

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
 SIERRA CLUB)
 85 Second Street, 2nd Floor)
 San Francisco, CA 94105,)
)
 Plaintiff,)
)
 v.)
)
 LISA P. JACKSON, in her official capacity)
 as Administrator, United States Environmental)
 Protection Agency,)
 Ariel Rios Building)
 1200 Pennsylvania Avenue, NW)
 Washington, D.C. 20460,)
)
 Defendant.)
 _____)

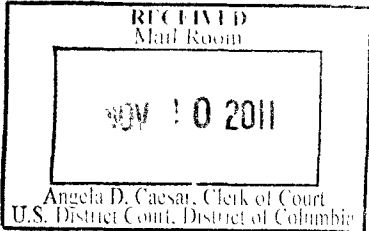
Case: 1:11-cv-02000
Assigned To : Collyer, Rosemary M.
Assign. Date : 11/10/2011
Description: Admn. Agency Review

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. Plaintiff SIERRA CLUB brings this Clean Air Act (“CAA”) citizen enforcement action to compel the United States Environmental Protection Agency (“EPA”) to undertake overdue nondiscretionary duties. Specifically, Sierra Club challenges the failure of Defendant, LISA P. JACKSON, in her official capacity as Administrator of the EPA to perform certain mandatory duties required by the CAA 42 U.S.C. §§ 7401-7671q, including the failure to take final action under 42 U.S.C. § 7410(k)(2) on multiple State Implementation Plans (“SIPS”) by the statutory deadline for taking such action.

2. In an effort to protect and enhance the quality of the nation’s air, the CAA requires EPA to establish National Ambient Air Quality Standards (“NAAQS”) and individual States to



develop the plans, known as State Implementation Plans (“SIPs”), 42 U.S.C. § 7604(a)(2), to achieve the standards.

3. The CAA establishes a mandatory duty for EPA to take final action under 42 U.S.C. § 7604(a)(2) on SIPs. 42 U.S.C. § 7410 requires States to submit SIPs that provide for implementation, maintenance and enforcement of the NAAQS, and publish notice of that action in the Federal Register.

4. EPA has failed to take final action on the (a) Georgia SIP submittals for the 1997 PM 2.5 annual NAAQS for the areas of Macon, Rome and Chattanooga, (b) Georgia SIP submittals for the 1997 8-hour ozone NAAQS for the Atlanta area, and (c) Alabama SIP submittals for the 1997 PM 2.5 Annual NAAQS for its portion of the Chattanooga, TN nonattainment area.

5. Had EPA approved the SIP provisions for these states, EPA and citizens would be able to enforce the plans to ensure that the states attain health based NAAQS by the deadlines in the CAA. Had EPA disapproved the SIP provisions as inconsistent with the CAA, the state would have already been required to make changes to the SIPs to meet the minimum requirements of the CAA or EPA would have promulgated Federal Implementation Plans (“FIPs”).

6. Instead, EPA has failed to act on these SIPs, ignoring EPA’s mandatory role to ensure that State plans attain the NAAQS so that the public is afforded the level of protection and accordingly comply with the CAA.

II. JURISDICTION, VENUE AND NOTICE

7. This action is a Clean Air Act citizen suit. Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a). This

Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tarif Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

8. A substantial part of the alleged events or omissions giving rise to Plaintiff's claims occurred in the District of Columbia. In addition, Defendant Lisa P. Jackson officially resides in the District of Columbia. Thus, venue is proper in this Court pursuant to 28 U.S.C. §1391(e).

9. On May 4, 2011, Plaintiff mailed a letter via certified mail, return receipt requested to Defendant Lisa P. Jackson stating that Plaintiff intended to sue Defendant for failure to take final action under 42 U.S.C. § 7410(k)(2) and (3) and publish notice of that action in the Federal Register on Georgia SIP submittals for the 1997 PM 2.5 annual NAAQS for the areas of Macon, Rome and Chattanooga. The certified mail return receipt accompanying the letter was signed as received on May 9, 2011.

10. On June 8, 2011, Plaintiff mailed a letter via certified mail, return receipt requested to Defendant Lisa P. Jackson stating that Plaintiff intended to sue Defendant for failure to take final action under 42 U.S.C. § 7410(k)(2) and (3) and publish notice of that action in the Federal Register on Georgia SIP submittals for the 1997 8-hour ozone NAAQS for the Atlanta area. The certified mail return receipt accompanying the letter was signed as received on June 13, 2011.

