

SUE AND SETTLE UPDATED:

DAMAGE DONE

2013–2016



U.S. CHAMBER OF COMMERCE
Environment, Technology & Regulatory Affairs

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Executive Summary



William L. Kovacs

U.S. Chamber Senior Vice-President for
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Four years ago, the U.S. Chamber of Commerce began an effort to document how environmental advocacy groups use the “sue and settle” tactic to influence federal environmental policy. We wanted to understand the impacts sue and settle agreements have on businesses, communities, and state and local governments. We wanted to see who wins and who loses when agencies negotiate with advocacy groups in secret and affected parties are shut out of the process.

Our research showed that stakeholders left out of the sue and settle process often lose and that **the states** are among the biggest losers. The Chamber’s July 2012 report, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs*,¹ illustrated how the U.S. Environmental Protection Agency (EPA) uses sue and settle agreements with environmental advocates to override state decisions—and force its preferred, more burdensome, requirements on states. Likewise, our May 2013 report, *Sue and Settle: Regulating Behind Closed Doors*,² described situations where agreements entered into by EPA forced stringent new regulatory schemes on the states, despite concerns and objections asserted by the states. Our August 2016 report, *The Growing Burden of Unfunded EPA Mandates on the States*,³ demonstrated how EPA has taken unilateral action on policies—some originating in sue and settle agreements—that imposed sweeping impacts on states without providing additional federal resources to the states.⁴

The Chamber’s research documented the extent of sue and settle as a problem for the states, for business, and for the public’s ability to see and understand what federal agencies are doing. Even EPA’s Administrator, Scott Pruitt has now publicly acknowledged that sue and settle is a serious problem. In an interview, Administrator Pruitt stated that he intends to stop the sue and settle practice at EPA,⁵ noting

¹ U.S. Chamber of Commerce, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_Ir_0.pdf.

² U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf>.

³ U.S. Chamber of Commerce, *The Growing Burden of Unfunded EPA Mandates on the States* (August 2016) available at https://www.uschamber.com/sites/default/files/documents/files/022879_etra_epa_coercive_federalism_report_fin.pdf

⁴ *Id.* at 1517.

⁵ Kimberley A. Strassel, *A Back-to-Basics Agenda for EPA*, WALL ST. J., February 18, 2017.

“there is a time and place to sometimes resolve litigation, but don’t use the judicial process to bypass accountability.” As the Attorney General of Oklahoma, Mr. Pruitt was on the receiving end of more than one sweetheart deal between EPA and advocacy groups, including an onerous regional haze sue and settle that imposed \$282 million in additional regulatory costs on Oklahomans for visibility “benefits” too slight to be noticed.⁶

Administrator Pruitt’s concern that sue and settle has been used to bypass accountability is well founded. The Chamber’s updated analysis shows that after 2012, advocacy groups relied on sue and settle as a way to influence state policies behind the scenes—and to undermine state decision-making. While most of the agreements we documented in our May 2013 report involved new *federal* regulatory programs, more recent agreements often involve outside groups pressuring EPA to overrule *state-level* environmental decisions.

In addition, our updated analysis reveals that the use of sue and settle after 2012 did not diminish—it actually expanded. Between January 2013 and January 2017, EPA entered into 77 consent decrees, compared with the 60 agreements the agency made between 2009 and 2012. Thus, in 8 years the Obama administration’s EPA welcomed far more Clean Air Act (CAA) settlements (137) than previous administrations did over a 12 year period (93).

Since 2013, EPA has turned to Federal Implementation Plans (FIPs) as an everyday tool, increasingly relying on them to take direct control of state and local level environmental decision-making. The Obama administration imposed vastly more FIPs on states than any prior

administration. These include 17 FIPs dealing with regional haze (all in the wake of sue and settle agreements), 9 FIPs relating to greenhouse gas permitting programs, 28 FIPs for the cross-state air pollution rule, and 1 FIP for oil and gas activities in Indian Country (land located within the boundaries of federally-recognized Indian reservations).

Despite the fact that sue and settle agreements increasingly affect state-level decisions, the states continue to be shut out of negotiations and have new responsibilities forced upon them without commensurate new resources. And up until now, EPA has resisted calls by Congress to be more transparent and participatory in sue and settle negotiations. This combination of factors seriously erodes the working relationship between EPA and the states, threatening a partnership that has served the country for decades. As one state environmental agency official has noted,

[W]e also see “sue and settle” appearing on the EPA’s menu more and more frequently. As we states are more often asked to navigate the increasingly litigious “green” lobby fighting hand in hand with the EPA, we states are left to wonder if this vocal special interest currently occupies the seat at the table that was once was reserved for us ... When the states are disenfranchised, so is the truth of our federalist democracy, and the people WE represent.”

—Becky Keogh
Director, Arkansas Department of Environmental Quality (March 2016)

⁶ U.S. Chamber of Commerce, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_Ir_0.pdf at 24.

Since January 2013, special interest groups have notified EPA of their intent to file **more than 180** lawsuits under the Clean Air Act or the Clean Water Act (CWA). Although not all of these Notices of Intent become lawsuits that in turn become sue and settle agreements, experience shows that some will.

Because EPA is out of compliance with the CAA's statutory deadlines virtually all of the time, advocacy groups are free to pick and choose the rules they believe should be a priority. This gives third-party interests a way to dictate EPA priorities and budgetary agendas, particularly when the agency is receptive to settlements. Instead of being able to use its discretion as to how best utilize its limited resources—*and, indirectly, the resources of the states*—the agency agrees to shift these resources away from critical duties in order to satisfy the narrow demands of outside groups.

Recommendations

EPA Should Make Information Publicly Available About Negotiated Settlements of Lawsuits Where the Agency Is the Defendant.

EPA needs to make this critical information routinely available to the public—especially to the states. In addition, EPA needs to amend its regulations to ensure that a state or states affected by a potential settlement agreement is given notice: (1) that EPA has been sued on an issue involving that state; and (2) that the agency is meeting with outside groups in the settlement context. States then should be given the opportunity to participate. This information should include details of any attorneys' fees and/or costs paid to outside groups.

EPA Should Review the Federal Implementation Plans It Imposed on the States and Evaluate Whether They Should Be Repealed.

EPA should review the 55 FIPs it has issued since 2009 and evaluate whether, under the Trump administration, they remain appropriate. EPA should not use the drastic tactic of imposing FIPs on states unless all efforts to work cooperatively and collaboratively have failed.

Congress Should Enact the Sunshine for Regulatory Decrees and Settlements Act.

This legislation would: (1) require agencies to give notice when they receive Notices of Intent to sue from private parties; (2) afford affected parties an opportunity to intervene *prior to the filing* of the consent decree or settlement with a court; (3) publish notice of a proposed decree or settlement in the *Federal Register*, and take (and respond to) public comments at least 60 days prior to the filing of the decree or settlement; and (4) provide the court with a copy of the public comments at least 30 days prior to the filing of the decree or settlement. The legislation would also require agencies to do a better job of showing that a proposed agreement is consistent with the law and in the public interest. While Congress is considering legislation EPA should implement administratively those portions of the legislation that it can do administratively, such as placing on-line all of the received Notices of Intent to sue, all complaints, all draft Consent Decrees and take comments on the draft Consent Decrees and present them to the court prior to asking for approval of the Consent Decree.

Congress should assume a more formalized role in overseeing deadline suits.

The provisions in various environmental statutes that allow for deadline suits to be filed against EPA and other agencies should be re-codified into Title 28 of the U.S. Code. This simple step would provide the House and Senate Judiciary Committees direct

jurisdiction over such lawsuits and allow Congress to properly oversee the effect these suits are having on the judiciary system.

Congress should extend/stagger the deadlines contained in the Clean Air Act and the Clean Water Act. As discussed above, EPA has chronically missed statutory deadlines since Congress wrote the major environmental laws in the 1970s. The modern-day impact of nondiscretionary deadlines established in major environmental statutes written decades ago is critically important, because it is the fuel that drives the sue and settle approach to policymaking. Accordingly, Congress must either extend or stagger the numerous action deadlines it wrote into statutes in the 1970s so as to give EPA a reasonable chance to comply. Congress should also provide EPA with an affirmative defense to deadline suits, under which a plaintiff must show the agency acted in bad faith in missing a deadline.

Congress Should Redefine the term “mandate” in the Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act (“UMRA”)⁷ requires federal agencies to assess the likely effects of new federal mandates of \$100 million or more per year on state and local governments where federal funding will not be provided to implement the mandate. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states. The definition of a “mandate” should be redefined as “any federal requirement that obligates a state or a subdivision of a state to expend state or local resources to comply.”

Federal agencies should be required to perform an analysis of probable unfunded mandate impacts. Employing the new definition of

mandate above, agencies need to calculate the costs of implementing federal rules that will be borne by state and local government bodies. Principles of transparency embedded in other administrative analytical requirements, such as Executive Order 12,866, should be extended to the requirements of the UMRA analysis. Further, if a new regulation will impose a new unfunded mandate, then agencies should consult with states before drafting a notice of proposed rulemaking. This consultation should be clearly documented and placed in the rulemaking record.

States should have a right to obtain judicial review of agency failures to conduct UMRA cost analyses. The states should have the ability to challenge the federal government in court when it imposes new unfunded mandates and does not conduct a cost analysis calculating and disclosing the burdens its new requirements are anticipated to impose on state and local governments.

⁷ Pub. L. 104-4, 109 Stat. 48 (1995).

Report

Over the past four years, the U.S. Chamber of Commerce has sought to better understand how environmental advocacy groups use the “sue and settle” tactic to influence federal environmental policy in secret, outside of the normal regulatory process. We wanted to understand the impacts sue and settle agreements have on businesses, communities, and state and local governments.

1. Understanding how federal agencies override states’ regulatory discretion through “sue and settle” agreements (July 2012)
2. Understanding how private parties control agency actions through the “sue and settle” process (May 2013)
3. Understanding how EPA ignores the states when it imposes new unfunded mandates on the states, including mandates arising out of “sue and settle” agreements

What Is Sue and Settle? “Sue and settle” occurs when an agency such as EPA accepts a lawsuit from outside advocacy groups that effectively dictate the priorities and duties of the agency through legally-binding, court-approved settlements negotiated behind closed doors—with no participation by other affected parties or the public.

What Did Previous Chamber Reports Reveal about Sue and Settle?

Previous Chamber reports documented the unprecedented rise in sue and settle agreements between federal agencies and special interest groups since 2009. These agreements have profoundly affected states, businesses, and consumers, yet agencies shut out those who are most affected by the deals.

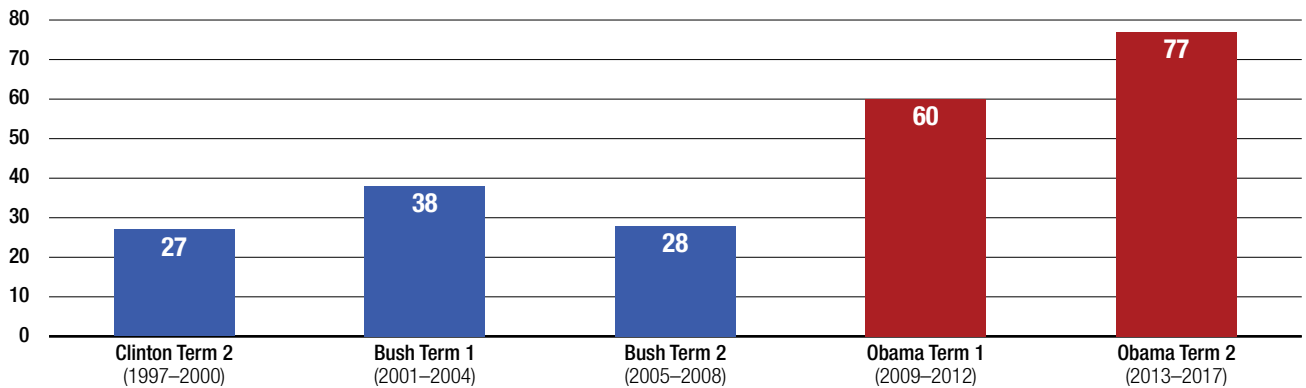
- The Chamber’s May 2013 report, *Sue and Settle: Regulating Behind Closed Doors*,⁸ catalogued scores of sue and settle agreements that imposed major new regulatory burdens on the states, often without the knowledge or consent of the states themselves. In total, the report found that between 2009 and 2012, a total of **71** lawsuits against EPA and other federal agencies were settled under circumstances that categorize them as sue and settle cases. These agreements resulted in over **100** new regulatory actions, with some of these actions imposing **\$1 billion or more** in annual costs and burdens on states,⁹ along with businesses, consumers, and local communities.
- Earlier, the Chamber’s July 2012 report, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs*,¹⁰ documented how EPA has used sue and settle agreements to enable the federal agency to override state-developed regional haze plans—thereby forcing states to implement far more costly requirements that yield negligible visibility improvements. EPA negotiated with advocacy groups in secret and chose to settle cases directly impacting

⁸ U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf>.

⁹ *Id.* at 15-20.

¹⁰ U.S. Chamber of Commerce, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_Ir_0.pdf.

Figure 1: Clean Air Act Sue and Settle Cases Between 1997 and 2017



Source: EPA, *Federal Register*

specific states without notifying the affected state(s) or allowing them to participate. In fact, EPA actively sought to **block** states from participating in settlements on issues critical to them. The agency refused to be transparent and inclusive, frustrating states that are supposed to be EPA's regulatory partners.

- Our August 2016 report, *The Growing Burden of Unfunded EPA Mandates on the States*,¹¹ illustrated how EPA takes unilateral actions—**many originating in sue and settle agreements**—that impose significant new responsibilities on states while providing **no** additional resources to the states.¹²

Among other impacts, our reports have clearly shown that regulatory actions arising out of sue and settle agreements between EPA and advocacy groups impose particularly heavy burdens **on the states**.

Sue and Settle Developments Since 2013

Based on proposed Clean Air Act (CAA) settlements published in the *Federal Register*, our May 2013 study *Sue and Settle: Regulating Behind Closed Doors*, reported that the Obama administration's EPA negotiated **60** CAA sue and settle agreements between 2009 and 2012.¹³

Subsequently, between 2013 and January 2017, advocacy groups continued to rely heavily on sue and settle agreements to transform their policy objectives into federal law. As shown in Figure 1, between January 2013 and January 2017, EPA entered into an **additional 77** CAA consent decrees.¹⁴ Thus, over 8 years the Obama administration's EPA welcomed substantially more CAA settlements (**137**) than previous administrations did over a 12-year period (**93**). **The individual CAA agreements are listed in Appendix A.**

¹¹ U.S. Chamber of Commerce, *The Growing Burden of Unfunded EPA Mandates on the States* (August 2016) available at https://www.uschamber.com/sites/default/files/documents/files/022879_etra_epa_coercive_federalism_report_fin.pdf

¹² *Id.* at 15-17.

¹³ U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf> at 14.

¹⁴ Note that in the list of notices of proposed consent decrees and settlement agreements in Appendix A, there are 78 listed notices for only 77 actual consent decrees and settlement agreements. This is because the notice for the consent decree in *Sierra Club, et al. v. EPA*, No. 2:15-cv-3798-ODW (ASx) (C.D. Cal.) was published in the *Federal Register* on two separate occasions, 80 Fed. Reg. 63,782 (October 21, 2015) and 80 Fed. Reg. 79,338 (December 21, 2015).

