



February 10, 2021

Sent via United States certified mail, and electronic mail

Acting Administrator Jane Nishida
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Nishida.Jane@epa.gov

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

Dear Acting Administrator Nishida:

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 multiple failures to take final action on State Implementation Plans (“SIP”) pursuant to 42 U.S.C. § 7410(k)(2)-(4) and failures to promulgate Federal Implementation Plans (“FIP”) pursuant to 42 U.S.C. § 7410(c)(1). 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 pollutants.

Ozone pollution negatively affects human health. EPA 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 chronic obstructive pulmonary disease; and people with cardiovascular disease.”²

¹ American Lung Association, *Ozone*, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (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.*

Delays in implementing the ozone national ambient air quality standard (“NAAQS”) also has detrimental effects on public welfare, as that term is defined in the Clean Air Act. Acute and chronic exposures to ozone lead to foliar injury, decreased photosynthesis, and decreased growth of vegetation. EPA’s *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 the ponderosa pine, serve as important habitat for endangered species like the threatened Pawnee montane skipper butterfly (*Hesperia leonardus montana*) and the threatened Mexican spotted owl (*Strix occidentalis lucida*).

I. EPA Violated the Clean Air Act by Failing to Take Final Action for the 2008 Ozone NAAQS Nonattainment SIP Submittal for Nonattainment Areas

If EPA has not made a completeness finding, a SIP submittal will be deemed complete by operation of law after 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 twelve months of the submittal being deemed or found complete. 42 U.S.C. § 7410(k)(2).

It has been more than twelve months since the nonattainment SIP submittal 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 submittal elements for the listed ozone nonattainment areas in Table 1. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

Table 1 lists 2008 ozone NAAQS nonattainment SIP submittal elements which EPA has failed to act on by the Clean Air Act’s statutory deadline.

TABLE 1: THE 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS FOR NONATTAINMENT AREAS

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
Los Angeles-San Bernardino Counties	<ul style="list-style-type: none"> RFP VOC and NOX—Severe 15 	12/11/2018	06/11/2019	06/11/2020

³ See 76 Fed. Reg. 21,849 (Apr. 20, 2020); see also United States Environmental Protection Agency, *Integrated Assessment for Ozone and Related Photochemical Oxidants* EPA/600/R-20/012 (Apr. 2020) at 8-42, <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=348522>.

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
(West Mojave Desert), California				
Sacramento Metro, California	<ul style="list-style-type: none"> • RFP VOC and NOX— Severe 15 • Emissions Inventory 	12/5/2018 ⁴	06/5/2019	06/5/2020
Chicago-Naperville, Illinois	<ul style="list-style-type: none"> • Contingency Measures VOC and NOX • Ozone attainment demonstration • Reasonably Available Control Technology (“RACT”) Non-Control Techniques Guidelines (“CTG”) VOC for Major Sources • RACT NOX for Major Sources • RFP VOC and NOX— Moderate • RACT VOC CTG Aerospace • RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008) • RACT VOC CTG Bulk Gasoline Plants • RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants • RACT VOC CTG Factory Surface Coating of Flat Wood Paneling • RACT VOC CTG 	01/10/2019	07/10/2019	07/10/2020

⁴ See 85 Fed. Reg. 68,509, 68,512 (Oct. 29, 2020).

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	Fiberglass Boat Manufacturing Materials (2008) <ul style="list-style-type: none"> • RACT VOC CTG Flat Wood Paneling Coatings (2006) • RACT VOC CTG Flexible Packaging Printing Materials (2006) • RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment • RACT VOC CTG Graphic Arts - Rotogravure and Flexography • RACT VOC CTG Industrial Cleaning Solvents (2006) • RACT VOC CTG Large Appliance Coatings (2007) • RACT VOC CTG Large Petroleum Dry Cleaners • RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems • ACT VOC CTG Leaks from Petroleum Refinery Equipment • RACT VOC CTG Lithographic Printing Materials and Letterpress Printing 			

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	Materials (2006) <ul style="list-style-type: none"> • RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins • RACT VOC CTG Manufacture of Pneumatic Rubber Tires • RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products • RACT VOC CTG Metal Furniture Coatings (2007) • RACT VOC CTG Miscellaneous Industrial Adhesives (2008) • RACT VOC CTG Miscellaneous Metal Products Coatings (2008) • RACT VOC CTG Paper, Film, and Foil Coatings (2007) • RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks • RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds • RACT VOC CTG 			

