



September 10, 2021

**Via Certified and Electronic Mail**  
**Return Receipt Requested**

Michael S. Regan  
Administrator  
Environmental Protection Agency  
Office of the Administrator: Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
E: regan.michael@epa.gov

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

Dear Administrator:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. part 54, we hereby give notice of our intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“EPA”) for failing to perform a nondiscretionary duty under the Clean Air Act (“Act”). As further specified below, EPA has failed to carry out its nondiscretionary duty under section 110(c)(1) of the Act, 42 U.S.C. § 7410(c)(1), to adopt a federal implementation plan (“FIP”) to address deficiencies in state implementation plan (“SIP”) revisions for meeting the 1997, 2006, and 2012 national ambient air quality standards (“NAAQS”) for fine particulate matter (“PM<sub>2.5</sub>”) in the San Joaquin Valley, California.

Inhalable airborne particles present serious air quality problems in many areas of the United States, but nowhere as extreme as in the San Joaquin Valley. Numerous scientific studies have linked particle pollution exposure, especially exposure to PM<sub>2.5</sub>, to a variety of problems, including premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.<sup>1</sup> The COVID-19 pandemic has tragically exacerbated the health burdens borne by communities exposed to elevated PM<sub>2.5</sub> levels: a recent study showed that for every 1 microgram per cubic meter increase in PM<sub>2.5</sub>, the COVID-19 mortality rate increased by more than 10%.<sup>2</sup>

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<sup>1</sup> See *Health and Environmental Effects of Particulate Matter (PM)*, EPA, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last updated May 26, 2021).

<sup>2</sup> Xiao Wu et al., *Exposure to Air Pollution and COVID-19 Mortality in the United States: A Nationwide Cross-Sectional Study*, 6 *Sci. Adv.* (Nov. 2020); see also Daniele Contini & Francesca Costabile, *Does Air Pollution Influence COVID 19 Outbreaks?*, 11 *Atmosphere* 377 (2020).

Valley residents breathe extreme levels of PM<sub>2.5</sub>—levels that EPA declared unlawfully dangerous nearly a quarter century ago. The American Lung Association’s 2021 *State of the Air* report shows that the four counties in the country with the most year-round PM<sub>2.5</sub> pollution are *all* in the San Joaquin Valley, as well as five of the six counties with the most dangerous short-term spikes in PM<sub>2.5</sub> pollution.<sup>3</sup>

The Valley’s PM<sub>2.5</sub> levels—in concert with the cumulative harms caused by air and water pollutants in general—are an ongoing public health and environmental justice crisis. Health problems related to PM<sub>2.5</sub> are myriad in the Valley: for instance, one in six Valley children gets asthma by the time they turn 18, and emergency room visits for air-related ailments spike during periods when PM<sub>2.5</sub> is high.<sup>4</sup> The Valley has proportionally many more people living in poverty and a much larger population who identify as people of color and/or Hispanic or Latino than the state or country as a whole,<sup>5</sup> and low-income communities and communities of color in the Valley are disproportionately exposed to air pollution and its accompanying impacts.<sup>6</sup>

In addition to harming health, PM<sub>2.5</sub> from the San Joaquin Valley also is the main cause of unsightly “haze” in several federal Class 1 areas, including Yosemite, Sequoia, and Kings Canyon National Parks, which are three of the most heavily polluted parks in the nation for air quality.<sup>7</sup> Alongside the Valley, these parks often see substantial reductions to average visibility from haze pollution, as well as other air pollution impacts to the various aquatic and terrestrial ecosystems of the Southern Sierra Nevada region.<sup>8</sup>

As you are aware, EPA first established the annual and 24-hour PM<sub>2.5</sub> NAAQS in 1997 after reviewing scientific data and public comment suggesting separate standards for coarse (PM<sub>10</sub>)

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<sup>3</sup> See Am. Lung Ass’n, *State of the Air 18* (2021), <https://www.lung.org/getmedia/17c6cb6c-8a38-42a7-a3b0-6744011da370/sota-2021.pdf>.

<sup>4</sup> Joint Ctr. for Pol. and Econ. Studies, *Place Matters for Health in the San Joaquin Valley* 1 (Mar. 2012), <http://www.fresnostate.edu/chhs/cvhipi/documents/cvhipi-jointcenter-sanjoaquin.pdf>; John Amson Capitman & Tim R. Tyner, *The Impacts of Short-term Changes in Air Quality on Emergency Room and Hospital Use in California’s San Joaquin Valley* at ii (June 2011), <http://www.fresnostate.edu/chhs/cvhipi/documents/aqr-web.pdf>.

