



July 5, 2022

Sent via United States certified mail

Administrator Michael S. Regan
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Regan.Micheal@epa.gov

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

Dear Administrator Regan:

On behalf of the Center for Biological Diversity and the Center for Environmental Health, we are writing to inform you that we 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 this chapter which is not discretionary with the Administrator” pursuant to 42 U.S.C. § 7604(a)(2).

EPA is in violation of its duties under the Clean Air Act by failing to:

1. take final action pursuant to 42 U.S.C. § 7410(k)(2)-(4) on State Implementation Plans submittals submitted by North Dakota; California; Colorado; and Pennsylvania;
2. promulgate a Federal Implementation Plan for the Sacramento (Placer) minor source New Source Review; and
3. take final action on the 2020 Ozone Reasonably Available Control Technology Demonstration for San Diego County, California.

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

EPA must remedy the violations of its mandatory duties to better protect the public and natural systems from the harmful effects of ground-level ozone, which is commonly referred to as smog, and other dangerous air pollutants.

Ozone pollution negatively affects human health. EPA found that ozone “posed multiple, serious threats to health” including: worsening respiratory and cardiovascular health, increased likelihood of early death, increased asthma-related hospital admissions, increased likelihood of children developing asthma as adolescents, and lower birthweights and decreased lung function in newborns.¹ The people most impacted by even “low” levels of ozone are “children and teens;

¹ American Lung Association, *Ozone*, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (summarizing the results of Table 1-1 in United States Environmental Protection Agency, Integrated Science

anyone 65 and older; people who work or exercise outdoors; people with existing lung diseases, such as asthma and chronic obstructive pulmonary disease; and people with cardiovascular disease.”²

Ozone is also harmful to vegetation and ecosystems.³ 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.⁴ Ozone pollution can also indirectly harm soils, water, and wildlife, and their associated ecosystems, leading to diminished clean air and water.⁵

Finally, ozone pollution contributes to the climate crisis. Ozone is a greenhouse gas and ozone pollution hinders plant growth throughout a plant’s lifecycle, thereby shrinking the carbon sequestration potential of plants.⁶

II. EPA Violated the Clean Air Act by Failing to Take Final Action for the 2008 Ozone National Ambient Air Quality Standards Nonattainment State Implementation Plan Submittal for Nonattainment Areas

EPA is required to determine whether a State Implementation Plan (“SIP”) submittal is administratively complete.⁷ If EPA has not made a completeness finding, a SIP submittal will be deemed complete by operation of law after six months of its submittal pursuant to 42 U.S.C. § 7410(k)(1)(B). EPA has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within twelve months of the submittal being deemed or found complete pursuant to 42 U.S.C. § 7410(k)(2)-(4).

A. North Dakota

North Dakota submitted a SIP submittal to EPA on August 3, 2020, which contains amendments to North Dakota Administrative Code and Article 33.1-15 (Air Pollution Control).⁸ Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than February 3, 2021. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than February 3, 2022. However, EPA has not taken final action. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

Assessment for Ozone and Related Photochemical Oxidants EPA/600/R-10/076F (2013) at 1-5) (hereinafter “American Lung Association”).

² *Id.*

³ EPA, *Ecosystem Effects of Ozone Pollution*, (last updated Mar. 8, 2022) <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution>.

⁴ *Id.*, see also EPA, *Integrated Assessment for Ozone and Related Photochemical Oxidants* EPA/600/R-20/012 (Apr. 2020) at 8-42, <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=348522>.

⁵ 73 Fed. Reg. 16436, 16485-86.

⁶ *Id.* at 16486; see generally UC Davis, *Biological Carbon Sequestration*, <https://climatechange.ucdavis.edu/climate/definitions/carbon-sequestration/biological>.

⁷ 42 U.S.C. § 7410(k)(1)(B).

⁸ 86 Fed. Reg. 41413, 41414 (Aug. 2, 2021).

B. Ventura County, California

EPA failed to take final action on the contingency measures for the Ventura County, California Serious 2008 ozone SIP.⁹ In 2017 and 2018, the California Air Resources Board submitted SIP revisions to address the nonattainment planning requirements for Ventura County for the 2008 ozone NAAQS.¹⁰ Further, there was a vacatur of the previous conditional approval, therefore EPA has failed to take final action on the contingency element submittals.¹¹

The “Final 2016 Ventura County Air Quality Management Plan” was submitted to EPA on April 11, 2017.¹² Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than October 11, 2017. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than October 11, 2018. However, EPA has not taken final action. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

CARB submitted the “2018 Updates to California State Implementation Plan” to EPA on December 5, 2018.¹³ Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than June 5, 2019. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than June 5, 2020. However, EPA has not taken final action. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

C. Colorado—New Source Review and Air Pollution Emission Notices

Colorado submitted a SIP submittal to EPA on May 13, 2020.¹⁴ The SIP revisions contain amendments to the Colorado’s New Source Review permitting program and Air Pollution Emission Notices.¹⁵ Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than November 13, 2020. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than November 13, 2021. However, EPA has not taken final action. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

⁹ 87 Fed. Reg. 24060, 24061 (Apr. 22, 2022); *see also* 85 Fed. Reg. 11814, 11814 (Feb. 27, 2020)

¹⁰ *Id.*

¹¹ *Id.* at 24060.

