



August 3, 2016

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

The Hon. 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 188 of the Act<sup>1</sup> to determine whether the Fairbanks North Star Borough non-attainment area has attained the 24-hour fine particulate matter National Ambient Air Quality Standard and to publish notice of that finding in the Federal Register, as well as potentially of reclassification of the area as a “serious” non-attainment area “no later than 6 months following the attainment date.”<sup>2</sup> The area’s attainment date was December 31, 2015, therefore the agency’s action was due on June 30, 2016. EPA has still not reached a determination and issued notice of the area’s attainment or reclassification.

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<sup>1</sup> 42 U.S.C. § 7513(b)(2) (“Within 6 months following the applicable attainment date for a PM-10 nonattainment 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-- (A) the area shall be reclassified by operation of law as a Serious Area; and (B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date”); *see also Nat. Res. Def. Council v. EPA*, 706 F.3d 428, 436 (D.C. Cir. 2013) (holding that Subpart four of the Clean Air Act, addressing PM<sub>10</sub> standards extends to PM<sub>2.5</sub>).

<sup>2</sup> *See id.*

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 (particles, such as those found in smoke and haze, that are 2.5 micrometers in diameter or smaller, hereinafter “PM<sub>2.5</sub>”), to a variety of problems, including premature death in people with heart or lung disease, non-fatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing,<sup>3</sup> as well as possibly cancer, and reproductive and developmental harms.<sup>4</sup> Of all previously designated nonattainment areas for PM<sub>2.5</sub>, measured by 2013-2015 design values, Fairbanks has the worst episodic pollution, with levels far in excess of the next most-polluted area, at 354 percent of the 24-hour PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS).<sup>5</sup>

In 1997, EPA established a 24-hour NAAQS for PM<sub>2.5</sub> that was revised by the agency in 2006 to provide increased protection for public health and welfare.<sup>6</sup> EPA established its air quality designations for 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.<sup>7</sup> The Borough’s attainment date for the 24-hour PM<sub>2.5</sub> 2006 NAAQS was “no later than the end of the sixth calendar year after the area’s designation as nonattainment,”<sup>8</sup> thus no later than December 31, 2015.

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<sup>3</sup> See EPA, *Particulate Matter (PM)* (Feb. 23, 2016), available at <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm>.

<sup>4</sup> See Am. Lung Ass’n, *State of the Air 2015* at 31, available at [http://www.stateoftheair.org/2015/assets/ALA\\_State\\_of\\_the\\_Air\\_2015.pdf](http://www.stateoftheair.org/2015/assets/ALA_State_of_the_Air_2015.pdf) (citing EPA, *Integrated Science Assessment for Particulate Matter*, EPA 600/R-08/139F (2009)).

<sup>5</sup> See EPA, *PM 2.5 Design Values, 2015* at tbl. 3b (Jul. 29, 2016) available at [https://www.epa.gov/sites/production/files/2016-07/pm25\\_designvalues\\_20132015\\_final\\_07\\_29\\_16.xlsx](https://www.epa.gov/sites/production/files/2016-07/pm25_designvalues_20132015_final_07_29_16.xlsx).

<sup>6</sup> See 71 Fed. Reg. 61,144, 61,144, 61,147 (Oct. 17, 2006).

<sup>7</sup> 74 Fed. Reg. 58,688, 58,702 (Nov. 13, 2009).

<sup>8</sup> See 42 U.S.C. § 7513(c)(1) (“[T]he attainment dates for PM-10 nonattainment areas shall be as follows . . . For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area’s designation as nonattainment.”); see also *Nat. Res. Def. Council*, 706 F.3d at 434. On June 2, 2014, EPA issued a rule that acknowledged the Fairbanks North Star Borough as a “moderate” nonattainment area. 79 Fed. Reg. 31,566, 31,568 (June 2, 2014) (“[T]he EPA in this notice is identifying the classification of all PM<sub>2.5</sub> areas currently designated nonattainment for the 1997 and 2006 NAAQS as ‘Moderate.’”); see also *id.* at 31,570 (stating that the areas identified as moderate under the rule “are subject to a Moderate area attainment deadline under subpart 4 of no later than December 31, 2015.”); *WildEarth Guardians v. EPA*, No. 14-1145, 2016 WL 4056089, at \*10 (D.C. Cir. July 29, 2016) (observing that in EPA’s 2014 implementation rule “the agency retained the attainment deadline of December 31, 2015”).

Within six months of the Borough's attainment date—that is, by June 30, 2016—EPA was required to determine whether the area had attained the NAAQS, and to publish notice of that finding, and potentially reclassification of the area as serious, in the Federal Register.<sup>9</sup> That deadline has passed, and you have not reached such a determination and published it in the Federal Register, as you are required by law.

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to determine whether the Borough has attained the NAAQS and to publish notice of that finding, and potentially reclassification of the area as a serious non-attainment area, in the Federal Register, unless EPA has fully performed this duty within 60 days of the postmark date of this letter. As required by 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  
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 64 chapters and 645,000 members nationwide, including 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 indicated below.

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<sup>9</sup> See 42 U.S.C. § 7513(b)(2); see also *Nat. Res. Def. Council*, 706 F.3d at 436; *WildEarth Guardians*, 2016 WL 4056089 at \*2 (“Should an area fail to attain the requisite standard by the moderate-area attainment date, it is reclassified by operation of law as a [s]erious [a]rea.” (internal quotation mark omitted)).

Sincerely,



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Lorie Schmidt, Air and Radiation Law Office, Office of General Counsel,  
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