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February 1, 2010

Lisa P. Jackson
Administrator
United State Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington D.C. 20460

Re: Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to make attainment determinations under 42 U.S.C. §§ 7509(c)(1) & (2), 7513(b), failure to take final action under 42 U.S.C. §§ 7410(k)(1) & (2) on State Implementation Plans, failure to promulgate Federal Implementation Plans under 42 U.S.C. § 7410(c)(1), and failure to impose sanctions as required under 42 U.S.C. § 7509(a).

Dear Administrator Jackson,

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, the Center for Biological Diversity is notifying you that they intend to file suit against you for "a failure of the Administrator [of the United States Environmental Protection Agency (EPA)] to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Clean Air Act. 42 U.S.C. § 7604(a)(2). Specifically, EPA is required to determine, and publish in the Federal Register, its determination whether a total of 14 nonattainment areas located in Alaska, Arizona, Idaho, Montana, and Nevada have attained the National Ambient Air Quality Standard for PM-10. 42 U.S.C. §§ 7509(c)(1) & (2), 7513(b)(2). EPA is also required to take final action, and publish notice of that action in the Federal Register, on the PM-10 NAAQS State Implementation Plan (SIP) submittals for 2 nonattainment areas located in Arizona. 42 U.S.C. § 7410(k)(2). If that final action is a finding of a failure to submit a sufficient SIP, that action triggers an 18-month and 24-month "clock" before EPA must impose mandatory sanctions, 42 U.S.C. § 7509(a), and a 24-month clock before EPA must promulgate a Federal Implementation Plan (FIP). 42 U.S.C. § 7410(c)(1). Finally, if the state fails to submit a SIP by the date they are required to do so, EPA must issue a determination that they have failed to submit a sufficient SIP pursuant to 42 U.S.C. § 7410(k)(1)(B). As explained below in detail, EPA has violated these mandatory duties.

EPA should remedy its violations of its mandatory duties to provide better protection for the public from the harmful impacts of particulate matter less than ten microns in diameter (“PM-10”) pollution. Long-term exposure to PM-10 is associated with “reduced lung function and the development of chronic bronchitis – and even premature death.” EPA, Particle Pollution and Your Health, U.S. Environmental Protection Agency (available at <http://www.epa.gov/oar/particlepollution/pdfs/pm-color.pdf>). Short-term exposure aggravates “lung disease, causing asthma attacks and acute bronchitis, and may also increase susceptibility to respiratory infections...[and] linked to heart attacks and arrhythmias [in people with heart disease].” *Id.* PM-10 pollution also includes black carbon, which has direct climate change implications. It is imperative that EPA make attainment determinations, take final action on the appropriate state SIPs, and promulgate FIPs and impose sanctions on the appropriate areas to prevent the public from suffering unnecessary health and welfare damage from PM-10 pollution.

I. PM-10 Nonattainment Areas Where EPA Failed to Make a Determination of PM-10 NAAQS and Public Notice of the Determinations Pursuant to 42 U.S.C. §§ 7509(c)(1)&(2), 7513(b)(2)

EPA has a mandatory duty to determine “not later than 6 months after [the applicable attainment date]” whether an area in nonattainment has attained the NAAQS by the applicable attainment date. 42 U.S.C. §§ 7509(c)(1); 7513(b)(2). EPA must then publish notice of such determination in the Federal Register. 42 U.S.C. §§ 7509(c)(2); 7513(b)(2). If the area is a moderate non-attainment area, the area becomes a serious non-attainment area by operation of law. 42 U.S.C. § 7513(b)(2). If the area is a serious nonattainment area, the state must submit a SIP revision “which provides for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.” 42 U.S.C. § 7513a(d).

a. Eagle River, Alaska

EPA has failed to make an attainment determination for Eagle River, Alaska. Eagle River was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of the PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Eagle River has attained but has failed to do so. 42 U.S.C. §§ 7509(c)(1); 7513(b)(2). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. §§ 7509(c)(2); 7513(b)(2).