<sup>5</sup> See U.S. Census Bureau, *QuickFacts*, <https://www.census.gov/quickfacts/fact/table/>.

<sup>6</sup> Amber D. Haley et al., *Community Risk Factors for Mortality and Exposure to Environmental Hazards in the San Joaquin Valley* 31 (Feb. 2012), [https://societyhealth.vcu.edu/media/society-health/pdf/PMReport\\_SJV.pdf](https://societyhealth.vcu.edu/media/society-health/pdf/PMReport_SJV.pdf).

<sup>7</sup> See *Particulate Matter (PM) Basics*, EPA, <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics#effects> (updated May 26, 2021); *Sequoia and Kings Canyon: Air Quality Information*, Nat’l Park Serv., <https://www.nps.gov/seki/learn/nature/airqualityinfo.htm> (last updated Aug. 25, 2021); *Yosemite: Air Quality*, Nat’l Park Serv., <https://www.nps.gov/yose/learn/nature/airquality.htm> (last visited Sept. 8, 2021).

<sup>8</sup> See *Park Air Profiles - Sequoia & Kings Canyon National Parks*, Nat’l Park Serv., <https://www.nps.gov/articles/airprofiles-seki.htm#PM> (last updated Nov. 19, 2019); *Health and Environmental Effects of Particulate Matter (PM)*, EPA, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last updated May 26, 2021).

and fine (PM<sub>2.5</sub>) particulate matter would lead to increased public health and welfare.<sup>9</sup> The agency lowered the 24-hour PM<sub>2.5</sub> NAAQS in 2006,<sup>10</sup> and the annual PM<sub>2.5</sub> NAAQS in 2012,<sup>11</sup> further strengthening the standards.

Air quality in the Valley currently fails to meet *any* of these national PM<sub>2.5</sub> standards—not even the original 1997 standards adopted more than 20 years ago. Owing to the length of time that the Valley has failed to meet the 1997 and 2006 NAAQS, it has been designated as a “Serious” nonattainment area for these standards.<sup>12</sup> The Valley also has been designated as a “Moderate” nonattainment area for the 2012 PM<sub>2.5</sub> NAAQS, although the State has admitted that it will not be able to attain by the deadline for a Moderate area and thus will need to be reclassified to Serious.<sup>13</sup>

In the late 2010s, the San Joaquin Valley Air Pollution Control District (“District”) fell far behind on submitting plans to EPA for controlling the Valley’s PM<sub>2.5</sub> problem. By 2018, the District had failed to submit required plans pertaining to all the PM<sub>2.5</sub> NAAQS. And yet, EPA did nothing to compel Clean Air Act compliance. In response, several of the undersigned groups filed a lawsuit in the Northern District of California requesting that the court order EPA to issue findings that the State had failed to submit the required plans for each NAAQS by the respective deadlines.<sup>14</sup>

After acknowledging noncompliance and settling the litigation, EPA issued findings of failure to submit, which became effective on January 7, 2019.<sup>15</sup> In its final rule, EPA noted: “No later than 2 years after the EPA makes these findings, if the State has not submitted, and the EPA has not approved, each of the required SIP submissions, the EPA must promulgate a federal implementation plan (FIP) to address any remaining requirements.”<sup>16</sup>

In May 2019, the State submitted revisions to its SIP that purported to provide for attainment of each standard by its respective deadline, or to obtain an extension of time for attainment and provide for attainment by the extended deadline.<sup>17</sup>

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<sup>9</sup> 62 Fed. Reg. 38,652 (July 18, 1997).

<sup>10</sup> 71 Fed. Reg. 61,144 (Oct. 17, 2006).

<sup>11</sup> 78 Fed. Reg. 3,086 (Jan. 15, 2013).

<sup>12</sup> 81 Fed. Reg. 2,993 (Jan. 20, 2016) (reclassification of the Valley from Moderate to Serious Nonattainment for the 2006 PM<sub>2.5</sub> NAAQS); 80 Fed. Reg. 18,528 (Apr. 7, 2015) (reclassification from Moderate to Serious for the 1997 PM<sub>2.5</sub> Standards).