EPA Imposes Major Costs on the States through Sue and Settle Agreements, but Provides No New Federal Funding

Sue and Settle Agreements Result In Costly New State Burdens

- Florida Nutrient Rule - Estuaries/Flowing Waters – up to **\$632 million** annual costs.¹⁷
- Chesapeake Bay Clean Water Act rules – up to **\$6 billion** cost for states to comply.¹⁸
- 2013 Revision to the PM2.5 NAAQS – up to **\$350 million** annual costs.¹⁹
- 2015 Clean Power Plan – between **\$5.1 billion and \$8.4 billion** annual costs.²⁰
- 2015 Startup, Shutdown & Malfunction (SSM) rule – nearly **\$ 12 million** annual costs.²¹
- 2011–2016 Regional Haze rules – more than **\$5 billion** additional cost to comply.²²
- 2016 OSM Stream Protection rule – **\$3-\$6 billion** in lost state tax revenues on coal.²³

¹⁷ EPA, Nutrient Standards for Florida's Coastal, Estuarine & South Florida Flowing Waters (Nov. 2012).

¹⁸ Chesapeake Bay Program, Funding and Financing, "State Funding" (2012), see www.chesapeakebay.net/about/how/funding (the six states and the District of Columbia anticipated combined expenditures of \$2.4 billion in their 2011 milestone, or as much as \$6 billion over a decade).

¹⁹ EPA, "Overview of EPA's Revisions to the Air Quality Standards for Particulate Matter" (2012).

²⁰ EPA, Regulatory Impact Analysis, Clean Power Plan Final Rule, Exec. Summary (October 23, 2015) at ES-9..

²¹ North Carolina Department of Environmental Quality, Division of Air Quality, *Fiscal and Regulatory Analysis for Amendments Concerning SSM Operations* (May 12, 2016) available at [https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental Management Commission/EMC Meetings/2016/May2016/Attachments/AttachmentB_to16-20_SSM_SIP_Call.pdf](https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental%20Management%20Commission/EMC%20Meetings/2016/May2016/Attachments/AttachmentB_to16-20_SSM_SIP_Call.pdf). EPA did not conduct a regulatory impact analysis for the Startup, Shutdown & Malfunction (SSM) SIP Call, saying it could not estimate how each state will act to revise its SIP. However, North Carolina estimated that the SIP Call revisions would cost the state air agency and affected facilities \$337,700 annually to comply. Assuming that North Carolina is representative of the affected states, assigning North Carolina's costs to the 35 affected states gives an annual cost of the SSM SIP Call of about \$12 million.

²² U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012); Testimony of William Yeatman before the House Committee on Science, Space and Technology, Subcommittee on Environment (March 29, 2016), available at: <https://cei.org/content/testimony-william-yeatman-%E2%80%99Cepa%E2%80%99s-regional-haze-program%E2%80%9D-subcommittee-environment-committee>.

²³ National Mining Association, *Economic Analysis of Proposed Stream Buffer Protection Rule* (October 2015) <http://www.ourenergy-policy.org/wp-content/uploads/2015/10/Final-SPR-Economic-Impact-Report-NMA.pdf>.

These agreements involved CAA rulemakings, which carry most of the costs of **all** EPA regulatory actions.¹⁵ In fact, the costs of CAA rules issued between 2004 and 2015 represented **94.3%**

of the cost of all EPA rules issued during that period.¹⁶ These sue and settle agreements resulted in new rules that heavily impact businesses, communities, and, as shown below, **states**.

¹⁵ U.S. Chamber of Commerce, *The Growing Burden of Unfunded EPA Mandates on the States* (August 2016) available at https://www.uschamber.com/sites/default/files/documents/files/022879_etra_epa_coercive_federalism_report_fin.pdf at 16.

¹⁶ *Id.* at 16, Figure 5.

While much of the costs of these new rules will be borne by businesses and consumers, states will be responsible for a significant portion of the burden. Many of the major sue and settle agreements entered into since 2009 are only now having impacts that can be felt, particularly at the state level.

For example, in December 2010, EPA entered into a sue and settle agreement that obligated the agency to issue a rule limiting greenhouse gas (GHG) emissions from electric utilities.²⁴ The GHG rules finalized by EPA in 2015 under the Clean Power Plan will, under EPA's *own* economic analysis, impose between **\$5.1 billion and \$8.4 billion** in annual compliance costs on states, businesses, and communities.²⁵

Likewise, in March 2010, the Department of the Interior's Office of Surface Mining (OSM) entered into a settlement with advocacy groups to revise its Stream Protection Rule affecting coal mining operations near streams. OSM published the final Stream Protection Rule on December 20, 2016.²⁶ The National Mining Association estimated that the Stream Protection Rule could cost between 112,757 and 280,809 mining-related jobs in coal-producing states. Equally important, the rule was estimated to eliminate between **\$3.1 billion and \$6.4 billion in tax revenues for**

governments, including already hard-hit state and local governments in states like Kentucky and West Virginia.²⁷ Ultimately, the Congressional Review Act (CRA) was used to revoke the stream protection rule, with President Trump signing it into law on February 16, 2017.

As the result of a lawsuit filed by environmental groups, EPA agreed in May 2010 to impose costly new requirements on the six states and the District of Columbia that contribute most of the runoff to the Chesapeake Bay.²⁸ The Chesapeake Bay Program has estimated the total cost for the states to comply with new federal requirements to be as much as **\$6 billion**.²⁹ These states must impose more stringent operating requirements on farmers, businesses and other sources within the watershed. For example, Pennsylvania has to "implement over 22,000 acres of additional forest and grass buffers" to meet federal pollutant load requirements.³⁰ In other words, the state must place land use limits on 22,000 acres to satisfy new federal requirements the state was prevented from having any role in crafting.

Perhaps most important, while earlier sue and settle agreements were aimed at forcing major new *federal* regulatory programs, advocacy groups are increasingly using agreements to pressure EPA

²⁴ EPA, Notice of Proposed Settlement Agreement, 75 Fed. Reg. 82,392 (Dec. 30, 2010).

²⁵ EPA, Regulatory Impact Analysis, Clean Power Plan Final Rule, Executive Summary (October 23, 2015) at ES-9. It is possible that the review and potential revision or repeal of the Clean Power Plan under the Trump administration would substantially reduce or eliminate these compliance costs.

²⁶ 81 Fed. Reg. 93,066 (December 20, 2016). The Stream Protection Rule was subsequently disapproved by Congress under the Congressional Review Act. See H. J. Res. 38 (February 2, 2017).

²⁷ National Mining Association, Economic Analysis of Proposed Stream Buffer Protection Rule (October 2015) <http://www.ourenergypolicy.org/wp-content/uploads/2015/10/Final-SPR-Economic-Impact-Report-NMA.pdf>.

²⁸ *Fowler v. EPA*, No. 10-00005 (settled May 10, 2010).

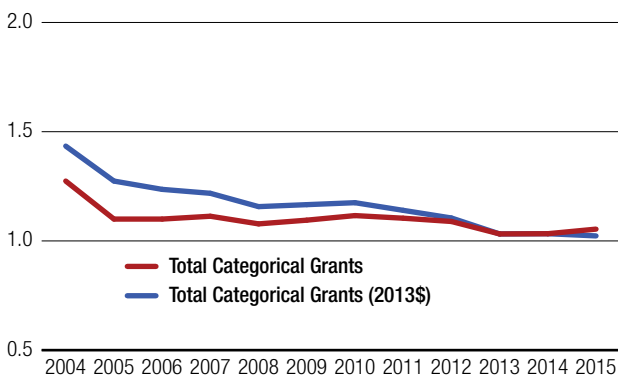
²⁹ Chesapeake Bay Program, *Funding and Financing*, "State Funding" (2012), see www.chesapeakebay.net/about/how/funding (the six states and the District of Columbia anticipated combined expenditures of \$2.4 billion in their 2011 milestone, or as much as \$6 billion over a decade).

³⁰ See EPA, Interim Evaluation of Pennsylvania's 2014–2015 Milestones and WIP [Watershed Improvement Program] Progress (June 10, 2015) available at https://www.epa.gov/sites/production/files/2015-07/documents/pennsylvania2014-2015interimmilestoneevaluation_61015.pdf at 3.

to override *state-level* environmental decisions. Thus, special interest groups are more frequently using sue and settle to achieve their policy priorities at the state level.

To make matters worse, as detailed in the Chamber’s recent report, *The Growing Burden of Unfunded EPA Mandates on the States*,³¹ EPA provides no additional funding to the states to implement the costly new mandates it assigns to them. As shown in Figure 2, yearly budget data collected by the Congressional Research Service between 2004 and 2015 confirms that EPA categorical grant dollars to the states have been flat or, in real terms, steadily declining since 2004.³² In 2015, categorical grants to the states were actually about **29% lower** in inflation-adjusted dollars than they were in 2004.

Figure 2: EPA Categorical Grants to States from 2004 to 2015



Source: Congressional Research Service

³¹ U.S. Chamber of Commerce, *The Growing Burden of Unfunded EPA Mandates on the States* (August 2016) available at https://www.uschamber.com/sites/default/files/documents/files/022879_etra_epa_coercive_federalism_report_fin.pdf

³² Likewise, a 2013 Government Accountability Office report noted that “annual appropriations for these grants have decreased by approximately \$85 million between fiscal year 2004 and fiscal year 2012.” GAO, *Funding for 10 States’ Programs Supported by Four Environmental Protection Agency Categorical Grants*, 13-504R Information on EPA Categorical Grants (May 6, 2013).

³³ EPA, “State Implementation Plan Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 Fed. Reg. 33,840 (June 12, 2015).

³⁴ The states are Maine, Rhode Island, New Jersey, Delaware, Virginia, West Virginia, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Minnesota, Ohio, Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Iowa, Kansas, Missouri, Colorado, Montana, North Dakota, South Dakota, Arizona, California, Alaska, Washington, and the District of Columbia.

Sue and Settle Agreements Also Impose Heavy Administrative Burdens on the States

Sue and settle agreements not only force states to redirect their scarce program dollars to satisfy the preferred policies of outside advocacy groups, they require state programs to reassign personnel to complete administrative tasks that are made a priority because of a court-approved sue and settle deadline.

Many of the major rulemakings finalized between 2004 and 2016 require state agencies to rewrite state rules, revise implementation plans, conduct additional air quality monitoring and/or modeling, and revise and reissue permits to individual sources. These activities require large amounts of state agency staff time and resources. For example, the Startup, Shutdown, and Malfunction rule revision³³—finalized in 2015 as the result of a sue and settle agreement on a 2011 petition for rulemaking—has forced **45 state and local air pollution agencies** located in 36 states rewrite more than 110 individual administrative codes.³⁴ Rewriting state administrative codes requires public notice and comment, hearings, significant staff and counsel time to prepare code language, and approval of the revised regulatory provisions by EPA. This process can take months and ties up significant amounts of the time of state agency personnel.

It is worth considering the comments of state officials themselves regarding the impacts of these agreements—and their frustration at being saddled with such mandates they played no part in developing.

The deadlines related to the [Clean Power Plan, Cross-State Air Pollution Rule, and the Startup, Shutdown, and Malfunction State Implementation Plan Call] overlap (and in some cases conflict with) deadlines regarding compliance with regional haze rules, and sulfur dioxide and ozone National Ambient Air Quality Standards. We estimate that complying with all these deadlines will require the devotion, above and beyond what would otherwise be required to conduct core functions, of as many as eleven full time employees, in an agency of less than 425 total employees.

—Gary Rickard
Executive Director, Mississippi Department of Environmental Quality (February 8, 2016)

The additional workloads forced on states by sue and settle agreements is significant, because according to the Environmental Council of the States (ECOS), the states implement approximately **96.5%** of federal environmental laws through delegated programs.³⁵ State agencies also conduct **90%** of all environmental inspections, enforcement actions, and collection of environmental data, and issue the vast bulk of the permits needed to build or operate a facility.³⁶ Despite this workload, as noted above, the states receive federal grant assistance at levels that are flat or even declining since 2001. This has prompted ECOS to publically state that “[o]ver nearly two decades, federal funding of state environmental programs has remained essentially flat. ***It is time for this to change.*** New and existing regulatory requirements must come with the fiscal resources for states to carry them out.”³⁷

Also, when states get new mandates to implement and enforce through an EPA sue and settle, they must reorder their program priorities and put other pressing objectives on the back burner. An unreasonable deadline for one rule draws resources from other regulations that may also be under deadlines. Resulting delays invite advocacy groups to further reorder an agency’s priorities when they in turn sue to enforce the other rules’ deadlines.

³⁵ Testimony of Teresa Marks, Director, Arkansas Department of Environmental Quality and President, Environmental Council of the States, before the House Energy and Commerce Committee, Subcommittee on Environment and the Economy (February 15, 2013) *available at* <http://docs.house.gov/meetings/IF/IF18/20130215/100242/HHRG-113-IF18-Wstate-MarksT-20130215.pdf>) at 3.

³⁶ *Id.*

³⁷ Letter from Commissioner John Line Stine, ECOS President to Myron Ebell, President-Elect Trump Transition Team, Priority Areas for a Time of Political Transition (December 2, 2016) at 2 (*emphasis in the original*).

When Consent Decrees between EPA and plaintiffs require states to change their [state] rules to incorporate new requirements—often without the input of states on either the substance or timing of those changes—states must necessarily adjust their programs to meet the new requirements and deadlines. In Indiana, and in other states, diverting resources to meet these unexpected federal requirements often comes at the expense of other pressing environmental priorities.

—Thomas Easterly

*Commissioner, Indiana Department of Environmental Management (June 2013)*³⁸

This phenomenon has been clearly illustrated by sue and settle agreements entered into between environmental advocacy groups and the U.S. Fish and Wildlife Service (FWS). In May and July 2011, FWS agreed to two consent decrees which required the agency to propose adding more than 720 new candidates to the list of endangered species under the Endangered Species Act.³⁹

Agreeing to a “mega-listing” of this many species all at once imposed an overwhelming new burden on the agency, which required redirecting resources away from other—often more pressing—priorities. According to the director of the FWS, in FY 2011 the FWS was allocated \$20.9 million for endangered species listing and critical habitat designation, but the agency was obligated to spend more than 75% of this allocation (\$15.8 million) undertaking the substantive actions required by court orders or settlement agreements resulting from litigation.⁴⁰ The same thing can be expected to happen to states that are overwhelmed by new mandates arising out of sue and settle agreements.

Special Interest Groups and EPA Increasingly Use Sue and Settle to Exert Direct Control over the States

The Chamber’s 2012 report, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs*,⁴¹ documented how EPA used sue and settle agreements to override state-level decisions reserved to the states by the Clean Air Act.⁴² Since 2012, EPA and advocacy groups have increasingly used sue and settle agreements to exert direct control over state decision making.

³⁸ Testimony of Thomas Easterly, Commissioner, Indiana Department of Environmental Management, before the House Judiciary Committee, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Hearing on H.R. 1493, the “Sunshine for Regulatory Decrees and Settlements Act of 2013” (June 5, 2013).

³⁹ 16 U.S.C. §§ 1531-1544. See U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPOR-Final.pdf> at 21-22.

⁴⁰ Testimony of Hon. Dan Ashe, Director, U.S. Fish and Wildlife Service before the House Natural Resources Committee (December 6, 2011). Sue and settle agreements requiring “mega-listings” of candidate became such a logistical problem for FWS that the agency was forced to change its rules. On September 27, 2016, FWS revised the filing procedures for public petitions to FWS and the National Marine Fisheries Service (NMFS) to list candidate species. 81 Fed. Reg. 66,462 (September 27, 2016). The final rule requires that a petition for listing must be limited to just one species, and that each petition must have sufficient scientific data to support a listing for that species.

⁴¹ U.S. Chamber of Commerce, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012) available at https://www.uschamber.com/sites/default/files/documents/files/1207_ETRA_HazeReport_Ir_0.pdf.

⁴² *Id.* at 4-6.

