



July 6, 2018

Via Certified and Electronic Mail
Return Receipt Requested

Administrator
Environmental Protection Agency
Office of the Administrator: mail code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
E: pruit.scott@epa.gov; wheeler.andrew@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 intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (“Act”). As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), to issue “findings of failure to submit” addressing the State of California’s failure to develop and submit at least *four separate* nonattainment State Implementation Plan (“SIP”) revisions to combat persistent violations of the 1997, 2006, and 2012 national ambient air quality standards (“NAAQS”) for fine particulate matter (PM_{2.5}) in the San Joaquin Valley, California.

Inhalable airborne particles present serious air quality problems in many areas of the United States, including in the San Joaquin Valley. Numerous scientific studies have linked particle pollution exposure, especially exposure to PM_{2.5}, 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.¹ A recent report released by the American Lung Association ranked the San Joaquin Valley as the nation’s most polluted air basin,² with three cities—Visalia, Bakersfield, and Fresno—ranked in the top five of dirtiest cities in the country

¹ See *Health and Environmental Effects of Particulate Matter (PM)*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last updated June 20, 2018).

² See Press Release, Am. Lung Ass’n, State of the Air 2018 1 (April 18, 2018), <http://www.lung.org/local-content/california/documents/state-of-the-air/2018/sota-2018-statewide-press-english.pdf>.

for both annual and 24-hour PM_{2.5} pollution.³ In addition to harming health in the San Joaquin Valley, PM_{2.5} also is the main cause of unsightly “haze” within the area’s iconic National Parks: Yosemite, Sequoia, and Kings Canyon.

As you are aware, EPA first established the Annual and 24-hour PM_{2.5} NAAQS in 1997 after reviewing scientific data and public comment suggesting separate standards for coarse (PM₁₀) and fine (PM_{2.5}) particulate matter would lead to increased public health and welfare. 62 Fed. Reg. 38,652 (July 18, 1997). The agency lowered the 24-hour PM_{2.5} NAAQS in 2006, 71 Fed. Reg. 61,144 (Oct. 17, 2006), and the Annual PM_{2.5} NAAQS in 2012, 78 Fed. Reg. 3,086 (Jan. 15, 2013), further strengthening the standards. Air quality in the San Joaquin Valley currently fails to meet *any* of these standards—not even the original 1997 PM_{2.5} standards adopted more than 20 years ago. Because of repeated failures to comply with the PM_{2.5} NAAQS, EPA has designated the San Joaquin Valley as a Serious or Moderate nonattainment area with respect to each. These designations and related findings have triggered specific SIP revision requirements that California has failed to timely satisfy. California’s specific failures are as follows:

1997 PM_{2.5} Standards

1. Failure to submit a revised SIP after Serious nonattainment reclassification with respect to the 1997 standards.

Effective May 7, 2015, EPA reclassified the San Joaquin Valley as a Serious nonattainment area for the 1997 Annual and 24-hour PM_{2.5} NAAQS. 80 Fed. Reg. 18,528 (Apr. 7, 2015). As a result, EPA declared that “California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas. . . .” *Id.* Among other things, section 189 of the Act requires California to submit a revised SIP to EPA within 18 months of reclassification that includes provisions to ensure best available control measures (“BACM”) are implemented for control of direct PM_{2.5} and precursors to PM_{2.5}. 42 U.S.C. §§ 7413a(b)(1)(B), (b)(2); 80 Fed. Reg. at 18,531. Based on the effective date of reclassification, California should have submitted a revised SIP to EPA by November 7, 2016 (i.e., within 18 months). To date, California has failed to make the required submission.

2. Failure to submit a revised SIP after missing attainment deadline for achieving the 1997 standards.

Section 188(c) of the Act establishes attainment dates for areas designated as Moderate or Serious nonattainment for a particulate matter standard. 42 U.S.C. §§ 7513(c)(1)-(2). A Serious nonattainment area must achieve attainment “no later than the end of the tenth calendar year beginning after the area’s designation as nonattainment” *Id.* § 7513(c)(2). EPA initially designated the San Joaquin Valley as a nonattainment area under the 1997 PM_{2.5} standards effective April 5, 2005. *See* 70 Fed. Reg. 944, 956-57 (Jan. 5, 2005). Thus, under section 188(c), once EPA designated the San Joaquin Valley as a Serious nonattainment area, the Act required attainment with the 1997 Annual and 24-hour PM_{2.5} NAAQS by December 31, 2015.

³ *See* AM. LUNG ASS’N, STATE OF THE AIR 2018 18-19 (2018), <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>.

Accord 80 Fed. Reg. at 18,530 (“[A]s a result of our reclassification of the SJV area as a Serious nonattainment area, the latest permissible attainment date under section 188(c)(2) of the Act, for purposes of the 1997 PM_{2.5} standards in this area, is December 31, 2015.”)

