
LAW OFFICE OF BRENT J. NEWELL

June 11, 2024

By Certified Mail, Return Receipt Requested

Michael Regan, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code ORA-1
San Francisco, CA 94105

Re: Clean Air Act Notice of Intent to Sue for Failure to Take Action on Heavy-Duty Inspection and Maintenance Regulation.

Dear Administrator Regan and Regional Administrator Guzman:

The Center for Community Action and Environmental Justice (“CCA EJ”) gives notice to the Environmental Protection Agency, Michael Regan, and Martha Guzman (collectively “EPA”) of CCA EJ’s intent to sue EPA for its failure to fulfill its mandatory duty to take final action to approve, disapprove, or partially approve/disapprove the Heavy-Duty Inspection and Maintenance Regulation (“Heavy-Duty I/M Regulation” or “Regulation”). CCA EJ sends this notice pursuant to section 304(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3. At the conclusion of the 60-day notice period, CCA EJ intends to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA’s failure to perform a non-discretionary duty.

CCA EJ is a progressive, base-building, non-profit organization bringing communities together to find opportunities for cooperation, agreement and problem solving in improving their social and natural environment. Using the lens of environmental health to achieve social change, CCA EJ works within communities to develop and sustain democratically based, participatory

decision-making that promotes involvement of a diverse segment of the community in ways that empower the community. CCAEJ advocates for improved air quality in the South Coast Air Basin and believes in a zero-emission future and in regenerative and sustainable communities.

Ozone and fine particulate matter (“PM2.5”) pollution remains a public health crisis in the South Coast Air Basin, which ranks among the most ozone and PM2.5-polluted air basins in the United States. Heavy-duty diesel trucks are one of the leading sources of ozone-forming and PM2.5-forming air pollution in the South Coast Air Basin. With respect to ozone, the South Coast is classified as an extreme nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (“NAAQS” or “standard”), an extreme nonattainment area for the 2015 8-hour ozone standard, and has failed to attain either of the revoked ozone standards (the 1-hour and 1997 8-hour ozone standards). With respect to PM2.5, the South Coast is classified as a moderate nonattainment area for the 1997 PM2.5 standards, a serious nonattainment area for the 2006 PM2.5 standard, and a serious nonattainment area for the 2012 PM2.5 standard.

Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also increases the risk of premature death, especially among older adults. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.¹

Short-term exposure to PM2.5 pollution causes premature death, decreases lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term exposure causes development of asthma in children, decreased lung function growth in children, increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.²

According to the American Lung Association, counties in the South Coast air basin rank among the worst in the United States for ozone and PM2.5 pollution. San Bernardino, Riverside, and Los Angeles counties are the first, second, and third most ozone-polluted counties in the

¹ AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2024 at 30-31, available at <https://www.lung.org/getmedia/dabac59e-963b-4e9b-bf0f-73615b07bfd8/State-of-the-Air-2024.pdf> (last visited June 4, 2024).

² *Id.* at 28-29.

United States.³ With respect to long-term exposure to PM2.5, San Bernardino, Riverside, and Los Angeles counties rank as the tenth, twelfth, and fourteenth most polluted counties.⁴

In 2019, the California Legislature successfully passed Senate Bill 210 (Leyva, Chapter 5.5, Statutes of 2019) into law. Senate Bill 210 directed the California Air Resources Board (“CARB”) to adopt a comprehensive heavy-duty truck inspection and maintenance program to more effectively reduced emissions from diesel trucks.⁵

On December 9, 2021, the California Air Resources Board (“CARB”) adopted the Heavy-Duty I/M Regulation.⁶ The Regulation would ensure that emission control systems on heavy-duty diesel trucks operate as designed and that owners of such trucks repair malfunctioning emission control systems. CARB described the Regulation as “one of the most critical measures in achieving near term federal attainment standards in the South Coast and San Joaquin Valley.”⁷ For the South Coast Air Basin, CARB estimates that the Heavy-Duty I/M Regulation would reduce NOx emissions by 8.4 tons per day in 2024, 19.6 tons per day in 2031, 22.1 tons per day in 2037, and 29.1 tons per day in 2050.⁸ CARB projects significant health benefits from the Regulation, estimating it would prevent 4,278 cardiopulmonary-related deaths, 1,556 hospital visits, and 2,171 emergency room visits in the South Coast Air Basin.⁹

On December 7, 2022, CARB submitted the Heavy-Duty I/M Regulation to EPA for review and inclusion in the State Implementation Plan.

EPA shall act on the Heavy-Duty I/M Regulation, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that EPA shall make a completeness finding within 60 days of the date that EPA receives a plan or plan revision. A plan or plan revision shall be deemed complete by operation of law if EPA fails to make a

³ *Id.* at 25.

⁴ *Id.*

⁵ Cal. Health & Safety Code § 44152.

⁶ CARB Resolution 21-29.

⁷ Initial Statement of Reasons at ES-12, October 8, 2021, available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2021/hdim2021/isor.pdf> (last visited June 4, 2024).

⁸ *Id.*

⁹ *Id.* at ES-15.

completeness finding within six months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

To date, EPA has not made a completeness finding and has not taken action on the Heavy-Duty I/M Regulation. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the Regulation no later than June 7, 2024. EPA's failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), has violated and continues to violate the Act.

Identity of the Noticing Party and its Attorney

CCA EJ

Ana Gonzalez, Executive Director
CCA EJ
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Attorney for CCA EJ

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Conclusion

Following the 60-day period, CCA EJ will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to CCA EJ's attorney.

Sincerely,



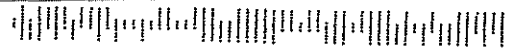
Brent Newell

cc: Governor Gavin Newsom (By Certified Mail, Return Receipt Requested)
1021 O Street, Suite 9000
Sacramento, CA 95814

Liane Randolph, Chair (By Certified Mail, Return Receipt Requested)
California Air Resources Board
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Sacramento, CA 95812

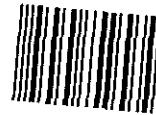
Steven Cliff, Executive Officer (By Certified Mail, Return Receipt Requested)
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JUN 18 2024 *DLC*

RETURN RECEIPT
REQUESTED