



February 11, 2022

Michael Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
regan.michael@epa.gov

Sent via email to regan.michael@epa.gov and via Certified Mail

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) and 42 U.S.C. § 7410(k)(2)-(4) for Failure to Take Final Action for State Implementation Plan Elements Under the 2008 and 2015 Ozone NAAQS

Dear Administrator Regan:

On behalf of the Center for Biological Diversity and the Center for Environmental Health (collectively, “Environmental Groups”), we hereby give notice of intent to file suit against you for “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.”¹

Specifically, EPA is in violation of its duties under the Clean Air Act by failing to:

1. take final action on State Implementation Plan (“SIP”) submittals for the Dallas-Fort Worth 2008 ozone national ambient air quality standard (“NAAQS”) nonattainment area, pursuant to 42 U.S.C. § 7410(k)(2)-(4) (see Table 1, below);
2. take final action on a SIP submittal for the Eastern Kern Air Pollution Control District 2008 ozone NAAQS, pursuant to 42 U.S.C. § 7410(k)(2)-(4) (see Table 2, below); and
3. take final action on a SIP revision for the Denver Metro/North Front Range 2015 ozone NAAQS nonattainment area, pursuant to 42 U.S.C. § 7410(k)(2)-(4) (see Table 3, below).

I. Ground-Level Ozone Pollution is Harmful to Public Health and the Environment

EPA must remedy its violation of this mandatory duty to better protect public health and native ecosystems from ozone’s harmful effects. According to EPA’s exhaustive scientific review, ground-level ozone pollution—commonly referred to as smog²—causes “adverse health effects

¹ 42 U.S.C. § 7604(a)(2); 40 C.F.R. § 54.

² See, e.g., EPA, “Ground-level ozone basics,” <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics> (“Ozone at ground level is a harmful air pollutant, because of its effects on people and the environment, and it is the main ingredient in “smog.”).

that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity,” such as emergency department visits and hospital admissions.³ A recent peer-reviewed medical study found that even short-term exposure to high levels of ground-level ozone increases the risk of death.⁴ Those most at risk from ozone pollution are children and older adults; people who are regularly active outside, such as laborers; and individuals with pre-existing lung and heart diseases such as asthma.⁵

Ozone is also harmful to vegetation and ecosystems.⁶ Ozone can be especially harmful to sensitive vegetation—including trees such as the black cherry, quaking aspen, white pine, and ponderosa pine—during the growing season.⁷ Ozone pollution can also indirectly harm soils, water, and wildlife, and their associated ecosystems, leading to diminished clean air and water.⁸ And ozone pollution also contributes to the climate crisis, as ozone is a greenhouse gas and ozone pollution also hinders plant growth throughout a plant’s lifecycle, thereby shrinking the carbon sequestration potential of plants.⁹

II. EPA Failed to Make Findings of Failure to Submit for Required SIP Elements Required Under the 2008 and 2015 Ozone Standards

EPA is required to determine whether a SIP submittal is administratively complete.¹⁰ If EPA has not made a completeness finding six months after a SIP submittal, the submittal will be deemed complete by operation of law.¹¹ EPA then has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within twelve months of the submittal either being deemed, or found, administratively complete.¹²

On August 23, 2019, EPA classified the Dallas-Fort Worth, Texas area as in “Serious” nonattainment for the 2008 ozone NAAQS.¹³ All elements of that area’s nonattainment SIP were due by no later than August 3, 2020, with the exception for RACT measures not tied to

³ 73 Fed. Reg. 16,436 (March 27, 2008); *see also* EPA, “Health Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

⁴ “Increased exposure to ozone may increase the risk of death,” *Medical News Today* (Feb. 2020), <https://www.medicalnewstoday.com/articles/increased-exposure-to-ozone-may-increase-the-risk-of-death#Ozone-pollution>, citing Ana M. Vicedo-Cabrera, et al., “Short term association between ozone and mortality: global two stage time series study in 406 locations in 20 countries,” *BMJ* 368 (Feb. 2020), <https://www.bmj.com/content/368/bmj.m108>.

⁵ 73 Fed. Reg. 16,436, 16,440.

⁶ EPA, “Ecosystem Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution>.