While many of the sue and settle agreement negotiated between 2009 and 2012 involved major new federal rulemakings sought by special interest groups (e.g., revising the 2008 Ozone National Ambient Air Quality Standards, the Mercury and Air Toxics Standard, the Chesapeake Bay cleanup plan), **recent agreements more often involve an advocacy group putting pressure on EPA to reject state-level environmental decisions.**

Recent examples of these kind of sue and settle agreements include petitions for EPA to object to a state's issuance or renewal of an individual facility's Title V operating permit. EPA agrees to grant or deny the petition within a specified date—and most often subsequently requires the state to modify the permit to satisfy the advocacy group(s). These agreements give EPA and special interest groups a way to rewrite facility permits, thereby exerting direct control over the states.

Other recent sue and settle agreements involve EPA pressuring the states to prioritize specific actions on State Implementation Plans (SIPs), regardless of existing state priorities. As was the case with **federal** agency resource priorities and agendas, special interests now increasingly use sue and settle as a way to reprogram **state** resources and policy agendas.

On June 30, 2011, Sierra Club filed a petition asking EPA to find inadequate and correct a number of SIPs that allegedly “threaten states’ ability to achieve and maintain compliance with NAAQS.” EPA agreed, even though many of the provisions in question clearly did not preclude areas from meeting ambient standards.

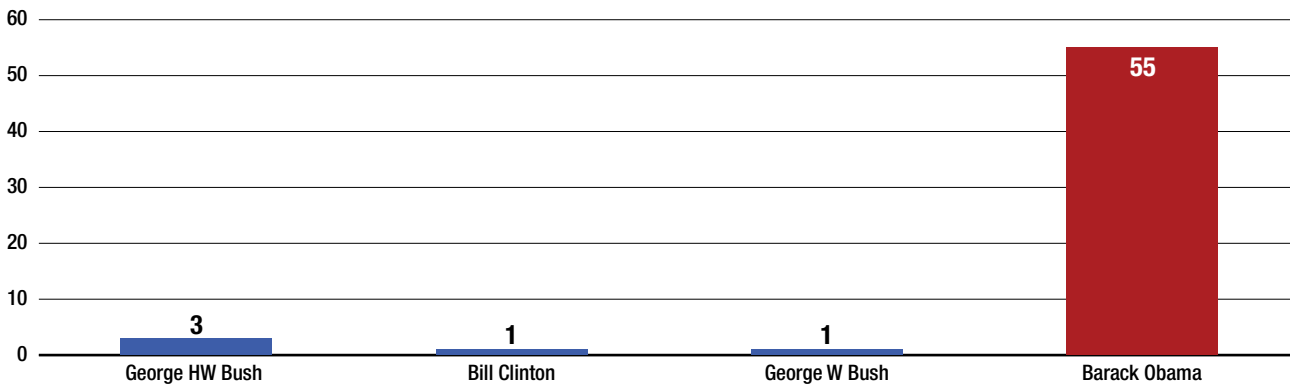
—Chuck Carr Brown
Secretary, Louisiana Department of Environmental Quality (February 8, 2016)

Among the most egregious of direct federal actions imposed upon the states via sue and settle is EPA's widespread imposition of **Federal Implementation Plans (FIPs)**. Under the Clean Air Act, the FIP is designed as a “last-ditch” federal backstop to be used only where a state is unwilling or is unable to develop a required SIP. As noted in our 2012 report *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs*, however, EPA is choosing to impose FIPs on states in order to compel specific policy outcomes. Our 2012 report focused on Regional Haze FIPs that EPA imposed on the states of Arizona, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, and Wyoming.⁴³ These FIPs allowed EPA to federalize actions that Congress intended to be decided by the states.⁴⁴

⁴³ U.S. Chamber of Commerce, *EPA's New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012).

⁴⁴ *Id.* at 5.

Figure 3: CAA FIPs by Administration (1989–2016) # of FIPs Imposed on States



Source: William Yeatman, Competitive Enterprise Institute; Federal Register

Since 2013, EPA by no means limited itself to the eight FIPs discussed in our report. Instead, the agency has turned to the FIP as an everyday tool, increasingly relying on it as a means to take direct control of state- and local-level environmental decision making. The state of Arkansas, for example, has recently complained that:

Historically FIPs were used as the weapon of last resort for our EPA partner, its nuclear option for States that were unfaithful to the partnership or denied the marriage outright. FIPs are used as an everyday tool (often of dubious origin) in the EPA's vast arsenal. ... [I]t is worth noting that in the past seven years the States have experienced more of these federal hostile takeovers, known as FIPs, than were delivered in the prior three administrations combined, ten times over.

—Becky Keogh

Director, Arkansas DEQ (March 2, 2016)(emphasis added)

As Figure 3 clearly shows, the Obama Administration imposed vastly more FIPs on states than has any prior administration. As shown in **Appendix C**, these include **17** FIPs dealing with regional haze (all in the wake of sue and settle agreements), **9** FIPs relating to greenhouse gas permitting programs, **28** FIPs for the cross-state air pollution rule, and **1** FIP for oil and gas activities in Indian Country (land located within the boundaries of federally-recognized Indian reservations).

As the U.S. map at right clearly illustrates, EPA has not only imposed a very large number of FIPs since 2010, the agency has also imposed FIPs across a wide geographic swath, literally from coast to coast. **Forty states** have been hit with at least one FIP since 2010.⁴⁵

⁴⁵ While many of the FIPs imposed on states have subsequently been removed, the willingness of EPA to rely so heavily on FIPs to impose its will on states is noteworthy.

Many More Potential Sue and Settle Lawsuits Are In the Pipeline

In the months that followed publication of the Chamber's 2013 *Sue and Settle: Regulating Behind Closed Doors* report,⁴⁷ the Senate Environment and Public Works (EPW) Committee persuaded EPA to make certain agency documents related to the sue and settle process publicly available for the first time,⁴⁸ including copies of the notices EPA receives indicating an outside group's intent to file a lawsuit against the agency for missing a deadline or otherwise failing to act (known as a "Notice of Intent" to sue).

Since January 2013, based on EPA's list of Notices of Intent to sue, advocacy groups have notified EPA of their intent to file **more than 180** lawsuits under the Clean Air Act or the Clean Water Act, with more than **125** under the CAA.⁴⁹ **See Appendix B.** While not all of these Notices of Intent become lawsuits that, in turn, become sue and settle agreements, experience shows that many do.

EPA's Failure to Meet Statutory Deadlines Drives Most Sue and Settle Cases

Under several of the major environmental laws, such as the CAA, and the CWA, the EPA is required to promulgate regulations or review existing standards under specific statutory deadlines. The EPA overwhelmingly fails to meet those deadlines, however. For example, according to a 2014 *Harvard Journal of Law & Public Policy* article, "[i]n 1991, the EPA met only **14%** of the hundreds of congressional deadlines" imposed upon it.⁵⁰

Another study by the Competitive Enterprise Institute (CEI) examined the EPA's timeliness to promulgate regulations or review standards under three programs administered through the CAA: the National Ambient Air Quality Standards, the National Emissions Standards for Hazardous Air Pollutants, and the New Source Performance Standards.⁵¹ The 2013 CEI study concluded that since 1993, **"98 percent of EPA regulations (196 out of 200) pursuant to these programs**

⁴⁷ U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf>.

⁴⁸ Senator David Vitter, Press Release, "Vitter, EPW Republicans Get Major Agreements from EPA on 5 Transparency Requests" (July 9, 2013) available at <https://www.vitter.senate.gov/newsroom/press/vitter-epw-republicans-get-major-agreements-from-epa-on-5-transparency-requests>.

⁴⁹ See EPA, "Notices of Intent to Sue the U.S. Environmental Protection Agency Documents," available at <https://www.epa.gov/noi>.

⁵⁰ Henry N. Butler and Nathaniel J. Harris, *Sue, Settle, and Shut Out the States: Destroying Environmental Benefits of Cooperative Federalism*, *Harvard Journal of Law & Public Policy*, Vol. 37, No. 2 at 599 (2014) (available at http://www.harvard-jlpp.com/wp-content/uploads/2014/05/37_2_579_Butler-Harris.pdf) (citing Richard J. Lazarus, *The Tragedy of Distrust in the Implementation of Federal Environmental Law* 54 *Law & Contemp. Probs.* 311, 323 (1991) (available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1158&context=facpub>). According to Lazarus, "the 14% compliance rate refers to all environmental statutory deadlines, 86% of which apply to EPA." *Id.* at 324.

⁵¹ William Yeatman, "EPA's Woeful Deadline Performance Raises Questions about Agency Competence, Climate Change Regulations," "Sue and Settle" July 10, 2013 (*emphasis added*) (available at <https://cei.org/web-memo/epas-woeful-deadline-performance-raises-questions-about-agency-competence-climate-change-re>).

were promulgated late, by an average of 2,072 days after their respective statutorily defined deadlines.”⁵² Historically, EPA has consistently failed to meet the vast majority of its action deadlines, even when the agency has enjoyed staffing and budget levels well above current levels.⁵³ Given the myriad of interrelated statutory deadlines—some dependent on the completion of others—and the procedural requirements that are a prerequisite to agency action, it is almost technically impossible for EPA to meet its continuous deadlines (even if it were not already hopelessly mired in long-passed missed deadlines).

When EPA misses deadlines—as it almost always does—advocacy groups can sue the agency via the citizen suit provision in the CAA⁵⁴ for failure to promulgate the subject regulation or to review the standard at issue. Because EPA is out of compliance with the CAA’s statutory deadlines virtually all of the time, advocacy groups are free to pick and choose the rules they believe should be a priority. This gives third party interests a way to dictate EPA priorities and budgetary agendas, particularly when the agency is receptive to settlements. Instead of being able to use its discretion as to how best utilize limited resources—*and, indirectly, the resources of the states*—the agency agrees to shift these resources away from critical duties in order to satisfy the narrow demands of outside groups.

⁵² *Id.*

⁵³ According to EPA, its largest budget (\$10.3 billion) was in FY2010, while its biggest staff roster (18,110) was in FY1999. In FY2016, EPA’s budget was \$8.1 billion, with 15,376 employees. See <https://www.epa.gov/planandbudget/budget>.

⁵⁴ 42 USC § 7604.

Litigation can also accelerate implementation schedules, thereby depriving permitting authorities of compliance options that would otherwise be available ... An agreement between the EPA and Sierra Club and NRDC to resolve litigation concerning the deadline for completing SO2 designations ... effectively precludes LDEQ from demonstrating compliance with the 1-hour SO2 NAAQS via ambient air monitoring, despite the fact that this option is expressly available for other areas per EPA’s SO2 Data Requirements Rule.

—Chuck Carr Brown

Secretary, Louisiana Department of Environmental Quality (February 8, 2016) (*emphasis added*)

EPA Refused to Consult with States before Imposing Sue and Settle Burdens on Them

States increasingly complain that EPA does not consult with them before taking actions that profoundly affect them. In most of the sue and settle cases related to regional haze discussed in the Chamber’s 2012 report, EPA didn’t notify affected states that it was actively negotiating with advocacy groups—and chose not to consult with a state before agreeing to settlement terms that would adversely affect the state’s interests. As one Nevada official noted recently:

Like they have done before, environmental groups are trying to work out a side-deal with the EPA that leaves everyone else, including Nevadans, without a seat at the table. We want to ensure that is not the outcome this time. When the EPA misses a deadline, that should not provide environmental groups with an opportunity to impose new regulations on the state through special settlements, especially without providing a meaningful opportunity for the state to represent all Nevadans in the settlement.

—Adam Paul Laxalt

Nevada Attorney-General (August 3, 2015)

EPA Has Been Non-Transparent about Sue and Settle

Because sue and settle agreements obligate EPA to take actions that can affect the rights and responsibilities of stakeholders—especially the states—that are not represented in settlement negotiations, principles of transparency and open government require EPA to publicly disclose these negotiations well in advance of the date such an agreement takes legal effect.

And EPA has publicly committed itself to such transparency. In the wake of President Obama’s Presidential Memorandum titled, “Transparency and Open Government,”⁵⁵ EPA’s then-Administrator Lisa Jackson issued a Memorandum to all EPA employees titled “Transparency in EPA’s Operations.”⁵⁶ The EPA Memorandum states that:

The American public will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust we must conduct business with the public openly and fairly.⁵⁷

Significantly, the Memorandum provides that “EPA is engaged in a wide range of litigation. **The conduct of litigation by the Agency should reflect the principles of fairness and openness that apply to other EPA activities.**”⁵⁸

Despite these strong public commitments to transparency and fairness, EPA chose to keep the details of its settlement negotiations secret and actively worked to prevent states and other stakeholders from participating. In mid-2013, the Senate EPW Committee expressed serious concerns about “the lack of transparency surrounding EPA’s sue-and-settle agreements with environmental activist groups that were driving much of EPA’s regulatory activities.”⁵⁹ The committee persuaded EPA to make certain agency documents relating to the sue and settle

⁵⁵ 73 Fed. Reg. 4.685 (Jan. 21, 2009). The Memorandum directed federal agencies to take steps to ensure an open federal government. Specifically, the Memorandum states that “[m]y Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.”

⁵⁶ Memorandum for All EPA Employees from Administrator Lisa Jackson, “Transparency in EPA’s Operations” (April 23, 2009).

⁵⁷ *Id.* at 1.

⁵⁸ *Id.* at 4. (emphasis added).

⁵⁹ Letter from Senate Committee on Environment and Public Affairs to EPA Administrator Gina McCarthy (September 7, 2016) *available at* www.epw.senate.gov/public/_cache/files/047620af-edf3-4593-82ef-b1be8eb3c250/09.07.2016-epw-majority-to-mccarthy-re-litigation-and-reg-transparency.pdf.

process publicly available for the first time,⁶⁰ including (1) petitions to take action on an EPA rule or take other specific rulemaking action, (2) notices of a party's intent to file a lawsuit against EPA for missing a deadline or otherwise failing to act ("Notices of Intent" to sue), and (3) updated information about rulemakings under development by the agency.

Despite EPA's public assurances in 2013 that it will be more open and transparent, on September 7, 2016, the Senate EPW Committee sent a letter to EPA Administrator Gina McCarthy, complaining that the agency has not kept its promises. The committee noted that EPA's website is both out of date and incomplete, and that the agency has not fulfilled its pledge to be more open.⁶¹ Specifically, the agency website does not accurately list Petitions and Notices of Intent received by EPA or rulemakings under development, nor does it provide a comprehensive listing of ongoing litigation involving the agency.

Accordingly, the EPW Committee has asked that EPA provide: (1) a list of all actions on rulemakings underway as part of the Action Development Process; (2) a complete list of all pending administrative or judicial litigation involving the agency; (3) a complete list of all petitions to issue, amend, or repeal a rule currently pending before the agency since January 1, 2016; (4) a complete list of all Notices of Intent to file suit received by

the agency since January 1, 2016; (5) a complete list of all delegations of authority issued, amended, or revoked since January 1, 2016; and (6) copies of all mass emails, guidance, briefings, or memoranda distributed to EPA staff concerning planning for the upcoming transition in administrations.⁶²

The Chamber agrees that EPA should make all of this critical information routinely available to the public—especially to the states. We are hopeful that EPA will now make transparency and accountability the agency's highest priority.

Conclusion

Sue and settle agreements are a threat to the states and their ability to perform the jobs that Congress assigned to them in the cooperative federalism scheme. It has recently been observed that

The use of sue-and-settle has diminished both the States' involvement in statutorily-created roles and the States' right to participate in notice-and-comment rulemaking. These consent decrees have not just caused intangible harm to state involvement, they have actually resulted in real harm to society.⁶³

As one state environmental official noted in 2016, the atmosphere of distrust between EPA and the states because of sue and settle, "is an unhealthy dynamic."⁶⁴ Commenting on the disruptive effect

⁶⁰ Senator David Vitter, Press Release, "Vitter, EPW Republicans Get Major Agreements from EPA on 5 Transparency Requests" (July 9, 2013) *available at* <https://www.vitter.senate.gov/newsroom/press/vitter-epw-republicans-get-major-agreements-from-epa-on-5-transparency-requests>.

