



February 7, 2022

**Via Certified and Electronic Mail**

Michael Regan, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Mail Code 1101A  
Washington, DC 20460  
Regan.Michael@epa.gov

**Re: Notice of Intent to File Suit Under the Clean Air Act for Failure to Make  
Statutory Completeness Determinations and Findings of Failure to Submit  
Regional Haze State Implementation Plans for the Second Planning Period**

Dear Administrator Regan,

Under Section 304(b)(2) of the Clean Air Act (“the Act”), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. part 54, the National Parks Conservation Association, Sierra Club, A Community Voice, Alliance for Affordable Energy, Appalachian Mountain Club, Association of Irrigated Residents, Badlands Conservation Alliance, Center for Biological Diversity, Central California Asthma Collaborative, Coalition to Protect America’s National Parks, Coalition Against Death Alley, Colorado Renewable Energy Society, Cook Inletkeeper, Diné Citizens Against Ruining our Environment, Earthworks, Environmental Defense Fund, Greater- Birmingham Alliance to Stop Pollution (“GASP”) Greater New Orleans Climate Reality Project, Gunnison Valley Climate Crisis Coalition, Healthy Environment Alliance of Utah (“HEAL Utah”), Healthy Gulf, Idaho Conservation League, Inclusive Louisiana, Justice & Beyond Louisiana, Louisiana Bucket Brigade, Minnesota Center for Environmental Advocacy, Montana Environmental Information Center, Piedmont Environmental Council, Southeast Rural Community Assistance Project (“SERCAP”) Tennessee Citizens for Wilderness Planning, To Nizhoni Ani, Utah Physicians for a Healthy Environment, Virginia Conservation Network, Virginia League of Conservation Voters, Voyageurs Conservancy, Western Clean Energy Campaign, Western Environmental Law Center, WildEarth Guardians, and 350 New Orleans (the “Conservation

Organizations”) provide notice of their intent to file suit against the Administrator of the U.S. Environmental Protection Agency (“EPA”) for the failure of the Administrator to perform acts or duties under the Act which are not discretionary with the Administrator. 42 U.S.C. § 7604(a)(2).<sup>1</sup> Specifically, the Administrator has violated, and is in violation of, his nondiscretionary duties under 42 U.S.C. § 7410(k)(1)(B) by failing to timely issue the statutorily mandated determinations of whether 39 states, listed below, have submitted revised regional haze state implementation plans (“SIPs”) that meet the minimum completeness criteria of 42 U.S.C. § 7410(k)(1)(A). Those SIPs were due July 31, 2021, pursuant to 42 U.S.C. § 7491(b) and 40 C.F.R. § 51.308(f), and the Administrator’s determination of whether the states submitted SIPs meeting the completeness criteria was due 6 months later, that is, by January 31, 2022. 42 U.S.C. § 7410(k)(1)(B). The Administrator is now in violation of his nondiscretionary duty to make that determination. Because these states have in fact failed to submit the required SIPs by the July 31, 2021 deadline, the Administrator further is in violation of a nondiscretionary duty to determine that these states have not submitted SIPs that meet the minimum completeness criteria.

As detailed below, EPA’s immediate issuance of a finding of failure to submit is not only required by the Clean Air Act, but it will further this Administration’s promises to protect air quality in the nation’s national parks and wilderness areas. Decades of delay in finalizing and implementing regulations to reduce visibility impairing haze in our parks and wilderness areas has deprived citizens of the enjoyment of these precious resources, and has caused visitors, employees, and wildlife to be unnecessarily exposed to harmful levels of air pollution. Indeed, the same pollutants that cause visibility impairment in Class I areas also harm public health. 82 Fed. Reg. 3,078, 3,081, 3,117 (Jan. 10, 2017). Thus, timely implementation of the Act’s visibility requirements not only presents a significant opportunity to improve visibility in the nation’s most treasured national parks, but to improve air quality in communities across the country where the largest sources of visibility impairing air pollutants are typically located.<sup>2</sup>

## **I. THIRTY-NINE STATES HAVE IGNORED THE CLEAN AIR ACT’S MANDATE TO SUBMIT COMPREHENSIVE STATE IMPLEMENTATION PLANS**

In 1977, to protect the “intrinsic beauty and historical and archeological treasures” of the national parks and wilderness areas,<sup>3</sup> Congress directed EPA to ensure the development and implementation of Clean Air Act plans that ultimately eliminate all anthropogenic air pollution impairing the nation’s most iconic landscapes. 42 U.S.C. §§ 7491(a)(1), (b). After more than two decades of delay in implementing that mandate, in 1999, EPA finally issued the Regional Haze

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<sup>1</sup> This notice is provided to you in your official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”) as a prerequisite to bringing a civil action. 42 U.S.C. § 7604(b)(2); 40 C.F.R. part 54. As used herein, the term “EPA” means the Administrator.

