EARTHJUSTICE

July 29, 2022

**Via Certified and Electronic Mail**
**Return Receipt Requested**

The Hon. Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
E: Regan.Michael@epa.gov

**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit**

Dear Administrator Regan:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the U.S. Environmental Protection Agency ("Administrator," "EPA," or "you") for failing to perform a nondiscretionary duty under the Clean Air Act (the "Act"). As further specified below, you have failed to carry out your nondiscretionary duty under Section 110(k) of the Act.[1] You have yet to fully approve or disapprove the State of Alaska's proposed amendments to its state implementation plan ("SIP") for the Fairbanks North Star Borough ("Fairbanks" or the "Borough"), which EPA has designated as a 2006 24-hour fine particulate matter "Serious" nonattainment area.

Inhalable airborne particles present serious environmental and health concerns in many areas of the United States. Numerous scientific studies have linked particle pollution exposure, especially exposure to fine particles (those that are 2.5 micrometers in diameter or smaller, hereinafter "$PM_{2.5}$") to a variety of health problems, including premature death, heart attacks, aggravated asthma, and other respiratory issues.[2] EPA has also concluded that $PM_{2.5}$ pollution may cause cancer and developmental and reproductive harm.[3] Moreover, while exposure to $PM_{2.5}$ can put anyone at risk of adverse health impacts, the risk is especially high for members of vulnerable

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[1] 42 U.S.C. § 7410(k)(2), (3).

[2] *See* EPA, *Health and Environmental Effects of Particulate Matter (PM)*, https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm (last visited July 26, 2022).

[3] *See* American Lung Association, *Particle Pollution*, http://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/particle-pollution.html (last visited July 26, 2022) (citing EPA, *Integrated Science Assessment for Particulate Matter (Final Report)* (Dec. 2009)).

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populations, such as children, people with heart or lung disease, people of color, and low-income individuals.[4]

Fairbanks has some of the worst air pollution in the country—it topped the American Lung Association's list of U.S. cities with the highest levels of short-term particle pollution in 2021 and ranked third in 2022.[5] Of all designated nonattainment areas for $PM_{2.5}$, as measured by their 2019-2021 design values, Fairbanks has one of the highest levels of episodic pollution, at levels more than twice federal limits.[6] Despite the severity of the air pollution in Fairbanks, EPA has repeatedly failed to meet its basic obligations under the Act to address that pollution. Our clients have filed four lawsuits in the last decade to enforce the mandatory deadlines set by the Act. We are now prepared to bring a fifth.

The actions and deadlines directly relevant to this notice letter follow below:

In 1997, EPA established a 24-hour National Ambient Air Quality Standard (NAAQS) for $PM_{2.5}$[7] and made these standards more stringent in 2006.[8] On November 13, 2009, EPA identified Fairbanks as a "nonattainment area" for the revised 2006 standard in a rule that became effective on December 14, 2009.[9] EPA later promulgated a rule in 2014 acknowledging that Fairbanks had been a "Moderate" nonattainment area "by operation of law" since the date of the Borough's nonattainment designation in December 2009.[10]

In May 2017, after over seven years of failure by Alaska to achieve federal air quality standards in the Borough, EPA finalized a rule reclassifying Fairbanks from a "Moderate" to a "Serious"

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[4] *Id.*

[5] *See* American Lung Association, *State of the Air 2021* at 13-14 & Fig. 2 (2021) (listing the most polluted cities by 24-hour particulate matter for 2021); American Lung Association, *Most Polluted Cities*, https://www.lung.org/research/sota/city-rankings/most-polluted-cities (last visited July 26, 2022) (listing the most polluted cities by short-term particle pollution for 2022).

[6] The federal limit for 24-hour $PM_{2.5}$ is 35 micrograms per cubic meter ($\mu g/m^3$). 40 C.F.R. § 50.13(a). With a design value of 72 $\mu g/m^3$, Fairbanks ranks seventh worst out of 50 designated nonattainment areas for $PM_{2.5}$ pollution. *See* EPA, *$PM_{2.5}$ Design Values, 2021* at tbl. 1b ("Design Values in Areas Previously Designated Nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS"), tbl. 2b ("Violating Sites in Areas Not Previously Designated Nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS") (May 24, 2022), https://www.epa.gov/air-trends/air-quality-design-values (last visited July 26, 2022).

[7] 62 Fed. Reg. 38,652 (July 18, 1997).

[8] 71 Fed. Reg. 61,144 (October 17, 2006) (codified at 40 C.F.R. § 50.13).

[9] 74 Fed. Reg. 58,688, 58,696, 58,702 (November 13, 2009).

