



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

October 23, 2019

Andrew Wheeler
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Wheeler.andrew@epa.gov

Re: Clean Air Act Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2) for Failure to make Findings of Failure to Submit under 42 U.S.C. § 7410(k)(1)(B) and Failure to Take Final Action under 42 U.S.C. § 7410(k)(2)–(4).

Dear Administrator Wheeler:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice that the Center for Environmental Health and the Center for Biological Diversity intend to commence a civil action against Andrew Wheeler, the Administrator of the United States Environmental Protection Agency, (“Administrator,” “EPA,” or “you”) for your failure to perform non-discretionary duties under the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). As discussed below, EPA has failed to meet statutory deadlines to take legally required action to determine which ozone nonattainment areas or ozone transport region (“OTR”) areas have failed to submit Oil and Natural Gas Control Technology Guidelines (“CTG”) Reasonably Available Control Technology (“RACT”) provisions, 42 U.S.C. § 7410(k)(1)(B), and to publish notice in the Federal Register that identifies areas that failed to submit their Oil and Natural Gas CTG RACT plans by the deadline EPA set.¹ EPA has also failed to meet the statutory deadlines to take legally required action to approve or disapprove multiple submitted Oil and Natural Gas CTG RACTs. 42 U.S.C. § 7410(k)(2)–(4).

Timely implementation of the ozone National Ambient Air Quality Standards (“NAAQS”), including the Oil and Natural Gas CTG RACT is critical. Considering the scientific evidence, each year implementation of the eight-hour ozone NAAQS is delayed, up to 3,180 more people will die prematurely and 390,000 asthma attacks *in children* will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 2015 70 ppb

¹ See, EPA SIP Status Report, *National Status of ozone- 8Hr (2008) SIP Required Element: RACT VOC CTG Oil and Natural Gas Industry*, available at https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html, [last visited October 20, 2019].

ozone NAAQS is up to \$4.5 billion dollars. Those individuals who suffer from health impacts caused by exposure to ozone levels above the NAAQS will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the eight-hour ozone NAAQS will go unrealized. Further, the ability of those individuals to enjoy everyday activities such as exercise, school, and work will continue to be negatively impacted.

Further, delays in implementing the ozone NAAQS also has detrimental environmental effects. Acute and chronic exposure to ozone leads to foliar injury, decreased photosynthesis, and decreased growth of vegetation. EPA's draft Integrated Science Assessment for Ozone² acknowledges ozone has a potential to negatively affect plant species such as: black cherry (*Prunus serotina*), quaking aspen (*Populus tremuloides*), tulip poplar (*Liriodendron tulipifera*), white pine (*Pinus strobus*), ponderosa pine (*Pinus ponderosa*) and red alder (*Alnus rubra*). These plant species, in particular, ponderosa pine serve as critical habitat for endangered species like the California Condor (*Gymnogyps californianus*) and threatened Mexican spotted owl (*Strix occidentalis lucida*).

EPA must remedy its violation of the mandatory duties detailed below to better protect the public from the harmful effects of ozone. Exposure to ozone in even very short time periods has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity.

I. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS

The Clean Air Act requires that if, six months after a state submits a State Implementation Plan ("SIP") submittal, including the RACT element of a nonattainment area SIP, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA has a non-discretionary duty to take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the submittal being found or deemed complete. 42 U.S.C. § 7410(k)(2)-(4).

Table 1 lists the areas that have submitted Oil and Natural Gas Industry CTG RACT submittals for the 2008 ozone National Ambient Air Quality Standards but for which EPA has failed to take final action. It has been more than 12 months since these submittals were found administratively complete by EPA or deemed administratively complete by operation of law. Yet, EPA has not taken final action approving or disapproving, in full or part, these submittals. Therefore, EPA is in violation of its mandatory duty in 42 U.S.C. § 7410(k)(2)-(4) to take final action for the submittals listed in Table 1.

² 84 Fed. Reg. 50,836 (Sept. 26, 2019).

TABLE 1

STATE	Area	COMPLETION DATE	FINAL ACTION DUE DATE
California	Imperial County	5/14/2018	5/14/2019
California	Kern County (Eastern Kern)	2/09/2018	2/09/2019
Massachusetts	OTR	10/19/2018	10/19/2019
New Hampshire	OTR	9/06/2018	9/06/2019
Vermont	OTR	9/6/2018 ³	9/06/2019
Virginia	OTR	6/05/2018	6/05/2019

Table 2 lists the areas that have submitted Oil and Natural Gas Industry CTGs for the 2015 ozone NAAQS. It has been more than 12 months since these submittals were found administratively complete by EPA or deemed administratively complete by operation of law. Yet, EPA has not taken action approving or disapproving, in full or part, these submittals. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, in full or part the submittals listed in Table 2.

