
LAW OFFICES OF BRENT J. NEWELL

May 16, 2022

By Certified Mail, Return Receipt Requested

Michael Regan, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code ORA-1
San Francisco, CA 94105

Re: Clean Air Act Notice of Intent to Sue for Failure to Take Action on the Innovative Clean Transit Regulation.

Dear Administrator Regan and Regional Administrator Guzman:

The Center for Community Action and Environmental Justice (CCA EJ) gives notice to the Environmental Protection Agency, Michael Regan, and Martha Guzman (collectively "EPA") of CCA EJ's intent to sue EPA for its failure to fulfill its mandatory duty to take final action to approve, disapprove, or partially approve/disapprove the Innovative Clean Transit regulation ("ICT regulation"). CCA EJ sends this notice pursuant to section 304(b) of the Clean Air Act ("Act"), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3. At the conclusion of the 60-day notice period, CCA EJ intends to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA's failure to perform a non-discretionary duty.

CCA EJ is a progressive, base-building, non-profit organization bringing communities together to find opportunities for cooperation, agreement and problem solving in improving their social and natural environment. Using the lens of environmental health to achieve social change, CCA EJ works within communities to develop and sustain democratically based, participatory decision-making that promotes involvement of a diverse segment of the community in ways that

empower the community. CCAEJ advocates for air quality in the South Coast Air Basin, and believes in a zero-emission future and in regenerative and sustainable communities.

Ozone and fine particulate matter (“PM2.5”) pollution remains a public health crisis in the South Coast Air Basin, which ranks among the most ozone and PM2.5-polluted air basins in the United States. With respect to ozone, the South Coast is classified as an extreme nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (“NAAQS” or “standard”), an extreme nonattainment area for the 2015 8-hour ozone standard, and has failed to attain either of the revoked ozone standards (the 1-hour and 1997 8-hour ozone standards). With respect to PM2.5, the South Coast is classified as a moderate nonattainment area for the 1997 PM2.5 standards, a serious nonattainment area for the 2006 PM2.5 standard, and a serious nonattainment area for the 2012 PM2.5 standard.

Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also increases the risk of premature death, especially among older adults. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.¹

Short-term exposure to PM2.5 pollution causes premature death, decreases lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term exposure causes development of asthma in children, decreased lung function growth in children, increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.²

According to the American Lung Association, counties in the South Coast air basin rank among the worst in the United States for ozone and PM2.5. San Bernardino, Riverside, and Los Angeles counties are the first, second, and third most ozone-polluted counties in the United States.³ With respect to long-term exposure to PM2.5, San Bernardino, Riverside, and Los Angeles counties rank as the ninth, eleventh, and sixteenth most polluted counties in the United States.⁴

¹ AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2022 at 24-25, available on the internet at <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf>.

² *Id.* at 21-23.

³ *Id.* at 19.

⁴ *Id.*

As part of the state's effort to reduce levels of ozone and PM2.5 in the ambient air, the California Air Resources Board adopted the ICT regulation on December 18, 2018.⁵ CARB describes the ICT regulation as follows:

The Innovative Clean Transit (ICT) regulation was adopted by CARB in 2019 and targets reductions in transit fleets by requiring transit agencies to gradually transition their buses to zero-emission technologies. ICT has helped to advance heavy-duty ZEV deployment, with buses acting as a beachhead in the heavy-duty sector. Based on the size of the transit agencies, they are categorized as small and large agencies. Starting calendar year 2023, large agencies follow the phase-in schedule to have a certain percentage of their new purchases as ZEB. For the small agencies, the start calendar year will be 2025. By 2030, all the agencies need to have 100 percent of their new purchases as ZEB. More details on the emissions benefit calculations can be found in Appendix L of the ICT's Staff Report.⁶

The ICT Regulation would result in eight avoided deaths in the Bay Area, five in the San Joaquin Valley, and thirty in the South Coast.⁷ The ICT Regulation would achieve greenhouse gas, NOx, and PM2.5 reductions statewide and emissions are projected to reach zero for NOx and PM2.5 by 2045.⁸

