Message

From: Conrad, Daniel [conrad.daniel@epa.gov]
Sent: 8/20/2019 8:58:58 PM
To: OGC Immediate Office MGMT [OGC_Immediate_Office_MGMT@epa.gov]; OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]
CC: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Smith, Kristi [Smith.Kristi@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]
Subject: NOTICE OF INTENT TO SUE - 42 U.S.C. § 7604(b)(2) - Failure to Issue a Finding of Failure to Submit a Nonattainment State Implementation Plan- Texas
Attachments: 2019.8.20.FINAL.Notice of Intent Texas SO2 NSIP Deadline.pdf

All,
By letter dated August 20, 2019, Sierra Club, represented by Joshua Smith, provided a notice of intent to sue (NOI) pursuant to 42 U.S.C. 7604(b)(2) for the alleged "failure of the Administrator to perform an[] act or duty under this chapter which is not discretionary with the Administrator" under 42 U.S.C. 7604(a)(2). Specifically, the attached NOI alleges that the Administrator has violated 42 U.S.C. 7410(k)(1)(B) by failing to issue a finding that Texas failed to submit a nonattainment state implementation plan (SIP) within 18 months of the effective date of EPA's final rule - Air Quality Designations for the 2010 Sulfur Dioxide (SO2) Primary National Ambient Air Quality Standard (NAAQS)—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Fed. Reg. 89,870 (Dec. 13, 2016). The NOI states that, pursuant to 42 U.S.C. 7514(a), Texas was required to submit a final nonattainment SIP by July 12, 2018, and has failed to do so; the SIP must meet the requirements of 42 U.S.C. 7502, 7514-7514a, and provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of the rule. The NOI further alleges that once EPA issues a finding of failure to submit, it has a mandatory duty to either promulgate a FIP or approve a SIP within two years, citing 42 U.S.C. 7410(c)(1)(B). Let me know if you have any questions.
-Dan

Daniel H. Conrad
U.S. Environmental Protection Agency
Office of General Counsel
Air and Radiation Law Office
(202) 564-0903

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