11. On August 30, 2011, Plaintiff mailed a letter via certified mail, return receipt requested to Defendant Lisa P. Jackson stating that Plaintiff intended to sue Defendant for failure to take final action under 42 U.S.C. § 7410(k)(2) and (3) and publish notice of that action in the

Federal Register on Alabama SIP submittals for the 1997 PM 2.5 Annual NAAQS for its portion of the Chattanooga, TN nonattainment area. The certified mail return receipt accompanying the letter was signed as received on September 6, 2011.

12. More than sixty days have passed since Defendant received Plaintiff's notice of intent to sue letters described in paragraphs 9, 10 and 11. To date, Defendant has not remedied the violations alleged in this Complaint. Therefore, an actual controversy exists between the parties.

III. PARTIES

13. Plaintiff SIERRA CLUB is a nonprofit public-benefit corporation with more than 600,000 members in the United States and with one or more chapters in every state. The Sierra Club's purpose includes "to practice and to promote responsible use of the earth's ecosystem and resources; to enlist and to educate humanity to protect and to restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives." Sierra Club activities include hiking, canoeing, caving, swimming, fishing, nature study, and advocacy for the improvement and protection of water quality and air quality across Georgia, Tennessee and Alabama.

14. Sierra Club members live, work, raise their families, recreate and engage in economic and other activities in and around Metro-Atlanta, Macon, Rome, and North Georgia, Jackson County, Alabama and Chattanooga, Tennessee. They are adversely affected by exposure to ozone and PM 2.5 pollution. The adverse effects of such pollution include actual and/or threatened harm to their health, their families' health, their professional well being, educational and economic interests, and their aesthetic and recreational enjoyment of the environment in these states and areas.

15. The Clean Air Act violations alleged in this Complaint also deprive Sierra Club and its members of certain procedural rights, including notice and opportunity to comment, associated with EPA's failure to perform certain mandatory duties: failure to take final action on certain SIP submittals. The Clean Air Act violations alleged in this Complaint also deprive Sierra Club and its members of certain information including but not limited to EPA's evaluation of the states' modeling analyses, ambient monitoring data gathered in accordance with applicable regulations, public notice of any exceedance of National Ambient Air Quality Standards and emission inventories.

16. Because Defendant has not taken final action on certain provisions of SIP submittals for certain states by the applicable deadlines, Sierra Club and its members cannot be certain that the 1997 8-hour ozone and PM 2.5 SIPs for the affected states conform with the requirements of the Clean Air Act.

17. The CAA violations alleged in this Complaint have injured and will continue to injure the interests of Sierra Club and its members, unless and until this Court grants the requested relief. Granting the relief requested in this lawsuit would readdress these injuries by compelling EPA action to improve air quality, provide more certainty about air pollution as well as provide the procedural opportunity and information that Sierra Club and its members have not obtained because for EPA's illegal actions.

18. Defendant LISA P. JACKSON is the Administrator of the EPA. She is charged in that role with taking various actions to implement and enforce the CAA, including the requirement to take final action on SIPs and the other actions sought in this Complaint.

IV. STATUTORY FRAMEWORK

19. The Clean Air Act aims “to protect and enhance the quality of the Nation’s air resources.” 42 U.S.C. § 7401(b)(1). Congress intended the Clean Air Act in part to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356.

20. To help achieve this goal, the CAA, including the 1990 amendments, establishes a partnership between EPA and the states for attainment and maintenance of national air quality goals. *See* 42 U.S.C. §§ 7401-7515.

21. Pursuant to the CAA, EPA has set national ambient air quality standards (NAAQSs) to limit levels of "criteria pollutants," including fine particulate matter and ozone. *See* 40 C.F.R. part 50.4-50.13.

22. The NAAQS are designed to protect the public from being exposed to levels of air pollutants that EPA has found to have significant adverse health and welfare impacts.

23. The Clean Air Act requires all areas of the country to meet NAAQS. 42 U.S.C. § 7409-7410.

24. In order to achieve this goal, States, or regions within a state, must adopt a pollution control plan (known as a State Implementation Plan (“SIP”)) that contains enforceable emissions limitations necessary to attain the NAAQS and meet other applicable requirements of the CAA, including ensuring attainment, maintenance and enforcement of the NAAQS. 42 U.S.C. §§ 7410(a)(1), (a)(2)(A); § 7401(a)(1), (k).

