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Steam Electric Station/Rusk County, Texas: Sierra Club Notice of Intent of Sue U.S. Environmental Protection Agency for Alleged Failure to Impose SO₂ Federal Implementation Plan

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The Sierra Club sent a Notice of Intent to file suit to the United States Environmental Protection Agency ("EPA") for failure to undertake a nondiscretionary duty under the Clean Air Act.

The Notice of Intent to file suit alleges that EPA:

... has violated 42 U.S.C. § 7410(c)(1)(A) by failing to satisfy its mandatory duty to promulgate a federal implementation plan ("FIP") within two years of finding that Texas failed to submit a nonattainment state implementation plan ("SIP") for Rusk and Panola Counties within 18 months of designating that area as failing to meet the National Ambient Air Quality Standard ("NAAQS") for sulfur dioxide ("SO₂"), as required under the Clean Air Act, 42 U.S.C. §§ 7502, 7514-7514a, and EPA's final nonattainment designation for that area, 81 Fed. Reg. 89,870.

The Sierra Club argues that in 2017 EPA determined that the area surrounding the Martin Lake Steam Electric Station ("Martin Lake Station") in portions of Rusk and Panola Counties failed to meet the SO₂ NAAQS. As a result, the areas were stated to have been designated as being in nonattainment.

The nonattainment designation was stated to be based on extensive air dispersion modeling because of the absence of relevant monitoring data to review at that time. Both Texas and the operator of Martin Lake Station are stated to have filed petitions for judicial review of EPA's SO₂ nonattainment designations. However, the Sierra Club states that the final rule remains in effect pending judicial review. Therefore, it argues that under Section 191 of the Clean Air Act, Texas was required to submit to EPA an SIP for the Rusk-Panola County nonattainment area within 18 months of the effective date of the designation.

Because Texas is stated to have failed to submit the required SIP, EPA is argued to be required to make a determination that the state failed to submit the required submittal. EPA is stated to have issued the requisite finding that Texas failed to submit a nonattainment SIP for the Rusk-Panola area, thereby triggering an obligation for the federal agency to anytime within two years issue a FIP or approve a state plan that ensures SO₂ pollution reductions necessary to ensure attainment of the NAAQS. EPA is argued to have not done so and, therefore, violated at Clean Air Act nondiscretionary duty.

The Sierra Club states that EPA must remedy the alleged violations by expeditiously issuing an FIP or approving a late SIP that provides for attainment of the NAAQS as expeditiously as possible. If not, it plans to file a Clean Air Act citizen suit seeking a remedy.

A copy of the Notice of Intent to file suit can be downloaded here.

<https://www.sierraclub.org/sites/www.sierraclub.org/files/2022-11/2022.11.15.Rusk%20Panola%20SO2%20FIP%20NOI%20FINAL.pdf>