



Institute for Policy Integrity

new york university school of law

November 28, 2012

Hon. Lisa P. Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Room 3000
Washington, D.C. 20460
Jackson.lisa@epa.gov

VIA EMAIL AND CERTIFIED MAIL

Subject: Notice of Intent to File Suit under Section 304 of the Clean Air Act for Failure to Respond to Petition for Rulemaking under Sections 211 and 231 of the Clean Air Act

Dear Administrator Jackson:

On July 29, 2009, the Institute for Policy Integrity at the New York University School of Law (“Policy Integrity” or “Petitioner”) submitted a formal petition to the Administrator of the United States Environmental Protection Agency (EPA), pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), and the Clean Air Act, 42 U.S.C. § 7401 et seq., to initiate a rulemaking procedure under the Clean Air Act.

Policy Integrity’s petition requested that the Administrator propose and adopt regulations instituting a cap-and-trade system to control emissions of greenhouse gases from fuels used in motor vehicles, nonroad vehicles, and aircraft, under Sections 211 and 231 of the Clean Air Act, 42 U.S.C. §§ 7545, 7571.

Specifically, Policy Integrity petitioned the Administrator to take the following actions:

- (1) Make a finding under Section 211 that greenhouse gas emissions from fuels used in motor and nonroad vehicles and engines cause or contribute to air pollution that may reasonably be anticipated to endanger public welfare;
- (2) Propose a cap-and-trade system to control greenhouse gas emissions from fuels used in mobile sources under the authority of Section 211;
- (3) Make a finding under Section 231 that greenhouse gas emissions from aircraft engines cause or contribute to air pollution that may reasonably be anticipated to endanger public welfare;
- (4) Propose a joint rulemaking with the Federal Aviation Administration to incorporate fuels used in aircraft into the cap-and-trade system established under Section 211; and
- (5) Finalize regulations on both proposals within 90 days of the issuance of such proposed standards.

Because of the urgency of the problem of global warming, Petitioner requested that EPA begin this rulemaking process “immediately.” More than three years have passed since the petition, yet Policy Integrity has received no response to its petition.

The Clean Air Act provides that “the district courts of the United States shall have jurisdiction to compel . . . agency action unreasonably delayed,” 42 U.S.C. § 7604(a)(3). A person intending to file suit for unreasonable delay by EPA must provide notice of this intention 180 days before commencing such action. **This letter constitutes notice of Policy Integrity’s intent to sue both for failure to respond to its petition and also for failure to commence rulemakings under Sections 211 and 231 of the Clean Air Act.**

Section 211 of the statute authorizes EPA to regulate fuels and fuel additives used in motor vehicles and nonroad vehicles. As discussed in Policy Integrity’s petition, Section 211(c) provides sufficient discretion to EPA to “control” or “prohibit” the manufacture of fuel through a cap-and-trade program, after making an endangerment finding with respect to a fuel or fuel additive. Policy Integrity’s petition, therefore, requested that EPA make an endangerment finding with regard to the contribution to air pollution from the greenhouse gas emissions from motor and nonroad vehicles. EPA has not acted on this request.

Section 231 of the statute gives EPA authority to establish emissions standards applicable to aircraft engines, and subsection (a)(2)(a) provides that “[t]he Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [her] judgment causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare.” The word “shall” makes this language nondiscretionary, as a federal judge has recently confirmed, *Ctr. for Biological Diversity v. EPA*, 794 F. Supp. 2d 151, 159 (D.D.C. 2011). Policy Integrity’s petition, therefore, requested that EPA immediately make an endangerment finding under Section 231 with respect to greenhouse gas emissions from aircraft fuels and also that EPA propose a joint rulemaking with the Federal Aviation Administration in order to incorporate aircraft fuels into the cap-and-trade program. EPA has not acted on this request.

In conclusion, EPA has not responded to Policy Integrity’s petition for a rulemaking to reduce greenhouse gas emissions from motor vehicles, nonroad vehicles, and aircraft through the implementation of a cap-and-trade system under Sections 211 and 231 of the Clean Air Act. Given the clear link between greenhouse gas emissions and global warming, EPA’s delay in acting and in responding to Policy Integrity’s petition is inconsistent with the agency’s legal requirements and scientific determinations. Thus, Policy Integrity intends to file suit 180 days after the date of this notice.

Please note that Policy Integrity’s address has changed since the time of its petition, and please feel free to contact us to discuss the basis for these claims, or to explore possible resolutions to these claims short of litigation.

Respectfully submitted,
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