If the Administrator’s finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Alaska has

failed to do that. EPA has therefore violated its mandatory duty to find that Alaska failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

b. Mendenhall Valley, Alaska

EPA has failed to make an attainment determination for Mendenhall Valley, Alaska. Mendenhall Valley was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Mendenhall Valley demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Alaska has failed to do that. EPA has therefore violated its mandatory duty to find that Alaska failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

c. Cochise County- Paul Spur and Douglas, Arizona

EPA has failed to make an attainment determination for Cochise County, Arizona. Cochise County was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). Arizona has treated Cochise County as two separate entities for PM10-SIP preparation: Paul Spur and Douglas. *See* 57 Fed. Reg. 19906, 19907 n.2 (May 8, 1992). Regardless, EPA was required to determine by June 30, 1995 whether either Paul Spur or Douglas demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Arizona has failed to do that. EPA has therefore violated its mandatory duty to find that Arizona failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

d. Santa Cruz County- Nogales, Arizona

EPA has failed to make an attainment determination for Nogales Planning Area of Santa Cruz County, Arizona. The Nogales area was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether the Nogales Planning Area demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Arizona has failed to do that. EPA has therefore violated its mandatory duty to find that Arizona failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

e. Hayden Planning Area, Arizona

EPA has failed to make an attainment determination for the Hayden Planning Area in Arizona. The Hayden Planning Area was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Hayden Planning Area demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Arizona has failed to do that. EPA has therefore violated its mandatory duty to find that Arizona failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

f. Bonner County-Sandpoint, Idaho

EPA has failed to make an attainment determination for Sandpoint area in Bonner County, Idaho. Bonner County-Sandpoint was designated a moderate nonattainment area for

PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Sandpoint demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Idaho has failed to do that. EPA has therefore violated its mandatory duty to find that Idaho failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

g. Power-Bannock Counties-Fort Hall Indian Reservation, Idaho

EPA has failed to make an attainment determination for the Fort Hall Indian Reservation area within the Power-Bannock nonattainment area. Power-Bannock was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA extended this date to December 31, 1996. 61 Fed. Reg. 66602, 66603 (Dec. 18, 1996). In 1998, EPA separated the Fort Hall Indian Reservation nonattainment area from state lands within the Power-Bannock nonattainment area. 63 Fed. Reg. 59722 (Nov. 5, 1998). Regardless, EPA found that even after splitting the Power-Bannock area, the attainment date for Fort Hall Indian Reservation continued to be December 31, 1996. 65 Fed. Reg. 76203, 76204 (Dec. 6, 2000). EPA was required to determine by June 30, 1997 whether the Fort Hall Indian Reservation area demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Idaho has failed to do that. EPA has therefore violated its mandatory duty to find that Idaho failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

h. Flathead County-Columbia Falls, Montana

EPA has failed to make an attainment determination for the Columbia Falls area in Flathead County, Montana. Flathead County-Columbia Falls was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Columbia Falls demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Montana has failed to do that. EPA has therefore violated its mandatory duty to find that Montana failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

i. Lake County-Ronan and Polson, Montana

EPA has failed to make an attainment determination for the Ronan and Polson areas of Lake County, Montana. Lake County-Ronan/Polson was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Ronan and Polson demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Montana has failed to do that. EPA has therefore violated its mandatory duty to find that Montana failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

j. Lincoln County-Libby and vicinity, Montana

EPA has failed to make an attainment determination for the Libby and vicinity areas of Lincoln County, Montana. Lincoln County-Libby (and vicinity) was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302;

56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether Libby and its vicinity demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Montana has failed to do that. EPA has therefore violated its mandatory duty to find that Montana failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

k. Rosebud County-Lame Deer, Montana

EPA has failed to make an attainment determination for the Lame Deer area of Rosebud County, Montana. Rosebud County-Lame Deer was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). EPA was required to determine by June 30, 1995 whether the Lame Deer area demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2); 7513(b)(2).

If the Administrator's finding is that the area has failed to attain by the attainment date, then the area was reclassified as a Serious Area by operation of law. 42 U.S.C. § 7513(b)(2). If that is the case, the state was required to submit a Serious Area SIP revision within 18 months after the area has been reclassified by operation of law. 42 U.S.C. § 7513a(b)(2). Montana has failed to do that. EPA has therefore violated its mandatory duty to find that Montana failed to submit its Serious Area non-attainment SIP by 18 months after the reclassification. *See* 42 U.S.C. § 7410(k)(1)(B).

l. Washoe County, Nevada

EPA has failed to make an attainment determination for Washoe County, Nevada. Washoe County was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). In 2001, EPA determined that Washoe County failed to attain the 24-hour PM-10 standard by the CAA mandated attainment date for moderate PM-10 nonattainment areas and reclassified the area to serious nonattainment status, effective Feb. 7, 2001, by operation of law. 66 Fed. Reg.

