



July 12, 2022

**VIA CERTIFIED MAIL**

Administrator Michael S. Regan  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
regan.michael@epa.gov

**Re: Notice of Intent to Sue Under the Clean Air Act for Failure to Perform  
Nondiscretionary Duties Related to the 2012 Fine Particulate Matter NAAQS**

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 Biological Diversity and Center for Environmental Health intend to commence a civil action against Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”), for failing to perform several nondiscretionary duties under the Clean Air Act (“the Act”).<sup>1</sup> These nondiscretionary duties each pertain to the 2012 annual fine particulate matter National Ambient Air Quality Standards (“NAAQS”). Specifically, EPA has failed to carry out its mandatory duties to:

- Take final action under 42 U.S.C. § 7410(k)(2)–(4) on the serious nonattainment State Implementation Plan (“SIP”) elements submitted by the State of California for the Los Angeles-South Coast Air Basin, California (“South Coast”) nonattainment area within one year of the SIP elements being deemed administratively complete.
- Promulgate a Federal Implementation Plan (“FIP”) pursuant to 42 U.S.C. § 7410(c)(1) to give effect to the requirements of moderate nonattainment for the Imperial County, California moderate nonattainment area within two years of finding that California failed to submit a SIP for the area by the SIP deadline.
- Make final determinations regarding whether the Allegheny County, Pennsylvania; Plumas County, California; and Imperial County, California moderate nonattainment areas attained the 2012 fine particulate matter NAAQS by their attainment date within six months of that attainment date pursuant to 42 U.S.C. §§ 7509(c)(1) and 7513(b)(2), and publish notice of those final determinations in the Federal Register within six months of the attainment date pursuant to 42 U.S.C. §§ 7509(c)(2) and 7513(b)(2)(B).

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<sup>1</sup> 42 U.S.C. § 7604(a)(2).

## **I. PARTICULATE MATTER IS HARMFUL TO PUBLIC HEALTH AND THE ENVIRONMENT**

Timely implementation of the 2012 fine particulate matter NAAQS is critical. Fine particulate matter is the variant of particulate matter that poses the greatest risk to health.<sup>2</sup> According to EPA's scientific review, fine particulate matter pollution is linked to premature death, cardiovascular illness, and respiratory diseases, including lung cancer and asthma, among other harms.<sup>3</sup> EPA has not found a threshold under which fine particulate matter does not cause death and disease; there is no "safe" level of this pollutant.<sup>4</sup> In addition, EPA originally estimated that benefits from the 2012 NAAQS would reach up to \$9.1 billion,<sup>5</sup> but delayed implementation of the NAAQS translates into greater human exposure to this pollution and increased medical costs, ultimately reducing the overall monetized benefit.

Fine particulate matter is also a leading cause of haze, which impairs visibility all over the country, including in national parks and wilderness areas.<sup>6</sup> Further, this pollutant soils and corrodes historic monuments and buildings.<sup>7</sup> It also affects the functionality of solar panels.<sup>8</sup>

Additional delay in implementing the 2012 fine particulate matter NAAQS will cause these harms to human health and the environment to continue to accrue.

## **II. FAILURE TO TAKE FINAL ACTION ON THE UNRESOLVED SIP SUBMITTAL FOR THE SOUTH COAST SERIOUS NONATTAINMENT AREA**

California submitted a SIP to EPA for the South Coast serious nonattainment area on April 27, 2017.<sup>9</sup> The SIP included the following elements to fulfill the requirements of the area's serious nonattainment classification:

- Attainment Demonstration;
- Contingency Measures;
- Emission Inventory;
- BACM/BACT;<sup>10</sup>
- Reasonable Further Progress; and
- Quantitative Milestones.<sup>11</sup>

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<sup>2</sup> EPA, Particulate Matter (PM) Basics (May 26, 2021), <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

<sup>3</sup> 78 Fed. Reg. 3,086, 3,103–04 (Jan. 15, 2013).

<sup>4</sup> 71 Fed. Reg. 2,620, 2,635 (Jan. 17, 2006).

<sup>5</sup> 78 Fed. Reg. at 3,089 (estimating benefits based on a three-percent discount rate).

<sup>6</sup> *Id.* at 3,186–94.

<sup>7</sup> EPA, Integrated Science Assessment for Particulate Matter, ES-20, 13-77 to 13-81 (Dec. 2019).

<sup>8</sup> *Id.*

<sup>9</sup> EPA, Required State Implementation Plan Elements Dashboard (accessed July 1, 2022) (filter for "CA," "Attainment Plan/Maintenance Plan," "PM-2.5 (2012 Standard)," and "Los Angeles-South Coast Air Basin") [hereinafter "SPeCS for SIPs"].

<sup>10</sup> "Best Available Control Measures" and "Best Available Control Technology."

<sup>11</sup> EPA, SPeCS for SIPs (same filter criteria described above).

