



CENTER for BIOLOGICAL DIVERSITY

VIA CERTIFIED MAIL

February 2, 2022

Michael S. Regan
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 for Failure to Complete a Mandatory Review of the Secondary National Ambient Air Quality Standards for Sulfur Oxides, Nitrogen Oxides, and Particulate Matter, to Make Such Revisions to the Sulfur Oxides, Nitrogen Oxides, and Particulate Matter National Ambient Air Quality Standards as May Be Appropriate, to Promulgate Such New National Air Quality Standards for Sulfur Oxides, Nitrogen Oxides, and Particulate Matter as May Be Appropriate, and to Publish Notice of Such Actions in the Federal Register

Dear Administrator Regan:

On behalf of the Center for Biological Diversity and Center for Environmental Health, I am writing to provide you with notice that we intend to sue you for your failure to complete a mandatory review of the secondary National Ambient Air Quality Standards (NAAQS) for Sulfur Oxides (SO_x), Nitrogen Oxides (NO_x), and particulate matter (PM), to revise the SO_x, NO_x, and PM NAAQS as may be appropriate, to promulgate such new NAAQS for SO_x, NO_x, and PM, and to publish notice of such actions in the Federal Register. Under 42 U.S.C. § 7409(d)(1), you have a non-discretionary duty to review, and as appropriate, revise the NAAQS for SO_x, NO_x, and PM and, if necessary, promulgate new NAAQS for SO_x, NO_x, and PM. Additionally, the promulgation of new or revision to NAAQS must be published in the Federal Register. See 42 U.S.C. §§ 7408(d), 7607(d). We intend to bring a suit sixty days from the date of this letter, or shortly thereafter, under section 304 of the federal Clean Air Act, 42 U.S.C. § 7604, for your failure to perform the non-discretionary duties outlined in 42 U.S.C. §§ 7408(d), 7409(d)(1), & 7607(d). The suit will seek injunctive and declaratory relief, the cost of litigation, and may seek other relief.

Section 109 of the Clean Air Act (42 U.S.C. § 7409) requires EPA to promulgate secondary NAAQS for pollutants that “may reasonably be anticipated to endanger ... welfare”. 42 U.S.C. § 7408. “[E]ffects on welfare include[], but [are] not limited to effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage

to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.” 42 U.S.C. § 7602(h).

Under section 109, “at five-year intervals” the Administrator “shall complete a thorough review of ... the national ambient air quality standards promulgated under this section and shall make such revisions in such ... standards and promulgate such new standards as may be appropriate”. 42 U.S.C. § 7409(d)(1). Despite this clear requirement, it has been more than five years since EPA last completed such a review of the secondary NAAQS for SO_x, NO_x, and particulate matter.

Sulfur oxides are a group of gases formed primarily from the combustion of fuel containing sulfur, such as coal. SO_x are also released during the manufacture of metals and in some oil refining processes. SO₂ is the sulfur oxide that EPA has used as an indicator since first promulgating NAAQS for SO₂ in 1971. *See* 36 Fed. Reg. 8,186.

Nitrogen oxides, such as NO₂, are highly reactive gases emitted primarily through the combustion of fossil fuels in mobile and stationary sources. NO_x are a precursor of ground-level ozone and fine particulate matter pollution. NO_x emissions also play a role in the accumulation of excess nitrates in drinking water, the eutrophication of aquatic ecosystems and nitrification of soils, global climate change, increases in toxic pollutant levels, and the depletion of the ozone layer. 70 Fed. Reg. 8888-89. EPA has used NO₂ as the indicator for NO_x since first promulgating NAAQS for NO₂ in 1971. *See* 36 Fed. Reg. 8,186.

Both NO_x and SO_x contribute to the acidification of freshwater and terrestrial ecosystems. U.S. Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter –Ecological Criteria, October 2020 (2020 ISA) at ES-13. Acidification of aquatic habitats decreases species richness and affects organisms “at all trophic levels,” which results in the loss of “culturally and recreationally important [fish] species.” *Id.* at ES-14. In terrestrial habitats, acidification leads to a decline in plant health, including decreases in cold tolerance, suppression of seed regeneration, and increases mortality. *Id.*

EPA’s last review of the secondary NAAQS for SO_x and NO_x, where EPA concluded that the current standards were adequate, was completed no later than June 4, 2012. 77 Fed. Reg. 20218 (April 3, 2012). According to the clear statutory deadlines, such a review should have been completed by no later than June 4, 2017. Thus, EPA’s ongoing failure to complete this review and to make necessary revisions to the secondary NAAQS for SO_x and NO_x, runs contrary to section 109(d)(1) of the Clean Air Act. *See* 42 U.S.C. § 7409(d)(1).

Particulate matter is a mixture of inhalable solid and liquid particles in the air, and there are separate standards for different particle types. PM is separated into PM₁₀, particles with diameters 10 micrometers or smaller, and PM_{2.5}, particles with diameters 2.5 micrometers and smaller, which are the type that pose the greatest risk to health. “Particulate Matter (PM) Pollution –Particulate Matter Basics” (last accessed Dec. 3, 2021), available at <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>. Sources of PM_{2.5} emissions

include industrial activities, motor vehicles, and fuel combustion. Integrated Science Assessment for Particulate Matter, December 2019 (2019 ISA) at ES-5. Ecological effects of PM include acidification of aquatic ecosystems. Integrated Science Assessment for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter –Ecological Criteria, October 2020 (2020 ISA) at ES-5.

EPA's last review of the secondary NAAQS for PM, which resulted in a revision of the primary standards and retention of the current secondary standards, was completed no later than March 18, 2013. 78 Fed. Reg. 3085 (Jan. 15, 2013). The statutory deadline to review the secondary NAAQS for PM was March 18, 2018, which EPA failed to meet. By not completing this mandatory review, EPA has failed to comply with section 109(d)(1) of the Clean Air Act. *See* 42 U.S.C. § 7409(d)(1).

In keeping with the requirements of federal regulations, you are hereby notified that the full names and addresses of the persons giving the notice are:

The Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Attn: Robert Ukeiley
Tel: (720) 496-8568

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612

However, if you wish to discuss this matter, please contact the undersigned counsel at the address indicated below.

The Center for Biological Diversity, the Center for Environmental Health, and their counsel prefer to resolve this matter without the need for litigation. Therefore, we look forward to you contacting us to resolve this matter. However, if we do not hear from you in 60 days, we will be forced to assume that you are not interested in settling this matter and will file our complaint.

Sincerely,

s/ Robert Ukeiley

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