25. EPA is required to determine whether a SIP submittal from a state is administratively complete within 60 days of EPA’s receipt of the SIP submittal. 42 U.S.C. §

7410(k)(1)(B). However, if six months after state submits a SIP submittal, EPA has not made a determination of whether or not the SIP submittal is administratively complete, the SIP submittal is deemed by operation of law as administratively complete. 42 U.S.C. § 7410(k)(1)(B).

26. Within 12 months of a determination that a SIP submittal is administratively complete, either by EPA or by operation of law, EPA must take final action on the SIP submittal by approving in full, disapproving in full, or approving in part and disapproving in part. 42 U.S.C. § 7410(k)(2) and (3).

V. STATEMENT OF FACTS

27. EPA has failed to perform certain mandatory duties required by the Clean Air Act, including the failure to take final action, and publish notice of that action in the Federal Register, on State Implementation Plan submittals as required by 42 U.S.C. § 7410(k)(2) and (3)(2010) on (a) Georgia SIP submittals for the 1997 PM 2.5 annual NAAQS nonattainment areas of Macon, Rome, and the Georgia portion of Chattanooga, (b) Georgia SIP submittals for the 1997 8-hour ozone NAAQS nonattainment area of Metro-Atlanta area, and (c) Alabama SIP submittals for the 1997 PM 2.5 Annual NAAQS for its portion of the Chattanooga, TN nonattainment area within 12 months after these submittals were found or deemed administratively complete.

- Failure to Take Final Action on SIP submittals for the 1997 PM 2.5 NAAQS -

28. Pursuant to 42 U.S.C. § 7410, EPA has a mandatory duty to take final action (*i.e.* to approve, disapprove, approve in part or disapprove in part), and publish notice of that action in the Federal Register, on [a] Georgia SIP submittals for three areas - Macon, Rome and Chattanooga - designated as “nonattainment” for the 1997 annual particulate matter less than 2.5 microns in diameter (“PM 2.5”) NAAQS and [b]Alabama SIP submittals for the 1997 PM 2.5 Annual NAAQS for its portion of the Chattanooga, TN nonattainment area.

Georgia SIP: Macon, Georgia

29. EPA failed to take final action on Georgia's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and reasonably available control measures/reasonably available control technology ("RACM/RACT") requirements for the Macon nonattainment area.

30. On September 21, 2009, either EPA or operation of law deemed Georgia's SIP submittals addressing these requirements administratively complete.

31. Pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part by no later than September 21, 2010.

32. EPA has failed to do so.

Georgia SIP: Chattanooga, TN

33. EPA failed to take final action on Georgia's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and RACM/RACT requirements for its portion of the Chattanooga, Tennessee nonattainment area.

34. On November 12, 2009, either EPA or operation of law deemed Georgia's SIP submittals addressing the attainment demonstration requirement administratively complete for its portion of Chattanooga, TN. On April 27, 2010, either EPA or operation of law deemed Georgia's SIP submittals addressing emission inventory, contingency measures and RACM/RACT requirements administratively complete.

35. Pursuant to 42 U.S.C. § 7410(k)(2), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part by no later

than November 12, 2010 (for attainment demonstration) and April 27, 2011 (for emission inventory, contingency measures and RACM/RACT requirements).

36. EPA has failed to do so.

Georgia SIP: Rome, GA

37. EPA failed to take final action on Georgia's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and RACM/RACT requirements for Rome nonattainment area.

38. On November 12, 2009, either EPA or operation of law deemed Georgia's SIP submittals addressing the attainment demonstration requirement administratively complete for its portion of Rome, Georgia. On April 27, 2010, either EPA or operation of law deemed Georgia's SIP submittals addressing emission inventory, contingency measures and RACM/RACT requirements administratively complete.

39. Pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part by no later than November 12, 2010 (for attainment demonstration) and April 27, 2011 (for emission inventory, contingency measures and RACM/RACT demonstration requirements).

40. EPA has failed to do so.

Alabama SIP: Chattanooga, TN (Jackson, County)

41. EPA failed to take final action on Alabama's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and RACM/RACT requirements for Jackson County, Alabama.

42. On October 26, 2009, either EPA or operation of law deemed Alabama's SIP submittals addressing these requirements administratively complete.

43. Pursuant to 42 U.S.C. § 7410(k)(2) & (3), EPA was required to take final action on Alabama's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and RACM/RACT requirements by approving in full, disapproving in full, or approving in part and disapproving in part by no later than October 26, 2010.