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	Synthetic Organic Chemical Manufacturing Industry (“SOCMI”) Air Oxidation Processes <ul style="list-style-type: none"> • RACT VOC CTG SOCMI Distillation and Reactor Processes • RACT VOC CTG Shipbuilding/repair 			
Chicago-Naperville, Wisconsin	<ul style="list-style-type: none"> • Nonattainment New Source Review (“NSR”) Rules— Moderate • RACT VOC CTG Aerospace • RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008) • RACT VOC CTG Bulk Gasoline Plants • RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants • RACT VOC CTG Factory Surface Coating of Flat Wood Paneling • RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008) • RACT VOC CTG Flat Wood Paneling Coatings (2006) • RACT VOC CTG Flexible Packaging Printing Materials 	04/17/2017	10/17/2017	10/17/2018

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	(2006) <ul style="list-style-type: none"> • RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment • RACT VOC CTG Graphic Arts - Rotogravure and Flexography • RACT VOC CTG Industrial Cleaning Solvents (2006) • RACT VOC CTG Large Appliance Coatings (2007) • RACT VOC CTG Large Petroleum Dry Cleaners • RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems • ACT VOC CTG Leaks from Petroleum Refinery Equipment • RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006) • RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins • RACT VOC CTG Manufacture of Pneumatic Rubber 			

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	<p>Tires</p> <ul style="list-style-type: none"> • RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products • RACT VOC CTG Metal Furniture Coatings (2007) • RACT VOC CTG Miscellaneous Industrial Adhesives (2008) • RACT VOC CTG Miscellaneous Metal Products Coatings (2008) • RACT VOC CTG Paper, Film, and Foil Coatings (2007) • RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks • RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds • RACT VOC CTG Synthetic Organic Chemical Manufacturing Industry (“SOCMI”) Air Oxidation Processes • RACT VOC CTG SOCMI Distillation and Reactor Processes • RACT VOC CTG 			

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	Shipbuilding/repair <ul style="list-style-type: none"> • RACT VOC CTG Solvent Metal Cleaning • RACT VOC CTG Stage I Vapor Control Systems—Gasoline Service Stations • RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks • RACT VOC CTG Surface Coating for Insulation of Magnet Wire • RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks • RACT VOC CTG Surface Coating of Cans • RACT VOC CTG Surface Coating of Coils • RACT VOC CTG Surface Coating of Fabrics • RACT VOC CTG Surface Coating of Large Appliances • RACT VOC CTG Surface Coating of Metal Furniture • RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products • RACT VOC CTG Surface Coating of 			

Area, State	SIP Element(s)	Submittal Date	Completion Date	Final Action Due Date
	Paper <ul style="list-style-type: none"> • RACT VOC CTG Tank Truck Gasoline Loading Terminals • RACT VOC CTG Use of Cutback Asphalt • RACT VOC CTG Wood Furniture 			
New York-N. New Jersey-Long Island, New York	<ul style="list-style-type: none"> • Contingency Measures VOC and NOX • Emission Inventory • Ozone Attainment Demonstration • RFP VOC and NOX—Moderate 	11/13/2017	05/13/2018	05/13/2019
New York-N. New Jersey-Long Island, New York	<ul style="list-style-type: none"> • I/M Enhanced • Nonattainment NSR rules – Serious • Ozone Attainment Demonstration – Serious • RFP VOC and NOx-Serious 	1/2/2018	5/29/2018	5/29/2019
New York-N. New Jersey-Long Island, New Jersey	<ul style="list-style-type: none"> • Contingency Measures VOC and NOX • I/M Enhanced • Nonattainment NSR rules - Serious • Ozone Attainment Demonstration • RFP VOC and NOX—Moderate • RFP VOC and NOX - Serious 	01/02/2018	5/29/2018	5/29/2019

II. EPA Violated the Clean Air Act by Failing to Promulgate a Federal Implementation Plan for 2008 Ozone NAAQS Nonattainment Areas

EPA has failed to promulgate Federal Implementation Plans (“FIP”) to address certain elements for nonattainment SIP for the 2008 ozone NAAQS for fifteen states and the District of

Columbia. Pursuant to 42 U.S.C. § 7410(c)(1)(A), “the Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—finds that a State has failed to make a required submission.”

