



Enviro Group, EPA Settle Air Pollution Case

By Martin Bricketto

Law360, New York (February 14, 2011) -- The Center for Biological Diversity and the U.S. Environmental Protection Agency have reached a settlement that effectively ends a suit accusing the federal regulator of blowing several deadlines related to the reduction of particulate matter air pollution in five states.

In a joint motion filed Friday in the U.S. District Court for the Northern District of California, the parties referenced a signed settlement agreement and asked the court to vacate all procedural deadlines and administratively close the case — in which the environmental group claimed that the EPA had violated the Clean Air Act.

The settlement acknowledged EPA determinations since the filing of the lawsuit that areas of Idaho, Alaska and Nevada attained the National Ambient Air Quality Standard for particulate matter of less than 10 microns in diameter, or PM-10, according to a copy of the agreement provided by the Center for Biological Diversity.

The settlement also established a schedule for EPA determinations on whether areas of Alaska, Arizona and Montana and Nevada attained the PM-10 NAAQS, based on an averaging time of 24 hours, as well as the establishment of federal implementation plans for areas of Arizona, based on certain conditions.

According to the complaint filed in April, the EPA had not determined whether Alaska, Arizona, Idaho, Montana and Nevada had met the national standard for PM-10.

The lawsuit covered 13 so-called nonattainment areas that still have PM-10 levels above federal guidelines in the five states.

In addition, the lawsuit alleged that the EPA has failed to impose sanctions and establish a federal implementation plan on two areas in Arizona where the state has not met legally mandated PM-10 levels.

The Center for Biological Diversity said the EPA has already determined that Arizona did not have a sufficient state implementation plan for reducing the pollutants in the two areas.

The EPA also was required to file a determination that Montana had not filed a sufficient state implementation plan for reducing particulate matter, but has failed to do so, the environmental group argued.

The EPA has found that long-term exposure to PM-10 is linked with reduced lung function and the development of chronic bronchitis. Short-term exposure aggravates lung disease, causing asthma attacks and acute bronchitis, and can increase susceptibility to respiratory infections, according to the agency.

PM-10 pollution also includes black carbon, or soot, which has been identified as a potential contributor to global warming, the Center for Biological Diversity said.

The particulate matter at the heart of the lawsuit is about 10 times smaller than the width of a human hair.

Under the Clean Air Act, the EPA is required to establish national standards for PM-10 levels as well as deadlines for states to meet those standards. The Center for Biological Diversity said the EPA has failed to meet those deadlines.

The Center for Biological Diversity informed the EPA of its intention to sue in a February letter.

In several cases, the deadline for the EPA to make determinations on the nonattainment areas passed in 1995, the environmental group said.

The group said in its letter that it had uncovered the EPA's alleged failures under the Clean Air Act after reviewing where the agency had and had not complied with the statute since Congress made the amendments in 1990.

The parties notified the court as far back as June about their intent to resolve the case through a settlement. In September, the parties told the court they had tentatively agreed to the terms of a deal, according to court documents.

At that time, and again in December, the parties stipulated to pushing back the deadline by which the EPA had to respond to the complaint.

A senior attorney with the center, Kevin Bundy, said Monday that the group was pleased with the settlement.

"The whole point of the NAAQS program is to make sure that air quality standards are attained, and without prompt determinations of attainment or nonattainment, the states and EPA cannot do what the Clean Air Act requires to protect our air and our health," Bundy said. "This settlement gets EPA back on track in communities and regions across the West."

A representative with the EPA could not immediately comment on the settlement.

The Center for Biological Diversity is representing itself in the case.

The case is Center for Biological Diversity v. Lisa P. Jackson, case number 10-cv-1846, in the U.S. District Court for the Northern District of California.