



VIA CERTIFIED MAIL

June 21, 2021

Michael S. Regan
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW, M/C 1101A
Washington, D.C. 20460
regan.michael@epa.gov

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

Dear Administrator Regan:

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 Michael S. Regan, the Administrator of the United States Environmental Protection Agency, (“Acting 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 its statutory deadline to take legally required action to approve or disapprove the California Greenhouse Gas Emissions Standards for Crude Oil and Natural Gas Facilities (Oil and Methane Gas Regulation) that the state of California submitted to EPA on December 4, 2018. 42 U.S.C. § 7410(k)(2)–(4). EPA’s review and approval or disapproval of this submittal is necessary to ensure timely and effective implementation of the 2008 and 2015 ozone National Ambient Air Quality Standards (“NAAQS”).

Timely implementation of the ozone NAAQS is critical to protect human health and the environment. Exposure to ozone in even short time periods has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. Considering the scientific evidence, each year implementation of this ozone NAAQS is delayed, up to 390,000 more asthma attacks will occur *in children*. Further, EPA estimates that the net benefit of implementing the 2015 70 parts per billion 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.

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 Integrated Science Assessment for Ozone and Related Photochemical Oxidants 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 sugar maple (*Acer saccharum*).¹ 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*).

Ozone even impacts national parks, where the ground-level ozone concentrations are often indistinguishable those found in major cities in the United States.² The National Park Service monitors ozone around the country. In 2020, 25 national parks had at least one day where the air quality violated the 8-hour ozone NAAQS.³

According to EPA, the oil and natural gas industry is the largest industrial source of emissions of volatile organic compounds ("VOCs"), which contribute to the formation of ground-level ozone.⁴ EPA must remedy the violations detailed below to better protect the public from the harmful effects of ozone.

I. FAILURE TO TAKE FINAL ACTION ON A SIP SUBMITTAL

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 a 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).

California submitted its Oil and Methane Gas Regulation to EPA on December 4, 2018. Thus, this submittal was administratively complete by no later than June 4, 2019. Yet, EPA has failed to take final action. It has been more than 12 months since this submittal was 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, this submittal. Therefore, EPA is in violation of its mandatory duty in 42 U.S.C. § 7410(k)(2)-(4) to take final action on California's Oil and Methane Gas Regulation submittal.

¹ EPA, EPA/600/R-20/012, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants IS-77* (2020).

² Keiser, et al., *Air Pollution and Visitation at U.S. National Parks*, 4 *Science Advances* (2018), available at <https://advances.sciencemag.org/content/4/7/eaat1613/tab-pdf>.

³ Nat'l Park Serv., *Ozone Exceedances Monitored in National Parks*, <https://www.nps.gov/subjects/air/ozone-exceed.htm> (last accessed May 25, 2021).

⁴ EPA, *Controlling Air Pollution from the Oil and Natural Gas Industry: Basic Information about Oil and Natural Gas Air Pollution Standards*, <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/basic-information-about-oil-and-natural-gas> (last accessed May 25, 2021).

II. CONCLUSION

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

The Center for Biological Diversity
P.O. Box 1178
Flagstaff, AZ 86002
Attn: Ashley Bruner
Tel: (928) 666-0731

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612

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 have to file or amend a complaint.

Sincerely,



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