On October 27, 2017, the submittal was deemed administratively complete by operation of law.<sup>12</sup> As a result, the Act required EPA to approve or disapprove, either in full or in part, the submittal within 12 months, by October 27, 2018.<sup>13</sup> This date has passed, but EPA has not taken any final action on these serious SIP elements<sup>14</sup> and has therefore failed to perform its nondiscretionary duty.

### **III. FAILURE TO PROMULGATE A FIP FOR THE IMPERIAL COUNTY, CALIFORNIA MODERATE NONATTAINMENT AREA**

On April 6, 2018, EPA published its finding, effective May 7, 2018, that California had failed to submit SIP elements for the Imperial County moderate nonattainment area by the submittal deadline.<sup>15</sup> EPA found that California failed to submit the following SIP elements:

- Attainment Demonstration;
- Contingency Measures;
- Emission Inventory;
- RACM/RACT;<sup>16</sup>
- Reasonable Further Progress; and
- Quantitative Milestones.<sup>17</sup>

EPA's finding of failure to submit triggered a requirement that EPA promulgate a FIP to address this deficiency within two years of the effective date of the finding, by May 7, 2020, unless the state submitted, and EPA approved, the requisite SIP elements before then.<sup>18</sup> The May 7, 2020 FIP deadline has passed, yet EPA has not taken final action on a SIP submittal that gives effect to the moderate nonattainment requirements for Imperial County,<sup>19</sup> nor has EPA promulgated a FIP that does the same. Accordingly, EPA is in violation of this nondiscretionary duty.

### **IV. FAILURE TO MAKE AND NOTICE FINAL DETERMINATIONS AS TO WHETHER THE MODERATE NONATTAINMENT AREAS ATTAINED BY THEIR ATTAINMENT DATE**

The Act requires nonattainment areas classified as moderate for the 2012 fine particulate matter NAAQS to attain the NAAQS as expeditiously as practicable "but no later than the end of the sixth calendar year after the area's designation as nonattainment . . . ."<sup>20</sup> The Allegheny County, Pennsylvania; Imperial County, California; and Plumas County, California

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<sup>12</sup> *Id.*; *see also* 42 U.S.C. § 7410(k)(1)(B).

<sup>13</sup> 42 U.S.C. § 7410(k)(2)–(4).

<sup>14</sup> *See* EPA, SPeCS for SIPs (same filter criteria described above).

<sup>15</sup> 83 Fed. Reg. 14,759, 14,761 (Apr. 6, 2018).

<sup>16</sup> "Reasonably Available Control Measures" and "Reasonably Available Control Technology."

<sup>17</sup> 83 Fed. Reg. at 14,761.

<sup>18</sup> 42 U.S.C. § 7410(c)(1); *see also* 83 Fed. Reg. at 14,760.

<sup>19</sup> *See* EPA, SPeCS for SIPs (filter for "CA," "Attainment Plan/Maintenance Plan," "PM-2.5 (2012 Standard)," and "Imperial County").

<sup>20</sup> 42 U.S.C. § 7513(c)(1).

nonattainment areas were designated as nonattainment areas in 2015.<sup>21</sup> Therefore, these areas were required to attain by December 31, 2021, at the latest.<sup>22</sup> If the areas failed to attain by this date, they will be reclassified by operation of law to a “serious” nonattainment status, which will result in requirements that are more protective of public health and welfare.

Under 42 U.S.C. §§ 7509(c)(1) and 7513(b)(2), EPA must determine whether nonattainment areas attained the NAAQS by their attainment date no later than six months after that attainment date. EPA must also publish notice in the Federal Register of its determinations no later than six months after the attainment date under 42 U.S.C. §§ 7509(c)(2) and 7513(b)(2)(B). Given the December 31, 2021 attainment date for the Allegheny County, Imperial County, and Plumas County nonattainment areas, EPA was required to make and publish a final determination regarding their attainment status by June 30, 2022. This date has passed, but EPA has not made or published a final determination for these areas. Thus, EPA has failed to perform these mandatory duties.

## V. PARTIES GIVING NOTICE

As required by 40 C.F.R § 54.3(b), the full names and addresses of the persons giving notice are:

Center for Biological Diversity  
Attn: Ryan Maher  
1411 K Street NW, Suite 1300  
Washington, DC 20005

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

The Center for Biological Diversity and Center for Environmental Health would welcome the opportunity to resolve this matter without the need for litigation. Please contact the undersigned if you wish to discuss the contents of this notice letter or opportunities for resolution.

Respectfully submitted,

*/s/ Ryan Maher*

Ryan Maher  
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<sup>21</sup> 80 Fed. Reg. 2,205, 2,217–18 (Jan. 15, 2015).

<sup>22</sup> See 86 Fed. Reg. 12,263, 12,263–64 (Mar. 3, 2021).

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