44. In the alternative, pursuant to 42 U.S.C. § 7410(k)(2) & (3), EPA was required to take final action on Alabama's SIP submittal addressing the 1997 annual PM 2.5 NAAQS emission inventory, attainment demonstration, contingency measures and RACM/RACT requirements by approving in full, disapproving in full, or approving in part and disapproving in part by no later than January 31, 2011. *See* http://www.epa.gov/air/urbanair/sipstatus/reports/al_elembypoll.html#pm-2.5_1997_748 (last visited on 11/9/11).

45. EPA has failed to do so, in violation of its mandatory duty.

- Failure to Take Final Action on Metro-Atlanta SIP submittals for the 1997 8-hour Ozone NAAQS -

46. EPA failed to take final action on Georgia's SIP submittal addressing the 1997 8-hour ozone NAAQS, including volatile organic compound ("VOC") and nitrogen oxides ("NOx") contingency measures, emission inventory, emission statement, attainment demonstration, reasonably available control technology ("RACT") non-control techniques guidelines ("CTG") VOC for major sources, and RACT NOx for major sources.

47. On April 21, 2010, either EPA or operation of law deemed Georgia's SIP submittals addressing these requirements administratively complete.

48. Pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part by no later than April 21, 2011.

49. EPA has failed to do so.

**FIRST CLAIM FOR RELIEF
FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO ACT
TO TAKE FINAL ACTION UNDER 42 U.S.C. § 7410(k)(2) AND (3)
ON STATE IMPLEMENTATION PLANS**

50. Each allegation set forth in the complaint is incorporated herein by reference.

51. Pursuant to 42 U.S.C. §7410(k)(2) and (3) (2010), EPA has a mandatory duty to take final action within 12 months of SIP submittal being deemed complete (either by operation of law or a completeness finding by EPA), by approving it in full, disapproving it in full or approving part of it and disapproving part of it.

52. EPA has failed to take final action (and publish notice of that action) within 12 months of its completeness findings on the (a) Georgia SIP submittals identified above for the 1997 PM 2.5 annual NAAQS nonattainment areas of Macon, Rome and Chattanooga, (b) Georgia SIP submittals identified above for the 1997 8-hour ozone NAAQS nonattainment area of Metro-Atlanta, and (c) Alabama SIP submittals identified above for Alabama's portion of the 1997 PM 2.5 Annual NAAQS Chattanooga, Tennessee nonattainment area.

53. Therefore, EPA has violated and continues to violate its nondiscretionary duty in 42 U.S.C. §7410(k)(2) and (3) (2010).

PRAYER FOR RELIEF

WHEREFORE, Sierra Club respectfully requests that this Court grant the following relief:

[A] DECLARE

(1) That Defendant's failure to take final action, and publish notice on that action in the Federal Register, on the (a) Georgia SIP submittals for the 1997 PM 2.5 annual NAAQS nonattainment areas of Macon, Rome and Chattanooga, (b) Georgia SIP submittals for the 1997 8-hour ozone NAAQS nonattainment area of Metro-Atlanta, and (c) Alabama SIP submittals for Alabama's portion of the 1997 PM 2.5 Annual NAAQS nonattainment area of Chattanooga, Tennessee constitutes a failure to perform an act or duty that is not discretionary for Defendant within the meaning of 42 U.S.C. § 7604(a)(2);

[B] ORDER

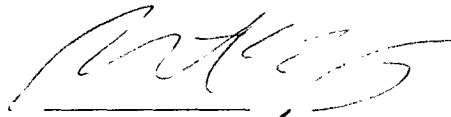
(1) Defendant to take final action on the (a) Georgia SIP submittals for the 1997 PM 2.5 annual NAAQS nonattainment areas of Macon, Rome and Chattanooga, (b) Georgia SIP submittals for the 1997 8-hour ozone NAAQS nonattainment area of Metro-Atlanta, and (c) Alabama SIP submittals for Alabama's portion of the 1997 PM 2.5 Annual NAAQS nonattainment area for Chattanooga, Tennessee by a certain date;

[C] RETAIN jurisdiction of this action to ensure compliance with the Court's Order;

[D] AWARD Plaintiff the costs of litigation, including fees and costs; and

[E] GRANT such other relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Ukeiley', is written over a horizontal line.

Robert Ukeiley ✓
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Counsel for Sierra Club

Dated: November 9, 2011