⁶¹ Letter from Senate Committee on Environment and Public Affairs to EPA Administrator Gina McCarthy (September 7, 2016) *available at* www.epw.senate.gov/public/_cache/files/047620af-edf3-4593-82ef-b1be8eb3c250/09.07.2016-epw-majority-to-mccarthy-re-litigation-and-reg-transparency.pdf.

⁶² *Id.* at 5-6.

⁶³ Henry Butler and Nathaniel Harris, *Sue, Settle, and Shut Out the States: Destroying the Environmental Benefits of Cooperative Federalism*, 37 *Harvard Journal of Law & Public Policy* 579, 621 (May 13, 2014).

⁶⁴ Jim Macy, Director, Nebraska Department of Environmental Quality to Senator James M. Inhofe, Chairman, Senate Committee on Environment and Public Works (March 2016).

the agreements have on states, the official added, “[t]he diversion of resources away from meeting permitting responsibilities, addressing complaints from the public and general community and regulatory outreach creates animosities that do not bode well for future success.”

Recommendations

- ***EPA Should Make Information Publicly Available About Negotiated Settlements of Lawsuits Where the Agency Is the Defendant.*** EPA needs to make this critical information routinely available to the public—especially to the states. In addition, EPA needs to amend its regulations to ensure that a state or states affected by a potential settlement agreement is given notice: (1) that EPA has been sued on an issue involving that state; and (2) that the agency is meeting with outside groups in the settlement context. States then should be given the opportunity to participate. This information should include details of any attorneys’ fees and/or costs paid to outside groups.
- ***EPA Should Review the Federal Implementation Plans It Imposed on the States and Evaluate Whether They Should Be Repealed.*** EPA should review the 55 FIPs it has issued since 2009 and evaluate whether, under the Trump administration, they remain appropriate. EPA should not use the drastic tactic of imposing FIPs on states unless all efforts to work cooperatively and collaboratively have failed.
- ***Congress Should Enact the Sunshine for Regulatory Decrees and Settlements Act.*** This legislation would (1) require agencies to give notice when they receive Notices of Intent to sue from private parties; (2) afford affected

parties an opportunity to intervene *prior to the filing* of the consent decree or settlement with a court; (3) publish notice of a proposed decree or settlement in the *Federal Register*, and take (and respond to) public comments at least 60 days prior to the filing of the decree or settlement; and (4) provide the court with a copy of the public comments at least 30 days prior to the filing of the decree or settlement. The legislation would also require agencies to do a better job of showing that a proposed agreement is consistent with the law and in the public interest.

Congress should assume a more formalized role in overseeing deadline suits. The provisions in various environmental statutes that allow for deadline suits to be filed against EPA and other agencies should be re-codified into Title 28 of the U.S. Code. This simple step would provide the House and Senate Judiciary Committees direct jurisdiction over such lawsuits and allow Congress to properly oversee the effect these suits are having on the judiciary system.

Congress should extend/stagger the deadlines contained in the CAA and the Clean Water Act. As discussed above, EPA has chronically missed statutory deadlines since Congress wrote the major environmental laws in the 1970s. The modern-day impact of nondiscretionary deadlines established in major environmental statutes written decades ago is critically important, because it is the fuel that drives the sue and settle approach to policymaking. Accordingly, Congress must either extend or stagger the numerous action deadlines it wrote into statutes in the 1970s so as to give EPA a reasonable chance to comply. Congress should also provide EPA with an affirmative defense to deadline suits, under which a plaintiff must show the agency acted in bad faith in missing a deadline.

Congress Should Redefine the term “mandate” in the Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act (“UMRA”)⁶⁵ requires federal agencies to assess the likely effects of new federal mandates of \$100 million or more per year on state and local governments where federal funding will not be provided to implement the mandate. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states. The definition of a “mandate” should be redefined as “any federal requirement that obligates a state or a subdivision of a state to expend state or local resources to comply.”

Federal agencies should be required to perform an analysis of probable unfunded mandate impacts. Employing the new definition of mandate above, agencies need to calculate the costs of implementing federal rules that will be borne by state and local government bodies. Principles of transparency embedded in other administrative analytical requirements, such as Executive Order 12,866, should be extended to the requirements of the UMRA analysis. Further, if a new regulation will impose a new unfunded mandate, then agencies should consult with states before drafting a notice of proposed rulemaking. This consultation should be clearly documented and placed in the rulemaking record.

States should have a right to obtain judicial review of agency failures to conduct UMRA cost analyses. The states should have the ability to challenge the federal government in court when it imposes new unfunded mandates and does not conduct a cost analysis—calculating and disclosing the burdens its new requirements are anticipated to impose on state and local governments.

⁶⁵ Pub. L. 104-4, 109 Stat. 48 (1995).

Appendix A: Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013 (excluding enforcement-related settlements)

Case Name	Federal Register Publication	Settlement Topic
Sierra Club v. McCarthy , No. 1:16-cf-01895-KBJ (D. D.C.)	82 Fed. Reg. 7,820 (January 23, 2017)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Utah Dept. of Air Quality to PacifiCorp Energy authorizing the operation of the coal-fired Hunter Plant in Castle Dale, Utah.
Sierra Club v. EPA , No. 16-1158 (D.C. Cir.)	82 Fed. Reg. 6,532 (January 19, 2017)	Review of final EPA action titled “Revisions to Ambient Monitoring Quality Assurance and Other Requirements.” The EPA action dealt with public inspections of annual monitoring plans. EPA agreed to issue guidance documents to state and local agencies advising them on public notice and inspection practices for annual monitoring plans.
Center for Biological Diversity, et al. v. McCarthy , No. 3:16-cv-03796-VC (N.D. Cal.)	82 Fed. Reg. 4,866 (January 17, 2017)	Deadline for EPA to act to complete periodic review of air quality criteria and National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO ₂) and oxides of nitrogen (SO _x). EPA agreed to set a time for its proposed decision on the NO _x review no later than July 14, 2017, a final decision on the NO _x review by April 6, 2018, a final SO _x criteria document by December 14, 2017, a proposed decision on the SO _x review by May 25, 2018, and a final decision on the SO _x review by January 28, 2019.
Sierra Club v. McCarthy , No. 1:16-cv-01831-EGS (D. D.C.)	82 Fed. Reg. 1,732 (January 6, 2017)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Pennsylvania Dept. of Environmental Protection to the Scrubgrass Generating Co. LP power plant in Venango County. EPA agreed to take specific action by a specified date.
Citizens for Clean Air, et al. v. McCarthy, et al. , No. 2:16-cv-01594-RAJ (W.D. Wa.)	82 Fed. Reg. 116 (January 3, 2017)	Deadline for EPA action on determination of attainment status of Fairbanks North Star Borough in Alaska under 2006 24-hour PM _{2.5} NAAQS. EPA agreed to take specific action by April 28, 2017.
Basin Electric Power Co-op, et al. v. EPA , No. 14-9533 (10th Cir.); Wyoming v. EPA , No. 14-9529 (10th Cir.); Powder River Resource Council v. EPA , No. 14-9530 (10th Cir.); PacifiCorp v. EPA , No. 14-9534 (10th Cir.)	81 Fed. Reg. 96,450 (December 30, 2016)	Review of final EPA action on Regional Haze Plan for Wyoming. Basin Electric challenged application of NO _x Best Available Refit Technology (BART) requirements to Laramie River Units 1-3. Under the terms of the settlement Basin Electric agreed to submit a source-specific State Implementation Plan (SIP) to EPA for SO ₂ , to comply with specified average SO ₂ emission rates at each unit. The State of Wyoming agreed to review the SIP submittal expeditiously, and EPA agreed to make a decision on removing the Federal Implementation Plan it had imposed
American Chemistry Council v. EPA , No. 15-1146 (D.C. Cir.)	81 Fed. Reg. 91,931 (December 19, 2016)	EPA action on reconsideration of requirements for pressure relief devices under March 2015 final hazardous air pollutant rule for Off-Site Waste Recovery Operations. EPA agreed to take specific final action by January 18, 2018.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
State of New York, et al. v. McCarthy, et al. No. 1:16-cv-07827 (S.D. N.Y.)	81 Fed. Reg. 91,169 (December 16, 2016)	Deadline for EPA to act on two petitions requesting that EPA expand the Ozone Transport Region to include numerous upwind states. EPA agreed to take action on one petition by January 18, 2017 and on the other petition by October 27, 2017.
Center for Biological Diversity, et al. v. McCarthy, et al. , No. 4:16-cv-04092-PJH (N.D. Cal.)	81 Fed. Reg. 89,094 (December 9, 2016)	Deadline for EPA to act to address an alleged failure to find that specified states did not submit required implementing SIPs under the 1997 and 2008 Ozone NAAQS. EPA agreed to take specific action by specified dates.
Donald van der Vaart, et al. v. McCarthy , No. 4-16-cv-01946-SBA (E.D. N.C.)	81 Fed. Reg. 83,235 (November 21, 2016)	Deadline for EPA to act on petition seeking to include North Carolina to the Ozone Transport Region. EPA agreed to take specific action on the petition by October 27, 2017. Plaintiff is Secretary of the North Carolina Dept. of Environmental Quality.
Citizens for Clean Air, et al. v. McCarthy, et al. , No. 2:16-cv-00857-JCC (W.D. WA.)	81 Fed. Reg. 76,582 (November 3, 2016)	Deadline for EPA to act on Fairbanks North Slope Borough Moderate Area Attainment Plan for the 2006 24 hour PM2.5 NAAQS SIP. EPA agreed to take action on the SIP submittal by January 19, 2017.
Air Alliance Houston et. al. v. EPA , No. 1-16-cv-01998 (D.C. Cir)	81 Fed. Reg. 73,387 (October 25, 2016)	Deadline for EPA to act to revise emission factors for volatile organic compounds from flares at natural gas production facilities at least once every three years. EPA agreed to take specific actions relating to emissions factors by June 3, 2017.
Center for Biological Diversity, et al. v. EPA , No. 4:16-cv-01946-SBA (N.D. Cal.)	81 Fed. Reg. 72,804 (October 21, 2016)	Deadline for EPA to act on petition challenging proposed Authority to Construct/Certificate of Authority issued by the San Joaquin Valley Air Pollution Control District for the Alon USA Refinery in Bakersfield, California.
Air Alliance Houston et. al. v. EPA , No. 15-1210 (D.C. Cir)	81 Fed. Reg. 70,677 (October 13, 2016)	Deadline for EPA to act to revise emission factors for volatile organic compounds from flares, tanks, and wastewater collectors. EPA agreed to take specific actions relating to emissions factors by December 16, 2016.
Concerned Citizens of Seneca County, Inc. v. McCarthy , No. 6:16-cv-06196 (W.D.N.Y.)	81 Fed. Reg. 54,802 (August 17, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the New York State Dept. of Environmental Conservation to the Seneca County Landfill Gas-to-Energy Facility.
Sierra Club v. Gina McCarthy , No. 3:15-cv-04328-JD (N.D. Cal.)	81 Fed. Reg. 54,800 (August 17, 2016)	Deadline for EPA to act on Wyoming's SIP submittal relating to the 2008 ozone NAAQS.
Sierra Club v. EPA , No. 15-cv-01555 (D.D.C.)	81 Fed. Reg. 44,301 (July 7, 2016)	Deadline for EPA to act to promulgate a FIP for Louisiana to address regional haze.
Appleton Coated, LLC v. McCarthy , No. 1:16-cv-272 (E.D. Wis.)	81 Fed. Reg. 44,018 (July 6, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Wisconsin Department of Natural Resources to Appleton Coated, LLC.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
Sierra Club v. Gina McCarthy , No. 3:15-cv-04328-JD (N.D. Cal.)	81 Fed. Reg. 42,351 (June 29, 2016)	Deadline for EPA to act on 2008 ozone NAAQS SIP submittals by Louisiana, Montana, New Jersey, New York, South Dakota, Wisconsin, and Wyoming, and to promulgate a FIP for California and Kentucky relating to the 2008 ozone NAAQS SIP.
Sierra Club v. McCarthy , No. 1:16-cv-235 (D.D.C.)	81 Fed. Reg. 39,922 (June 20, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Tennessee Dept. of Env't and Conservation to TVA's Bull Run Fossil Plant.
Partnership for Policy Integrity v. McCarthy , No. 5:16-cv-00038-CAR (M.D. G.A.)	81 Fed. Reg. 37,588 (June 10, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Georgia Dept. of Natural Resources to Piedmont Green Power, LLC for a biomass boiler.
Midwest Environmental Defense Center v. McCarthy , No. 1:15-cv-1511 (E.D. Wis.)	81 Fed. Reg. 29,260 (May 11, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit issued by the Wisconsin Department of Natural Resources to Appleton Coated, LLC.
Louisiana Environmental Action Network v. McCarthy , No. 3:15-cv-00858-JJB-RLB (M.D. La.)	81 Fed. Reg. 24,810 (April 27, 2016)	Deadline for EPA to act on petition filed by LEAN and Sierra Club challenging proposed Title V operating permit for Yuhuang Chemical Inc. issued by the Louisiana Dept. of Environmental Quality.
State of Nevada, et al. v. McCarthy , No. 3:15-cv-00396-HDM-WGC (D. Nev.)	81 Fed. Reg. 22,079 (April 14, 2016)	Deadline for EPA to act on Nevada's SIP submittal relating to the interstate transport requirements under the 2008 ozone NAAQS.
Donald van der Vaart, et al. v. EPA , No. 5:15-cv-593-FL (E.D.N.C.)	81 Fed. Reg. 19,600 (April 5, 2016)	Deadline for EPA to act on North Carolina's submitted PM2.5 PSD SIP. Plaintiff is Secretary of the North Carolina Department of Environmental Quality.
Center for Biological Diversity, et al. v. EPA , No. 4:15-cv-4663-SBA (N.D. Cal.)	81 Fed. Reg. 19,175 (April 4, 2016)	Deadline for EPA to determine whether California submitted a complete SIP for 2006 PM2.5 nonattainment new source review (NNSR) program for El Dorado and Yolo-Solano Air Districts; whether Arizona, California, Idaho, Oregon and Utah submitted adequate 2006 PM2.5 NNSR SIPs, and whether EPA must impose a FIP.
PPHE v. McCarthy , No. 1:15-cv-00412-ACK-BMK (D. Haw.)	81 Fed. Reg. 9,849 (February 26, 2016)	Deadline for EPA to act on petition challenging proposed Title V operating permit for Hu Hunua Bioenergy Facility issued by the Hawaii Dept. of Health.
Sierra Club, et al. v. EPA , No. 2:15-cv-3798-ODW (ASx) (C.D. Cal.)	80 Fed. Reg. 79,338 (December 21, 2015)	Deadline for EPA to act on 2006 PM2.5 Air Quality Management Plan submitted by California for the South Coast Air Quality Management District. This is the second notice of the same proposed consent decree published on October 21, 2015.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
<i>In re Deseret Power Cooperative Bonanza Power Plant</i> , CAA Appeal Nos. 15-1, 15-2	80 Fed. Reg. 63,993 (October 22, 2015)	Deadline for EPA to act on Sierra Club and WildEarth Guardian challenges to Part 71 federal operating permit issued by EPA Region 8 to Deseret Power Cooperative for operation of the Bonanza Plant in Utah. Under the agreement, Deseret will apply for a New Source Review permit which EPA will draft and seek public comment upon.
<i>Sierra Club, et al. v. EPA</i> , No. 2:15-cv-3798-ODW (ASx) (C.D. Cal.)	80 Fed. Reg. 63,782 (October 21, 2015)	Deadline for EPA to act on 2006 PM2.5 Air Quality Management Plan submitted by California for the South Coast Air Quality Management District.
<i>Environmental Integrity Project, et al. v. McCarthy</i> , No. 1:15-CV-745 (ABJ) (D.D.C.)	80 Fed. Reg. 63,779 (October 21, 2015)	Deadline for EPA to act on petition objecting to proposed title V operating permit issued by Texas Comm'n on Environmental Quality to Southwestern Electric Power Company's H.W. Pirkey Power Plant.
<i>WildEarth Guardians, et al. v. EPA</i> , No. 1:15-cv-00630 (D. Colo.)	80 Fed. Reg. 57,178 (Sept. 22, 2015)	Deadline for EPA to act pursuant to partial disapproval of Utah's regional haze SIP and deadline to promulgate a FIP for Utah.
<i>Sinclair Wyoming Refining Co. et al. v. EPA</i> , No. 14-9594 (10th Cir.) and <i>Sinclair Wyoming Refining Co. et al. v. EPA</i> , No. 14-1209 (D.C. Cir.)	80 Fed. Reg. 55,113 (September 14, 2015)	EPA action on decision concerning small oil refiners' request for extension of small refiner temporary exemption from 2014 obligations under Renewable Fuel Standards Program.
<i>Sierra Club v. EPA</i> , No. 10-cv-1541 (CKK) (D.D.C.)	80 Fed. Reg. 47,922 (August 10, 2015)	Deadline for EPA to act on 1997 PM2.5 and ozone NAAQS requirements for Texas, including acting on submitted SIPs and imposing FIPs as necessary.
<i>Center for Biological Diversity, et al. v. EPA</i> , No. 3:14-cv-0138-WHO (N.D. Cal.)	80 Fed. Reg. 46,985 (August 6, 2015)	Deadline for EPA to act on 2008 lead nonattainment SIP submittals by Florida, Minnesota, Texas, Indiana, Ohio, and North Carolina, as well as non-submittals by Iowa and Puerto Rico.
<i>Sierra Club, et al. v. EPA</i> , No. 13-1639 (D.D.C.)	80 Fed. Reg. 38,444 (July 6, 2015)	Deadline for EPA to act on revised MACT standards for Publicly-owned treatment works (POTWs).
<i>Center for Biological Diversity v. McCarthy</i> , No. 15-cv-00268 TFH (D.D.C.)	80 Fed. Reg. 36,335 (June 24, 2015)	Deadline for EPA to promulgate a FIP to address 2006 OM2.5 NAAQS requirements for Puerto Rico, Iowa, and Washington.
<i>Environmental Integrity Project v. McCarthy</i> , No. 1:14-cv-2106 (RC) (D.D.C.)	80 Fed. Reg. 35,951 (June 23, 2015)	Deadline for EPA to act on petition objecting to proposed title V operating permit issued by the Texas Comm'n on Environmental Quality to Shell Chemical/Shell Oil for operations at two facilities.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
National Parks Conservation Association, et al. v. EPA , No. 12-3043 (D. Minn.)	80 Fed. Reg. 31,031 (June 1, 2015)	Deadline for EPA to act on finding by Department of Interior that Xcel Energy's Sherburne plant contributes to visibility impairment in Minnesota and Minnesota Class I areas.
Sierra Club v. McCarthy , No. 4:14-cv-02149-CRC (D.D.C.)	80 Fed. Reg. 27,303 (May 13, 2015)	Deadline for EPA to act on petition objecting to proposed title V operating permit issued by New Hampshire Dept. of Environmental Quality to Public Service Company of New Hampshire's Shiller Station power plant.
American Fuel & Petrochemical Manufacturers, et al. v. EPA , No. 1:15-cv-394 (D.D.C.)	80 Fed. Reg. 21,718 (April 20, 2015)	Deadline for EPA to act regarding renewable fuel obligations for 2014 and 2015.
Bill Green v. McCarthy , No. 4:14-cv-05093-TOR (E.D. Wash.)	80 Fed. Reg. 19,079 (April 9, 2015)	Deadline for EPA to act on petition objecting to proposed title V operating permit issued by Washington State Department of Ecology to the Hanford Site in Benton County, Washington.
Sierra Club v. McCarthy , No. 4:14-cv-00643-JLH (E.D. Ark.)	80 Fed. Reg. 14,999 (March 20, 2015)	Deadline for EPA to act pursuant to partial disapproval of Arkansas regional haze SIP and promulgate FIP for Arkansas.
Sierra Club v. McCarthy , No. 3:12-cv-6472-CRB (N.D. Cal.)	80 Fed. Reg. 7,586 (February 11, 2015)	Deadline for EPA to act on 2006 PM2.5 infrastructure SIPs and/or "good neighbor" transport FIPs affecting California, Illinois, Michigan, Nebraska, South Dakota, Wisconsin, Colorado, Wyoming, Oregon, Idaho, and the District of Columbia.
Finger Lakes Zero Waste Coalition, Inc. v. McCarthy , No. 6:14-cv-06542 (W.D.N.Y.)	80 Fed. Reg. 6,707 (February 6, 2015)	Deadline for EPA to act on petition objecting to proposed title V operating permit issued by New York State Dept. of Environmental Conservation to Seneca Energy's landfill gas-to-energy facility.
Sierra Club v. McCarthy , No. 4:14-cv-3198-JSW (N.D. Cal.)	80 Fed. Reg. 6,513 (February 5, 2015)	Deadline for EPA to act on absence of Tennessee SIP submittal for 2008 ozone NAAQS requirements, and to take action on 2008 ozone NAAQS SIP submittals from Alabama, Arizona, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, West Virginia, Utah .

