

Administrator A. Wheeler
November 6, 2019

ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

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November 6, 2019

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Andrew Wheeler, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 1101A)
Washington, D.C. 20460

Re: Notice of Intent to Sue Pursuant to Section 304(b)(2) of the Clean Air Act for Failure of the Administrator to Act on Clean Air Act State Implementation Plan Submissions from California

Dear Administrator Wheeler:

I am writing on behalf of Our Children's Earth Foundation ("OCE") to notify you of ongoing violations of the federal Clean Air Act by you, as Administrator of the Environmental Protection Agency ("EPA"), for your failure to timely act, as required by Section 110(k)(2) of the Clean Air Act, 42 U.S.C. § 7410(k)(2), on numerous state implementation plan ("SIP") revisions submitted by the State of California. OCE intends to file a lawsuit seeking to address your failure to perform these nondiscretionary duties set forth in 42 U.S.C. § 7410(k)(2) 60 days from the date of this letter under Section 304 of the Clean Air Act, 42 U.S.C. § 7604.

The SIP submissions that you have failed to timely address include the following:

SIP Submission/Description	Date Submitted	Date Action was Due
Final 2003 State and Federal Strategy (Statewide Strategy) for the California State Implementation Plan	January 9, 2004	July 9, 2005
Update to the San Joaquin Valley PM10 Maintenance Plan	May 17, 2017	November 17, 2018
2016 Ozone Plan for the 2008 8-Hour Ozone Standard for the San Joaquin Valley Air Pollution Control	August 24, 2016	February 24, 2018

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District		
Eastern Kern Air Pollution Control District 2017 Ozone Attainment Plan for 2008 Federal 75ppb 8-Hour Ozone Standard	October 25, 2017	April 25, 2019
Feather River Air Quality Management District Reasonably Available Control Technology Analysis	September 29, 2014	March 29, 2016
Particulate Matter (PM10) in the Mono Basin Planning Area	July 11, 1995	January 11, 1997
Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard	November 14, 2017	May 14, 2019
Revision to the Infrastructure Portion of California's State Implementation Plan	January 19, 2016	July 19, 2017
Placer County Reasonably Available Control Technology State Implementation Plan Analysis	April 14, 2014	October 14, 2015
2008 8-Hour Ozone Attainment Plan for San Diego County	April 12, 2017	October 12, 2018
2008 8-Hour Ozone Reasonably Available Control Technology State Implementation Plan for San Diego County	April 12, 2017	October 12, 2018
Santa Barbara 2007 Clean Air Plan	February 29, 2008	August 29, 2009
South Coast Reasonably Available Control Technology State Implementation Plan	July 18, 2014	January 18, 2016
Placer County Reasonably Available Control Technology State Implementation Plan	July 18, 2014	January 18, 2016
Ventura County Reasonably Available Control Technology State Implementation Plan	July 18, 2014	January 18, 2016
San Joaquin County Reasonably Available Control Technology State Implementation Plan	July 18, 2014	January 18, 2016
Request for PM10 Redesignation and Maintenance Plan for the Coachella Valley	March 23, 2010	September 23, 2011

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A. Failure To Perform Nondiscretionary Duties

Under the Clean Air Act, states are required to submit SIPs to the EPA to implement, maintain, and enforce National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C. § 7410(a). The Clean Air Act further requires the Administrator to fully or partially approve or disapprove a SIP submission within twelve (12) months after such submission has been deemed complete, either by the Administrator or as a matter of law. *See* 42 U.S.C. § 7410(k)(2). If the EPA does not make a completeness finding, SIP submissions are deemed complete by operation of law six (6) months after submission. *See* 42 U.S.C. § 7410(k)(1)(B). Therefore, at most, EPA had eighteen (18) months within which to take final action to approve, disapprove, or partially approve or disapprove the aforementioned SIPs from the States of California. As of the date of this letter, EPA has failed to fully or partially approve or disapprove the aforementioned SIP submissions. Because EPA has failed to take action on the above SIP submissions by the statutory deadline, EPA is now in violation of Clean Air Act Section 110(k)(2), 42 U.S.C. § 7410(k)(2).

B. Notice of Intent to Sue

After the expiration of sixty (60) days from the date of this notice of intent to sue, OCE intends to file suit against you in federal court for your failure to act in accordance with, or fulfill, the duties described in Section A of this letter.

C. Identity of Persons Giving Notice and Their Counsel

As required by 40 C.F.R. § 54.3, the name and address of OCE, the noticing party, is as follows:

Our Children’s Earth Foundation
1625 Trancas St. #2218
Napa, CA 94558-9998
Tel: (510) 910-4535
E-mail: annie.beaman@gmail.com

OCE is a non-profit public benefit corporation with members throughout the United States, including many members in California, dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit. Part of OCE’s mission is to participate in environmental decisionmaking, enforce federal and state environmental laws (including via citizen suits), to reduce pollution, and to educate the public concerning environmental laws and their enforcement.

OCE has retained the following legal counsel to represent it in this matter:

Christopher A. Sproul, Esq.
Environmental Advocates
5135 Anza Street
San Francisco, CA 94121

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Tel: (415) 533-3376
Fax: (415) 358-5695
E-mail: csproul@enviroadvocates.com

D. Offer to Negotiate

During the sixty (60) day notice period, OCE is willing to discuss effective measures to correct your failure to comply with your nondiscretionary duties and to discuss any information bearing upon this notice. If you wish to pursue such discussions prior to litigation, we request that you expeditiously initiate them so that these discussions may be completed before the end of the sixty (60) day notice period. OCE does not intend to delay the filing of a complaint in federal court if the discussions fail to resolve these matters within the sixty (60) day notice period, and it intends to seek all appropriate relief, including injunctive relief and all costs of litigation, including, but not limited to, attorneys' fees, expert witness fees, and other costs.

We believe this notice provides information sufficient for you to determine the mandatory duty we allege you have failed to perform. If, however, you have any questions, please feel free to contact us for clarification.

We look forward to hearing from you.

Sincerely,



Christopher Sproul
Environmental Advocates
Counsel for Our Children's Earth Foundation