

## SO<sub>2</sub>/NAAQS – Missouri/Louisiana: Sierra Club Notice of Intent to Sue U.S. Environmental Protection Agency Alleging Delay in Making a Finding of Failure to Submit



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The Sierra Club and two other environmental organizations (collectively “Sierra Club”) sent a May 28th Clean Air Act Notice of Intent to Sue (“Notice”) to United States Environmental Protection Agency (“EPA”) Administrator Andrew R. Wheeler alleging:

. . . 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.

The Notice alleges that EPA failed to undertake certain mandatory duties with regard to sulfur dioxide (“SO<sub>2</sub>”) pollution in certain areas.

EPA allegedly failed, pursuant to Section 110 of the Clean Air Act, to make a “finding of failure to submit” for parts of Louisiana and Missouri to address National Ambient Air Quality Standard (“NAAQS”) SO<sub>2</sub> revisions.

Sections 108 and 109 of the Clean Air Act require that EPA identify air pollutants utilizing certain criteria and set NAAQS for each. Pursuant to Section 109 of the Clean Air Act, EPA promulgated primary and secondary NAAQS for SO<sub>2</sub>. The Clean Air Act mandates periodic review and, if appropriate, revision of existing air quality criteria and NAAQS.

The states are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (“SIP”) designed to achieve each NAAQS.

The SIPs will contain the measures and actions the state proposes to undertake of each NAAQS. These measures or actions must be enforceable through state regulations and typically include emission limits applicable to certain types of stationary sources. The SIP and subsequent revisions must be reviewed and approved by EPA which will determine if certain criteria in Section 110 of the Clean Air Act are met. The SIPs must be amended to address the revised NAAQS if necessary to ensure continued attainment.

Sierra Club alleges that certain identified areas in the cited states are nonattainment for the 2010 SO<sub>2</sub> NAAQS. As a result, it states that nonattainment SIPs were due by dates specified in the Notice.

The Notice references a mandatory EPA duty to make a completeness finding by no later than six months after the due dates for the submittals. It identifies certain areas that include parts of Missouri and Louisiana for which more than six months have passed since the due dates for the submittal.

The Notice states that EPA has failed to issue a finding of failure to submit, as required under 42 U.S.C. § 74.10(k)(1)(B) regarding the nonattainment SIPs for the identified areas. The Louisiana and Missouri areas include:

- Missouri (Jackson County, Part)
- Louisiana (Evangeline Parish (Partial))

A copy of the Notice can be downloaded [here](#).