[10] 79 Fed. Reg. 31,566, 31,567, 31,578 (June 2, 2014).



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nonattainment area and setting the Borough's attainment date as December 31, 2019.[11] In light of this redesignation, Alaska was required to submit a new proposed "Serious" area SIP to EPA by December 31, 2017,[12] and EPA was required to make a completeness determination regarding Alaska's SIP submission.[13] Following litigation initiated by our clients to enforce these mandated actions, Alaska submitted a proposed SIP to EPA on December 13, 2019, and EPA issued a completeness finding on January 9, 2020.[14]

In its proposed "Serious" area SIP, Alaska requested an extension of the Borough's attainment date from December 31, 2019, to December 31, 2024—the maximum allowable time limit.[15] On September 2, 2020, EPA found that Alaska had failed to demonstrate attainment in Fairbanks by the 2019 deadline and denied the state's extension request.[16] EPA's attainment-date extension denial triggered the requirement for Alaska to submit a revised SIP, subject to the even more stringent requirements set out in 40 C.F.R. § 51.1010(c),[17] by December 31, 2020.[18]

Alaska submitted a revised SIP proposal to EPA on December 15, 2020.[19] After EPA failed to make a completeness determination by June 15, 2021, the plan was deemed complete "by

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[11] 82 Fed. Reg. 21,711, 21,712 (May 10, 2017); *see also* 42 U.S.C. § 7513(c)(2) (stating that the attainment date for a "Serious" $PM_{10}$ nonattainment area "shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment"); *Nat. Res. Def. Council v. EPA*, 706 F.3d 428, 434-37 (D.C. Cir. 2013) (finding that because $PM_{2.5}$ pollution is a subset of $PM_{10}$ pollution, the Clean Air Act's regulatory requirements for $PM_{10}$ apply to $PM_{2.5}$.).

[12] 40 CFR § 51.1003(b)(2)(ii).

[13] 42 U.S.C. § 7410(k)(1)(B).

[14] 85 Fed. Reg. 7760, 7760 (Feb. 11, 2020).

[15] Alaska Department of Environmental Conservation, *Amendments To: State Air Quality Control Plan, Vol. II: III.D.7.1, Executive Summary* at III.D.7.1-13 (Nov. 19, 2019); *see also* 42 U.S.C. § 7513(e) ("The Administrator may grant at most one [attainment] extension for an area, of no more than 5 years.").

[16] 85 Fed. Reg. 54, 509, 54,509-10 (Sept. 2, 2020).

[17] 42 U.S.C. §§ 7509(d) and 7513a(d); 40 C.F.R. § 51.1010(c).

[18] 85 Fed. Reg. at 54,509.

[19] *See* J. W. Brune, Commissioner, Alaska Department of Environmental Conservation, Letter to Chris Hladick, Regional Administrator, EPA Region 10, Re. SIP Submittal of 202 Amendments to the Fairbanks Serious SIP – DEC Priority (Dec. 15, 2020).



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operation of law."[20] EPA was then required to approve or disapprove the plan as a whole by June 15, 2022.[21] EPA still has not performed this nondiscretionary duty.[22]

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue an approval or disapproval of Alaska's plan revision unless EPA fully performs this duty within 60 days of the postmark date of this letter. As required under 40 C.F.R. § 54.3(a), this notice letter is submitted on behalf of the following organizations:

Citizens for Clean Air, a project of Alaska Community Action on Toxics
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Sierra Club
2101 Webster Street, Suite 1300
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Citizens for Clean Air is a coalition of local community members and citizen groups in Fairbanks, Alaska committed to cleaning up the air while keeping everyone warm in the winter. The coalition is a project of Alaska Community Action on Toxics, a non-profit environmental health research and advocacy organization whose mission is to assure justice by advocating for environmental and community health.

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 64 chapters and 3 million members and supporters nationwide, including members in Fairbanks, Alaska.

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to discuss further the basis for this claim, or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to me using the contact information below.

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[20] 42 U.S.C. § 7410(k)(1)(B) ("Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to [be incomplete], shall on that date be deemed by operation of law to meet such minimum criteria.").

[21] 42 U.S.C. § 7410(k)(2), (3) (requiring approval or disapproval of a plan within 12 months of a "determination deemed by operation of law" that the plan is complete).

[22] On September 24, 2021, EPA approved portions of the plan revision. 86 Fed. Reg. 52,997 (Sept. 24, 2021). But this did not remove EPA's obligation to approve or disapprove of the whole SIP by the statutorily mandated deadline. 42 U.S.C. § 7410(k)(3).



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Sincerely,

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