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
Cliff Natural Resources Inc., et al, v. EPA , No. 13-1758 (and consolidated case Nos. 13-1761, 13-2126, 13-2129, 13-2130) and Cliffs Natural Resources Inc., et al., v. EPA , No. 13-3573 (and consolidated cases No. 13-3575, 14-1710, and 14-1712) (8th Cir.)	80 Fed. Reg. 5,111 (January 30, 2015)	Deadline for EPA to propose revisions to rulemaking establishing Regional Haze FIPs for Michigan and Minnesota relating to taconite processing facilities.
Oxy Vinyls, LP; The Vinyl Institute, Inc. (“Vinyl Institute”); PolyOne Corp. (now, Mexichem Specialty Resins, Inc.); SaintGobain Corp. and CertainTeed Corp. Case Nos. 12-1260, 12-165, 12-1266, and 12-1267 (D.C. Cir.)	79 Fed. Reg. 77,004 (December 23, 2014)	Deadline for EPA to act on petition for review of Polyvinyl Chloride and Copolymer Production MACT filed by Oxy Vinyl, The Vinyl Institute, Saint Gobain Corp, PolyOne Corp, and CertainTeed Corp.
Environmental Integrity Project v. McCarthy , No. 1:14-cv-01196 (D.D.C.)	79 Fed. Reg. 67,431 (November 13, 2014)	Deadline for EPA to act on Sierra Club’s and EIP’s petitions objecting to proposed title V operating permits for three Luminant Generating Co. power plants issued by Texas Comm’n on Environmental Quality.
Sierra Club v. McCarthy , No. 1:14-cv-00883-ESH (D.D.C.)	79 Fed. Reg. 66,368 (November 7, 2014)	Deadline for EPA to determine whether the Dallas/Ft. Worth area is in attainment with the 1997 8-hour ozone NAAQS, as well as RACT requirements for VOCs and NOX and reasonable further progress.
Wyoming v. McCarthy , No. 2:14-cv-00042-NDF (D. Wyo.)	79 Fed. Reg. 61,864 (October 15, 2014)	Deadline for EPA to act on Wyoming’s nonattainment new source review (NNSR) SIP submission.
WildEarth Guardians v. McCarthy , No. 1:13-dv-02748-RBJ (D. Colo.)	79 Fed. Reg. 55,477 (September 16, 2014)	Deadline for EPA to make findings that Alaska, Colorado, Hawaii, Idaho, New Mexico, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming failed to submit NOX SIPs to EPA.
Sierra Club v. McCarthy , No. 1:14-cv-00222 (D.D.C.)	79 Fed. Reg. 53,193 (September 8, 2014)	Deadline for EPA to promulgate a FIP for Montana’s PSD program for NOX.
WildEarth Guardians v. EPA , No. 13-9520 (10th Cir.) and National Parks Conservation Association v. EPA , No. 13-9525 (10th Cir.)	79 Fed. Reg. 47,636 (August 14, 2014)	Challenge to EPA’s approval of Colorado’s regional haze SIP; requires EPA to require Colorado to submit a revised SIP by a deadline.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
Sierra Club v. McCarthy , No. 3:14-cv-00964-JD (N.D. Cal.)	79 Fed. Reg. 46,439 (August 8, 2014)	Deadline for EPA to act on PSD program requirement for PM2.5 under SIPs.
Center for Biological Diversity v. McCarthy , No. 4:13-cv-5142-SBA (N.D. Cal.)	79 Fed. Reg. 44,452 (July 31, 2014)	Deadline for EPA to act on nonattainment SIPs pursuant to the 2006 PM2.5 NAAQS.
National Parks Conservation Association v. McCarthy , No. 12-3043 (RHK/JSM) (D. Minn.)	79 Fed. Reg. 40,098 (July 11, 2014)	Deadline for EPA to act on finding by Department of Interior that Xcel Energy's Sherburne plant contributes to visibility impairment in Minnesota and Minnesota Class I areas.
Sierra Club et al. v. McCarthy , No. 3:13-cv-3953-SI (N.D. Cal.)	79 Fed. Reg. 31,325 (June 2, 2014)	Deadline for EPA to act to promulgate and publish remaining area designations under the 2010 revised SO2 NAAQS.
Sierra Club v. McCarthy , No. 2:13-cv-06115-JCJ (E.D. Pa.)	79 Fed. Reg. 29,188 (May 21, 2014)	Deadline for EPA to act on Sierra Club's petitions objecting to proposed title V operating permits for seven coal-fired power plants in Pennsylvania.
Environmental Integrity Project v. McCarthy , No. 1:13-cv-01783 (KBJ) (D.D.C.)	79 Fed. Reg. 27,605 (May 14, 2014)	Deadline for EPA to object to a proposed title V permit for Mettiki Coal's coal processing plant in Oakland, Maryland issued by the Maryland Department of the Environment.
WildEarth Guardians v. McCarthy , No. 1:13-cv-03457-JLK (D. Colo.)	79 Fed. Reg. 27,304 (May 13, 2014)	Deadline for EPA to act on a title V operating permit application for the Deseret Bonanza coal-fired power plant in Uintah County, Utah.
State of New York, et al. v. McCarthy , No. 13-1553 and consolidated case No. 13-1555 (D.D.C.)	79 Fed. Reg. 26,752 (May 9, 2013)	Deadline for EPA to act to review and potentially revise the New Source Performance Standards for new residential woodstoves.
Air Alliance Houston, et al. v. McCarthy , No. 1:13-cv-00621-KBJ (D.D.C.)	79 Fed. Reg. 10,519 (February 25, 2014)	Deadline for EPA to review and potentially revise emission factors for VOC, CO, and NOX from flares, liquid storage tanks and wastewater treatment systems.
Sierra Club v. McCarthy , No. 1:13-cv-00385 (BHA) (D.D.C.)	79 Fed. Reg. 9,204 (February 18, 2014)	Deadline for EPA to act on Georgia's 2010 SIP submittal, and to act on Sierra Club's petitions objecting to proposed title V permits for Georgia Power's Scherer, Hammond, Wansly, Kraft and McIntosh Steam-Electric Generating Plants.
WildEarth Guardians v. McCarthy , No. 1:12-cv-03307 (D. Colo.)	78 Fed. Reg. 60,280 (October 1, 2013)	Deadline for EPA to act on revised SIPs submitted by the States of Colorado, North Dakota, South Dakota, and Utah.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
<i>American Forest and Paper Association Inc. and American Wood Council v. EPA</i> , No. 12-1452 (D.C. Cir.)	78 Fed. Reg. 59,684 (September 27, 2013)	EPA's Mandatory Greenhouse Gas Reporting Rule and amendments favorable to industry.
<i>Bahr, et al. v. McCarthy</i> , No. 2:13-cv-00872 SMM (D. Ariz.)	78 Fed. Reg. 54,143 (August 28, 2013)	Deadline for EPA to act on a Federal Implementation Plan for Arizona relating to PM10.
<i>Air Alliance Houston, et al. v. McCarthy</i> , No. 12-1607 (RMC) (D.D.C.)	78 Fed. Reg. 51,186 (August 20, 2013)	Deadline for EPA to act on MACT standards for petroleum refineries.
<i>Sierra Club v. Jackson</i> , No. 1:12-cv-01237-ESH (D.D.C.)	78 Fed. Reg. 48,161 (August 7, 2013)	Deadline for EPA to act on 1997 PM2.5 NAAQS SIP submittals by New Jersey and Michigan.
<i>Communities for a Better Environment, et al. v. EPA</i> , No. 12-71340 (9th Cir.)	78 Fed. Reg. 43,200 (July 19, 2013)	Deadline for EPA to act on South Coast Air Quality Management District (California) 1-hour and 8-hour ozone SIP.
<i>Sierra Club v. Perciasepe</i> , No. 1:12-cv-01917 (D.D.C.)	78 Fed. Reg. 40,140 (July 3, 2013)	Deadline for EPA to act on Wyoming's SIP revision relating to the 1997 PM2.5 NAAQS and Connecticut's SIP revision relating to the 1997 Ozone NAAQS.
<i>Sierra Club v. Perciasepe</i> , No. 3:12-cv-4078-JST (N.D. Cal.)	78 Fed. Reg. 30,919 (May 23, 2013)	Deadline for EPA to act on Clark County, Nevada SIP revision dealing with startup, shutdown, and malfunction requirements.
<i>Sierra Club v. Jackson</i> , No. 12-cv-00347 (D.D.C.)	78 Fed. Reg. 26,028 (May 3, 2013)	Deadline for EPA to act on SIP submittals from Colorado, Kansas, Missouri, Montana, New Jersey, New York, North Dakota, and Utah relating to 2006 PM2.5 NAAQS standard.
<i>Clean Air Council v. Jackson</i> , No. 1:12-cv-00707 (D.D.C.)	78 Fed. Reg. 23,562 (April 19, 2013)	Deadline for EPA to promulgate a Federal Implementation Plan for Pennsylvania for 1997 lead NAAQS.
<i>Center for Biological Diversity v. Jackson</i> , No. C-12-04968-JWT (N.D. Cal.)	78 Fed. Reg. 23,560 (April 19, 2013)	Deadline for EPA to act on 2008 lead NAAQS SIPs for Colorado, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, and Washington.
<i>Louisiana Environmental Action Network and Sierra Club v. Jackson</i> , No. 12-1096 (D.D.C.) ("LEAN v. Jackson")	78 Fed. Reg. 18,979 (March 28, 2013)	Deadline for EPA to act on proposed Title V permit for Nucor Steel issued by the Louisiana Dept. of Environmental Quality.

Federal Register Notices of Proposed Clean Air Act Settlement Agreements and Consent Decrees since January 2013, cont.

Case Name	Federal Register Publication	Settlement Topic
<i>Preserve Pepe'ekeo Health and Environment v. EPA</i> , No. CV 12 00520 ACK-RLP (D. Haw.)	78 Fed. Reg. 16,667 (March 18, 2013)	Deadline for EPA to act on proposed Title V permit for Hu Hunua Bioenergy Facility issued by the Hawaii Dept. of Health.
<i>Sierra Club v. Jackson</i> , No. 108-cv-00414 RWR (D.D.C.)	78 Fed. Reg. 2,260 (January 10, 2013)	Deadline for EPA to act on revised MACT standards for the brick manufacturing industry.