<sup>2</sup> See Memo from Peter Tsirogotis to Regional Air Directors, Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, at 16 (July 8, 2021) (<https://www.epa.gov/visibility/clarifications-regarding-regional-haze-state-implementation-plans-second-implementation>) (urging the states and EPA regional offices to consider equity and environmental justice when developing their regional haze strategies for the second planning period).

<sup>3</sup> H.R. Rep. No. 95-294, at 203-04 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1077, 1282.

Rule, which requires the states (or EPA where a state fails to act) to periodically issue SIPs that contain “emission limits, schedules of compliance and other measures” to ensure reasonable progress toward eliminating visibility pollution in Class I national parks and wilderness areas by 2064. 64 Fed. Reg. 35,714, 35,727 (July 1, 1999); 40 C.F.R. §§ 51.308(d)(1), (d)(3). The first of those periodic SIPs were due in 2007. Despite that mandate—and nearly fifteen years after the deadline—several states still do not have fully approved Regional Haze plans for the first planning period.

In 2017, EPA revised the Regional Haze Rule to clarify and strengthen aspects of the Clean Air Act’s visibility program. Among other changes, the revised Regional Haze Rule required each state to “revise and submit its regional haze implementation plan revision to EPA by July 31, 2021, July 31, 2028, and every 10 years thereafter.” 40 C.F.R. § 51.308(f). The submittal is to be a “comprehensive SIP revision” that includes emission limits and other measures to fulfill the Clean Air Act’s reasonable progress requirements. 82 Fed. Reg. 3,078, 3,116; 40 C.F.R. § 51.308(f). As of February 4, 2022, however, the following thirty-nine states have failed to submit to EPA the regional haze implementation plan revision due by July 31, 2021 as required by the Regional Haze Rule, 40 C.F.R. § 51.308(f):

Alabama	Louisiana	Oklahoma
Alaska	Maine	Oregon
Arizona	Maryland	Pennsylvania
Arkansas	Minnesota	Rhode Island
California	Mississippi	South Carolina
Colorado	Missouri	South Dakota
Delaware	Montana	Tennessee
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Mexico	Washington
Iowa	North Carolina	West Virginia
Kentucky	North Dakota	Wyoming

## **II. EPA IS IN VIOLATION OF ITS MANDATORY STATUTORY DUTY TO ISSUE A FINDING THAT THESE STATES FAILED TO SUBMIT A REGIONAL HAZE SIP REVISION.**

Under 42 U.S.C. §7410(k)(1)(B), EPA must determine no later than six months after the date by which a state is required to submit a SIP whether a state has made a submission that meets the minimum completeness criteria established pursuant to 42 U.S.C. § 7410(k)(1)(A). These criteria are set forth at 40 C.F.R. part 51, appendix V. The EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria, or has not submitted a SIP at all, as a “finding of failure to submit.”

As noted, on January 19, 2017, EPA issued a final rule under 42 U.S.C. § 7491(b), requiring each state to submit for EPA review a Regional Haze state implementation plan revision by July 31, 2021. 40 C.F.R. § 51.308(f). As of February 4, 2022, however, each of the

above-listed states has failed to submit the regional haze implementation plan revision that was due by July 31, 2021 as required by 40 C.F.R. § 51.308(f).

More than six months have passed since the July 31, 2022 deadline for each of those states to submit the required SIP revisions, yet EPA has not issued the statutorily mandated determinations of whether each such state has made a submission that meets the minimum completeness criteria. EPA's failure to make such determinations constitutes failure to perform acts or duties that are nondiscretionary with EPA within the meaning of 42 U.S.C. § 7604(a)(2). Further, each of the above-named states has in fact failed to submit the SIP revisions required by July 31, 2021. Under these circumstances, EPA has a nondiscretionary statutory obligation to issue a formal finding that these states have failed to submit the requisite Regional Haze SIP revisions.

### III. NOTICE OF INTENT TO SUE

The above-listed Conservation Organizations hereby give notice of their intent to file suit 60 days from the postmark of this letter to compel EPA to perform its overdue mandatory duties under the Clean Air Act as described above.

As required by 40 C.F.R. § 54.3, the persons providing this notice are listed below.<sup>4</sup>

The Conservation Organizations would welcome the opportunity to meet with EPA to discuss the potential for promptly resolving this matter. If EPA is interested in pursuing discussions on the above matter, please contact the undersigned counsel at [joshua.smith@sierraclub.org](mailto:joshua.smith@sierraclub.org) and [cmcphehdan@earthjustice.org](mailto:cmcphehdan@earthjustice.org). If we do not hear from EPA in 60 days, we intend to proceed with filing a complaint in U.S. District Court.

Sincerely,



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*Counsel for National Parks  
Conservation Association and Sierra  
Club*

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<sup>4</sup> While EPA regulations require the entities providing their notice of intent to provide this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Pursuant to 40 C.F.R. § 54.3(a), the persons providing this notice are:

National Parks Conservation Association  
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Greater New Orleans Climate Reality Project  
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Gunnison Valley Climate Crisis Coalition  
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Copy (by Certified Mail):

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