



January 7, 2022

Mr. Michael Regan, Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator: mail code 1101A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
regan.michael@epa.gov

By Email and Certified Mail

**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit**

Dear Administrator Regan:

This letter is submitted on behalf of the following organizations to notify you pursuant to 42 U.S.C. § 7604(b) of the Clean Air Act that these organizations intend to bring suit for the U.S. Environmental Protection Agency's failure to perform nondiscretionary duties under the Act:

Texas Environmental Justice  
Advocacy Services  
900 N. Wayside Drive  
Houston, TX 7701

Air Alliance Houston  
2520 Caroline St., Ste. 100  
Houston, TX 77004

Sierra Club  
2101 Webster St., Ste. 1300  
Oakland, CA 94612

Center for Biological Diversity  
1536 Wynkoop St., Ste 421  
Denver, CO 80202

Citizens for Pennsylvania's Future  
610 North Third Street  
Harrisburg, PA 17101

Clean Air Council  
135 S. 19th St, Ste. 300  
Philadelphia, PA 19103

As further specified below, the EPA has failed to carry out its nondiscretionary duty under 42 U.S.C. § 7410(a)(2)(D)(i)(I) and (c)(1) to issue federal implementation plans for four states within two years of EPA's finding that those states failed to submit legally adequate state implementation plans addressing interstate ozone pollution.

### **STATUTORY BACKGROUND**

The Clean Air Act requires EPA to set national ambient air quality standards for certain pollutants that endanger public health or welfare, including ozone. 42



U.S.C. §§ 7408, 7409. EPA must set these standards at a level that protects public health with “an adequate margin of safety.” *Id.* § 7409(b). The Clean Air Act also requires that states “prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national [] ambient air quality standard.” *Id.* § 7410(a)(2)(D)(i)(I). This provision of the Act addressing interstate pollution is commonly called the Good Neighbor Provision.

“[W]ithin 3 years” of promulgation of standards, states “shall . . . adopt and submit” to EPA a plan that implements the standards and satisfies the Good Neighbor Provision. 42 U.S.C. § 7410(a). Where EPA finds that a state has failed to submit an implementation plan or has submitted an inadequate plan, EPA must issue a federal implementation plan within two years, unless the state corrects its plan and EPA approves the plan or plan revision first. *Id.* § 7410(c)(1).

#### **EPA’S UNMET NONDISCRETIONARY DUTY**

EPA is in ongoing violation of its duty to issue federal interstate ozone plans for the following four states: New Mexico, Pennsylvania, Utah, and Virginia.

On October 26, 2015, EPA promulgated the 2015 ozone standard of 70 parts per billion, 80 Fed. Reg. 65,292, triggering states’ obligation to issue state plans “within 3 years.” 42 U.S.C. § 7410(a). More than four years later, on December 5, 2019, EPA found that seven states failed to submit adequate interstate ozone plans. 84 Fed. Reg. 66,614. Specifically, EPA found that five states—Maine, New Mexico, Pennsylvania, Rhode Island, and Virginia—failed to submit any plan addressing ozone transport, while two states—South Dakota and Utah—submitted incomplete plans. *Id.* This finding became effective on January 6, 2020, triggering EPA’s duty to issue federal interstate ozone plans for these seven states within two years, or by January 6, 2022. *Id.*; 42 U.S.C. § 7410(c)(1). EPA subsequently approved resubmitted plans for three of those states—South Dakota, Maine, and Rhode Island. 85 Fed. Reg. 67,653; 86 Fed. Reg. 45,870; 86 Fed. Reg. 70,409.

EPA is therefore in ongoing violation of its statutory obligation to promulgate federal interstate ozone plans for four states—New Mexico, Pennsylvania, Utah, and Virginia—within the Clean Air Act’s two-year deadline. *See* 42 U.S.C. § 7410(c)(1).



The above-listed organizations hereby give notice of their intent to file suit 60 days from the postmark of this letter to compel EPA to promptly issue a federal interstate ozone plan for these four states. Please contact us at your earliest convenience to discuss the resolution of these claims.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Riley".

Kathleen Riley  
Associate Attorney  
Neil Gormley  
Senior Attorney  
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1001 G St. NW, Suite 1000  
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*Counsel for Texas Environmental Justice  
Advocacy Services, Air Alliance Houston,  
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A handwritten signature in cursive script that reads "Ann Brewster Weeks".

Ann Brewster Weeks  
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*Counsel for Citizens for Pennsylvania's  
Future and Clean Air Council*

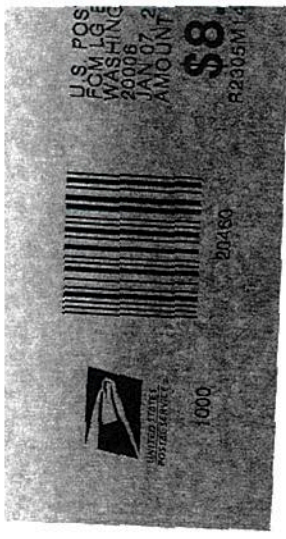




**CASE DRIVEN**  
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Sarah Elbakri  
 Litigation Assistant  
 Earthjustice

1001 G Street NW, Suite 1000  
 Washington, DC 20001

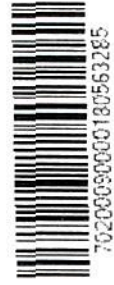


1/14/2022 8:45:27 AM



To: **REGAN, MICHAEL S.**

Mailstop 1101A  
 Building: ARN  
 Department ADMINISTRATOR



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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.  
**CERTIFIED MAIL**



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Mr. Michael Regan, Administrator  
 U.S. Environmental Protection Agency  
 Office of the Administrator: mail cod  
 1200 Pennsylvania Ave. NW