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National group threatening to sue EPA over not enforcing sanctions for missed clean air deadlines

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By Matt Buxton

FAIRBANKS — A national environmental group is threatening to sue the Environmental Protection Agency for not holding states like Alaska responsible for cleaning up air pollution in places like Fairbanks.

The Arizona-based Center for Biological Diversity filed a formal notice of intent to sue the EPA on Thursday for not enforcing sanctions and federal regulations on states that missed a 2012 deadline to prove they're cleaning up air pollution, specifically mentioning Fairbanks' ongoing wintertime air pollution woes.

"The Clean Air Act saves lives and protects ecosystems, but only when there is a plan to attack pollution at its source," stated Jonathan Evans, the center's toxics and endangered species campaign director, in a press release.

"We need the EPA and Obama administration to show the political will to enforce the law and clean up the air breathed by millions of Americans."

The EPA tightened air pollution regulations in 2006 and determined Fairbanks was in non-attainment of those standards in December 2009, as were cities like San Francisco, Los Angeles and New York City. The deadline to meet those new standards is 2014, and Alaska was supposed to provide a plan proving it could meet that deadline in 2012, which it missed.

Because of a separate lawsuit that argued the EPA applied the wrong standards to the states, the EPA in November last year proposed to push that plan deadline off to the end of 2014. Alaska Department of Environmental Conservation officials cited that lawsuit as its reason for missing the 2012 deadline and said the state will be on track to submit its plan in 2014.

However, the Center for Biological Diversity's complaint argues the EPA should hold states to the 2012 deadline in law and asks the federal agency to follow through on the sanctions it has so far not employed against Alaska.

"EPA's proposal to push back deadlines set by statute through a proposed rule runs contrary to the Clean Air Act," Evans said in a follow-up interview with the News-Miner. "Even if the draft proposal is finalized it still can't trump the law. It's something they teach you in the first year of law school, the statute trumps the regulations."

When asked about the lawsuit Thursday, an EPA spokesman said the EPA has a policy of not commenting on pending litigation.

However, the consequences of failing to meet the 2012 deadline were outlined in a letter from Rick Albright, the former EPA Region 10 Director of the Office of Air, Waste and Toxics, to the borough in the run-up to the 2012 election, in which borough residents voted to bar the borough from regulating wood burning in any way.

He said consequences could include federal sanctions on new power plants and withholding federal highway funds for the affected area.

“Offset sanctions require that new or expanded stationary sources must offset emissions of the non-attainment pollutant by 2 tons for every 1 ton of emission growth,” Albright wrote. “Highway funding sanctions prohibit federal funds for transportation projects within the non-attainment area, except for certain safety, transit and air quality beneficial projects.”

The Alaska Department of Environmental Conservation’s spokesman said the state had just become aware of the letter and said it wasn’t ready to comment.

The Center for Biological Diversity’s complaint, however, gives the EPA time to react before it says it will file its lawsuit, but it already has a lawsuit for similar failures in California, Pennsylvania, West Virginia, Wisconsin and Tennessee.

“EPA and the states have had over seven years,” Evans said.

“It’s time to put up a plan to protect the public health and wildlife.”