Appendix B: List of Notices of Intent to Sue EPA

Date	NOI Submitter	Statute & Issue
1/19/2017	Environmental Law & Policy Center	Clean Water Act - For failure to perform nondiscretionary duty to act on the State of Ohio's October 20, 2016, submission of a Clean Water Act impaired waters list under 33 U.S.C. § 1313(d) within thirty days.
1/13/2017	Bill Green	Clean Air Act - For failure to respond to petition requesting that the Administrator object to the Title V operating permit for the U.S. Department of Energy Hanford Site.
1/13/2017	Gulf Restoration Network, Little Tchefuncte River Association, Sierra Club Delta Chapter, Louisiana Audubon Council, and Louisiana Environmental Action Network	Endangered Species Act - Regarding June 3, 2016 EPA Approval of Louisiana's Dissolved Oxygen Criteria Revisions for the Eastern Lower Mississippi Alluvial Plain Ecoregion. Sixty-Day Notice of Intent to Sue: Violations of the Endangered Species Act Related to the U.S. Environmental Protection Agency's Failure to Consult.
12/29/2016	Douglas Lindamood	Clean Air Act - For failure to respond to petition requesting that the Administrator object to the Title V operating permit for the U.S. Department of Energy Hanford Site.
12/22/2016	Sierra Club and Environmental Integrity Project	Clean Air Act - Failure to grant or deny a petition to object to a proposed Title V Operating Permit for Wheelabrator Frackville Energy, Inc. power plant in Schuylkill County, Pennsylvania.
12/20/2016	Alliance for the Great Lakes, Lake Erie Charter Boat Association, Lake Erie Foundation, Michigan League of Conservation Voters, Michigan United Conservation Clubs, National Wildlife Federation, and Ohio Environmental Council	Clean Water Act - Mandatory duty challenge to Region 5 demanding that they act on Ohio's 2016 303(d) list.
12/7/2016	New York Department of State, New York Department of Environmental Conservation	Marine Protection, Research, and Sanctuaries Act (MPRSA) - NOI regarding EPA designation of Eastern Long Island Sounds dredged material disposal site.
11/23/2016	Environmental Integrity Project, Sierra Club, and Air Alliance Houston	Clean Air Act - For Failure to Timely Grant or Deny a Petition to Object to Part 70 Operating Permit No. 01553 Issued to the ExxonMobil Corporation for the Baytown Olefins Plant in Harris County, Texas.
11/4/2016	Center for Biological Diversity and Center for Environmental Health	Clean Air Act - For failure to perform a mandatory duty with regard to PM2.5 to protect the North Coast Air Quality Management District in California.
11/4/2016	Valero Energy Corporation	Clean Air Act - For failure to perform non-discretionary duties which relate to defining the obligated party for the RFS program.
11/3/2016	Climate Change Law Foundation, Association of Irrigated Residents, Center for Biological Diversity, and Sierra Club	Clean Air Act - Failed to grant or deny a petition to object to a proposed Authority to Construct/Certificate of Conformity ("Permit") for a Steam Plant in the McKittrick Oil Field in California.

Date	NOI Submitter	Statute & Issue
10/28/2016	Northwest Environmental Advocates	Clean Water Act - Mandatory duty lawsuit against Oregon to approve or disapprove the state's 2012 303(d) list.
10/14/2016	The Humane Society of the United States, Association of Irrigated Residents, Environmental Integrity Project, Friends of the Earth, and Sierra Club	Clean Air Act - For Unreasonable Delay in Responding to a Petition for the Regulation of CAFOs under the Clean Air Act.
10/14/2016	Environmental Integrity Project, Sierra Club, Air Alliance Houston, and Environment Texas	Clean Air Act - For Unreasonable Delay and Failure to Perform a Non-Discretionary Duty to Revise and Re-Issue or Deny Three Title V Permits Issued by the Texas Commission on Environmental Quality (Shell Deer Park Chemical Plant, Shell Deer Park Refinery, and SWEPCO's I-1. W. Pirkey Power Plant).
10/13/2016	Sierra Club	Clean Air Act - Concerning Clean Air Act deadlines related to Commercial and Industrial Solid Waste Incinerators and other categories of Solid Waste Incinerators.
10/12/2016	Sierra Club	Clean Air Act - For failure to grant or deny a petition seeking an objection by EPA to the Title V Operating Permit renewal for the Tennessee Valley Authority's Gallatin Fossil Plant.
10/6/2016	New England Gen-Connect, LLC	Clean Air Act - For failure to respond to petition regarding "Control of Emissions from New, Small Nonroad Spark-Ignition Engines and Equipment" to take action to remedy violations of the Act by certain generator conversion kit companies.
9/29/2016	Center for Biological Diversity and Northwest Environmental Advocates	Clean Water Act / Endangered Species Act - Notice of Violations of the Endangered Species Act Regarding Approval of Water Quality Standards in New Hampshire, Vermont, Maine, and Connecticut.
9/23/2016	Northwest Environmental Advocates	Endangered Species Act - Notice of intent to allege violations Endangered Species Act consultation provisions for administration of nonpoint source grant funds.
9/22/2016	George Barto, Beth Barto, and citizens of Borough of Blairsville PA	Clean Water Act - Failure to perform nondiscretionary duty.
9/21/2016	Perry Lee Oil & Gas Company	Safe Drinking Water Act - Texas business-owner is asking EPA to weigh in on his legal dispute with several oil companies and the Texas Railroad Commission.
9/14/2016	Center for Biological Diversity, the Center for Environmental Health, and the Clean Air Council	Clean Air Act - For failure to take final action and failure to make findings of failure to submit for 2008 ozone NAAQS nonattainment areas state implementation plans.
8/25/2016	Sierra Club	Clean Air Act - Failure to grant or deny a petition seeking an objection by EPA to the Title V Operating Permit proposed by the Western North Carolina Regional Air Quality Agency for Duke Energy Progress, Inc.'s Asheville Steam Electric Plant in Buncombe County, North Carolina.

Date	NOI Submitter	Statute & Issue
8/25/2016	Sierra Club	Clean Air Act - Failure to grant or deny a petition seeking an objection by EPA to the Title V Operating Permit proposed by the North Carolina Department of Environmental Quality, Division of Air Quality for Duke Energy Progress, LLC's Roxboro Steam Electric Plant in Caswell County, North Carolina.
8/22/2016	Columbia Riverkeeper, Idaho Rivers United, Snake River Waterkeeper, Pacific Coast Federation of Fishermen's Associations, and the Institute for Fisheries Resources	Clean Water Act - Alleging non-discretionary duty to establish TMDL for temperature on Lower Columbia River.
8/16/2016	Center for Biological Diversity and Center for Environmental Health	Clean Air Act - For failure to perform a mandatory duty with regard to PM2.5 to protect the state of Wisconsin.
8/3/2016	Citizens for Clean Air and Sierra Club	Clean Air Act - For failure to determine whether the Fairbanks North Star Borough non-attainment area has attained the 24-hour PM2.5 NAAQS and to publish notice of that finding in the Federal Register, in addition to potentially reclassification of the area as a "serious" non-attainment area "no later than 6 months following the attainment date.
7/21/2016	Chesapeake Climate Action Network, Sierra Club and Environmental Integrity Project	Clean Air Act - For unreasonable delay in responding to petition requesting that EPA reconsider its final action on the startup and shutdown provisions from the Mercury and Air Toxics Standards.
7/21/2016	Municipality of San Juan	Clean Water Act - Notice of Intent to Sue for aerial spraying of pesticides in Puerto Rico to combat the Zika Virus.
7/18/2016	Center for Biological Diversity and the Center for Environmental Health	Clean Air Act - For failure to perform mandatory duties for PM2.5.
7/7/2016	Sierra Club	Clean Air Act - Failure to perform a non-discretionary duty to grant or deny petition seeking an objection to Proposed Title V Permit for the operation of Scrubgrass Generating Company L.P. facility located near Kennerdell, Pennsylvania.
7/6/2016	Sierra Club	Clean Air Act - Failure to perform a nondiscretionary duty to grant or deny petition seeking an objection to Proposed Title V Permit for the operation of PacifiCorp's Hunter Power Plant located in Castle Dale, Utah.
7/5/2016	Environmental Integrity Project, Air Alliance Houston, Environment Texas, Texas Campaign for the Environment, Downwinders at Risk...	Clean Air Act - For unreasonable delay in responding to Petition for EPA action to address startup, shutdown, and maintenance exemptions in revised permits for Texas coal-fired power plants.
7/1/2016	Center for Biological Diversity and the Center for Environmental Health	Clean Air Act - For failure to perform multiple mandatory duties with regard to PM2.5.
6/30/2016	State of New York	Clean Air Act - Failure to perform non-discretionary duty to promulgate Federal Implementation Plan for Kentucky's Good Neighbor provision requirements for the 2008 ozone NAAQS.

Date	NOI Submitter	Statute & Issue
6/9/2016	Chesapeake Climate Action Network, Sierra Club, Environmental Integrity Project and Physicians for Social Responsibility, Chesapeake, Inc.	Clean Air Act - For failure to timely grant or deny a petition to object to the Title V operating permit for the Morgantown Generating Station.
6/6/2016	Sierra Club	Clean Air Act - For failure to promulgate Federal Implementation Plan for Kentucky Good Neighbor provision.
5/17/2016	Center for Biological Diversity, the Center for Environmental Health, and the Clean Air Council	Clean Air Act - Deadline suit for failure to submit and failure to act on 2008 ozone attainment SIPs.
5/11/2016	Toni Offner and Cynthia Portera	Clean Air Act - Failure to grant or deny a petition to object to the Title V air permit issued to Bunge North America Inc. for construction activities at its grain elevator in Destrehan, Louisiana.
4/27/2016	Finger Lakes Zero Waste Coalition, Inc.	Clean Air Act - For failure to perform nondiscretionary duty under the CAA to respond to Petition filed on or about February 8, 2016, requesting that the Administrator object to the Title V operating permit for the Seneca Energy II, LLC, Ontario County Landfill Gas to Energy Facility.
4/27/2016	Center for Biological Diversity and the Center for Environmental Health	Clean Air Act - For failure to timely review, revise and promulgate the Air Quality Criteria for Sulfur Oxides and the NAAQS for Sulfur Dioxide and Nitrogen Oxides as may be appropriate.
4/27/2016	Sierra Club, Medical Advocates for Healthy Air, Physicians for Social Responsibility - Los Angeles, WildEarth Guardians, and Center for Biological Diversity	Clean Air Act - For failure to perform non-discretionary duties related to the implementation of the 1997 NAAQS PM2.5 in the Los Angeles-South Coast Air Basin, CA nonattainment area.
4/18/2016	States of New York, Connecticut, Massachusetts, New Hampshire, Rhode Island and Vermont	Clean Air Act - Failure to Act on their Petitions Under Clean Air Act Section 176A.
4/8/2016	Community In-Power and Development Association Inc., Hoosier Environmental Council, Ohio Valley Environmental Coalition...	Clean Air Act -For failure to issue standards or final residual risk determinations for various major sources of hazardous air pollutants categories. Also for failure to review and revise as necessary emission standards promulgated every 8 years.
4/7/2016	Potomac Riverkeeper Network	Clean Water Act - Allegation EPA failed to fulfill mandatory duty to approve or disapprove Virginia's 2014 303(d) list.
4/6/2016	Citizens for Clean Air and Sierra Club	Clean Air Act -Failure to issue a full or partial approval or a disapproval of the State of Alaska's state implementation plan addressing the Fairbanks North Star Borough 24-hour fine particulate matter non-attainment area.
4/4/2016	Sierra Club, West Virginia Highlands Conservancy, West Virginia Rivers Coalition	Clean Water Act - Allegation EPA failed to fulfill mandatory duty to approve or disapprove West Virginia's 2014 303(d) list.

Date	NOI Submitter	Statute & Issue
4/1/2016	Sierra Club, West Virginia Highlands Conservancy, and Ohio Valley Environmental Coalition	Clean Water Act - NOI from environmental groups alleging that EPA failed to perform a mandatory duty under 303(c) to review an alleged revision to West Virginia's water quality standards. " The NOI states that West Virginia permitting guidance effectively revises the biological integrity standard by exempting NPDES mining permits from the standard.
3/24/2016	Sierra Club	Clean Air Act -Amended NOI for the failure to promulgate a FIP within two years of partially disapproving Louisiana's June 13, 2008 Regional Haze SIP.
3/7/2016	Conservation Law Foundation	Clean Water Act - Notice of intent to sue EPA for failure to establish a Lake Champlain phosphorus TMDL within 30 days of disapproving VT's 2002 TMDL (January 24, 2011).
3/1/2016	Puyallup Tribe of Indians	Clean Water Act - NOI regarding alleged mandatory duty to promulgate WQS in Washington State.
2/18/2016	Bill Green	Clean Air Act - Failure to issue a part 71 permit in response to EPA's order granting in part a petition to object to the Hanford permit and the state's failure to respond to that order.
2/16/2016	WildEarth Guardians	Clean Air Act - Failure to determine that the Denver Metropolitan/North Front Range area of Colorado failed to attain the 2008 ozone NAAQS by the attainment date of July 20, 2015.
2/12/2016	Center for Biological Diversity and Elizabeth Crowe	Clean Air Act - For failure to make "bump up" determinations for various marginal non-attainment areas for the 2008 ozone NAAQS.
2/10/2016	Iowa Citizens for Community Improvement, Clean Wisconsin, Center for Food Safety, The Humane Society of the United States...	Clean Air Act - For unreasonable delay in responding to our April 5, 2011 petition for the Regulation of Ammonia as a Criteria Pollutant Under Clean Air Act Sections 108 and 109.
1/28/2016	Plant Oil Powered Diesel Fuel Systems, Inc.	Clean Air Act - For failure to properly regulate fuel, particularly renewable diesel.
1/21/2016	Seneca County, Inc.	Clean Air Act - For failure to timely grant or deny Petition to Object to the proposed Title V Operating Permit issued to Seneca Energy, II LLC for operation of the Landfill Gas to Energy Facility located in Seneca Falls, Seneca County, New York.
1/21/2016	North Carolina Department of Environmental Quality	Clean Air Act - Failure to timely respond to 2013 petition regarding the Ozone Transport.
1/18/2016	Appleton Coated, LLC and Wisconsin Paper Council, Inc.	Clean Air Act - Failure to grant or deny a petition regarding the Title V Operating Permit to Appleton Coated. LLC. for a plant in Wisconsin.
12/24/2015	Blue Ridge Environmental Defense League, Clean Wisconsin and Midwest Environmental Defense Center	Clean Air Act - Failure to promulgate standards for several categories of major sources of hazardous air pollutants.