<sup>13</sup> San Joaquin Valley Air Pollution Control Dist., *2018 Plan for the 1997, 2006, and 2012 PM<sub>2.5</sub> Standards and the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan 7-1* (Nov. 15, 2018), <https://www.valleyair.org/pmplans/documents/2018/pm-plan-adopted/2018-Plan-for-the-1997-2006-and-2012-PM2.5-Standards.pdf> (“2018 Plan”).

<sup>14</sup> *Comm. for a Better Arvin v. Wheeler*, No. 4:18-cv-05700-DMR (N.D. Cal., filed Sept. 18, 2018).

<sup>15</sup> 83 Fed. Reg. 62,720 (Dec. 6, 2018).

<sup>16</sup> *Id.* at 62,721.

<sup>17</sup> 86 Fed. Reg. 38,652, 38,654 (July 22, 2021); 2018 Plan, *supra*.

In July 2020, EPA approved in part the State's plan for attaining the 2006 NAAQS, including an extension request to allow for attainment by 2024, instead of 2020.<sup>18</sup> EPA left the contingency measures element of the State's plan unapproved.<sup>19</sup>

After missing previous attainment deadlines, the San Joaquin Valley was required to attain the 1997 annual PM<sub>2.5</sub> standard by December 31, 2020. But as of that date, EPA had not even reviewed the State's plan for meeting the standard. Not surprisingly, air monitoring data showed that the Valley failed to attain. Not until July 2021, seven months after the Valley should have met the 1997 standards, did EPA finally propose action on the failed plan. Specifically, EPA now proposes to approve the plan in small part and disapprove it in large part.<sup>20</sup> In its proposed rule, EPA acknowledged that its failure to approve the various long-overdue SIP elements meant that it "is already subject to a statutory deadline to promulgate a FIP."<sup>21</sup> Nevertheless, EPA has not proposed to adopt a FIP, and instead seems content to await a revised plan from the District while the Valley's residents continue to breathe unlawfully dirty air. The District, for its part, has already developed a revision that contains *no* new control measures, but that instead simply pushes back the expected attainment date to the end of 2023.<sup>22</sup>

Earlier this month, EPA proposed (1) to approve in large part the State's Moderate area plan for the 2012 NAAQS, which demonstrates that it would be impracticable to attain the NAAQS by the deadline, and to reclassify the Valley from Moderate to Serious for those NAAQS; and (2) to disapprove contingency measures for the 2006 and 2012 NAAQS.<sup>23</sup>

EPA has not acted on the State's plan for attaining the 1997 24-hour standard.

EPA thus has not yet approved or proposed to approve the following: (1) the State's full plan for the 1997 24-hour standard; (2) the State's full plan, with the exception of the inventory, for the 1997 annual standard; and (3) the State's contingency measures associated with the 2006 and 2012 standards. EPA's neglect of the San Joaquin Valley is an administrative and environmental justice travesty. It is also a plain violation of the Agency's mandatory duties under the Clean Air Act.

The Clean Air Act provides that if EPA finds a state has failed to develop and timely submit a required SIP, the Administrator must adopt a FIP covering each unapproved aspect of the SIP

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<sup>18</sup> 85 Fed. Reg. 44,192 (July 22, 2020).

<sup>19</sup> *Id.* at 44,192-93.

<sup>20</sup> *See* 86 Fed. Reg. at 38,652. EPA proposed to approve the plan's emissions inventories and to disapprove all other aspects of the plan, including the comprehensive precursor demonstration, five percent annual emission reductions demonstration, best available control measures demonstration, reasonable further progress demonstration, quantitative milestone demonstration, and contingency measures. *Id.*

<sup>21</sup> *Id.* at 38,673.

<sup>22</sup> *See* San Joaquin Valley Air Pollution Control Dist., *Attainment Plan Revision for the 1997 Annual PM<sub>2.5</sub> Standard* (July 20, 2021), [http://www.valleyair.org/Workshops/postings/2021/08-19-21\\_1997-pm-plan/Attainment-Plan-Revision-for-the-1997-Annual-PM2.5-Standard.pdf](http://www.valleyair.org/Workshops/postings/2021/08-19-21_1997-pm-plan/Attainment-Plan-Revision-for-the-1997-Annual-PM2.5-Standard.pdf).