On February 3, 2017, EPA published a final rule which found that fifteen states and the District of Columbia failed to submit SIP “revisions in a timely manner to satisfy certain requirements for the 2008 ozone NAAQS that apply to nonattainment areas...” 82 Fed. Reg. 9,158, 9,158 (Feb. 3, 2017). Further, EPA found, “[t]hese findings of failure to submit establish certain deadlines...for the EPA to promulgate a...FIP to address any outstanding SIP requirements.” *Id.*

EPA’s finding became effective on March 6, 2017; therefore, no later than March 6, 2019 was the deadline for EPA to fulfill its mandatory duty to promulgate FIPs. *Id.* More than two years have passed, and EPA has not promulgated FIPs for the nonattainment areas.

Therefore, EPA is in violation of its mandatory duties by not promulgating FIPs.

Table 2 lists 2008 ozone NAAQS nonattainment SIP elements which EPA has failed to promulgate FIPs for by the Clean Air Act’s statutory deadline.

TABLE 2: THE 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS FOR NONATTAINMENT AREAS WHICH EPA FAILED TO PROMULGATE FIPs FOR BY DEADLINE

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
Los Angeles-San Bernardino Counties (Mojave Desert), California	<ul style="list-style-type: none"> • Nonattainment NSR rules Severe 15 • Vehicle Miles Traveled—Transportation Control Measures to Offset Growth 	<ul style="list-style-type: none"> • 03/06/2019⁵
Sacramento Metro [Sacramento], California	<ul style="list-style-type: none"> • RACT Non-CTG VOC for Major Sources • RACT NOX for Major Sources • RACT VOC CTG Aerospace • RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008) 	<ul style="list-style-type: none"> • 03/06/2019⁶

⁵ See 82 Fed. Reg. at 9,161, 9,161 (Feb. 3, 2017).

⁶ *Id.*

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	<ul style="list-style-type: none"> • RACT VOC CTG Bulk Gasoline Plants • RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants • RACT VOC CTG Factory Surface Coating of Flat Wood Paneling • RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008) • RACT VOC CTG Flat Wood Paneling Coatings (2006) • RACT VOC CTG Flexible Packaging Printing Materials (2006) • RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment • RACT VOC CTG Graphic Arts - Rotogravure and Flexography • RACT VOC CTG Industrial Cleaning Solvents (2006) • RACT VOC CTG Large Appliance Coatings (2007) • RACT VOC CTG Large Petroleum Dry Cleaners • RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems • ACT VOC CTG Leaks from Petroleum Refinery Equipment • RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006) • RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins • RACT VOC CTG Manufacture of 	

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	<p>Pneumatic Rubber Tires</p> <ul style="list-style-type: none"> • RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products • RACT VOC CTG Metal Furniture Coatings (2007) • RACT VOC CTG Miscellaneous Industrial Adhesives (2008) • RACT VOC CTG Miscellaneous Metal Products Coatings (2008) • RACT VOC CTG Paper, Film, and Foil Coatings (2007) • RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks • RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds • RACT VOC CTG Synthetic Organic Chemical Manufacturing Industry (“SOCMI”) Air Oxidation Processes • RACT VOC CTG SOCMI Distillation and Reactor Processes • RACT VOC CTG Shipbuilding/repair • RACT VOC CTG Solvent Metal Cleaning • RACT VOC CTG Stage I Vapor Control Systems—Gasoline Service Stations • RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks • RACT VOC CTG Surface Coating for Insulation of Magnet Wire • RACT VOC CTG Surface Coating of Automobiles and Light-Duty 	