TABLE 2

STATE	Area	COMPLETION DATE	FINAL ACTION DUE DATE
Massachusetts	OTR	10/19/2018	10/19/2019
New Hampshire	OTR	9/06/2018	9/06/2019
Vermont	OTR	9/06/2018	9/06/2019

II. FAILURE TO MAKE FINDING OF FAILURE TO SUBMIT

EPA is required to determine whether a SIP submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has failed to submit any required SIP submittal, there is no submittal that may be deemed administratively complete, and EPA must make a determination stating that the state failed to submit the required SIP submittal. *Id.* This determination is referred to as a “finding of failure to submit.”

³ See, 84 Fed. Reg. 37,812, 37,813 (Aug. 2, 2019).

EPA designated all of the areas listed in Table 3 nonattainment for the 2008 ozone NAAQS or as part of the ozone transport region. The required Oil and Natural Gas Industry CTG RACT SIP elements were due by no later than the dates listed in Table 3.⁴ EPA has a mandatory duty to make a completeness finding under 42 U.S.C. § 7410(k)(1)(B) by no later than six months after the due dates for the submittals. The States in Table 3 have failed to submit Oil and Natural Gas Industry Guidelines for the areas listed in Table 3 as of the date of this letter. EPA has failed to issue a finding of failure to submit, as required under 42 U.S.C. § 7410(k)(1)(B) yet it is after April 27, 2019. Thus, EPA is in violation of its nondiscretionary duty.

TABLE 3

STATE	Area	OIL AND GAS CTG RACT SUBMITTAL DUE DATE	FINDING OF FAILURE TO SUBMIT DUE DATE
Arizona	Phoenix-Mesa [Maricopa]	10/27/2018	4/27/2019
Arizona	Phoenix-Mesa [Pinal]	10/27/2018	4/27/2019
California	Los Angeles-San Bernardino Counties (West Mojave Desert) [Antelope Valley]	10/27/2018	4/27/2019
California	Los Angeles-San Bernardino Counties (West Mojave Desert) [Mojave Desert]	10/27/2018	4/27/2019
California	Mariposa County	10/27/2018	4/27/2019
California	Sacramento Metro [Placer]	10/27/2018	4/27/2019
California	San Diego County	10/27/2018	4/27/2019
Connecticut	Greater Connecticut	10/27/2018	4/27/2019

⁴ 81 Fed. Reg. 74,798, 74,799 (Oct. 27, 2016), *See also*, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html.

Connecticut	New York-N. New Jersey-Long Island	10/27/2018	4/27/2019
Connecticut	OTR	10/27/2018	4/27/2019
Illinois	Chicago-Naperville	10/27/2018	4/27/2019
Indiana	Chicago-Naperville	10/27/2018	4/27/2019
Maine	OTR	10/27/2018	4/27/2019
Maryland	Baltimore	10/27/2018	4/27/2019
Maryland	OTR	10/27/2018	4/27/2019
New York	New York-N. New Jersey-Long Island	10/27/2018	4/27/2019
New York	OTR	10/27/2018	4/27/2019
Pennsylvania	OTR	10/27/2018	4/27/2019
Texas	Dallas-Fort Worth	10/27/2018	4/27/2019
Texas	Houston-Galveston-Brazoria	10/27/2018	4/27/2019
Wisconsin	Chicago-Naperville	10/27/2018	4/27/2019
Wisconsin	Inland Sheboygan County	10/27/2018	4/27/2019
Wisconsin	Shoreline Sheboygan County	10/27/2018	4/27/2019

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

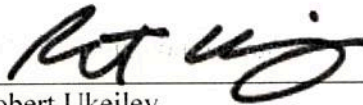
The Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Attn: Robert Ukeiley
Tel: (720) 496-8568

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Caroline Cox
Tel: (510) 655-3900

While EPA regulations require this information, please direct all communications regarding this matter to the undersigned counsel.

The Center for Biological Diversity, the Center for Environmental Health, and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will file a complaint.

Sincerely,



Robert Ukeiley
Senior Attorney – Environmental Health
Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
(720) 496-8568
rukeiley@biologicaldiversity.org

Counsel for Center for Biological Diversity and Center for
Environmental Health