



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

June 18, 2014

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios 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 duties under the 2008 Lead NAAQS

Dear Administrator McCarthy,

On behalf of the Center for Biological Diversity, Center for Environmental Health, and Clean Air Council (“Environmental Groups”), I am writing to inform you that the Environmental Groups intend to file a lawsuit 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). Specifically, under 42 U.S.C. § 7410(k)(1)(B), EPA must make a finding of failure to submit, and publish notice of that finding in the Federal Register, for nonattainment state implementation plan (“SIPs”) for various states for the 2008 lead National Ambient Air Quality Standards (NAAQS). Additionally, under 42 U.S.C. § 7410(k)(2) – (4), EPA must take final action, and publish notice of that action in the Federal Register, on nonattainment SIP submittals for various states addressing the 2008 lead NAAQS. As explained below, EPA has failed to perform these mandatory duties.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of lead. There is no safe level of exposure to lead. When EPA originally set the lead National Ambient Air Quality Standards (“NAAQS”) in 1978, it relied on what was then deemed “the maximum safe blood lead level...for a population of young children.” 73 Fed. Reg. 66964, 66983 (Nov. 12, 2008) (quoting 43 Fed. Reg. 46247, 46253 (Oct. 5, 1978)). Thirty years later, in 2008, EPA noted the increased evidence of risks posed by significantly lower levels of lead exposure: “Based on the current evidence, the Staff Paper first concluded that young children remain the sensitive population of primary focus in this review and that ‘there is now no recognized safe level of Pb in children’s blood . . .’”*Id.* at 66984, quoting Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper (Nov. 2007). EPA concluded that the

risk of population IQ loss in children and other sensitive populations from airborne lead exposure was unacceptably high, and that the 1978 lead NAAQS were inadequate to protect public health with an adequate margin of safety. *Id.* at 66987. EPA thus reduced the primary lead NAAQS by 90 percent, from 1.5 µg/m³ averaged over a calendar quarter to 0.15 µg/m³ over a rolling 3-month period, in order to satisfy the Clean Air Act requirement that primary NAAQS protect public health with an adequate margin of safety. *Id.* at 66991-67007.

The effects of lead are not limited to public health. As EPA noted when promulgating the 2008 lead NAAQS; “Lead is persistent in the environment and accumulates in soils, aquatic systems (including sediments), and some biological tissues of plants, animals and other organisms, thereby providing long-term, multi-pathway exposures to organisms and ecosystems.” 73 Fed. Reg. 66964, 67008 (Nov. 12, 2008). Ecosystems near sources of lead emissions experience “decreases in species diversity, loss of vegetation, changes to community composition, decreased growth of vegetation, and increased number of invasive species.” *Id.*

I. Failure to issue a finding of failure to submit

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.”

The following states have failed to submit a nonattainment plan or revision for the 2008 lead NAAQS:

| Area | SIP Due Date | Finding of Failure to Submit Due Date |
|-------------------------|--------------|---------------------------------------|
| Chicago, IL | 6/30/13 | 12/30/13 |
| Pottawattamie, IA | 6/30/13 | 12/30/13 |
| Saline County, KS | 6/30/13 | 12/30/13 |
| Lower Beaver Valley, PA | 6/30/12 | 12/30/12 |
| Lyons, PA | 6/30/12 | 12/30/12 |
| North Reading, PA | 6/30/12 | 12/30/12 |
| Arecibo, Puerto Rico | 6/30/13 | 12/30/13 |

See http://www.epa.gov/air/urbanair/sipstatus/reports/lead_2008_lead_sip_enbystate.html (last visited June 16, 2014) (“latest action” is blank for the listed areas). Even though the date for EPA to make a finding of failure to submit for the above areas has passed and the states have failed to submit nonattainment SIPs for the above areas, EPA has failed to make a finding of failure to submit in violation of its mandatory duty to do so.

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II. Failure to take final action

If, six months after a state submits a state implementation plan 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).

EPA has failed to take final action on submittals listed below in violation of EPA’s mandatory duty:

| Area | Completeness Date | Due Date for Final Action |
|----------------------------------------------|-------------------|---------------------------|
| Los Angeles County-South Coast Air Basin, CA | 12/20/12 | 12/20/13 |
| Tampa, FL | 12/29/12 | 12/29/13 |
| Eagan, MN | 12/11/12 | 12/11/13 |
| Cleveland, OH | 12/25/12 | 12/25/13 |
| Delta, OH | 12/25/12 | 12/25/13 |
| Frisco, TX | 04/17/13 | 04/17/14 |

See http://www.epa.gov/air/urbanair/sipstatus/reports/lead_2008_lead_sip_enbystate.html (last visited June 16, 2014).

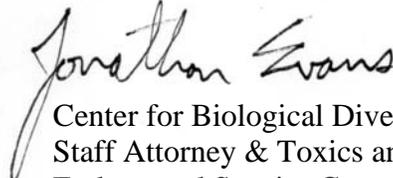
As required by 40 C.F.R. § 54.3, the person providing this notice is:

The Center for Biological Diversity
351 California Street, Suite 600
San Francisco, California 94104
Tel: (415) 436-9682

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

The Environmental Groups would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file a complaint.

Sincerely,



Center for Biological Diversity
Staff Attorney & Toxics and
Endangered Species Campaign Director

cc:

Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

US EPA, Office of General Counsel
Air and Radiation Law Office
1200 Pennsylvania Ave, NW (2344A)
Washington, DC 20760