



January 30, 2020

Sent via United States mail, return receipt requested, and electronic mail

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

Re: 60-Day Notice of Intent to File a Clean Air Act Citizen Suit

Dear Administrator Wheeler:

On behalf of the Center for Biological Diversity and the Center for Environmental Health we are writing to inform you that we intend to file suit against you for “a failure of the Administrator [of the United States Environmental Protection Agency (EPA)] to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2).

These violations include failures to take final action on State Implementation Plans pursuant to 42 U.S.C. § 7410(k)(2)-(4). EPA must remedy the violations of its mandatory duties to better protect the public and natural systems from the harmful effects of ground-level ozone, which is commonly referred to as smog, and other dangerous air pollutions.

Ozone pollution negatively affects human health. EPA has found that ozone “posed multiple, serious threats to health” including: worsening respiratory and cardiovascular health, increased likelihood of early death; increased asthma-related hospital admissions; increased likelihood of children developing asthma as adolescents; and lower birthweights and decreased lung function in newborns.¹ The people most impacted by even “low” levels of ozone are “children and teens; anyone 65 and older; people who work or exercise outdoors; people with existing lung diseases, such as asthma and COPD; and people with cardiovascular disease.”²

¹ American Lung Association, Ozone, available at: <https://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/ozone.html> (last visited Feb. 1, 2019) (summarizing the results of Table 1-1 in United States Environmental Protection Agency, Integrated Science Assessment for Ozone and Related Photochemical Oxidants EPA/600/R-10/076F (2013) at 1-5).

² *Id.* See also United States Environmental Protection Agency, “Ozone,” available at: <https://airnow.gov/index.cfm?action=aqibasics.ozone> (last visited Jan. 20, 2020).

Delays in implementing the ozone NAAQS also have detrimental environmental effects. Acute and chronic exposures to ozone lead to foliar injury, decreased photosynthesis, and decreased growth of vegetation. EPA's draft Integrated Science Assessment for Ozone 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*).³ These plant species, in particular, ponderosa pine serve as important habitat for endangered species like the California Condor (*Gymnogyps californianus*) and threatened Mexican spotted owl (*Strix occidentalis lucida*).

I. EPA Has Violated the Clean Air Act by Failing to Take Final Action

Under 42 U.S.C. § 7410(k)(2) – (4), EPA has a mandatory duty to take final action to fully or partially approve or disapprove a state implementation plan submittal within 12 months of a plan being deemed or determined to meet the minimum criteria for completeness.

A. The 2008 Ozone NAAQS for the Eastern Kern (Kern County) nonattainment area

We provided EPA with a notice of intent to sue letter on November 21, 2019 which covered various elements of the 2008 ozone NAAQS nonattainment SIP for Eastern Kern (Kern County part). EPA claims that the base-year emission inventory included in our November 21, 2019 notice of intent to sue letter was “withdrawn.” We disagree. The Clean Air Act does not allow for the withdrawal of SIP submittals. Rather, claiming SIP submittals can be withdrawn is a fiction EPA has made up to further enable its habitual missing of Congressional deadlines. Sadly, these missed deadlines result in multiple horrific outcomes including children being poisoned and other people being killed.

Nevertheless, to avoid or narrow the scope of litigation and thus save judicial, EPA, and our resources, we are providing notice of our intent to sue over the following “submittal”.

³ 84 Fed. Reg. 50,836 (Sept. 26, 2019); *see also* United States Environmental Protection Agency, Integrated Assessment for Ozone and Related Photochemical Oxidants (External Review Draft) EPA/600/R-19/093 (2019) at IS-77, available at: <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=344670>.

TABLE 1: THE 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS FOR THE EASTERN KERN NONATTAINMENT AREA

Element Number	Nonattainment SIP Element	Submittal Date	Date of Completeness Finding (no later than)	Due Date for final action (no later than)
1	Emission Inventory	10/25/2017	4/25/2018	4/25/2019

If EPA has not made a completeness finding, a SIP submittal will be deemed complete by operation of law within six months of its submittal. 42 U.S.C. § 7410(k)(1)(B). EPA has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within 12 months of the submittal being deemed or found complete. 42 U.S.C. § 7410(k)(2).

It has been more than 12 months since the nonattainment SIP elements in Table 1 were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP elements for the Eastern Kern nonattainment area in Table 1. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2) – (4).

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

Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, Colorado 80202
Tel: (720) 496-8568

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
Tel: (510) 655-3900

While EPA regulations require this information, please direct all correspondences and 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 the EPA contacting us within sixty days about coming into compliance on the above-referenced violations. If you do not do so, however, we will have to file or amend a complaint.

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Notice of Intent Letter
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Sincerely,

A handwritten signature in black ink that reads "Perry Eleerts". The signature is written in a cursive style with a horizontal line underneath it.

Perry Eleerts
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