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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Article No. 7009 2820 0001 4054 4488

June 27, 2012

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

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to perform mandatory duties under the 1978 and 2008 Lead NAAQS

Dear Administrator Jackson,

On behalf of the Center for Biological Diversity and the Center for Environmental Health, I am writing to inform 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.” 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. § 7410(k)(1)(B), EPA must make a finding of failure to submit, and publish notice of that finding in the Federal Register, for infrastructure SIPs for various states for the 2008 lead National Ambient Air Quality Standards (NAAQS). Additionally, under 42 U.S.C. § 7410(k)(2) and (3), EPA must take final action, and publish notice of that action in the Federal Register, on submittals by Kentucky and Tennessee addressing the infrastructure SIP requirements for the 2008 lead NAAQS. Finally, under 42 U.S.C. § 7509(c)(1), EPA has a mandatory duty to determine, for the Herculaneum, Jefferson Co., MO 1978 lead NAAQS nonattainment area, “not later than 6 months after [the applicable attainment date]...whether the area attained the standard by that date.” EPA is also required to publish notice of this determination in the Federal Register and identify in that notice each area that the Administrator has determined to have failed to attain. 42 U.S.C. § 7509(c)(2). As explained below, EPA has failed to perform these mandatory duties.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of lead. There is no safe level of exposure to lead. When EPA originally set the lead National Ambient Air Quality Standards (“NAAQS”) in 1978, it relied on what was then deemed “the maximum safe blood lead level...for a population of young children.”⁷³ Fed. Reg. 66964, 66983 (Nov. 12, 2008) (quoting 43 Fed. Reg. 46247, 46253 (Oct. 5, 1978)). Thirty years later, in 2008, EPA noted the increased evidence of risks posed by significantly lower levels of lead exposure: “Based on the current evidence, the Staff Paper first concluded that young children remain the sensitive population of primary focus in this review and that ‘there is now no recognized safe level of Pb in children’s blood . . .’”*Id.* at 66984, quoting Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper (Nov. 2007). EPA concluded that the risk of population IQ loss in children and other sensitive populations from airborne lead exposure was unacceptably high, and that the 1978 lead NAAQS were inadequate to protect public health with an adequate margin of safety. *Id.* at 66987. EPA thus reduced the primary lead NAAQS by 90 percent, from 1.5 µg/m³ averaged over a calendar quarter to 0.15 µg/m³ over a rolling 3-month period, in order to satisfy the Clean Air Act requirement that primary NAAQS protect public health with an adequate margin of safety. *Id.* at 66991-67007.

The effects of lead are not limited to public health. As EPA noted when promulgating the 2008 lead NAAQS, “Lead is persistent in the environment and accumulates in soils, aquatic systems (including sediments), and some biological tissues of plants, animals and other organisms, thereby providing long-term, multi-pathway exposures to organisms and ecosystems.” 73 Fed. Reg. 66964, 67008 (Nov. 12, 2008). Ecosystems near sources of lead emissions experience “decreases in species diversity, loss of vegetation, changes to community composition, decreased growth of vegetation, and increased number of invasive species.” *Id.*

I. Failure to issue a finding of failure to submit

EPA is required to determine whether a state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has failed to submit any required state implementation plan, 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 state implementation plan. *Id.* This is referred to as a “finding of failure to submit.”

The following states have failed to submit a plan or revision that addresses the infrastructure SIP requirements of 2008 lead NAAQS: Alabama, Alaska (section 110(a)(2)(D)(i) only), Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio (sections 110(a)(2)(A)-(D)(i), (E)-(H), (J)-(M) only), Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Utah, Vermont, Virgin Islands, Virginia, Washington, Wisconsin, Wyoming. *See generally* EPA, Status of State SIP Infrastructure Requirements (available at http://www.epa.gov/air/urbanair/sipstatus/reports/map_i.html, click on the various states, then “110(a)(2) Lead (2008)”) (last viewed May 8, 2012) (“latest action” is blank for the listed states).

The rule promulgating the 2008 lead NAAQS revision was published in the Federal Register on November 12, 2008. 73 Fed. Reg. 66964 (Nov. 12, 2008). States are required to submit infrastructure State Implementation Plans within three years of the promulgation of any new or revised NAAQS. 42 U.S.C. § 7410(a)(1); 73 Fed. Reg. at 67034. Three years after November 12, 2008 is November 12, 2011. Thus, a finding of failure to submit under 42 U.S.C. § 7410(k)(1)(B) must be made for the above listed states by no later than May 12, 2012. EPA has failed to issue this finding in violation of its mandatory duty.

II. Failure to take final action

If, six months after a state submits a state implementation plan submittal, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA must take final action on an administratively complete submittal 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) and (3).

As explained below, EPA has failed to take final action on submittals by Kentucky and Tennessee of the infrastructure SIP requirements for the 2008 lead NAAQS.

A. Kentucky

On March 8, 2010, either EPA or operation of law deemed Kentucky's submittal addressing the requirements of sections 110(a)(2)(A)-(H) and (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Kentucky: 110(a)(2) Lead (2008) Infrastructure Requirements (*available at* http://www.epa.gov/air/urbanair/sipstatus/reports/ky_infrabypoll.html#x110_a_2_lead_2008) (last viewed May 8, 2012). The Clean Air Act requires EPA to take final action by approving in full, disapproving in full, or approving in part and disapproving in part Kentucky's submittal by no later than March 8, 2011. 42 U.S.C. § 7410(k)(2)-(3). EPA has failed to take this final action in violation of its mandatory duty.

B. Tennessee

On April 19, 2010, either EPA or operation of law deemed Tennessee's submittal addressing the requirements of section 110(a)(2)(A)-(H) and (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Tennessee: 110(a)(2) Lead (2008) Infrastructure Requirements (*available at* http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_lead_2008) (last viewed May 8, 2012). The Clean Air Act requires EPA to take final action by approving in full, disapproving in full, or approving in part and disapproving in part Tennessee's submittal by no later than April 19, 2011. 42 U.S.C. § 7410(k)(2)-(3). EPA has failed to take this final action in violation of its mandatory duty.

III. Failure to determine whether an area has attained by its attainment date

EPA has failed to determine whether the Herculaneum, Jefferson County, MO 1978 Lead NAAQS nonattainment area has attained by its applicable attainment date. EPA designated the Herculaneum, Jefferson County, MO area nonattainment for the 1978 lead NAAQS effective January 6, 1992. 56 Fed. Reg. 56694 (Nov. 6, 1991). When EPA issued a SIP call for Missouri, it revised the attainment date for the Herculaneum area to April 7, 2008. 71 Fed. Reg. 19432, 19434 (Apr. 14, 2006).

The Administrator has a mandatory duty to determine “not later than 6 months after [the applicable attainment date]...whether the area attained the standard by that date.” 42 U.S.C. § 7509(c)(1). EPA had a mandatory duty to determine, by no later than October 7, 2008, whether the Herculaneum, Jefferson County, MO area nonattainment for the 1978 lead NAAQS attained the standard by its attainment date and publish notice of that determination in the Federal Register. *Id.* § 7509(c)(1)& (2). EPA is in violation of this mandatory duty.

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

The Center for Biological Diversity
351 California Street, Suite 600
San Francisco, California 94104
Tel: (415) 436-9682

The Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Tel: (510) 655-3900

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

The Center for Biological Diversity, the Center for Environmental Health 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 coming into compliance within 60 days. If you do not do so, however, we will have to file a complaint.

Sincerely,



Robert Ukeiley
Counsel for the Center for Biological Diversity
and the Center for Environmental Health