On November 23, 2016, EPA found that the San Joaquin Valley failed to attain the 1997 PM_{2.5} standards by December 31, 2015, as required by law. 81 Fed. Reg. 84,481 (Nov. 23, 2016). This failure to meet the attainment deadline triggers a separate SIP requirement under the Act. Within 12 months of missing the attainment deadline, states must submit to EPA revised SIPs that provide for annual reductions “of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.” 42 U.S.C. § 7513a(d); 81 Fed. Reg. at 84,481. Thus, the Act required California to submit a revised SIP that outlined 5 percent annual reductions in PM_{2.5} emissions in the Valley by December 31, 2016 (i.e., 12 months after December 31, 2015). *Id.* at 84,482 (“California is required under CAA sections 179(d) and 189(d) to submit, by December 31, 2016, a revision to the SIP for the San Joaquin Valley.”). To date, California has failed to make the required submission.

2006 PM_{2.5} Standards

3. Failure to submit a revised SIP after Serious nonattainment reclassification with respect to the 2006 24-hour standard.

Effective February 19, 2016, EPA reclassified the San Joaquin Valley as a Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS. 81 Fed. Reg. 2,993 (Jan. 20, 2016). As with the reclassification from Moderate to Serious nonattainment for the 1997 PM_{2.5} standards, the reclassification for the 2006 24-hour PM_{2.5} NAAQS triggered a requirement for California to submit a revised SIP that included provisions to implement BACM by August 19, 2017 (i.e., within 18 months of reclassification for the 2006 standard). 42 U.S.C. §§ 7413a(b)(1)(B), (b)(2); *accord* 81 Fed. Reg. at 2,993 (“As a consequence of this reclassification, California must submit, no later than 18 months from the effective date of this reclassification, a Serious area attainment plan . . .”). To date, California has failed to make the required submission.

2012 PM_{2.5} Standards

4. Failure to revise SIP after Moderate nonattainment classification with respect to the 2012 Annual standard.

Effective April 15, 2015, EPA classified the San Joaquin Valley as a Moderate nonattainment area with respect to the 2012 Annual PM_{2.5} NAAQS. 80 Fed. Reg. 2,206, 2,217-18 (Jan. 15, 2015). For Moderate nonattainment areas, section 189 of the Act requires states to submit SIP revisions within 18 months of the designation that, *inter alia*, include provisions to implement reasonably available control measures to achieve compliance. 42 U.S.C. § 7513a(a)(1)(C), (2)(B). Thus, California should have submitted a revised SIP addressing nonattainment of the 2012 Annual PM_{2.5} NAAQS in the San Joaquin Valley by October 15, 2016 (i.e., 18 months after designation as a Moderate nonattainment area). To date, California has failed to make the required submission.

If a state fails to develop and timely submit a required SIP, Clean Air Act section 110(k)(1)(B) requires the Administrator to make a so-called “finding of failure to submit” no later than six months after the statutory submission deadline. *Id.* § 7410(k)(1)(B). EPA’s nondiscretionary obligation to make a “finding of failure to submit” within six months of the SIP submission deadline reflects Congress’s goal to establish “statutory teeth” to enforce the deadline. *Nat. Res. Def. Council, Inc. v. E.P.A.*, 22 F.3d 1125, 1131 (D.C. Cir. 1994). Failure by the State of California to submit any of the above required SIP revisions means that EPA should have issued four separate “findings of failure to submit” for the San Joaquin Valley no later than the following respective dates:

1. May 7, 2017, for the SIP revisions required after reclassification of the San Joaquin Valley as Serious nonattainment with respect to the 1997 Annual and 24-hour PM_{2.5} NAAQS.
2. June 30, 2017, for the SIP revisions required after the San Joaquin Valley missed the nonattainment deadline for achieving the 1997 Annual and 24-hour PM_{2.5} NAAQS.
3. February 19, 2018, for the SIP revisions required after reclassification of the Valley as Serious nonattainment with respect to the 2006 24-hour PM_{2.5} NAAQS.
4. April 15, 2017, for the SIP revisions required after classification of the Valley as Moderate nonattainment with respect to the 2012 Annual PM_{2.5} NAAQS.

Having not issued the mandatory findings, EPA is in violation of section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), with respect to all four overdue PM_{2.5} SIP revisions.

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue the four “findings of failure to submit” unless EPA has fully performed these mandatory duties within 60 days of the postmark date of this letter. As required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

National Park Conservation Association
777 6th Street N.W., Suite 700
Washington, D.C. 20001

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

Committee for a Better Arvin
1241 Bear Mountain Boulevard
Arvin, CA 93203

Committee for a Better Shafter
209 Golden West Avenue
Shafter, CA 93263

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me 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 me using the contact information indicated below.

Sincerely,

A handwritten signature in blue ink that reads "Colin C. O'Brien". The signature is written in a cursive style and is positioned above a horizontal line.

Colin C. O'Brien
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San Francisco, CA 94111
T: 415.217.2010
E: cobrien@earthjustice.org

cc via e-mail:

Mike Stoker, Regional Administrator, EPA Region 9
(stoker.michael@epa.gov; r9.info@epa.gov)

Gautam Srinivasan, Acting Associate General Counsel, Office of General Counsel, EPA Air and
Radiation Law Office (srinivasan.gautam@epa.gov)