Date	NOI Submitter	Statute & Issue
12/22/2015	John Penn Whitescarver	Clean Water Act - Alleging violation of mandatory duty approving an alleged defective NPDES permit for active construction stormwater issued by State of Florida.
12/21/2015	Center for Biological Diversity, Sierra Club, Association of Irrigacect Residents and Climate Change Law Foundation	Clean Air Act - Failure to grant or deny the petition requesting that EPA object to the Permit proposed by the San Joaquin Valley Air Pollution Control District for the Alon USA - Bakersfield, California Refinery Crude Oil Flexibility Project, Facility.
12/21/2015	Sanitary Board of the City of Charleston, West Virginia	Clean Water Act - Alleging mandatory duty for EPA to approve or disapprove state-submitted WQS.
12/21/2015	Waterkeepers Washington	Clean Water Act - NOI to sue EPA for failure to perform mandatory duty to promulgate human health water quality criteria for State of Washington within 90 days of proposal.
12/10/2015	Sierra Club	Clean Air Act - Failure to submit non-attainment area SIP submittals for the NAAQS for SO2 for 14 states.
12/4/2015	Sierra Club and Environmental Integrity Project	Clean Air Act - Failure to grant or deny a petition regarding the Title V Operating Permit for the Tennessee Valley Authority's Bull Run Fossil Plant located in Clinton, Tennessee.
11/20/2015	New Era Group, Inc.	Clean Air Act - For failure to enforce the Greenhouse Gas Reporting rules for suppliers of HFCs.
11/13/2015	Air Alliance Houston, Texas Environmental Justice Advocacy Services, and two other groups.	Clean Air Act - For failure to review and revise emission factors for oil and gas flares.
11/6/2015	Missouri Coalition for the Environment Foundation	Clean Water Act - Notice of Intent to Sue filed by Missouri Coalition for the Environment Foundation alleging nondiscretionary duty to promulgate WQS for Missouri.
11/4/2016	Sierra Club	Clean Air Act - Failure to take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals for New Jersey.
11/2/2015	NRDC, Defenders of Wildlife, and The Bay Institute	Clean Water Act - Alleged failure to carry out non-discretionary federal review of California water quality standards in violation of Clean Water Act section 303(c).
10/13/2015	Southern Utah Wilderness Alliance	Clean Water Act - Notice alleging EPA failure to approve or disapprove Utah's CWA 303(d) list of impaired waters.
10/8/2015	Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air	Clean Air Act - Notice of intent to sue for failure to promulgate a Federal Implementation Plan for Montana.
10/5/2015	Sierra Club	Clean Air Act - For failure to take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals with regard to Wyoming.
9/21/2015	Nucor Steel Louisiana LLC and Consolidated Environmental Management, Inc., a fully-owned subsidiary of Nucor Corporation	Clean Air Act - Failure to take action after objection to Nucor's Title V permit.

Date	NOI Submitter	Statute & Issue
8/31/2015	Partnership for Policy Integrity	Clean Air Act - Failure of EPA Administrator to Take Timely Final Action Regarding Petition to Object to Permit for the Piedmont Green Power. LLC Facility in the City of Barnesville, Lamar County, Georgia.
8/31/2015	Wild Fish Conservancy	Clean Water Act / Endangered Species Act - Notice of Intent to Sue U.S. EPA and National Marine Fisheries Service for Violations of the Endangered Species Act Associated with Consultation on Washington State's Revised Sediment Management Standards for Marine Finfish Facilities.
8/17/2015	Sierra Club and Louisiana Environmental Action Network	Clean Air Act - For failure to grant or deny a petition requesting that the Administrator object to the Title V permit issued to Yuhuang Chemical Inc. for the construction and operation of a new methanol manufacturing plant in St. James, Louisiana.
8/17/2015	Midwest Environmental Defense Center	Clean Air Act - For failure to grant or deny a petition regarding the Title V Operating Permit issued by the Wisconsin Department of Natural Resources to Appleton Coated. LLC. for a plant in Wisconsin.
8/13/2015	Value Recovery Inc.	Clean Air Act - For failure to name a stationary major source category that includes the hazardous air pollutant, Methyl Bromide.
8/3/2015	Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air	Clean Air Act - For failure to take final action and failure to make findings of failure to submit for 2006 PM2.5 NAAQS nonattainment areas state implementation plans.
7/13/2015	Yvonne D. Lewis and Sidney T. Lewis	Clean Air Act - Pro se NOI regarding failure to do alleged mandatory duties related to lead HAP emissions from leaded avgas and Ohio nonattainment areas.
7/8/2015	State of North Carolina	Clean Air Act - Failure to Approve or Disapprove North Carolina's PM 2.5 State Implementation Submittal, dated September 5, 2013, pursuant to Clean Air Act Section 110(k).
6/17/2015	State of Maine	Clean Water Act - 60-day NOI from State of Maine to sue EPA over failure to approve WQS in Indian country within the State where EPA had previously approved such WQS in State waters.
6/11/2015	Preserve Pepe'keo Health and Environment	Clean Air Act - Failure to take timely action regarding petition to object to the Hu Honua Bioenergy, LLC ("Hu Honua") Title V operating permit.
6/1/2015	Sierra Club	Clean Air Act - For failure to take action on 2008 Ozone iSIPs and related FIP commitments.
5/28/2015	State of Nevada Dept. of Conservation and Natural Resources	Clean Air Act - Failure to Act on Nevada's 2008 Ozone NAAQS State Implementation Plan Submission as Required by 42 U.S.C. Sec. 7410(k)(2).
5/28/2015	State of Louisiana and Louisiana Department of Environmental Quality	Clean Air Act - For failure to Designate Areas of Attainment or Non-Attainment for the Sulfur Dioxide NAAQS (Mike Thrift).

Date	NOI Submitter	Statute & Issue
3/24/2015	Sierra Club	Clean Air Act - For failure to promulgate a FIP within two years of our partial disapproval on Louisiana's Regional Haze SIP.
3/20/2015	Sierra Club and Physicians for Social Responsibility- Los Angeles	Clean Air Act - For its failure to perform non-discretionary duties related to the implementation of the 2006 NAAQS for PM2.5 in the Los Angeles-South Coast Air Basin, CA nonattainment area.
3/20/2015	Wisconsin Public Service Corporation	Clean Air Act - For failure to grant or deny petitions to object to the proposed Title V permits for WPSC's De Pere Energy, LLC plant and for WPSC's Weston plant permit.
3/18/2015	Plant Oil Powered Diesel Fuel Systems, Inc.	Clean Air Act - For failure to regulate nitrous oxides emissions from biofuels, additives comprised of biofuels, and the biofuel-derived blend stocks of petroleum-based fuels run in compression ignition (diesel) engines of all kinds.
3/10/2015	Environmental Integrity Project and Sierra Club	Clean Air Act - For failure to respond to petition to object to the Title V permit issued to Southwestern Electric Power Company for operation of the H.W. Pirkey Power Plant in Harrison County, Texas.
2/20/2015	Hawaiian Electric Company, Inc.	Clean Air Act - Failure to Act on Petition for Reconsideration of the National Emission Standards for Hazardous Air Pollutants From Coal-Fired and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 77 Fed. Reg. 9304 (Feb. 16, 2012) ("MATS Rule").
2/11/2015	Northwest Environmental Advocates	Clean Water Act - Mandatory Duties Under Section 303(c)(4) of the Clean Water Act, to Revise Oregon's Water Quality Criteria for Toxic Pollutants.
2/10/2015	Conservation Law Foundation	Clean Water Act - Failure to perform non-discretionary duty to require NPDES permits for certain stormwater discharges to certain waters in RI.
2/10/2015	Conservation Law Foundation, Charles River Watershed Association	Clean Water Act - Failure to perform nondiscretionary duty to notify stormwater dischargers of permit requirement and to respond to residual designation petition within 90 days.
2/5/2015	WildEarth Guardians	Clean Air Act - For EPA's failure to promulgate to FIP within two years of disapproving the State of Utah's Regional Haze SIP.
2/4/2015	Earthjustice (Nine environmental organizations)	Clean Air Act - Regarding overdue health risk and technology review (RTR) rules.
1/29/2015	HEAL Utah, National Parks Conservation Association, and Sierra Club	Clean Air Act - For EPA's failure to promulgate Regional Haze FIP for Utah.
1/26/2015	WildEarth Guardians	Clean Air Act - For EPA's failure to promulgate to FIP within two years of disapproving the State of Utah's Regional Haze SIP.
1/16/2015	Sandra Reevis, Blackfeet Tribe	Safe Drinking Water Act - Notice of intent to sue EPA R8 over Town of Browning water supply on Blackfeet Reservation.

Date	NOI Submitter	Statute & Issue
1/15/2015	WildEarth Guardians	Clean Air Act - For failure to take action on a number of title V permit applications pending in Region 8.
12/30/2014	Upper Missouri Waterkeeper	Clean Water Act - NOI to sue for failure to perform mandatory duty to approve or disapprove Montana's new and revised WQS.
12/22/2014	Halogenated Solvents Industry Alliance, Inc.	Clean Air Act - For failure to list n-Propyl Bromide as a hazardous air pollutant.
12/15/2014	American Petroleum Institute	Clean Air Act - For failure to issue the 2014 & 2015 Renewable Fuel Standard Regulations and failure to meet the 90-day deadline with respect to API's waiver petition.
12/12/2014	Idaho Conservation League	Clean Water Act - Notice of intent to sue EPA for approval of Idaho Antidegradation rule.
12/2/2014	Peter Bormuth	Safe Drinking Water Act - Non-discretionary duty suit for permitting Class II UIC well in violation of the SDWA and implementing regulations.
12/1/2014	American Fuel & Petrochemical Manufacturers	Clean Air Act - For failure to issue the 2015 Renewable Fuel Standard Regulations.
12/1/2014	American Petroleum Institute	Clean Air Act - For failure to issue the 2015 Renewable Fuel Standard Regulations.
12/1/2014	Center for Biological Diversity	Clean Air Act - For failure to take final action on nonattainment SIP submittals for various states addressing the 2008 lead NAAQS.
11/22/2014	San Juan Citizens Alliance	Clean Water Act - NOI alleges EPA has unreasonably delayed in reissuing an NPDES permit for the Four Corners Power Plant.
11/21/2014	American Fuel & Petrochemical Manufacturers	Clean Air Act - For failure to issue the 2014 Renewable Fuel Standard Regulations.
10/17/2014	Sierra Club, Waterkeeper Alliance, Center for Biological Diversity	Endangered Species Act - 60 Day Notice of Intent to sue under ESA for EPA failure to comply with ESA on 316(b).
10/8/2014	Sierra Club and WildEarth Guardians	Clean Air Act - For failure to find that Alabama, Florida, Mississippi, and North Carolina have failed to submit SIPs to meet various requirements under Section 110(a) of the CAA with regards to the 2008 revised NAAQS for ozone.
10/8/2014	Sierra Club	Clean Air Act - For failure to take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals for Kansas and North Dakota.
10/6/2014	Mark W. Schaefer	Clean Water Act - Failure to regulate illegal building of berms and monitor building of pipes to storm sewer system and maintain compliance of storm sewer permit.
10/2/2014	Sierra Club	Clean Air Act - Failure to grant or deny petition to object to the proposed Title V permit for the Schiller Station power plant in Portsmouth, New Hampshire.

Date	NOI Submitter	Statute & Issue
9/17/2014	Nucor Steel Louisiana LLC and Consolidated Environmental Management, Inc., a fully-owned subsidiary of Nucor Corporation	Clean Air Act - For failure to take mandatory action under the CAA for violations of the Administrative Procedure Act and for relief under the Declaratory Judgment Act.
9/2/2014	WildEarth Guardians	Clean Air Act - For unreasonable delay in responding to petition to find that Colorado is failing to administer its Title V permitting program.
8/27/2014	Sierra Club and WildEarth Guardians	Clean Air Act - For failure to make findings of failure to submit 'Good Neighbor' provisions for the 2008 ozone NAAQS.
8/22/2014	Public Employees for Environmental Responsibility (PEER)	Toxic Substances Control Act - PEER issued NOI against EPA for failure to enforce TSCA and Santa Monica-Malibu Unified School District for violating TSCA (for having PCBs in the school).
8/20/2014	Shenandoah Riverkeeper and Potomac Riverkeeper, Inc.	Clean Water Act - Alleged mandatory duty to approve or disapprove Virginia's 2012 303(d) list.
8/4/2014	Sierra Club, Medical Advocates for Healthy Air, Physicians for Social Responsibility - Los Angeles, WildEarth Guardians, and Center for Biological Diversity	Clean Air Act - For its failure to perform non-discretionary duties related to the implementation of the 1997 NAAQS for PM2.5 in the San Joaquin Valley, CA and Los Angeles-South Coast Air Basin, CA nonattainment areas.
7/28/2014	Environmental Integrity Project, the Sierra Club, and Air Alliance Huston	Clean Air Act - For failure to grant or deny their petition to object to a title V permit issued to Shell Chemical LP for operation of the Deer Park Chemical Plant in Harris County, Texas.
7/28/2014	Center for Biological Diversity	Clean Air Act - For failure to take final action on North Carolina's 2008 Lead and Ozone NAAQS.
7/28/2014	Environmental Integrity Project, Sierra Club, and Air Alliance Houston	Clean Air Act - Failure to timely grant or deny a petition to object to the part 70 operating permit issued to Shell Oil Company for operation of the Deer Park Refinery in Harris County, Texas.
7/15/2014	Bill Green	Clean Air Act - For failure to respond to two Title V petitions submitted by Bill Green in 2013 and 2014 on renewals of and revisions to the Hanford Title V permit.
6/20/2014	Center for Biological Diversity, Center for Environmental Health, and Clean Air Council	Clean Air Act - Alleging EPA's failure to perform mandatory duties under the 2008 Lead NAAQS.
6/4/2014	Concerned Citizens Around Murphy	Clean Air Act - Allege failure to respond to LDEQ's Response to EPA's Order regarding the Valero Title V petition.
5/27/2014	Ronald J. Ferguson	Clean Water Act - Failure to maintain compliance with storm water permit.
5/20/2014	Finger Lakes Zero Waste Coalition, Inc.	Clean Air Act - Alleging EPA's failure to timely respond to a title V petition regarding Seneca Energy II, Ontario County Landfill Gas to Energy Facility, NY.
5/14/2014	Environmental Integrity Project and Sierra Club	Clean Air Act - Alleging EPA's failure to timely respond to a title V petition regarding Luminant's Monticello Plant, Texas.

Date	NOI Submitter	Statute & Issue
5/12/2014	New Era Group, Inc.	Clean Air Act - Alleged failure 'to collect reliable data and to perform a reliable assessment of the existing inventory of and the need for' HCFC-22.
5/2/2014	Californians Against Waste	Clean Air Act - Failure to Perform Nondiscretionary Duties Under Section 112(d)(6) and (f) Relating to Municipal Solid Waste Landfills.
4/28/2014	Sierra Club	Clean Air Act - Failing to promulgate a Federal Implementation Plan (FIP) within two years of partially disapproving Arkansas' revised Regional Haze (RH) and Interstate Transport State Implementation Plans (SIPs).
4/23/2014	Sierra Club	Clean Air Act - Failure to take final action on 2008 ozone NAAQS infrastructure state implementation plan submittals and failure to make finding of failure to submit.
4/22/2014	State of Wyoming	Clean Air Act - Failure to Act on Wyoming's 2008 Lead NAAQS State Plan Submission.
4/7/2014	Sierra Club, Appalachian Voices, Kentuckians for the Commonwealth, Kentucky Waterways Alliance, Kentucky Resources Council, Center for Biological Diversity, Defenders of Wildlife	Clean Water Act / Endangered Species Act - Notice of ESA violations in connection with EPA approval of KY WQS for Se and nutrients and eutrophication.
3/18/2014	Monroe Energy, LLC.	Clean Air Act - Failure to respond to a Petition for Reconsideration and a Petition for Partial Waiver of EPA's Regulation of Fuels and Fuel Additives 2013 Renewable Fuel Standards, published at 78 Fed. Reg. 49794 (Aug. 15, 2013).
2/19/2014	Nucor Steel-Arkansas, Nucor-Yamato Steel Company	Clean Air Act - Failure to grant or deny Nucor's petition for an objection to Title V Operating Permit issued to Big River Steel by the Arkansas Department of Environmental Quality for a steel manufacturing facility in Osceola, Arkansas.
2/14/2014	Jack L. Firsdon, Larry D. Askins and Vickie A. Askins	Clean Water Act - ODA authority to issue permits under the NPDES Permit Program for PTIs and PTOs for CAFOs.
2/10/2014	Sierra Club	Clean Air Act - Failure to take final action on 2010 sulfur dioxide NAAQS infrastructure state implementation plan submittal and failure to make finding of failures to submit.
1/27/2014	Sierra Club	Clean Air Act - Failure to take action on petition for redesignation of areas that violate 2008 NAAQS for Ozone.
1/27/2014	Murray Energy	Clean Air Act - Failure to carry out a duty under CAA 321 - entitled Employment Effects - to conduct continuing evaluations of potential loss or shifts of employment.
1/9/2014	Center for Biological Diversity	Clean Air Act - Failure to promulgate a FIP for Infrastructure SIP elements for Alaska, Iowa, Puerto Rico and Washington for the 2006 PM2.5 NAAQS.

