



October 14, 2021

Michael Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
regan.michael@epa.gov

Sent via certified mail and email to regan.michael@epa.gov

Re: Clean Air Act Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2) and 42 U.S.C. § 7410(k)(2) for Failure to Take Final Action for State Implementation Plan Elements Required for the West Mojave Desert Under the 2008 Ozone NAAQS

Dear Administrator Regan:

On behalf of the Center for Biological Diversity and the Center for Environmental Health (collectively, "Environmental Groups"), we hereby give notice of intent to file suit against you for "failure of the Administrator [of the United States Environmental Protection Agency ("EPA")] to perform any act or duty under this chapter which is not discretionary with the Administrator."¹ Specifically, EPA is failing to take final action on a State Implementation Plan ("SIP") elements submittals for the West Mojave 2008 ozone national ambient air quality standard ("NAAQS") nonattainment area, pursuant to 42 U.S.C. § 7410(k)(2)-(4). EPA must remedy this violation of its mandatory duty to better protect the public and natural systems from the harmful effects of ground-level ozone, commonly referred to as smog.

I. Ground-Level Ozone Pollution is Harmful to Public Health and the Environment

EPA must remedy its violation of this mandatory duty to better protect public health and native ecosystems from ozone's harmful effects. According to EPA's exhaustive scientific review, ground-level ozone pollution—commonly referred to as smog²—causes "adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity," such as emergency department visits and hospital admissions.³ A

¹ 42 U.S.C. § 7604(a)(2); 40 C.F.R. § 54.

² See, e.g., EPA, "Ground-level ozone basics," <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics> ("Ozone at ground level is a harmful air pollutant, because of its effects on people and the environment, and it is the main ingredient in "smog."").

³ 73 Fed. Reg. 16,436 (March 27, 2008); see also EPA, "Health Effects of Ozone Pollution," <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

recent peer-reviewed medical study found that even short-term exposure to high levels of ground-level ozone increases the risk of death.⁴ Those most at risk from ozone pollution are children and older adults; people who are regularly active outside, such as laborers; and individuals with pre-existing lung and heart diseases such as asthma.⁵

Ozone is also harmful to vegetation and ecosystems.⁶ Ozone can be especially harmful to sensitive vegetation—including trees such as the black cherry, quaking aspen, white pine, and ponderosa pine—during the growing season.⁷ Ozone pollution can also indirectly harm soils, water, and wildlife, and their associated ecosystems, leading to diminished clean air and water.⁸ And ozone pollution also contributes to the climate crisis, as ozone is a greenhouse gas and ozone pollution also hinders plant growth throughout a plant’s lifecycle, thereby shrinking the carbon sequestration potential of plants.⁹

II. EPA Violated the Clean Air Act by Failing to Take Final Action for SIP Contingency Measure Elements Required for the West Mojave Desert

Under the Clean Air Act (“CAA”), after EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions that provide for, among other things, attainment of the NAAQS within certain prescribed periods that vary depending on the severity of nonattainment.

EPA is required to determine whether a SIP submittal is administratively complete.¹⁰ If EPA has not made a completeness finding six months after a SIP submittal, the submittal will be deemed complete by operation of law.¹¹ EPA then has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within twelve months of the submittal either being deemed, or found, administratively complete.¹²

On May 21, 2012, EPA classified the West Mojave Desert area, covering parts of Los Angeles and San Bernardino Counties in California, as “Severe-15” nonattainment for the 2008 ozone

⁴ “Increased exposure to ozone may increase the risk of death, Medical News Today (Feb. 2020), <https://www.medicalnewstoday.com/articles/increased-exposure-to-ozone-may-increase-the-risk-of-death#Ozone-pollution>, citing Ana M. Vicedo-Cabrera, et al., “Short term association between ozone and mortality: global two stage time series study in 406 locations in 20 countries,” *BMJ* 368 (Feb. 2020), <https://www.bmj.com/content/368/bmj.m108>.

⁵ 73 Fed. Reg. 16,436, 16,440.

⁶ EPA, “Ecosystem Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution>.

⁷ *Id.*

⁸ 73 Fed. Reg. 16,436, 16,485-86.

⁹ *Id.* 16,486; *see generally* “Biological Carbon Sequestration,” UC Davis, <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/>.

¹⁰ 42 U.S.C. § 7410(k)(1)(B).

¹¹ *Id.*

¹² *Id.* § 7410(k)(2).

NAAQS.¹³ According to EPA, the contingency measure SIP elements for the 2008 ozone NAAQS were administratively complete no later than June 11, 2019.¹⁴

As of the date of this letter, it has been more than twelve months since the contingency measure SIP submittal elements for the West Mojave Desert were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the contingency measures as required under 42 U.S.C. § 7410(k)(2) – (4). EPA is therefore in violation of its nondiscretionary duty under the CAA.

Table 1 lists 2008 ozone NAAQS nonattainment SIP submittal elements which EPA has failed to act on by the Clean Air Act’s statutory deadline.

Table 1

Area	Elements	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
West Mojave Desert	Contingency Measures VOC and NOX	June 11, 2019	June 11, 2020
	Contingency Provisions for RFP Milestones	June 11, 2019	June 11, 2020

III. Conclusion

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

The Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Attn: Victoria Bogdan Tejada
Ph: 724.317.7029
Email: vbogdantejada@biologicaldiversity.org

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Kaya Allan
Email: kaya@ceh.org

¹³ 77 Fed. Reg. 30,088 (May 21, 2012).

¹⁴ EPA, Required State Implementation Plan Elements Dashboard, https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html (searching for “West Mojave Desert” and “2008 ozone standard”, and entry for “Contingency Provisions for RFP Milestones 182(c)(9)”). See also 86 Fed. Reg. 24,809, 24,811 (May 10, 2021).

Notice of Intent – Clean Air Act 42 U.S.C. § 7410(k)(2)
2008 Ozone NAAQS – West Mojave Desert, “Severe-15” Area
October 14, 2021
Page 4

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

The Environmental Groups and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file or amend a complaint.

Thank you,

Victoria Bogdan Tejada

Victoria Bogdan Tejada
Staff Attorney, Climate Law Institute
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Ph: 724.317.7029
Email: vbogdantejada@biologicaldiversity.org

Center for Biological Diversity
1212 Broadway
Ste 800
Oakland, CA 94612



NE
14

Michael Regan
Administrator,
US EPA
1200 Pennsylvania Ave NW
Washington, DC 20460

7020 1290 0000 1787 0147

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



7020 1290 0000 1787 0147

20460-


Small text at the top of the envelope, including "EPA" and "10/19/2021 8:07:55 AM".

To: **REGAN, MICHAEL
S.**

Mailstop 1101A
Building: ARN
Department ADMINISTRATOR



70201280000017870147

10/19/2021 8:07:55 AM