



June 25, 2008

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Stephen L. Johnson, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

RE: Notice of citizen suit under section 304 of the Clean Air Act regarding violation of nondiscretionary duties and unreasonable delay with respect to regional haze state implementation plans

Dear Administrator Johnson:

Pursuant to 42 U.S.C. §7604(b)(2) and 40 C.F.R. Pt. 54, we hereby give notice on behalf of Environmental Defense Fund and National Parks Conservation Association of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency ("Administrator," "you," or "EPA") for failing to perform certain nondiscretionary duties 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 to timely determine whether the states have submitted state implementation plan revisions ("SIPs" or "plans") required by section 107(d)(7)(A) of the Act and 40 C.F.R. §§51.308 & 51.309 that meet the minimum criteria under §110(k)(1)(A) of the Act. The Act and EPA rules required the states to submit such plans by December 17, 2007 and for EPA to make its nondiscretionary determination under section 110(k)(1)(B) by June 17, 2008.<sup>1</sup>

In §169A of the Act, Congress established a national goal of preventing any future, and remedying any existing visibility impairment in mandatory Class I areas which impairment results from manmade air pollution. Sections 169A and 169B of the Act further provided for adoption of SIPs to prevent and remedy such visibility impairment ("haze SIPs"). The Act and rules adopted by EPA pursuant to the Act further required each state to submit haze SIPs to EPA by December 17, 2007. 42 U.S.C. § 7407(d)(7)(A); 40 C.F.R. §§51.308(b), 309(c) (2007).<sup>2</sup> These haze SIPs must meet requirements set out in the Act and in 40 C.F.R. §51.308 & 51.309.

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<sup>1</sup> In the alternative, this letter serves as notice of intent to commence a civil action pursuant to section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), to remedy EPA's unreasonable delay in making the required finding

<sup>2</sup> Section 107(d)(7)(A) of the Act required each State to submit its haze SIP "not later than 3 years after the date on which Administrator promulgates the designations referred to" in §107(d)(6)(B) – that is, designations for the July 1997 PM<sub>2.5</sub> national ambient air quality standards. EPA promulgated those designations on December 17, 2004. See 70 Fed. Reg. 944,

Section 110(k)(1)(B) of the Act imposes on the Administrator a nondiscretionary duty to determine whether a state has submitted a required plan meeting the minimum criteria ("completeness criteria") promulgated under section 110(k)(1)(A) "no later than 6 months after the date, if any, by which a State is required to submit the plan or revision." Accordingly, section 110(k)(1)(B) of the Act imposed on you a nondiscretionary duty to determine by June 17, 2008 whether each state had submitted a haze SIP as required by §107(d)(7)(A) and 40 C.F.R. §§51.308 & .309 meeting the completeness criteria under §110(k)(1)(A). The June 17, 2008 deadline has passed, but the Administrator has not determined, as mandated by the Act, whether each state has submitted haze SIPs required by the Act and EPA rules satisfying the minimum criteria of 110(k)(1)(A). Accordingly, the Administrator is in violation of his nondiscretionary duty under section 110(k)(1)(B) to make such determinations within six months of the applicable submittal deadline.<sup>3</sup>

This notice letter is submitted on behalf of: a) Environmental Defense Fund, 257 Park Avenue South, New York, N.Y. 10010, (212) 505-2100; and b) National Parks Conservation Association, 1300 19th Street NW, Suite 300, Washington DC 20036, (202) 454-3335. Environmental Defense Fund and National Parks Conservation Association intend to commence a civil action to enforce the nondiscretionary duties described in this letter (and, in the alternative, to remedy EPA's unreasonable delay) unless EPA has fully performed these duties within sixty days of the postmark date of this letter.

I am acting as legal counsel for the above-named organizations in this matter. I would be happy to discuss the concerns raised in this letter with you. Any communications should be addressed to the undersigned at: Earthjustice, 1625 Massachusetts Avenue, N.W., Suite 702, Washington, D.C. 20036, (202) 667-4500.

Sincerely,

David S. Baron  
Attorney

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951 (2005). By rule, EPA expressly directed states to submit their haze SIPs not later than December 17, 2007. 40 C.F.R. §§51.308(b), .309(c)(2007).

<sup>3</sup> As noted, in the alternative, the Administrator has unreasonably delayed in making the required determinations.