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Regional Haze/Sierra Club Notice of Intent to Sue: Alleged U.S. Environmental Protection Agency Failure to Make Statutory Completeness Determinations/Findings for 39 States

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The Sierra Club submitted a February 7th letter to the United States Environmental Protection Agency ("EPA") styled:

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 ("NOI")

The *NOI* is submitted on behalf of a number of environmental groups and alleges that EPA has failed to timely issue certain statutorily mandated determinations of whether 39 states have submitted revised regional haze state implementation plans ("SIPs") that meet minimum completeness criteria of 42 U.S.C. § 7410(k)(1)(A).

EPA is also alleged to have failed to determine whether the states submitted SIPs meeting the criteria by the relevant due date.

Arkansas is one of the 39 states referenced in the *NOI*.

Regional haze is defined as visibility impairment produced by a multitude of sources and activities which emit fine particles and their precursors and which are located across a broad geographic area.

The federal regional haze regulations are driven by Section 169(A) of the Clean Air Act. Congress sought to address visibility issues in mandatory Class I federal areas in which impairment results from manmade air pollution. Class I federal areas include certain national wilderness areas and national parks.

Section 169(A) requires that certain sources contributing to visibility impairment install Best Available Retrofit Technology ("BART"). States must review all major stationary sources built between 1962 and 1977 to determine whether the source emits any air pollutant which may reasonably be anticipated to cause or contribute any impairment of visibility in any Class I area. The states are then responsible for determining the appropriate BART controls for each source.

EPA reviews the states' SIP submission for consistency with the statute and regulations. If EPA determines that an SIP does not meet the Clean Air Act's requirements, the federal agency may itself determine BART and impose an SIP. While Section 169(A) gives states substantial responsibility to determine appropriate BART controls, EPA may not disapprove reasonable state determinations that comply with the relevant statutory and regulatory requirements.

The Sierra Club *NOI* includes the following allegations:

- Thirty-nine states have ignored the Clean Air Act's mandate to submit comprehensive state implementation plans.
- EPA is in violation of its mandatory statutory duty to issue a finding that these states failed to submit a regional haze SIP revision.

Sierra Club states that it plans to file a Clean Air Act citizen suit 60 days from the postmark of the letter to compel EPA to perform the referenced alleged overdue mandatory duties under the Clean Air Act.

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