



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

August 11, 2020

Andrew R. Wheeler
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to approve or disapprove a state implementation plan submittal under 42 U.S.C. § 7410(k)(2) and for failure to make determinations of whether areas have attained by their attainment date under 42 U.S.C. § 7509(c).

Dear Administrator Wheeler:

On behalf of the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club, I am writing to inform you that they intend to file suit against you for “a failure of the Administrator [of the United States Environmental Protection Agency (EPA)] to perform any act or duty under [the Clean Air Act] which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). As detailed below, EPA has failed to undertake several mandatory duties related to sulfur dioxide (SO₂) pollution in numerous areas.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of SO₂. Exposure to SO₂ in even very short time periods—such as [five minutes](#)—has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. EPA has also determined that exposure to SO₂ pollution [can aggravate existing heart disease](#), leading to increased hospitalizations and premature deaths.

It is now more critical than ever for EPA to stop its illegal delays in ensuring there are effective plans in place to address air pollution. Numerous studies have shown that air pollution results in worse outcomes for people who have COVID-19 and similar diseases. See e.g. Xiao Wu et al., Exposure to air pollution and COVID-19 mortality in

the United States (April 2020). The Wu study looked at fine particulate matter, which SO₂ is a precursor to.

SO₂ also contributes to the formation of [acid rain](#), which damages trees, crops, historic buildings, and monuments, and alters the acidity of both soils and water bodies. Acute and chronic exposures to SO₂ lead to [foliar injury, decreased photosynthesis, and decreased growth of vegetation](#). EPA's draft Integrated Review Plan acknowledged that oxides of sulfur (SO_x) and oxides of nitrogen (NO_x) have a potential to [negatively affect endangered species](#). EPA's Integrated Science Assessment even identifies [four federally listed endangered species](#) — three “endangered species in the genus Isoetes” and the endangered green pitcher-plant (*Sarracenia oreophila*) — that are adversely affected by SO_x pollution. The U.S. Fish and Wildlife Service (FWS) has already identified many other federally protected species that are [negatively affected by atmospheric pollution from SO_x](#).

In addition, because SO₂ emissions may be transmitted long distances, they contribute to [visibility impairment problems](#) in many national parks and wilderness areas.

EPA has previously found “that current levels of oxides of nitrogen and sulfur are [sufficient to cause acidification](#) of both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse[.]” 77 Fed. Reg. 20,218, 20,241-42 (April 3, 2012).

[SO_x also facilitates mercury methylation](#). This creates the [form of mercury](#) which is especially dangerous to humans and wildlife.

On June 2, 2010, EPA revised the primary SO₂ National Ambient Air Quality Standard (NAAQS) by establishing a new one-hour standard at a level of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 ppb. The primary SO₂ NAAQS was set at this level in order to protect public health from the serious threats posed by short-term exposure to SO₂.

Due to both the more stringent numerical limit and shorter averaging time as compared to the previous SO₂ NAAQS, the 2010 SO₂ NAAQS is far more protective of human health than the prior SO₂ NAAQS and promises huge health benefits. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year will be prevented by the new standard.

Timely implementation of the new NAAQS is critical. Considering the scientific evidence, each year implementation of the one-hour SO₂ NAAQS is delayed, 5,900

more people will die prematurely and 54,000 asthma attacks will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 75 ppb SO₂ NAAQS is up to \$36 billion dollars. Those individuals who suffer from health impacts caused by exposure to SO₂ will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the one-hour SO₂ NAAQS will go unrealized. Further, the ability of those individuals to enjoy everyday activities such as exercise, school, and work will continue to be negatively impacted.

I. FAILURE TO APPROVE OR DISAPPROVE STATE IMPLEMENTATION PLAN SUBMISSION

Illinois submitted a state implementation plan (SIP) to EPA for the Alton Township SO₂ nonattainment area on December 3, 2018 with the following elements: Attainment Demonstration, Contingency Measures, Emission Inventory, Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable Further Progress (RFP).¹ Because EPA did not determine by June 3, 2019 whether the SIP submittal met the minimum statutory criteria, Illinois's SIP submittal was "deemed by operation of law" to meet the minimum statutory criteria on June 3, 2019. See 42 U.S.C. § 7410(k)(1)(B). As a result, EPA was required to approve or disapprove Illinois's SIP submittal for Alton township either in full or in part by June 3, 2020. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform this mandatory duty for the Alton Township SO₂ nonattainment area.

II. FAILURE TO MAKE DETERMINATIONS OF WHETHER AREAS HAVE ATTAINED BY THEIR ATTAINMENT DATES

No later than 6 months after the attainment date for a nonattainment area, EPA has a mandatory duty to determine whether an area has attained the NAAQS and publish a notice in the Federal Register of that determination. 42 U.S.C. § 7509(c).

EPA designated all of the areas listed in Table 1 below nonattainment for the 2010 SO₂ NAAQS effective October 4, 2013. 78 Fed. Reg. 47,191 (Aug. 5, 2013). Therefore, these areas had an attainment date of no later than October 4, 2018. See 42 U.S.C. § 7514a(a). As a result, EPA had a mandatory duty to determine whether these areas attained by the attainment date and publish notice of such finding by no later than April 4, 2019. See 42 U.S.C. § 7509(c). EPA has failed to perform this mandatory duty for the areas listed in Table 1.

¹ Status of SIP Required Elements for Illinois Designated Areas, EPA, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/il_elembypoll.html#so2_2010_1730 (last updated on July 21, 2020).

TABLE 1

State	Designated Area
Arizona	Hayden (parts of Gila County and Pinal County)
	Miami (part of Gila County)
Indiana	Southwest Indiana (parts of Daviess County and Pike County)
Iowa	Muscatine (part of Muscatine County)
Louisiana	St. Bernard Parish
Michigan	Detroit (part of Wayne County)
Missouri	Jackson County (part)
Tennessee	Sullivan County (part)
Wisconsin	Rhineland (part of Oneida County)

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

The Center for Biological Diversity
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Oakland, CA 94612
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While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

Administrator Wheeler
August 11, 2020
Page 5

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

Sincerely,

A handwritten signature in blue ink that reads "Ashley Palomaki". The signature is written in a cursive, flowing style.

Counsel for Center for Biological Diversity,
Center for Environmental Health, and Sierra
Club.