPA concluding that “Serious area attainment plan submissions for the areas reclassified in this action [including Fairbanks] will be due by December 31, 2017.”).

¹⁵ 42 U.S.C. § 7410(k)(1)(B) (“[N]o later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall” make a completeness determination.).

Both deadlines have come and gone. Alaska has not submitted a new proposed SIP, and EPA has not made a completeness determination as required by law. The EPA has therefore been in violation of Section 110(k) of the Clean Air Act since June 30, 2018.

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue a completeness determination regarding Alaska's failure to submit a new proposed SIP unless EPA fully performs this duty within 60 days of the postmark date of this letter. As required under 40 C.F.R. § 54.3(a), 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
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T: (907) 222-7714

Sierra Club
2101 Webster Street, Suite 1300
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Citizens for Clean Air is a coalition of local community members and citizen groups in Fairbanks, Alaska committed to cleaning up the air while keeping everyone warm in the winter. The coalition is a project of Alaska Community Action on Toxics, 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 64 chapters and 3.5 million members and supporters nationwide, including members in Fairbanks, Alaska.

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to discuss further 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 below.

Sincerely,



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