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Sulfur Dioxide/Clean Air Act NAAQS: Sierra Club Notice of Intent to Sue U.S. Environmental Protection Agency for Failure to Promulgate Federal Implementation Plan

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The Sierra Club and Center for Biological Diversity (collectively, “Sierra Club”) transmitted a December 20th Clean Air Act Notice of Intent to Sue (“Notice”) to the United States Environmental Protection Agency (“EPA”) for an alleged failure to carry out a nondiscretionary duty.

The Notice alleges that EPA has failed to undertake mandatory duties with respect to sulfur dioxide (“SO₂”) in various air quality control regions.

SO₂ is one of six air pollutants currently designated as a Clean Air Act criteria air pollutant. As a result, a National Ambient Air Quality Standard (“NAAQS”) was established for SO₂ many years ago. Section 109 of the Clean Air Act requires that EPA promulgate “primary” and “secondary” NAAQS for the criteria pollutants identified under Section 108.

The states are primarily responsible for ensuring attainment and maintenance of a NAAQS once EPA has established or revised them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (i.e., “SIP”) designed to achieve each NAAQS. The SIPs will contain the measures and actions the state proposes to undertake to attain each NAAQS. This will include emission limits imposed on stationary sources.

In the event a state cannot or will not prepare an EPA approvable SIP to attain a particular NAAQS, EPA is required at a certain point to promulgate a Federal Implementation Plan (“FIP”).

The Sierra Club’s December 20th Notice states that EPA revised the SO₂ NAAQS in 2010.

The organization further states that the Clean Air Act requires EPA to determine whether a SIP is administratively complete and that:

... 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.

The Notice lists a number of states and associated air quality control regions that Sierra Club states have failed to attain the 2010 SO₂ NAAQS by the relevant attainment date. These include:

- Michigan/Detroit Nonattainment Area

- Tennessee/Sullivan Nonattainment Area
- Arizona/Miami and Hayden Nonattainment Areas

Subsequent EPA nonattainment designations referenced by the Sierra Club Notice include:

- Kentucky/Henderson-Webster Counties
- New York/St. Lawrence County (part)
- Virginia/Giles County (part)

The Notice therefore argues that the deadline for EPA to promulgate federal FIPs for the relevant areas air quality control regions has expired.

Therefore, the Sierra Club states if EPA does not come into compliance with the relevant Clean Air Act regulations within 60 days it will file a Clean Air Act citizen suit.

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