



# EARTHJUSTICE

June 7, 2023

Michael S. Regan  
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U.S. Environmental Protection Agency  
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Martha Guzman  
Regional Administrator  
U.S. EPA Pacific Southwest, Region 9  
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**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit Regarding South Coast Warehouse Rule**

Dear Administrator Regan and Regional Administrator Guzman,

This letter is submitted on behalf of East Yard Communities for Environmental Justice (“EYCEJ”), People’s Collective for Environmental Justice (“PC4EJ”), Sierra Club, and Communities for a Better Environment (“CBE”) to notify you, pursuant to section 304(b) of the Clean Air Act, 42 U.S.C. § 7604(b), that these organizations intend to sue the U.S. Environmental Protection Agency for its failure to perform nondiscretionary duties under section 110(k) of the Act, 42 U.S.C. §§ 7410(k)(1)(B), (k)(2). Specifically, these organizations seek to compel EPA to perform its duty to act upon a revision to the state implementation plan to include the South Coast Air Quality Management District’s Rule 2305 (“Warehouse Indirect Source Rule”) to support future attainment of ozone and fine particulate matter standards in the Los Angeles-South Coast Air Basin (“South Coast”) nonattainment area, in accordance with the 2016 Air Quality Management Plan (“2016 AQMP”). To date, EPA has failed to act upon this update to California’s State Implementation Plan.

Warehouse pollution has reached a crisis level in the South Coast Air Basin. And EPA’s lack of action fails to acknowledge the dire circumstances borne by residents of the South Coast Air Basin due to this industry. The region is home to the largest port complex in the country, the San Pedro Bay Ports, which processes more than 40 percent of all goods imported to the United States. To serve this large port complex, hundreds of millions of square feet of warehouses have been built in the region. The South Coast Air Quality Management District’s (“South Coast AQMD”) Warehouse Indirect Source Rule was adopted to aid in quelling emissions from the warehouse industry. This rule will provide tangible benefits to people breathing the Los Angeles region’s notoriously polluted air.

*Need for the Warehouse Indirect Source Rule*

Over the past decade, the South Coast has seen unprecedented growth in the number of warehousing facilities, a critical stop for the movement of these goods. In the last five years, warehouse capacity in the

region has increased by an average of 50 million square feet per year.<sup>1</sup> The Inland Empire, in particular, has experienced a significant amount of development, with over 1 billion square feet of distribution centers. From 2000 to 2021, the number of warehouses in the Inland Empire more than quadrupled.<sup>2</sup> This boom in warehousing has come at a great cost to the health of South Coast residents. Diesel trucks traveling to and from warehouses in the South Coast, in addition to other dirty freight equipment, are a major source of harmful emissions, including diesel particulate matter. The highly profitable logistics industry is responsible for over half of all nitrogen oxide (NOx) pollution in the South Coast,<sup>3</sup> and trucks account for around 90 percent of all NOx emissions from warehouse operations.<sup>4</sup>

Absent reductions in emissions associated with warehouse facilities, the South Coast has no chance of attaining several national ambient air quality standards. The region is classified as an extreme nonattainment area for all federal ozone standards, and is also in serious nonattainment for federal fine particulate matter (PM2.5) standards.<sup>5</sup> NOx is a precursor pollutant to ozone, and both short- and long-term exposure to ozone is known to inflame and damage the airways and aggravate respiratory illnesses.<sup>6</sup> Ozone pollution is associated with school absences, reduced activity and productivity, and increased hospital and emergency room visits for respiratory issues.<sup>7</sup> PM2.5 exposure can also cause serious health effects, including aggravation of lung and heart diseases, asthma attacks, heart attacks, and premature deaths.<sup>8</sup> Many of these impacts are most acutely felt by our most vulnerable, including individuals with lung and heart disease, the elderly, and children.<sup>9</sup>

While warehouse pollution affects the entire South Coast region, communities living adjacent to warehouses are exposed to higher levels of pollution and thus bear disproportionate health burdens. Warehouse facilities are also overwhelmingly sited in low-income communities and communities of color, with nearly 70 percent of warehouse-adjacent communities in the South Coast being made up of people of color and nearly 50 percent experiencing poverty.<sup>10</sup> Communities living within half a mile of warehouses in the South Coast rank in the 80th percentile for pollution burdens, compared to the burden

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<sup>1</sup> Rachel Uranga, *Warehouse boom transformed Inland Empire. Are jobs worth the environmental degradation?*, L.A. Times, Feb. 5, 2023, <https://www.latimes.com/california/story/2023-02-05/warehouses-big-rigs-fill-inland-empire-streets>.

<sup>2</sup> Ngai Yeung & Augusta Saraiva, *Los Angeles Warehousing Mecca Halts Expansion Just as Needs Soar*, Bloomberg, Aug. 15, 2022, <https://www.bloomberg.com/news/articles/2022-08-15/los-angeles-warehousing-mecca-halts-expansion-just-as-needs-soar>.

<sup>3</sup> South Coast Air Quality Management District, Final Staff Report for Proposed Rules 2305 and 316 (May 2021), 14.

<sup>4</sup> *Id.* at 13-14.

<sup>5</sup> 40 C.F.R. § 81.305.

<sup>6</sup> 69 Fed. Reg. 23,858, 23,859 (Apr. 30, 2004).

