

Environmental Group Sends Notice of Intent to Sue Letter to EPA Over Failure to Act on Kentucky SIP Submittal

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On February 22, 2018, the Center for Biological Diversity (CBD) sent the Environmental Protection Agency (EPA) a [notice of intent to sue](#) letter for failure to approve Kentucky's air quality plan for limiting fine particulate (PM_{2.5}) emissions in the Louisville, Kentucky area. Kentucky's Energy and Environment Cabinet submitted a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) to EPA December 21, 2016. This revision addressed how Jefferson County would attain the PM_{2.5} standards established in EPA's October 20, 2010 final rule on the "Prevention of Significant Deterioration (PSD) for Particulates Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)."

EPA determined Kentucky's submittal was administratively complete December 21, 2016. Under 42 U.S.C. § 7410(k), once EPA finds a SIP submittal is administratively complete, it must act to approve or disapprove the submittal within 12 months of the completeness determination. Thus, EPA had until December 21, 2017 to act on Kentucky's PM_{2.5} SIP submittal. To date, EPA has still not approved or disapproved this submittal. CBD's letter stated "EPA should remedy its violation of this mandatory duty to better protect the public from the harmful effects of air pollution."

CBD's notice of intent to sue letter provides EPA with 60 days to come into compliance with 42 U.S.C. § 7410(k) by approving or disapproving Kentucky's PM_{2.5} SIP submittal for Jefferson County. If EPA fails to act, CBD may file a complaint challenging EPA's failure and requesting that the court grant it relief by forcing EPA to act on the submittal. Environmental groups frequently use suits like this to force EPA to meet statutory deadlines. While EPA Administrator Scott Pruitt issued an agency-wide directive in October 2017 directing the agency to end its "sue and settle" practices, it is unclear if and how EPA will follow this directive. Recently, February 7, 2018, the United States District Court for the District of Connecticut [held](#) EPA failed to meet a statutory deadline to act on a Clean Air Act § 126(b) petition alleging a Pennsylvania source was emitting air pollutants that significantly interfered with the maintenance of National Ambient Air Quality Standards in Connecticut. EPA did not deny it missed the deadline to act on the petition. Instead, the issue was about the remedy. EPA wanted until December 31, 2018, to act on the petition while the plaintiff environmental group wanted EPA to respond within 60 days. The court sided with plaintiff environmental group and held EPA had to act within 60 days. EPA's reaction to this Kentucky case may shed further light on the future of the October 2017 directive.

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