



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

October 15, 2018

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 make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B) and failure to take final action under 42 U.S.C. § 7410(k)(2) – (4).

Dear Acting Administrator Wheeler:

On behalf of the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club, 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 detailed below, EPA has failed to undertake mandatory duties with regard to sulfur dioxide (SO<sub>2</sub>) pollution in numerous areas throughout the Country.

EPA should remedy its violation of this mandatory duty to better protect the public from the harmful effects of sulfur dioxide. Exposure to SO<sub>2</sub> in even very short time periods—such as [five minutes](#)—has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. EPA has also determined that exposure to SO<sub>2</sub> pollution [can aggravate existing heart disease](#), leading to increased hospitalizations and premature deaths.

SO<sub>2</sub> also contributes to the formation of [acid rain](#), which damages trees, crops, historic buildings, and monuments and alters the acidity of both soils and water bodies. Acute and chronic exposures to SO<sub>2</sub> lead to [foliar injury, decreased photosynthesis, and decreased growth of vegetation](#). EPA’s draft Integrated Review Plan acknowledged that oxides of sulfur (SO<sub>x</sub>) and oxides of nitrogen (NO<sub>x</sub>) have a potential to [negatively affect endangered species](#). EPA’s Integrated Science Assessment even identifies [four federally listed endangered species](#) — three “endangered species in the genus Isoetes”

and the endangered green pitcher-plant (*Sarracenia oreophila*)—that are adversely affected by SO<sub>x</sub> pollution. The U.S. Fish and Wildlife Service (FWS) has already identified many other federally protected species that are [negatively affected by atmospheric pollution from SO<sub>x</sub>](#).

In addition, because SO<sub>2</sub> emissions may be transmitted long distances, they contribute to [visibility impairment problems](#) in many national parks and wilderness areas.

EPA has previously found “that current levels of oxides of nitrogen and sulfur are [sufficient to cause acidification](#) of both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse[.]” 77 Fed. Reg. 20,218, 20,241-42 (April 3, 2012).

[SO<sub>x</sub> also facilitate mercury methylation](#). This creates the [form of mercury](#) which is especially dangerous to humans and wildlife.

On June 2, 2010, EPA revised the primary SO<sub>2</sub> National Ambient Air Quality Standard (NAAQS) by establishing a new one-hour standard at a level of 75 parts per billion (ppb) which is met when the 3-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 ppb. The primary SO<sub>2</sub> NAAQS was set at this level in order to protect public health from the serious threats posed by short-term exposure to SO<sub>2</sub>.

Due to both the more stringent numerical limit and shorter averaging time as compared to the previous SO<sub>2</sub> NAAQS, the 2010 SO<sub>2</sub> NAAQS is far more protective of human health than the prior SO<sub>2</sub> NAAQS and promises huge health benefits. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year will be prevented by the new standard.

Timely implementation of the new NAAQS is critical. Considering the scientific evidence, each year implementation of the one-hour SO<sub>2</sub> NAAQS is delayed, 5,900 more people will die prematurely and 54,000 asthma attacks will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 75 ppb SO<sub>2</sub> NAAQS is up to \$36 billion dollars. Those individuals who suffer from health impacts caused by exposure to SO<sub>2</sub> levels above the NAAQS will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the one-hour SO<sub>2</sub> NAAQS will go unrealized. Further, the ability of those individuals to enjoy everyday activities such as exercise, school, and work will continue to be negatively impacted.

**I. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS**

The Clean Air Act requires that if, six months after a state submits a SIP submittal, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA must take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the completeness finding. 42 U.S.C. § 7410(k)(2) - (4).

Table 1 lists 2010 SO<sub>2</sub> NAAQS nonattainment SIP elements which various states have submitted. It has been more than 12 months since these submittals were found administratively complete by EPA or deemed administratively complete by operation of law. Yet, EPA has not taken final action approving or disapproving, in full or part, these submittals. Therefore, EPA is in violation of its mandatory duty to take final action for the submittals listed in Table 1.

**TABLE 1**

AREA & STATE	ELEMENT(S)	COMPLETION DATE (no later than)	FINAL ACTION DUE DATE
Hayden, AZ	Attainment Demonstration, Contingency Measures, Emission Inventories, Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable Further Progress (RFP).	9/26/2017	9/26/2018
Miami, AZ	Attainment Demonstration, Contingency Measures, Emission Inventories, RACM/RACT, RFP.	9/26/2017	9/26/2018
Jefferson County, KY	Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment New Source Review (NSR), RACM/RACT, RFP.	10/10/2017	10/10/2018
Allegheny, PA	Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/6/2017	10/6/2018

AREA & STATE	ELEMENT(S)	COMPLETION DATE (no later than)	FINAL ACTION DUE DATE
Beaver, PA	Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/5/2017	10/5/2018
Indiana, PA	Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/13/2017	10/13/208
Warren, PA	Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/5/2017	10/5/2018
Marshall, WV	Attainment Demonstration, Contingency Measures, Nonattainment NSR, RACM/RACT, RFP.	9/20/2017	9/20/2018

## II. FAILURE TO MAKE FINDING OF FAILURE TO SUBMIT

EPA is required to determine whether a state implementation plan (SIP) 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 SIP submittal, 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 SIP submittal. *Id.* This determination is referred to as a “finding of failure to submit.”

EPA designated all of the areas listed in Table 2 nonattainment for the 2010 SO<sub>2</sub> NAAQS. The nonattainment SIP were due by no later than the dates listed in Table 2.<sup>1</sup> EPA has a mandatory duty to make a completeness finding under 42 U.S.C. § 7410(k)(1)(B) by no later than six months after the due dates for the submittals, that is September 12, 2018. The States in Table 2 have failed to submit nonattainment SIPs for the areas listed in Table 2 as of the date of this letter. Yet, more than six months have passed since the due dates for these submittals. But EPA has failed to issue a

<sup>1</sup> See

[https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2\\_2010\\_so2\\_attainment\\_demonstration\\_enbystate.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2_2010_so2_attainment_demonstration_enbystate.html). See also 81 Fed. Reg. 45,039, 45,041 (July 12, 2016).

finding of failure to submit, as required under 42 U.S.C. § 7410(k)(1)(B), regarding the nonattainment SIPs for the areas listed in Table 2.

**TABLE 2**

<b>AREA &amp; ELEMENT(S)</b>	<b>SUBMITTAL DEADLINE (No later than)</b>
Alton Township, IL; Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment New Source Review (NSR), Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable Further Progress (RFP).	3/12/2018
Williamson County, IL; Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	3/12/2018
Anne Arundel County and Baltimore County, MD; Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	3/12/2018
St. Clair, MI; Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	3/12/2018

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

The Center for Biological Diversity  
1536 Wynkoop St., Ste. 421  
Denver, CO 80202  
Attn: Robert Ukeiley  
Tel: (720) 496-8568

Center for Environmental Health  
2201 Broadway, Suite 302  
Oakland, CA 94612  
Attn: Caroline Cox

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Tel: (510) 655-3900

Sierra Club  
2101 Webster St., Ste. 1300  
Oakland, CA 94612  
Attn: Zachary Fabish  
Tel: (202) 675-7917

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

The Center for Biological Diversity, the Center for Environmental Health, the Sierra Club 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 or amend a complaint.

Sincerely,

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

Robert Ukeiley  
Senior Attorney – Environmental Health  
Center for Biological Diversity  
1536 Wynkoop St., Ste. 421  
Denver, CO 80202  
(720) 496-8568  
rukeiley@biologicaldiversity.org

Counsel for Center for Biological Diversity, Center for  
Environmental Health and Sierra Club