<sup>7</sup> *Id.*

<sup>8</sup> 78 Fed. Reg. 3,086, 3,086 (Jan. 15, 2013).

<sup>9</sup> *Id.* at 3,104.

<sup>10</sup> South Coast Air Quality Management District, Final Socioeconomic Impact Assessment for Proposed Rules 2305 and 316 (May 2021), ES-2.

ranking of 61 percentile for the average community in the region.<sup>11</sup> Warehouse-proximate communities experience higher asthma rates and are at increased risk of heart attack as a result.<sup>12</sup>

### *Health Benefits of the Warehouse Indirect Source Rule*

Cleaning up warehouse operations is critical to reducing health burdens for communities living near warehouses and ensuring that all residents in the South Coast are able to breathe clean, healthy air.

The South Coast AQMD has estimated that the Warehouse Indirect Source Rule will reduce nitrogen oxide (NO<sub>x</sub>) pollution by 3,200 to 8,600 tons and particulate matter (PM) pollution by 48 to 64 tons from 2022 to 2031.<sup>13</sup> These emission reductions will result in 150 to 300 fewer deaths, 2,500 to 5,800 fewer asthma attacks, and 9,000 to 20,000 fewer work loss days during this time period, avoiding health costs between \$1.2 billion to \$2.7 billion.<sup>14</sup> Many of the health benefits from this rule will be realized in warehouse-adjacent communities that bear greater pollution burdens from warehouse operations.

### *Warehouse Indirect Source Rule Chronology*

On May 7, 2021, the South Coast Air Quality Management District adopted the Warehouse Indirect Source Rule, in accordance with statutory requirements under the federal Clean Air Act and state law, to reduce emissions in order to attain state and federal air quality standards and address the health impacts of warehouse pollution. On August 13, 2021, the California Air Resources Board submitted the South Coast Air Quality Management District's Warehouse Indirect Source Rule to EPA for inclusion in the California State Implementation Plan. *See* Submittal from Richard Corey to Deborah Jordan (Attachment A). The Warehouse Indirect Source Rule was adopted consistent with control measure MOB-03 of the South Coast Air Quality Management District's 2016 Air Quality Management Plan.<sup>15</sup> This regulation is integral to the Air District's strategy to attain the 1997 and 2008 8-hour ozone national ambient air quality standards. According to the 2016 AQMP, attainment of these standards will also allow the region to achieve attainment for all other federal and state ozone and particulate matter standards. Pursuant to CAA section 110(k), upon submission, EPA had 18 months, or until February 13, 2023, to approve the plan, disapprove the plan, or approve in part and disapprove in part.

EPA has declined to take any action and therefore failed to complete its nondiscretionary duty to approve, disapprove, or approve in part and disapprove in part the update to California's State Implementation Plan from the South Coast Air Quality Management District. As a result, EPA has been in violation of section 110(k) of the Act since February 13, 2023. Unless this deficiency is promptly addressed through a final action, EYCEJ, PC4EJ, Sierra Club, and CBE intend to file suit in federal district court sixty days after

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<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 5.

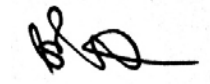
<sup>13</sup> South Coast Air Quality Management District, Appendix 1 to the Resolution for Final Environment Assessment for Proposed Rules 2305 and 316 (Apr. 2021), 60-61.

<sup>14</sup> *Id.*

<sup>15</sup> The 2016 AQMP can be found at the following link: <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/final2016aqmp.pdf?sfvrsn=15>.

your receipt of this letter. Please feel free to contact the counsel listed below to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

Sincerely,



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# Attachment A



Gavin Newsom, Governor  
Jared Blumenfeld, CalEPA Secretary  
Liane M. Randolph, Chair

August 13, 2021

Ms. Deborah Jordan  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 9  
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Dear Ms. Jordan:

The California Air Resources Board (CARB) is submitting to the U.S. Environmental Protection Agency (U.S. EPA) a revision to the California State Implementation Plan (SIP) from the South Coast Air Quality Management District (District). The revision consists of District Rule 2305, *Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program*. The District adopted the rule on May 7, 2021.

District Rule 2305 was adopted consistent with District control measure MOB-03 in the District's 2016 Air Quality Management Plan to reduce emissions from warehouse facilities in support of future attainment of ozone and fine particulate matter (PM<sub>2.5</sub>) standards.

Enclosed is CARB Executive Order S-21-012 adopting District Rule 2305 as a revision to the California SIP. This SIP submittal also includes the complete District package for Rule 2305 as submitted to CARB on June 4, 2021. To meet U.S. EPA's criteria for determining that rule submittals are administratively and technically complete, we have enclosed an evaluation of the effects of the rule on emissions, an evaluation of the rule's consistency with 40 CFR 51, and other supporting documentation provided to us by the District. Also enclosed is a letter from the California Attorney General Office, dated May 6, 2021, which was forwarded to the District by CARB and details the legality of the rule in support of District adoption.

If you have any questions, please contact Ms. Edie Chang, Deputy Executive Officer, at (916) 445-4383 or have your staff contact Dr. Michael Benjamin, Chief, Air Quality Planning and Science Division at (916) 201-8968.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. W. Corey", with a checkmark at the end.

Richard W. Corey, Executive Officer

Enclosures (19)

cc: See next page.

Ms. Deborah Jordan  
August 13, 2021  
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cc: (With Executive Order only)

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