1268 (Jan. 8, 2001); 42 U.S.C. § 7513(b)(2). It was given an attainment date of December 31, 2001. 42 U.S.C. § 7513(c)(2); 65 Fed. Reg. 70326 (Nov. 22, 2000). EPA was required to determine by June 30, 2002 whether Washoe County demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of her finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2).

If Washoe County did not attain by the applicable attainment date, then Nevada was required to submit a 5% plan SIP submittal pursuant to 42 U.S.C. § 7513a(d). Nevada has not done this. EPA has therefore failed to perform its mandatory duty to determine whether Nevada has submitted its 5% plan SIP submittal in violation of 42 U.S.C. § 7410(k)(1)(B).

m. Pinal County, Arizona

EPA has failed to make an attainment determination for Pinal County, Arizona. Pinal County was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). In 1996, EPA found that Pinal County had failed to attain the PM-10 standard by the CAA mandated attainment date for moderate PM-10 nonattainment areas and reclassified the area to serious nonattainment status. 61 Fed. Reg. 21372 (May 10, 1996); 42 U.S.C. § 7513(b)(2). Pinal County was required to demonstrate attainment by Dec. 31, 2001. 61 Fed. Reg. 21372; 42 U.S.C. § 7513(c)(2). EPA was required to determine by June 30, 2002 whether Pinal County demonstrated attainment but has failed to do so. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of its finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2).

If Pinal County did not attain by the applicable attainment date, then Arizona was required to submit a 5% plan SIP submittal pursuant to 42 U.S.C. § 7513a(d). Arizona has not done this. EPA has therefore failed to perform its mandatory duty to determine whether Arizona has submitted its 5% plan SIP submittal in violation of 42 U.S.C. § 7410(k)(1)(B).

n. Clark County, Nevada

EPA has failed to make an attainment determination for Clark County, Nevada. Clark County was designated a moderate nonattainment area for PM-10 by operation of law on November 15, 1990. 40 C.F.R. § 81.302; 56 Fed. Reg. 11101, 11103 (March 15, 1991). It was required to demonstrate attainment of PM-10 NAAQS by December 31, 1994. 58 Fed. Reg. 13572 (March 12, 1993) (proposed rule); 59 Fed. Reg. 13884 (March 24, 1994) (final rule). In 1993, EPA found that Clark County could not practicably attain the PM-10 standard by the CAA mandated attainment date for moderate PM-10 nonattainment areas and reclassified the area to serious nonattainment status. 58 Fed. Reg. 3334 (January 8, 1993); 42 U.S.C. § 7513(b)(1). Clark County was required to demonstrate attainment by Dec. 31, 2001. In 2004, EPA, pursuant to 42 U.S.C. § 7513(e), extended the attainment date for the area to December 31, 2006. 69 Fed.

Reg. 32273, 32274 (June 9, 2004). EPA was required to determine by June 30, 2007 whether Clark County demonstrated attainment but has failed to do. 42 U.S.C. § 7509(c)(1). The Administrator also failed to publish notice of its finding as to whether the area attained the NAAQS by its applicable attainment date. 42 U.S.C. § 7509(c)(2).

If Clark County did not attain by the applicable attainment date, then Nevada was required to submit a 5% plan SIP submittal pursuant to 42 U.S.C. § 7513a(d). Nevada has not done this. EPA has therefore failed to perform its mandatory duty to determine whether Nevada has submitted its 5% plan SIP submittal in violation of 42 U.S.C. § 7410(k)(1)(B).