Date	NOI Submitter	Statute & Issue
12/23/2013	Wild Equity Institute	Clean Air Act - Alleging EPA's failure to respond to a title V petition for Gateway Generating Station, Antioch, CA.
12/16/2013	Auto Industry Forum	Clean Air Act - Failure to promulgate standards under 112(d) for five major source categories.
12/3/2013	State of Wyoming	Clean Air Act - Failure to act on Wyoming's nonattainment NSR SIP submission.
11/26/2013	Center for Biological Diversity	Clean Air Act - Failure to make a finding of failure and take final action for 2006 PM2.5 NAAQS nonattainment areas.
11/1/2013	Idaho Power Company	Clean Water Act - Notice of Mandatory Duty to Review Site Specific Criteria in Idaho.
11/1/2013	Northwest Environmental Advocates	Clean Water Act / Endangered Species Act - Alleges further duties under the CWA and ESA respecting Washington Water Quality Standards.
11/1/2013	Northwest Environmental Advocates	Clean Water Act - Alleges further duties under the CWA relating to Idaho Water Quality Standards.
11/1/2013	Idaho Power Company	Clean Water Act - Mandatory Duty to Review Site Specific Criteria in Idaho.
10/28/2013	Sierra Club	Clean Air Act - For failure to make a finding of failure to submit for state implementation plan amendments to add particulate matter less than 2.5 microns in diameter (PM2.5) increments.
10/22/2013	WildEarth Guardians	Clean Air Act - Alleging EPA's failure to issue or deny a title V permit for Deseret Bonanza Power Plant in Utah.
10/21/2103	Sierra Club	Clean Air Act - For failure to promulgate a Federal Implementation Plan for Montana's SIP-approved PSD program to properly regulate nitrogen oxides as an ozone precursor.
10/21/2103	Sierra Club	Clean Air Act - Failure to meet statutory deadlines to set biomass-based diesel and renewable fuel requirements for 2014 standards.
9/4/2013	Center for Biological Diversity	Clean Air Act - For failure to make a finding of failure to submit and take final action for 2006 PM2.5 NAAQS nonattainment areas.
8/23/2013	California Communities Against Toxics and Sierra Club	Clean Air Act - Failure to conduct residual risk and technology reviews for 46 source categories pursuant to CAA section 112(d)(6) and (f)(2).
8/22/2013	Pine Creek Valley Water Association, Raymond Proffitt Foundation, Delaware Riverkeeper Network, Delaware Riverkeeper	Clean Air Act - Failure to review Pennsylvania's Act 41 that bars use of parts of Pennsylvania's approved antidegradation policy. The parties, along with Delaware Riverkeeper, sent a supplemental NOI dated December 3, 2013, stating that EPA has not approved or disapproved the change in water quality standards and...
8/15/2013	BCCA Appeal Group	Clean Air Act - Failure to promulgate designations of areas for the 1-hour NAAQS for sulfur dioxide.

Date	NOI Submitter	Statute & Issue
8/14/2013	South Carolina Coastal Conservation League	Clean Water Act - For violations in connection with approval of Clydesdale Mitigation Bank.
8/12/2013	Environmental Integrity Project and Benjamin Feldman	Clean Air Act - Failure to Grant or Deny Plaintiffs' Petition to Object to the Proposed Title V Operating Permit for Mettiki Coal preparation/processing plant.
8/8/2013	State of North Carolina	Clean Air Act - Failure to Designate Areas for the 2010 SO2 National Ambient Air Quality Standard.
8/8/2013	Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources	Clean Water Act - Alleges that EPA is in violation of a non-discretionary duty, under 33 U.S.C. 1313(c)(4), to propose and promulgate certain water quality standards for the State of Washington.
8/6/2013	WildEarth Guardians	Clean Air Act - Failure to find that Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming have failed to submit SIPs to meet various requirements under the CAA with regards to the 2010 revised NAAQS for nitrogen dioxide.
8/2/2013	Attorneys General of New York, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, Vermont, and the Puget Sound Clean Air Agency	Clean Air Act - Failure to timely review and revise the NSPS for Residential Wood Heaters under the CAA.
8/2/2013	American Lung Association, Clean Air Council, Environmental Defense Fund, and Environment and Human Health, Inc.	Clean Air Act - Failure to timely review and revise the NSPS for Residential Wood Heaters under the CAA.
7/29/2013	Wild Equity Institute, Communities for Better Environment, and Center for Biological Diversity	Clean Water Act - For illegally issuing federal CAA permits to the Gateway Generating Station without consulting with the Fish and Wildlife Service.
7/29/2013	State of Maine	Clean Water Act - Failure to perform nondiscretionary duties under the Clean Water Act.
7/29/2013	State of Maine	Clean Water Act - 60-day NOI to sue EPA over failure to timely approve/disapprove Maine's WQS in Indian country within the State.
7/23/2013	Center for Biological Diversity	Clean Water Act - Threatening an APA challenge to EPA's approval of Washington and Oregon's 2010 303(d) list where the state did not list waters as impaired due to ocean acidification.
7/23/2013	Columbia Riverkeeper, Puget Soundkeeper Alliance, Spokane Riverkeeper, and North Sound Baykeeper	Clean Water Act - Alleges that EPA is in violation of a non-discretionary duty, under 33 U.S.C. 1313(c)(4), to propose and promulgate certain water quality standards for the State of Washington.
7/22/2013	Commissioners of the County of Berks, Pennsylvania	Clean Air Act - Failing to make a finding of failure to develop a SIP addressing the North Reading 2008 Lead NAAQS Nonattainment Area and the Lyons 2008 Lead NAAQS Nonattainment Area.
7/9/2013	States of North Dakota, South Dakota, and Texas	Clean Air Act - Failure to designate areas for SO2 NAAQS.

Date	NOI Submitter	Statute & Issue
7/1/2013	Sierra Club and NRDC	Clean Air Act - Supplemental notice for failure to designate areas for the 2010 SO2 NAAQS.
6/20/2013	NRDC, Clean Ocean Action, Hackensack Riverkeeper, Heal the Bay, NY/NJ Baykeeper, Riverkeeper, and Waterkeeper Alliance	Clean Water Act - Notice of Intent to Sue for failure to promulgate National Recreational Water Quality Criteria in compliance with the Clean Water Act.
6/19/2013	Jacquelyn B. N'Jai	Toxic Substances Control Act - Appears to be a notice of intent to sue EPA and a named employee alleging that EPA failed to take action against a contractor who allegedly violated lead-based paint regulations.
6/12/2013	State of Oregon	Clean Air Act - Failure to determine whether standards of performance are appropriate for methane emissions from oil and gas operations and, if so, to issue methane standards and emissions guidelines.
6/10/2013	Clean Air Council	Clean Air Act - Failure to make a finding that Pennsylvania is failing to implement its SIP; for failure to determine that PA is not adequately administering and enforcing its CAA Title V permitting program; and failure to sanction PA for these actions.
6/10/2013	Turtle Island Restoration Network	Endangered Species Act - Notice of Intent to Sue under the ESA related to salmonid BiOps 1 and 2 (BiOps challenged in the NCAP v EPA lawsuit). Related to NOI NSC 2013-1.
6/4/2013	Sierra Club and NRDC	Clean Air Act - Failure to make SO2 NAAQS designations.
5/29/2103	Sierra Club	Clean Air Act - Failure to grant or deny petitions to object to the proposed Title V permits for seven Pennsylvania power plants.
5/23/2013	Sierra Club	Clean Air Act - Failure to issue a finding of failure to submit a SIP addressing the Baltimore 1997 ozone NAAQS serious nonattainment area.
5/13/2013	Northwest Environmental Advocates, Idaho Conservation League	Clean Water Act - Alleges duties under the CWA and ESA related to Idaho Water Quality Standards.
5/13/2013	West Virginia Coal Association	Clean Water Act - Alleges failure to approve revisions to West Virginia's NPDES program.
4/30/2013	Idaho Conservation League	Clean Water Act - Mandatory Duty to Promulgate Human Health Toxics Criteria in Idaho.
4/29/2013	Conservation Law Foundation	Clean Air Act - Failure to timely promulgate new source standards of performance and regulations providing emission guidelines for certain greenhouse gas emissions from fossil fuel-fired electric utility generating units (power plants).
4/25/2013	Richard Sloat	Clean Water Act - Notice of intent for failure to require NPDES permit for Buck Mine discharge site.

Date	NOI Submitter	Statute & Issue
4/22/2013	States of New York, Connecticut, Delaware, Maine, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia and the City of New York	Clean Water Act - Failure to promulgate final standards of performance for greenhouse gas emissions from new electric utility generating units (power plants) and to issue emission guidelines for existing power plants.
4/15/2013	Environmental Defense Fund, Sierra Club and NRDC	Clean Air Act - Failure to issue final NSPS regulating emissions of GHGs from new EGUs and failure to issue proposed and final emission guidelines for emissions of GHGs from existing EGUs.
4/4/2013	Center for Biological Diversity	Clean Air Act - Failure to promulgate a FIP within two years after finding that the State of Arizona failed to submit a SIP to attain NAAQS for PM10 in Maricopa County.
3/18/2013	Sierra Club	Clean Air Act - For failure to grant or deny a petition requesting EPA to object to the issuance of the revised proposed Title V Operating Permit for Georgia Power's coal-fired Kraft Steam-Electric Generating Plant in Port Wentworth, Georgia.
3/18/2013	Sierra Club	Clean Air Act - For failure to grant or deny a petition requesting EPA to object to the issuance of the revised proposed Title V Operating Permit for Georgia Power's coal-fired Wansley Steam-Electric Generating Plant in Carrollton, Georgia.
3/18/2013	Sierra Club	Clean Air Act - For failure to grant or deny a petition requesting EPA to object to the issuance of the revised proposed Title V Operating Permit for Georgia Power's coal-fired McIntosh Steam-Electric Generating Plant in Rincon, Georgia.
3/13/2013	American Lung Association, NRDC, and Sierra Club	Clean Air Act - For failure to perform non-discretionary duties related to the review of the national ambient air quality standards for ozone.
3/11/2013	Florida Wildlife Federation	Clean Water Act - Alleged mandatory duties under 303(d) regarding Florida's 303(d) list/antidegradation.
3/11/2013	Alabama Rivers Alliance	Clean Water Act - Failure to respond to petition to commence withdrawal proceedings regarding Alabama's NPDES program.
2/28/2013	Northwest Environmental Advocates	Clean Water Act / Endangered Species Act - Alleged mandatory duties under CWA and ESA regarding Washington WQS.
2/26/2013	Our Children's Earth Foundation and Ecological Rights Foundation	Clean Water Act / Endangered Species Act - Alleged duties under CWA and ESA regarding California Toxics Rule.
2/21/2013	Sandra L. Bahr and David Matusow	Clean Air Act - Failed to take final action with regard to the replacement 5% PM-10 plan or promulgate a FIP and impose highway funding sanctions.
2/6/2013	Sierra Club, West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition	Clean Water Act - NOI alleges failure to perform a mandatory duty to approve revisions to state NPDES program.

Date	NOI Submitter	Statute & Issue
1/30/2013	Sierra Club, West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition	Clean Water Act - Alleged mandatory duty to approve or disapprove WV's 303(d) list.
1/30/2013	BCCA Appeal Group	Clean Air Act - Failure to act on Texas SIP submittals relating to air quality permitting.
1/23/2013	WildEarth Guardians	Clean Air Act - Failure to take action on several Clean Air Act State Implementation Plan ("SIP") submissions from the States of Colorado, South Dakota, and Utah.
1/14/2013	WildEarth Guardians	Clean Air Act - Failure to Make a Finding that Utah and Idaho Failed to Submit State Implementation Plans to Attain the PM25 National Ambient Air Quality Standards as Required by Part D, Subpart 4 of the Clean Air Act.

Appendix C: Federal Implementation Plans Imposed by EPA (2010–2016)

Regional Haze Federal Implementation Plans (FIPs) (17 states)(EPA, rather than the state, determines the appropriate emissions control requirements to reduce haze)

Year	Federal Register Notice	Affected States
2016	81 Fed. Reg. 66,333 (Sept. 27, 2016)	Arkansas
2016	81 Fed. Reg. 43,894 (July 5, 2016)	Utah
2016	81 Fed. Reg. 295 (Jan. 5, 2016)	Texas, Oklahoma
2014	79 Fed. Reg. 33,438 (June 11, 2014)	Washington
2014	79 Fed. Reg. 5,032 (Jan. 30, 2014)	Wyoming
2013	78 Fed. Reg. 8,705 (Feb. 6, 2013)	Minnesota (taconite ore processing plants)
2013	78 Fed. Reg. 8,705 (Feb. 6, 2013)	Michigan (taconite ore processing plants)
2012	77 Fed. Reg. 72,511 (Dec. 5, 2012)	Arizona
2012	77 Fed. Reg. 71,533 (Dec. 3, 2012)	Michigan (St. Marys Cement Co. and Escanaba Paper Co.)
2012	77 Fed. Reg. 61,476 (Oct. 9, 2012)	Hawaii
2012	77 Fed. Reg. 57,864 (Sept. 18, 2012)	Montana
2012	77 Fed. Reg. 51,915 (Aug. 28, 2012)	New York
2012	77 Fed. Reg. 50,936 (Aug. 23, 2012)	Nevada
2012	77 Fed. Reg. 40,150 (July 6, 2012)	Nebraska
2012	77 Fed. Reg. 20,894 (April 6, 2012)	North Dakota
2011	76 Fed. Reg. 81,728 (Dec. 28, 2011)	Oklahoma
2011	76 Fed. Reg. 52,388 (Aug. 22, 2011)	New Mexico

Transport of Fine Particulate Matter (PM2.5) / Ozone FIPs (28 states)(EPA, rather than the state, takes control of planning and approvals for PM2.5 emission sources)

Year	Federal Register Notice	Affected States
2011	76 Fed. Reg. 48,208 (Aug. 8, 2011)	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin
2011	76 Fed. Reg. 48,006 (Aug. 8, 2011)	California (North Coast Unified Air Quality Management District)

Federal Implementation Plans Imposed by EPA (2010–2016), cont.

**Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) Program FIPs
(9 states)(EPA, rather than the state, issues GHG construction permits to sources)**

Year	Federal Register Notice	Affected States
2011	76 Fed. Reg. 2,581 (Jan. 14, 2011)	Kentucky (Jefferson County)
2010	75 Fed. Reg. 82,365 (Dec. 30, 2011)	Texas
2010	75 Fed. Reg. 82,240 (Dec. 30, 2011)	Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming

Oil and Gas Minor New Source Review (NSR) Program FIP (EPA issues construction permits to oil and gas sources, rather than Tribes or States)

Year	Federal Register Notice	Affected Areas
2016	81 Fed. Reg. 35,944 (June. 3, 2016)	Indian Country



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