Nitrogen/Clean Air Act: Center for Biological Diversity Notice of Intent to Sue U.S. Environmental Protection Agency for Failure to Review National Ambient Air Quality Standards

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Center for Biological Diversity (“CBD”) sent a July 11th Notice of Intent to Sue ("Notice") to the United States Environmental Protection Agency (“EPA”) alleging a failure to undertake a mandatory obligation under the Clean Air Act.

CBD alleges that EPA has failed to undertake a review of the National Ambient Air Quality Standards (“NAAQS”) for Nitrogen Oxides (“NOx”).

Pursuant to Section 108 and 109 of the Clean Air Act, ambient air quality standards are established for a number of air pollutants. The ambient standards are denominated NAAQS.

Section 108 of the Clean Air Act requires that EPA identify air pollutants which may be reasonably anticipated to endanger the public health and welfare and to issue air quality criteria.

Second, Section 109 requires that EPA promulgate primary and secondary NAAQS for the pollutants identified under Section 108. Section 109(b)(1) defines a primary standard as “the attainment and maintenance which, in the judgment of the Administrator, based on the criteria, allow an adequate margin of safety, or requisite to protect public health.

The Clean Air Act requires that EPA periodically review both the air quality criteria and the NAAQS.

The CBD Notice states that Section 109 requires that “at five-year intervals” the Administrator (referencing EPA) “shall complete a thorough review of . . . the national ambient air quality standards promulgated under this section and shall make such revisions in such . . . standards and promulgate such new standards as may be appropriate.”

CBD alleges that it has been more than five years since EPA last completed such a review of the primary NAAQS for. NOx Consequently, the organization states that EPA should have completed a review of the primary NOx NAAQS no later than May 18, 2023. This failure to complete the review and make necessary revisions to the primary NAAQS for NOx is deemed to be a failure by EPA to fulfill its duties under Section 109(d)(1) of the Clean Air Act.

CBD states that it intends to bring a Clean Air Act citizen suit 60 days from the date of its letter, or shortly thereafter, under Section 304(a)(2) of the Clean Air Act for the alleged failure to perform such necessary duties.

A copy of the Notice can be downloaded here.