II. PM-10 Nonattainment Area SIPs Which EPA Has Failed to Take Final Action On Under 42 U.S.C. § 7410(k)(2)

States in which all or part of a Moderate Area designated nonattainment under 42 U.S.C. § 7407(d)(4) were required to submit SIPs by November 15, 1991 except those provisions required under 42 U.S.C. 7513a(a)(1)(A)¹ were due by no later than June 30, 1992. 42 U.S.C. § 7513a(a)(2)(A). EPA is required to make a finding as to whether the SIP submittal complies with the requirements of 7410(a)(2) within six months of the submittal deadline, known as the completeness finding. 42 U.S.C. § 7410(k)(1)(B). If the Administrator does not determine that the plan fails to “meet the minimum criteria” for a completeness finding within six months, the plan is deemed by operation of law to meet such minimum criteria. 42 U.S.C. § 7410(k)(1)(B). EPA must take final action on the SIP by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the completeness finding. 42 U.S.C. § 7410(k)(2).

a. Cochise County-Paul Spur, Arizona

EPA has failed to take a final action on Arizona’s SIP submittal for the Paul Spur area in Cochise County. Arizona was required to submit their moderate PM-10 nonattainment SIP for the Paul Spur area, except for any provision regarding permits for new and modified major stationary sources, by November 15, 1991. 42 U.S.C. § 7513a(a)(2). Arizona submitted revisions to their SIP on January 16, 2004. EPA made a completeness finding on March 19, 2004. 69 Fed. Reg. 21797 (April 22, 2004). EPA was required to take a final action on the submittal by March 19, 2005 but has failed to do so in violation of its mandatory duty in 42 U.S.C. § 7410(k)(2).

b. Santa Cruz County-Nogales, Arizona

EPA has failed to take a final action on Arizona’s SIP submittal for the Nogales area in Santa Cruz County. Arizona was required to submit their moderate PM-10 nonattainment SIP for the Nogales area, except for any provision regarding permits for new and modified major

¹ U.S.C. § 7513a(a)(A) requires a “permit program providing that permits meeting the requirements of [42 U.S.C. § 7503] are required for the construction and operation of new and modified major stationary sources of PM-10.”

stationary sources, by November 15, 1991. 42 U.S.C. § 7513a(a)(2). Arizona submitted revisions to their SIP on January 16, 2004. EPA made a completeness finding on March 19, 2004. 69 Fed. Reg. 21797 (April 22, 2004). EPA was required to take a final action on the submittal by March 19, 2005 but has failed to do so in violation of its mandatory duty in 42 U.S.C. § 7410(k)(2).

III. PM-10 Nonattainment Areas Where a There has Been a Failure to Promulgate a Federal Implementation Plan under 42 U.S.C. § 7410(c)(1) and Failure to Impose Sanctions under 42 U.S.C. § 7509(a)

If EPA takes a final action on a SIP that determines a state has failed to submit a sufficient SIP, that action triggers an 18-month and 24-month clock after which EPA has a mandatory duty to impose sanctions, 42 U.S.C. § 7509(a), and a 24-month clock after which EPA has a mandatory duty to promulgate of a Federal Implementation Plan (FIP). 42 U.S.C. § 7410(c)(1). As explained below, EPA has violated these mandatory duties.

a. Cochise County- Douglas, Arizona

On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that the Douglas area in Cochise County, Arizona failed to submit a sufficient moderate PM-10 SIP by the November 15, 1991 deadline. 57 Fed. Reg. 19906, 19907 (May 8, 1992). This notice triggered an 18-month and 24-month clock for sanctions under 42 U.S.C. § 7509(a), and a 24-month clock for promulgation of a FIP pursuant 42 U.S.C. § 7410(c)(1),. 57 Fed. Reg. 19906 (May 8, 1992). EPA had a mandatory duty to impose 18-month sanctions by June 16, 1993 and the 24-month sanctions and FIP by December 16, 1993, 42 U.S.C. § 7509(a), unless Arizona corrected their deficiency by these dates. EPA has failed to approve any SIP for the Douglas area. Therefore EPA has failed to promulgate a FIP. 42 U.S.C. § 7410(c)(1)(A). EPA has also failed to impose sanctions under 42 U.S.C. §§ 7509(b)(1) & (2) on the Douglas area. 42 U.S.C. § 7509(a).

