



July 11, 2023

VIA CERTIFIED MAIL

Administrator Michael S. Regan
United States Environmental Protection Agency
William Jefferson Clinton Building
Mail Code:1101A
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 Primary National Ambient Air Quality Standards for Nitrogen Oxides, to Make Such Revisions to the Nitrogen Oxides National Ambient Air Quality Standards as May Be Appropriate, to Promulgate Such New National Air Quality Standards for Nitrogen Oxides 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, Sierra Club, and Center for Environmental Health, I am writing to provide you with notice that we intend to sue you for failing to complete a mandatory review of the primary National Ambient Air Quality Standards (NAAQS) for Nitrogen Oxides (NO_x), to revise the primary NO_x NAAQS as may be appropriate, to promulgate new primary NAAQS for NO_x as may be appropriate, 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 primary NAAQS for NO_x, and, if necessary, promulgate new NAAQS for NO_x. Additionally, notice of any revisions to such air quality criteria and notice of any new or newly modified NAAQS must be published in the Federal Register. *See* 42 U.S.C. §§ 7408(d), 7607(d).

We intend to bring a suit 60 days from the date of this letter, or shortly thereafter, under section 304(a)(2) of the federal Clean Air Act, 42 U.S.C. § 7604(a)(2), for your failure to perform the non-discretionary duties outlined in 42 U.S.C. §§ 7408(d), 7409(d)(1), and 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 primary NAAQS for criteria pollutants that “may reasonably be anticipated to endanger public health and welfare.” 42 U.S.C. § 7408. Section 109 further requires that “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 primary NAAQS for NO_x. EPA published the results of its most recent review of the primary NO_x NAAQS, which resulted in a conclusion not to revise, in the Federal Register on April 18, 2018. 83 Fed. Reg. 17,226 (April 18, 2018). This final action became effective on May 18, 2018, which was more than five years ago.

According to the clear statutory deadlines, EPA should have completed a review of the primary NO_x NAAQS no later than May 18, 2023. Thus, EPA’s ongoing failure to complete this review and to make necessary revisions to the primary NAAQS for NO_x means it is not fulfilling its mandatory duties under section 109(d)(1) of the Clean Air Act, 42 U.S.C. § 7409(d)(1), and under 42 U.S.C. §§ 7408(d) and 7607(d).

Nitrogen oxides are highly reactive gases emitted primarily through the combustion of fossil fuels in mobile and stationary sources. NO_x pollution leads to the formation of both ground-level ozone and fine particulate matter pollution. NO_x on its own is particularly harmful to the lungs. Even short-term exposure to nitrogen oxides impacts the respiratory system, aggravating asthma, and causing symptoms such as wheezing and difficulty breathing, often resulting in hospital admissions and emergency room visits. 75 Fed. Reg. 6,474, 6,480 (Feb. 9, 2010).

Long-term exposure can cause respiratory illness, particularly in children. *Id.* at 6,479. People with asthma, as well as children and the elderly, are at greater risk of adverse health effects. *Id.* at 6,481-82. 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. 8,888-89 (February 23, 2005).

In keeping with the requirements of 40 C.F.R. Part 54, you are hereby notified that the full names and addresses of the persons giving notice are:

Center for Biological Diversity
1411 K Street NW, Suite 1300
Washington, DC 20005
Attn: Ryan Maher
Tel: 781-325-6303

Center for Environmental Health
2201 Broadway, Suite 580
Oakland, CA 94612

Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612

However, if you wish to discuss this matter, please contact the undersigned counsel using the contact information provided below.

The Center for Biological Diversity, Sierra Club, and Center for Environmental Health prefer to resolve this matter without the need for litigation. Please contact the undersigned if you would like to discuss a path to resolution. If we do not hear from you within 60 days, we will be forced to assume that you are not interested in settling this matter and will file our complaint.

Sincerely,

/s/ Ryan Maher

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