
LAW OFFICES OF BRENT J. NEWELL

May 18, 2023

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 Rule 2305, Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, South Coast Air Quality Management District.

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 Rule 2305, Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program (“Rule 2305”). 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, CCAEJ 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

¹ AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2023 at 26-27, available at <https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf> (last visited May 8, 2023).

² *Id.* at 23-25.

³ *Id.* at 21.

Angeles counties rank as the seventh, eighth, and twelfth most polluted counties in the United States.⁴

On May 7, 2021, the South Coast Air Quality Management District (“South Coast”) adopted Rule 2305. The South Coast designed the Rule to reduce NO_x and diesel PM_{2.5} emissions from diesel trucks associated with warehouses. In 2019, the warehouse sector in the South Coast accounted for approximately 49 tons per day of NO_x, roughly equal to the NO_x emissions from all stationary sources in the air basin. New warehouses and warehouse expansions have increased significantly since 2019, especially in San Bernardino County.

Rule 2305 requires warehouse operators to earn a specific annual number of points from a menu, a custom plan, or by paying fees into a mitigation fund. The number of points required depends on the number of diesel truck trips during each 12-month compliance period. Warehouse operators must submit annual reports to the South Coast. Warehouse owners must also submit reports to the South Coast. Over the first three years of Rule 2305 implementation, warehouses will be phased in based on warehouse size. The Rule also allows warehouse owners to “bank” excess points from a given compliance period for use in future compliance periods at the same warehouse or other warehouses under the control of the operator, subject to a three-year limit on points banked.

On August 13, 2021, the California Air Resources Board submitted Rule 2305 to EPA for review and inclusion in the State Implementation Plan.

EPA shall act on Rule 2305, 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 six months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

To date, EPA has not made a completeness finding and has not taken action on Rule 2305. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove Rule 2305 no later than February 13, 2023. EPA’s failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), has violated and continues to violate the Act.

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⁴ *Id.*

Identity of the Noticing Party and its Attorney

CCA EJ

Ana Gonzalez, Executive Director
CCA EJ
P.O. Box 33124
Riverside, CA 92519
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Email: ana.g@cca ej.org

Attorney for CCA EJ

Brent Newell
Law Offices of Brent J. Newell
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Petaluma, CA 94952
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Email: brentjnewell@outlook.com

Conclusion

Following the 60-day period, CCA EJ 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 CCA EJ's attorney.

Sincerely,



Brent Newell

cc: Governor Gavin Newsom (By Certified Mail, Return Receipt Requested)
1021 O Street, Suite 9000
Sacramento, CA 95814

Liane Randolph, Chair (By Certified Mail, Return Receipt Requested)
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Steven Cliff, Executive Officer (By Certified Mail, Return Receipt Requested)
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Wayne Nastri, Executive Officer (By Certified Mail, Return Receipt Requested)
South Coast AQMD
21865 Copley Drive
Diamond Bar, CA 91765

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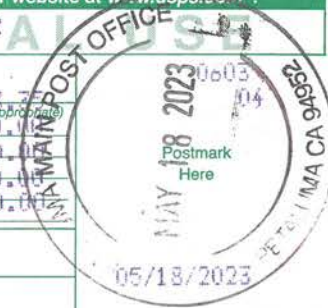
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Sent To Martha Guzman, RA USEPA
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 1200 Pennsylvania Ave, NW
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