b. Santa Cruz County- Nogales, Arizona

On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that the Nogales area in Santa Cruz County, Arizona failed to submit a sufficient moderate PM-10 SIP by the November 15, 1991 deadline. 57 Fed. Reg. 19906, 19907 (May 8, 1992). This notice triggered an 18-month and 24-month clock for sanctions under 42 U.S.C. § 7509(a), and a 24-month clock for promulgation of a FIP pursuant 42 U.S.C. § 7410(c)(1),. 57 Fed. Reg. 19906 (May 8, 1992). EPA had a mandatory duty to impose 18-month sanctions by June 16, 1993 and the 24-month sanctions and FIP by December 16, 1993, 42 U.S.C. § 7509(a), unless Arizona corrected their deficiency by these dates. EPA has failed to approve any SIP for the Nogales area. Therefore EPA has failed to promulgate a FIP. 42 U.S.C. § 7410(c)(1)(A). EPA has also failed to impose sanctions under 42 U.S.C. §§ 7509(b)(1) & (2) on the Nogales area. 42 U.S.C. § 7509(a).

c. Flathead County- Columbia Falls, Montana

On December 16, 1991, EPA made a finding pursuant to 42 U.S.C. § 7410(k) that the Columbia Falls area in Flathead County, Montana failed to submit a sufficient moderate PM-10 SIP by the November 15, 1991 deadline. 57 Fed. Reg. 19906, 19908 (May 8, 1992). This notice triggered an 18-month and 24-month clock for sanctions under 42 U.S.C. § 7509(a), and a 24-month clock for promulgation of a FIP pursuant 42 U.S.C. § 7410(c)(1),. 57 Fed. Reg. 19906 (May 8, 1992). EPA had a mandatory duty to impose 18-month sanctions by June 16, 1993 and the 24-month sanctions and FIP by December 16, 1993, 42 U.S.C. § 7509(a), unless Montana corrected their deficiency by these dates. EPA has failed to approve any SIP for the Columbia Falls area. Therefore EPA has failed to promulgate a FIP. 42 U.S.C. § 7410(c)(1)(A). EPA has also failed to impose sanctions under 42 U.S.C. §§ 7509(b)(1) & (2) on the Columbia Falls area. 42 U.S.C. § 7509(a).

IV. PM-10 Nonattainment Areas Where EPA Has Violated its Mandatory Duty to Find No SIP was Submitted Pursuant to 42 U.S.C. § 7410(k)(1)(B)

The Administrator is required to determine no later than 6 months after the date “by which a State is required to submit the plan or revision” whether the minimum criteria set pursuant to 42 U.S.C. § 7410(k)(1)(A) have been met. 42 U.S.C. § 7410(k)(1)(B). If there is no submittal, the minimum criteria could not have been met and EPA must make a determination stating so. As explained below, EPA has violated this mandatory duty.

a. Lake County- Ronan and Polson, Montana

EPA has failed to make a determination that Montana failed to submit a moderate PM-10 SIP for the Ronan and Polson areas in Lake County. Montana was required to submit their moderate PM-10 nonattainment SIP for the Ronan and Polson areas, except for any provision regarding permits for new and modified major stationary sources, by November 15, 1991. 42 U.S.C. § 7513a(a)(2). EPA was required to determine whether the minimum criteria for the Ronan and Polson areas of Lake County were sufficient by May 15, 1992 but has failed to do so in violation of its mandatory duty under 42 U.S.C. §7410(k)(1)(B).

b. Rosebud County- Lame Deer, Montana

EPA has failed to make a determination that Montana failed to submit a moderate PM-10 SIP for the Lame Deer area in Rosebud County. Montana was required to submit their moderate PM-10 nonattainment SIP for the Lame Deer area, except for any provision regarding permits for new and modified major stationary sources, by November 15, 1991. 42 U.S.C. § 7513a(a)(2). EPA was required to determine whether the minimum criteria for the Lame Deer area of Lake County were sufficient by May 15, 1992 but has failed to do so in violation of its mandatory duty under 42 U.S.C. §7410(k)(1)(B).

As required by 40 C.F.R. § 54.3, the person providing this notice is:

Center for Biological Diversity
P.O. Box 710
Tucson, AZ 85702
Phone: (520) 623-5252

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Center for Biological Diversity and their counsel would prefer to resolve this matter without the need for litigation. Quickly and fairly resolving this matter would also be a clear indication that you do indeed intend to respect the rule of law. Therefore we look forward to EPA contacting undersigned counsel to resolve this matter. If we do not hear from EPA in 60 days, however, we will have to assume that you are not interested in settling this matter and file a complaint.

Sincerely,

Robert Ukeiley
Counsel for Center for
Biological Diversity