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	Trucks <ul style="list-style-type: none"> • RACT VOC CTG Surface Coating of Cans • RACT VOC CTG Surface Coating of Coils • RACT VOC CTG Surface Coating of Fabrics • RACT VOC CTG Surface Coating of Large Appliances • RACT VOC CTG Surface Coating of Metal Furniture • RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products • RACT VOC CTG Surface Coating of Paper • RACT VOC CTG Tank Truck Gasoline Loading Terminals • RACT VOC CTG Use of Cutback Asphalt • RACT VOC CTG Wood Furniture 	
Sacramento Metro [Yolo-Solano], California	<ul style="list-style-type: none"> • RACT VOC CTG Bulk Gasoline Plants • RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008) • RACT VOC CTG Industrial Cleaning Solvents (2006) • RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems • RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006) • RACT VOC CTG Miscellaneous Metal Products Coatings (2008) • RACT VOC CTG Petroleum Liquid Storage in External Floating 	<ul style="list-style-type: none"> • 03/06/2019⁷

⁷ *Id.*

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	Roof Tanks <ul style="list-style-type: none"> • RACT VOC CTG Solvent Metal Cleaning • RACT VOC CTG Stage I Vapor Control Systems—Gasoline Service Stations • RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products • RACT VOC CTG Tank Truck Gasoline Loading Terminals • RACT VOC CTG Use of Cutback Asphalt • RACT Non-CTG VOC for Major Sources • RACT NOX for Major Sources 	
Sacramento Metro, California	<ul style="list-style-type: none"> • Attainment demonstration • Contingency measures for failure to attain and failure to meet RFP • RFP 	<ul style="list-style-type: none"> • 10/26/2019⁸
New Hampshire	<ul style="list-style-type: none"> • NH Non-CTG VOC RACT for Major Sources • RACT NOX for Major Sources • RACT VOC CTG Aerospace • RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008) • RACT VOC CTG Bulk Gasoline Plants • RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants • RACT VOC CTG Factory Surface Coating of Flat Wood Paneling • RACT VOC CTG Fiberglass Boat 	<ul style="list-style-type: none"> • 03/06/2019⁹

⁸ See 82 Fed. Reg. 44,726 (Sept. 26, 2017).

⁹ See 82 Fed. Reg. at 9,161, 9,162.

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	<p>Manufacturing Materials (2008)</p> <ul style="list-style-type: none"> • RACT VOC CTG Flat Wood Paneling Coatings (2006) • RACT VOC CTG Flexible Packaging Printing Materials (2006) • RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment • RACT VOC CTG Graphic Arts—Rotogravure and Flexography • RACT VOC CTG Industrial Cleaning Solvents (2006) • RACT VOC CTG Large Appliance Coatings (2007) • RACT VOC CTG Large Petroleum Dry Cleaners • RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems • RACT VOC CTG Leaks from Petroleum Refinery Equipment • RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006) • RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins • RACT VOC CTG Manufacture of Pneumatic Rubber Tires • RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products • RACT VOC CTG Metal Furniture Coatings (2007) • RACT VOC CTG Miscellaneous Industrial Adhesives (2008) 	

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	<ul style="list-style-type: none"> • RACT VOC CTG Miscellaneous Metal Products Coatings (2008) • RACT VOC CTG Paper, Film, and Foil Coatings (2007) • RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks • RACT VOC CTG Plastic Parts Coatings (2008) • RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds • RACT VOC CTG SOCFI Air Oxidation Processes • RACT VOC CTG SOCFI Distillation and Reactor Processes • RACT VOC CTG Shipbuilding/repair • RACT VOC CTG Solvent Metal Cleaning • RACT VOC CTG Stage I Vapor Control Systems—Gasoline Service Stations • RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks • RACT VOC CTG Surface Coating for Insulation of Magnet Wire • RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks • RACT VOC CTG Surface Coating of Cans • RACT VOC CTG Surface Coating of Coils • RACT VOC CTG Surface Coating of Fabrics • RACT VOC CTG Surface Coating 	

Area, State	SIP Elements	Deadline for EPA to Promulgate FIP
	of Large Appliances • RACT VOC CTG Surface Coating of Metal Furniture • RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Product • RACT VOC CTG Surface Coating of Paper • RACT VOC CTG Tank Truck Gasoline Loading Terminals • RACT VOC CTG Use of Cutback Asphalt • RACT VOC CTG Wood Furniture	

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

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

Center for Environmental Health
 2201 Broadway, Suite 508
 Oakland, CA 94612
 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 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 a complaint.

Acting Administrator Jane Nishida
February 10, 2021
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Sincerely,

A handwritten signature in black ink, appearing to read "R. Ukeiley", is centered below the word "Sincerely,".

Robert Ukeiley
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