⁷ *Id.*

⁸ 73 Fed. Reg. 16,436, 16,485-86.

⁹ *Id.* 16,486; *see generally* “Biological Carbon Sequestration,” UC Davis, <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/>.

¹⁰ 42 U.S.C. § 7410(k)(1)(B).

¹¹ *Id.*

¹² *Id.* § 7410(k)(2).

¹³ 84 Fed. Reg. 44,238 (Aug. 23, 2019).

attainment, which were due March 23, 2021.¹⁴ Dallas-Fort Worth submitted the SIP elements listed in Table 1, below, by no later than May 13, 2020. This submittal was complete no later than November 13, 2020. EPA has proposed rules approving the SIP submittals.¹⁵ As of the date of this letter, it has been more than twelve months since the SIP elements for Dallas-Fort Worth listed in Table 1 were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve these SIP elements, as required under 42 U.S.C. § 7410(k)(2)–(4). EPA is therefore in violation of its nondiscretionary duty under the CAA.

Table 1

Area	Elements (2008 Ozone NAAQS)	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
Dallas-Fort Worth, TX	<ul style="list-style-type: none"> • Emissions Inventory • Contingency Measures for Attainment • Contingency Provisions for Reasonable Further Progress (“RFP”) Milestones • I/M Enhanced • Non-attainment New Source Review (“NSR”) for Serious • RFP for Serious 	Nov. 13, 2020	Nov. 13, 2021

On August 22, 2018, the California Air Resources Board submitted to EPA Eastern Kern APCD rule 425.3, Portland Cement Kilns. This submittal was found or deemed complete by no later than February 22, 2019. As of the date of this letter, it has been more than twelve months since Rule 425.3 was deemed or found administratively complete (see Table 2, below). EPA has not taken final action to approve, disapprove, or conditionally approve this SIP elements, as required under 42 U.S.C. § 7410(k)(2)–(4). EPA is therefore in violation of its nondiscretionary duty under the CAA.

Table 2

¹⁴ *Id.* at 44,245 (“The EPA is finalizing August 3, 2020, as the due date for Serious area SIP revisions, including RACT measures tied to attainment.”); *id.* at 44,246 (“EPA is finalizing a due date for SIP revisions for RACT measures not tied to attainment of 18 months from the effective date of this final action, as explained further below.”).

¹⁵ *See* 86 Fed. Reg. 11,913, 11,914-15 (March 1, 2021) (explaining that EPA proposed approving the I/M Enhanced and Non-attainment New Source Review SIP elements submitted to EPA on May 13, 2020); *see also* 85 Fed. Reg. 64,084 (Oct. 9, 2020) (explaining that EPA proposed approving the Reasonable Further Progress element and Emissions Inventory submitted to EPA on May 13, 2020).

Area	Element (2008 Ozone NAAQS)	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
Eastern Kern Air Pollution Control District, CA	<ul style="list-style-type: none"> • Rule 425.3, Portland Cement Kilns 	Feb. 22, 2019	Feb. 22, 2020

On July 27, 2020, Colorado submitted a SIP revision for the 2015 ozone NAAQS for the Denver Metro/North Front Range Marginal nonattainment area covering nonattainment new source review (“NNSR”).¹⁶ This submittal was deemed or found to be complete by no later than January 27, 2021. On November 2, 2021, EPA proposed approving this SIP submittal.¹⁷ As of the date of this letter, it has been more than twelve months since Colorado’s NNSR submittal was deemed or found administratively complete (see Table 3, below). EPA has not taken final action to approve, disapprove, or conditionally approve this SIP revision, as required under 42 U.S.C. § 7410(k)(2)–(4). EPA is therefore in violation of its nondiscretionary duty under the CAA.

Table 3

Area	Element (2015 Ozone NAAQS)	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
Denver Metro/North Front Range, CO	<ul style="list-style-type: none"> • Marginal Nonattainment NNSR SIP revision 	Jan. 27, 2021	Jan. 27, 2022

III. Conclusion

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

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 Oakland, CA 94612
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¹⁶ 86 Fed. Reg. 60,434, 60,435 (Nov. 2, 2021).

¹⁷ *Id.* at 60,434.

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Center for Environmental Health
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While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

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

Thank you,

Victoria Bogdan Tejada

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