<sup>23</sup> 86 Fed. Reg. 49,100 (Sept. 1, 2021).

within two years.<sup>24</sup> EPA's nondiscretionary obligation to adopt a FIP within two years of the effective date of the findings of failure to submit reflects Congress's goal to establish "statutory teeth" to enforce the submission and attainment deadlines.<sup>25</sup> Because EPA's two-year deadline expired on January 7, 2021, a federal district court would be authorized to order the EPA Administrator to take the required steps to fulfill this duty.<sup>26</sup>

EPA has already admitted that its failure to adopt a FIP violates the Act, but it has shown no sign that it is preparing a FIP or outlining any sort of strategy for actually cleaning the air in the Valley.<sup>27</sup> We fear that EPA is planning to evade its FIP obligations by approving the Valley's existing and forthcoming SIP submissions, which are nothing more than continuations of inadequate strategies that have failed Valley residents for decades.

It is beyond time for EPA to intercede and adopt a FIP or outline the elements of a SIP that would be adequate to attain the national standards.<sup>28</sup> The undersigned, as well as other groups and residents that work and live in the Valley, would be more than willing to assist in that exercise, as they know all too well the deficiencies in the Valley's air quality regulations that need to be addressed. At a minimum, an adequate FIP or SIP would close loopholes for oil and gas operations, require real emission reductions at mobile source magnet facilities, impose meaningful controls at industrial agricultural facilities (including controls on ammonia emissions), address emissions from gas-fired appliances, and require feasible controls on wood burning across the Valley.

For years, Valley residents and public health groups have offered examples of better controls that the District and EPA have chosen to ignore. Pulling these ideas together into an affirmative vision that EPA could adopt itself or provide to Valley authorities does not have to be a daunting exercise. We urge EPA to take this opportunity to listen to impacted residents and to finally focus its considerable resources on solving, instead of excusing, the Valley's air quality problems.

Should EPA fail to do so, or should it fail to otherwise fully discharge its mandated duties under section 110(c)(1) within 60 days of the postmark date of this letter, the parties listed below intend to commence a civil action to enforce EPA's nondiscretionary duty to adopt a FIP. As

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<sup>24</sup> 42 U.S.C. § 7410(c)(1).

<sup>25</sup> *Nat. Res. Def. Council, Inc. v. E.P.A.*, 22 F.3d 1125, 1131 (D.C. Cir. 1994).

<sup>26</sup> *See Oklahoma v. U.S. E.P.A.*, 723 F.3d 1201, 1224 (10th Cir. 2013) ("[T]he appropriate remedy [for failure to adopt a FIP after two years] is simply a suit to compel agency action ..."); *New York v. Pruitt*, No. 18-CV-406 (JGK), 2018 WL 2976018, at \*2 (S.D.N.Y. June 12, 2018) (discussing EPA's acknowledgment that it was under a mandatory duty to adopt FIP and how, therefore, "the Court has jurisdiction over a citizen suit seeking to require the EPA to perform that non-discretionary duty"); *see also Montana Sulphur & Chem. Co. v. U.S. E.P.A.*, 666 F.3d 1174, 1190-91 (9th Cir. 2012) (listing "a suit to compel agency action" as a remedy for "EPA inaction" while discussing the termination of the two-year FIP clock).

<sup>27</sup> 86 Fed. Reg. at 38,673.

<sup>28</sup> *See* 42 U.S.C. §§ 7410(c), 7602(y) (outlining possible elements of a FIP); *id.* § 7509(d)(2) (authorizing EPA to prescribe measures in SIP following failure to attain).

required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

Association of Irrigated Residents  
29389 Fresno Ave.  
Shafter, CA 93263

Committee for a Better Shafter  
209 Golden West Ave.  
Shafter, CA 93263

Central California Environmental Justice  
Network  
4991 E. McKinley Ave., Ste. 109  
Fresno, CA 93727

Medical Advocates for Healthy Air  
5919 E. Robinson Ave.  
Fresno, CA 93727

Comité Progreso de Lamont  
9812 San Fernando St.  
Lamont, CA 93241

National Parks Conservation Association  
777 6th St. N.W., Ste. 700  
Washington, D.C. 20001

Committee for a Better Arvin  
1241 Bear Mountain Blvd., Ste. C  
Arvin, CA 93203

Sierra Club  
2101 Webster St., Ste. 1300  
Oakland, CA 94612

We are legal counsel for the above-named organizations in this matter. Please feel free to contact us to further discuss the basis for this claim or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to Stacey Geis, Managing Attorney for Earthjustice's California Regional Office, using the contact information indicated below.

Sincerely,



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