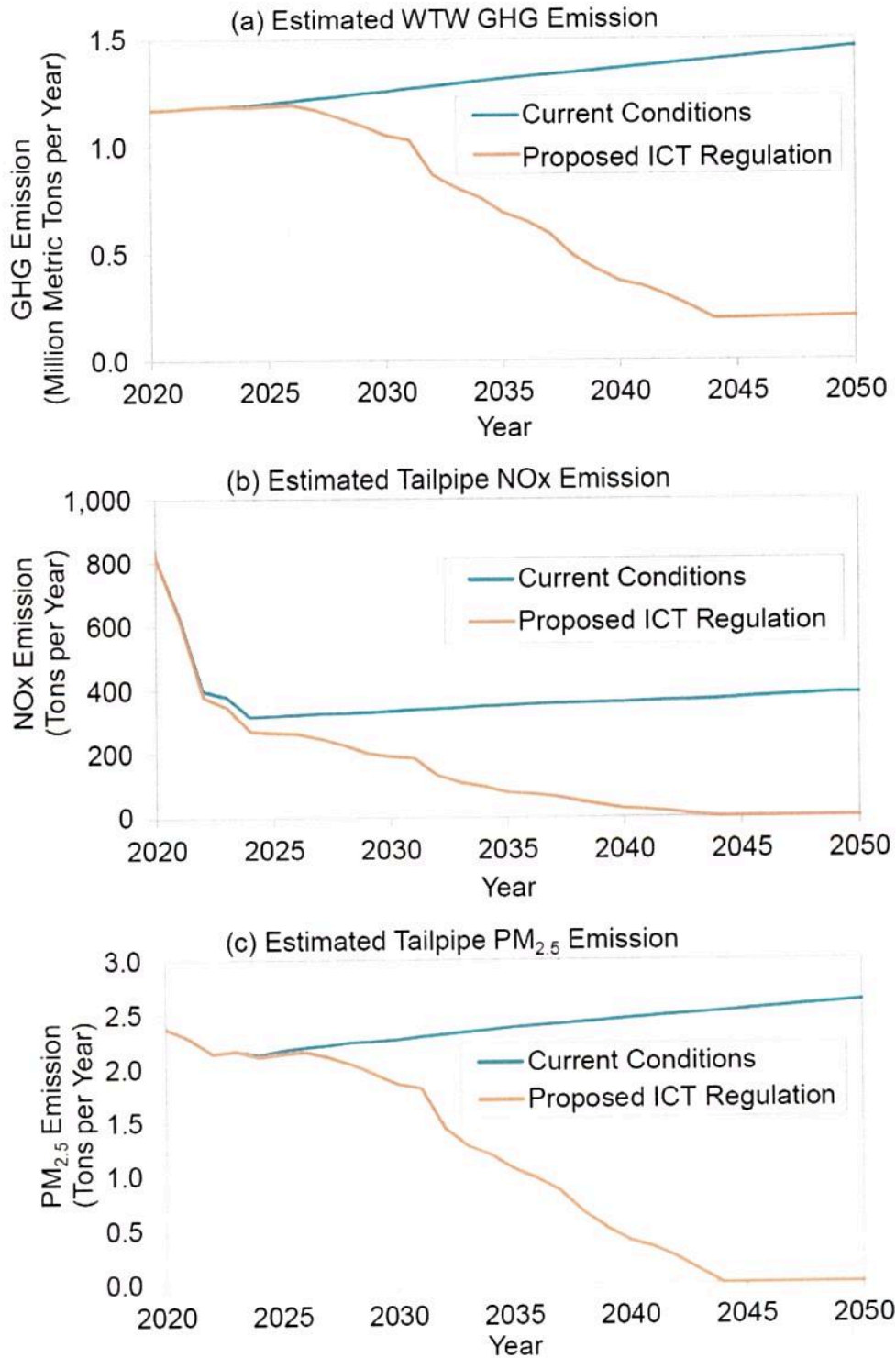
⁵ CARB Resolution 18-60.

⁶ Progress Report and Technical Submittal for the 2012 PM2.5 Standard San Joaquin Valley (citing Appendix L, Emissions Inventory Methods and Results for the Proposed Innovative Clean Transit Regulation) (October 19, 2021); *see also* Innovative Clean Transit (ICT) Regulation Fact Sheet, available at <https://ww2.arb.ca.gov/resources/fact-sheets/innovative-clean-transit-ict-regulation-fact-sheet>.

⁷ Staff Report and ISOR for the ICT regulation at Table V-1 (August 7, 2018).

⁸ *Id.* at IV-2 and Figure IV-1 (excerpted on page 4 of this letter).

Figure IV-1: Emission projections of WTW GHG, and tailpipe NO_x and PM_{2.5} under Current Conditions and Proposed ICT regulation



On February 12, 2020, the California Air Resources Board submitted the ICT regulation to EPA for review and inclusion in the State Implementation Plan.⁹

EPA shall act on the ICT regulation, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that EPA shall make a completeness finding within 60 days of the date that EPA receives a plan or plan revision. A plan or plan revision shall be deemed complete by operation of law if EPA fails to make a completeness finding within 6 months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

To date, EPA has failed to make a completeness finding and has not taken action on the ICT regulation. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the ICT regulation no later than August 13, 2021. EPA's failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), violates the Act.

Identity of Noticing Parties and their Attorneys

Center for Community Action and
Environmental Justice

Attorney for CCAEJ

Ana Gonzalez, Interim Executive Director
CCA EJ
P.O. Box 33124
Riverside, CA 92519
Telephone: (909)275-9812
Email: ana.g@ccaej.org

Brent Newell
Law Offices of Brent J. Newell
245 Kentucky Street, Suite A4
Petaluma, CA 94952
Telephone: (661) 586-3724
Email: brentjnewell@outlook.com

Conclusion

Following the 60-day period, CCAEJ will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to CCAEJ's attorney.

Sincerely,



Brent Newell

⁹ Letter from Richard Corey to John Busterud (February 12, 2020).