



**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

January 3, 2019

Andrew R. Wheeler  
Acting Administrator  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to perform mandatory duty to bump up West Central Pinal 2006 24-hour PM2.5 Nonattainment Area, promulgate a FIP for Arizona's NSR program defects, and make findings of failure to submit for the Provo and Salt Lake City, Utah serious 2006 24-hour averaging time PM2.5 Nonattainment Areas.**

Dear Acting Administrator Wheeler:

On behalf of the Center for Biological Diversity ("Center"), the Center for Environmental Health ("CEH"), Utah Physicians for a Healthy Environment ("UPHE"), SLC Air Protectors, and the Westside Coalition, I am writing to inform you that they intend to file suit against you for "a failure of the Administrator [of the United States Environmental Protection Agency ("EPA")] to perform any act or duty under this chapter which is not discretionary with the Administrator." 42 U.S.C. § 7604(a)(2). As explained below, EPA has failed to determine if the West Central Pinal 2006 24-hour averaging time particulate matter less than 2.5 microns in diameter ("PM2.5") national ambient air quality standard ("NAAQS") nonattainment area has attained the 2006 24-hour PM2.5 NAAQS by its attainment date. EPA has also failed to promulgate a federal implementation plan ("FIP") to fix deficiencies in the Arizona New Source Review ("NSR") program and impose sanctions. Finally, EPA has failed to make findings of failure to submit for the serious 2006 24-hour PM2.5 nonattainment areas state implementation plans ("SIPs") for Provo and Salt Lake City, Utah.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of PM2.5. PM2.5 is "produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants," thus "[s]ources of fine particles include... motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning." [71 Fed. Reg. 61,144](#), 61,146 (Oct. 17, 2006). The effects of PM2.5 on human health

are profound. For example, long-term exposure has been associated “with an array of health effects, notably premature mortality, increased respiratory symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” [62 Fed. Reg. 38,653](#), 38,668 (July 18, 1997).

PM2.5’s damage can be intergenerational. For example, [one study](#) has suggested that high blood pressure in children might have roots in their mothers being exposed to PM2.5 during pregnancy.

PM2.5 also adversely impacts wildlife. EPA has explained “a number of animal toxicologic . . . studies had reported health effects associations with high concentrations of numerous fine particle components[.]” [71 Fed. Reg. 2,620](#), 2,643 – 2,644 (Jan. 17, 2006). PM2.5 also causes direct foliar injury to vegetation. *Id.* at 2,682. As to broader ecosystem impacts, EPA has explained that the nitrogen and sulfur “containing components of PM have been associated with a broad spectrum of terrestrial and aquatic ecosystem impacts that result from either the nutrient or acidifying characteristics of the deposited compounds.” *Id.* These impacts include nitrogen saturation which “causes 1) [d]ecreased productivity, increased mortality, and/or shifts in terrestrial plant community composition, often leading to decreased biodiversity in many natural habitats wherever atmospheric [reactive nitrogen] deposition increases significantly and critical thresholds are exceeded; (2) leaching of excess nitrate and associated base cations from terrestrial soils into streams, lakes and rivers and mobilization of soil aluminum; and (3) alteration of ecosystem processes such as nutrient and energy cycles through changes in the functioning and species composition of beneficial soil organisms (Galloway and Cowling 2002).” *Id.* EPA has described this impact on terrestrial ecosystems as “profound and adverse[.]” *Id.* EPA has also determined that PM2.5 adversely impacts aquatic ecosystems via excess nutrient inputs and acid and acidifying deposition. [71 Fed. Reg. at 2,682 – 2,683](#). “Data from existing deposition networks in the U.S. demonstrate that N and S compounds are being deposited in amounts known to be sufficient to affect sensitive terrestrial and aquatic ecosystems over time.” [71 Fed. Reg. at 2,683](#).

Moreover, PM2.5 adversely affects the aesthetics of our natural surroundings. For example, regional haze is caused in part by particulates in the air scattering sunlight. EPA, [How Air Pollution Affects the View](#). Considering that the West Central Pinal nonattainment area is directly adjacent to the Table Top Wilderness area, these impacts are particularly concerning.

The fine particulate matter in the West Central Pinal nonattainment area is mainly caused by [agricultural activities and cattle feedlots](#). This introduces another danger caused by EPA’s illegal delay. Antibiotics, bacteria and antibiotic resistance genes are transported from cattle feed yards to people and wildlife via particulate matter. *See e.g.* McEachran AD, Blackwell BR, Hanson JD, Wooten KJ, Mayer GD, Cox SB and Smith PN, [Antibiotics, bacteria, and antibiotic resistance genes: aerial transport from cattle feed yards via particulate matter](#), *Enviro Health Perspect*, 2015 Apr, 123(4):337-43. In light of the above, it is vital that EPA take the required actions in order to strengthen protection of public health and welfare against PM2.5.