¹² 84 Fed. Reg. 70109, 70112 (Dec. 20, 2019).

¹³ *Id.*

¹⁴ 87 Fed. Reg. 16439, 16439 (Mar. 23, 2022).

¹⁵ *Id.*

D. Colorado—Section 182(c) Requirements

Colorado submitted a SIP to EPA on March 22, 2021.¹⁶ The SIP submittal addressed Clean Air Act Section 182(c) requirements for the Denver Metro/North Front Range Serious nonattainment area under the 2008 Ozone NAAQS.¹⁷ In a completeness determination letter dated June 2, 2021, EPA determined the SIP submittal fulfills the completeness criteria.¹⁸

Pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than June 2, 2022. However, EPA has not taken final action on Colorado's SIP to address Section 182(c). Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

E. Pennsylvania—Montour, LLC

Pennsylvania submitted SIP revisions to the EPA on March 9, 2020.¹⁹ The SIP revisions were submitted to establish and require reasonably available control technology (“RACT”) for nine major sources of volatile organic compounds and/or nitrogen oxides.²⁰ In a rulemaking on September 1, 2021, EPA approved source specific RACT determinations for some of the sources.²¹ However, EPA did not act on all sources. EPA failed to take final action on the RACT rule requirements for the 1997 and 2008 8-hour ozone NAAQS for the Montour, LLC facility in Pennsylvania.²²

Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than August 9, 2020. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than August 9, 2021. However, EPA has not taken final action on the RACT requirement for the Montour, LLC facility. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

III. EPA Violated the Clean Air Act by Failing to Promulgate a FIP for the 2008 Ozone NAAQS Nonattainment Area in Placer County, California

On April 20, 2020, EPA issued a final rule to finalize EPA's limited disapproval of a revision to the Placer County Air Pollution Control District portion of the California SIP.²³ The

¹⁶ Completeness Determination Letter from Carl Daly, Acting Director Air and Radiation Division, EPA Region 8 to Garry Kaufman, Division Director, Air Pollution Control Division Colorado Dep't of Pub. Health and Env't (Jun. 1, 2021) (on file with The Center for Biological Diversity).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 86 Fed. Reg. 48908, 48908 (Sept. 1, 2021).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 48909 fn. 4.

²³ 85 Fed. Reg. 21777, 21777 (Apr. 20, 2020).

revision concerns the area's New Source Review ("NSR") permitting program for new and modified sources of air pollution under section 110(a)(2)(C) of the Clean Air Act.²⁴

Pursuant to 42 U.S.C. § 7410(c)(1)(A), "the Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—finds that a State has failed to make a required submission."

EPA's limited disapproval became effective on May 20, 2020; therefore, no later than May 20, 2022, was the deadline for EPA to fulfill its mandatory duty to promulgate a FIP.²⁵

More than two years have passed since EPA's limited disapproval, and EPA has not promulgated a FIP for the Sacramento (Placer) minor source NSR. Therefore, Pursuant to 42 U.S.C. 7410(c)(1)(A), EPA is in violation of its mandatory duties by not promulgating a FIP.

IV. EPA Violated the Clean Air Act by Failing to Take Final Action for the 2020 Reasonably Available Control Technology Demonstration for the Ambient Air Quality Standards for Ozone in San Diego County, California

On December 29, 2020, California submitted to EPA the 2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County.²⁶

Pursuant to 42 U.S.C. 7410(k)(1)(B), the submittal was deemed administratively complete by no later than June 29, 2021. Therefore, pursuant to 42 U.S.C. § 7410(k)(2), EPA had a mandatory duty to take final action on the submittal by no later than June 29, 2022. However, EPA has not taken final action on the submission except for three negative declarations for Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products (EPA-450/2-78-029); Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials (EPA-453/R-08-004); Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (EPA-453/R-08-003); Table 3—Plastic Parts and Products, Table 4—Automotive/Transportation and Business Machine Plastic Parts, Table 5—Pleasure Craft Surface Coating, Table 6—Motor Vehicle Materials.²⁷ Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4) for failure to take final action on the 2020 RACT Demonstration Submittal for San Diego except with regard to the three negative declarations listed above.

V. Conclusion

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

²⁴ 85 Fed. Reg. 21777, 21777 (Apr. 20, 2020).

²⁵ *Id.*

²⁶ 87 Fed. Reg. 33697, 33697 (Jun. 3, 2022).

²⁷ *See* 87 Fed. Reg. 38,666 (Jun. 29, 2022).

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

The Center for Biological Diversity, the Center for Environmental Health, and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within sixty days about coming into compliance on the above-referenced violations. However, if you do not do so we will file a complaint.

Sincerely,



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