



March 11, 2009

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20004

Re: Notice of Intent to File Suit, Failure to Promulgate Federal Implementation Plans to Address Interstate Transport in Several Western States, a Nondiscretionary Duty Under the Clean Air Act

Dear Administrator Jackson:

This letter is to inform you that WildEarth Guardians intends to sue you and the Environmental Protection Agency (“EPA”) over your failure to promulgate a Federal Implementation Plan (“FIP”) within two years after making a finding that the States of California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon had failed to submit State Implementation Plans (“SIPs”) required to address interstate transport of ozone air pollution and particulate matter less than 2.5 microns in diameter (“PM-2.5”) as required under Section 110(a)(2)(D)(i) of the Clean Air Act.

We intend to bring a suit 60 days from the date of this letter, or shortly thereafter, under Section 304 of the Clean Air Act, 42 U.S.C. § 7604, against you for your failure to perform a nondiscretionary duty set forth in 42 U.S.C. § 7410(c)(1)(A). The suit will seek injunctive relief, declaratory relief, the cost of litigation, and other relief.

WildEarth Guardians is a New Mexico-based nonprofit organization with offices in Denver, Phoenix, Oakland, and Bozeman. WildEarth Guardians is dedicated to protecting and restoring the American West and has members throughout the Western United States who are harmed by the failure of the Administrator and the EPA to follow through with duties under the Clean Air Act to ensure that States are adequately protecting clean air and public health.

The Clean Air Act requires the Administrator to promulgate a FIP at anytime within two years after the Administrator “finds that a State has failed to make a required [State Implementation Plan] submission” under Section 110 of the Clean Air Act. *See* 42 U.S.C. 7410(c)(1)(A). On April 25, 2005, the Administrator published a finding that all States,

including California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon had failed to submit SIPs addressing interstate transport requirements under Section 110(a)(2)(D)(i) of the Clean Air Act related to the 8-hour ozone and PM-2.5 National Ambient Air Quality Standards (“NAAQS”). *See* 70 Fed. Reg. 21147. It is nearly four years later and the Administrator has not promulgated a FIP addressing these States’ failures to submit SIPs to address the requirements of Section 110(a)(2)(D)(i) in accordance with the nondiscretionary duty set forth under Section 110(c)(1)(A) of the Clean Air Act, 42 U.S.C. 7410(c)(1)(A).

In keeping with the requirements of federal regulations, you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 312 Montezuma Ave., Santa Fe, NM 87501.

If you wish to discuss this matter, please contact me at the information provided below.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
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