I. FAILURE TO MAKE A “BUMP UP” DETERMINATION FOR THE WEST CENTRAL PINAL MODERATE 2006 PM<sub>2.5</sub> NONATTAINMENT AREAS

The West Central Pinal 2006 PM<sub>2.5</sub> moderate nonattainment area<sup>1</sup> was designated by EPA effective March 7, 2011. 40 C.F.R. § 81.303. Therefore, it has an attainment date of no later than December 31, 2017. [81 Fed. Reg. 91,088](#), 91,091, fn. 7 (Dec. 16, 2016); 42 U.S.C. § 7513(c)(1). This means that EPA has a mandatory duty to determine if the West Central Pinal nonattainment area attained by its attainment date and publish notice of such a finding by no later than June 30, 2018. 42 U.S.C. §§ 7509(c)(1) & (2), 7513(b)(2). EPA has failed to perform this mandatory duty.

II. FAILURE TO PROMULGATE A FIP FOR ARIZONA’S NSR PROGRAM AND IMPOSE SANCTIONS

On November 2, 2015, EPA issued a limited approval and limited disapproval of rules for the issuance of New Source Review (“NSR”) permits for stationary sources of air pollution in Arizona. [80 Fed. Reg. 67,319](#) (Nov. 2, 2015). The limited disapproval was effective December 2, 2015. *Id.* Therefore, EPA has a mandatory duty to promulgate a FIP by December 2, 2017 to

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<sup>1</sup> We are referring to the nonattainment area described in 40 C.F.R. § 81.303 as West Central Pinal: Pinal County (part) which includes the area:

1. Commencing at a point which is the intersection of the eastern line of Range 1 East, Gila and Salt River Baseline and Meridian, and the northern line of Township 4 South, which is the point of beginning;
2. Thence, proceed easterly along the northern line of Township 4 South to a point where the northern line of Township 4 South intersects the eastern line of Range 4 East;
3. Thence, southerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects the northern line of Township 6 South;
4. Thence, easterly along the northern line of Township 6 South to a point where the northern line of Township 6 South intersects the eastern line of Range 4 East;
5. Thence, southerly along the eastern line of Range 4 East to a point where the eastern line of Range 4 East intersects the southern line of Township 7 South;
6. Thence, westerly along the southern line of Township 7 South to a point where the southern line of Township 7 South intersects the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of section 34, Range 3 East and Township 7 South;
7. Thence, northerly along the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, to a point where the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, intersects the northern line of section 15, Range 3 East and Township 7 South;
8. Thence, westerly along the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, to a point where the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, intersect the eastern line of Range 1 East, which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statutes sections 11-109 and 11-113;
9. Thence, northerly along the eastern line of Range 1 East to the point of beginning which is the point where the eastern line of Range 1 East intersects the northern line of Township 4 South;
10. Except that portion of the area defined by paragraphs 1 through 9 above that lies in Indian country.

address all the deficiencies which were part of the limited disapproval unless Arizona corrects the deficiencies and EPA approves the correction of these deficiencies into the Arizona SIP. 42 U.S.C. § 7410(c)(1). EPA also has a mandatory duty to impose both sanctions. 42 U.S.C. § 7509(a) and (b).

EPA did approve certain provisions into the Arizona SIP to address some of the deficiencies which were the basis of the November 2, 2015 limited disapproval. [83 Fed. Reg. 19,631](#), 19,632 (May 4, 2018). However, EPA's May 4, 2018 action "does not address all the outstanding limited disapproval issues related to the [Arizona Department of Environmental Quality ("ADEQ")] from [EPA's November 2, 2015 limited disapproval.]" [82 Fed. Reg. 25,213](#), 25,220 (June 1, 2017). EPA's Technical Support Document ("TSD") to the May 4, 2018 action "provides a summary of the remaining limited disapproval issues." *Id.* The Technical Support Document, EPA's Notice of Proposed Rulemaking: Air Plan Approval; Arizona; Stationary Source; New Source Review, May 2017, EPA-R09-OAR-2017-0255-0005, Document C-1 at 22-23, provides the list of items that Arizona failed to correct from the November 2, 2015 limited disapproval. This list includes:

- 40 CFR 51.160(a) and (b) – ADEQ rules do not ensure review of NAAQS in neighboring areas outside ADEQ permitting jurisdiction
- 40 CFR 51.160(a) and (b) – Add reference to "or maintenance" of a standard
- 40 CFR 51.160(b)(1) – Rule missing requirement to ensure sources must comply with all applicable portions of control strategy, similar to language in other portion of rules, e.g. R18-2-306(A)(2).
- 40 CFR 51.160(c) – R18-2-302.01 does not fully meet requirement to submit necessary information for ADEQ to review source. In requiring sources to provide potential emissions the rules reference procedures for determining "actual" emissions and the referenced rule is not in the SIP and has not been submitted for SIP-approval.
- 40 CFR 51.160(c)(1) – Rules allow some emissions units to be exempt from being included in applications for NSR purposes
- 40 CFR 51.160(d) – Registration rule missing provision that approval does not affect responsibility of owner/operator to comply with other requirements
- 40 CFR 51.160(f)(1) – Sources subject to registration program missing requirement to use Appendix W, when applicable
- 40 CFR 51.160(e) – Submittal did not include a sufficient basis for the program's minor NSR thresholds in nonattainment areas, must provide additional analysis or revise thresholds, as needed.
- 40 CFR 51.160(e) – Submittal did not include basis for exemptions of certain agricultural sources and fuel burning equipment. See our TSD for the 2015 NSR action on page 27 for four specific issues to be addressed
- 40 CFR 51.160(e) – Submittal did not include basis for PM2.5 permitting exemption threshold
- 40 CFR 51.161(a) – Submittal did not require public notice in all instances for permitting program. Federal rules do not allow for exemptions - including for

- disapprovals. Public notice is required for all sources defined under 40 CFR 51.160(e); clarification of the public notice procedures in R18-2-330 that apply to registrations is necessary; and program must require public notice for permit disapproval actions
- 40 CFR 51.161(a) – Elective limits for registrations need additional requirements to ensure enforceability, including technically accurate limit and the portion of the source subject to the limit, the time period over which the limit applies, and compilation of daily records if limit is not on a daily basis
  - 40 CFR 51.161(d) – The registration portion of ADEQ's program needs to require notices to specific parties
  - 40 CFR 51.163 – Submittal contained references to administrative procedures not included in SIP submittal (or existing SIP)
  - References to increment, as related to the PSD program. ADEQ corrected this issue in the rules associated with the April 2017 NSR submittal. However, there remain [] references that need to be submitted for rules R18-2-319 and 320.

TSD at 22-23. EPA is in violation of its mandatory duty by not promulgating a FIP to correct these still pending deficiencies and not imposing sanctions.

### III. FAILURE TO MAKE FINDINGS OF FAILURE TO SUBMIT FOR PROVO AND SALT LAKE CITY 2006 PM<sub>2.5</sub> 24-HOUR SERIOUS NONATTAINMENT AREAS SIPS

EPA is required to determine whether a state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has failed to submit any required state implementation plan, there is no submittal that may be deemed administratively complete, and EPA must make a determination stating that the state failed to submit the required state implementation plan. *Id.* This is referred to as a “finding of failure to submit.”

EPA bumped up to the serious classification the Provo, Utah and Salt Lake City, Utah 2006 24-hour PM<sub>2.5</sub> nonattainment areas. [82 Fed. Reg. 21,711](#), 21,712 (May 10, 2017). EPA set a December 31, 2017 deadline for Utah to submit serious 2006 24-hour PM<sub>2.5</sub> nonattainment SIPs for Provo and Salt Lake City. *Id. See also* [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ut\\_elembypoll.html#pm-2.5\\_2006\\_1229](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ut_elembypoll.html#pm-2.5_2006_1229) (last visited 12/27/2018). Therefore, EPA has a mandatory duty to make a finding of failure to submit serious 2006 24-hour PM<sub>2.5</sub> nonattainment SIPs by no later than July 1, 2018. 42 U.S.C. § 7410(k)(1)(B).

Utah has not submitted the following elements of a serious 2006 24-hour PM<sub>2.5</sub> nonattainment SIP for Provo and Salt Lake City.

Emission Inventory

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Best Available Control Measures (BACM)  
Attainment Demonstration  
Reasonable Further Progress (RFP)  
Quantitative Milestones  
Contingency Measures  
Nonattainment New Source Review (NSR)

See [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ut\\_elebypoll.html#pm-2.5\\_2006\\_1229](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ut_elebypoll.html#pm-2.5_2006_1229) (last visited 10/11/18). Yet, EPA has not made a finding of failure to submit for these elements which Utah has failed to submit. Therefore, EPA is in violation of its mandatory duty to make these findings of failure to submit.

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

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While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

The Center, CEH, UHEP, SLC Air Protectors, the Westside Coalition and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will have to file a complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Ukeiley".

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