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**LAW OFFICE OF BRENT J. NEWELL**

245 KENTUCKY STREET, SUITE A4  
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To: Martha Guzman, Regional Administrator  
U.S. EPA, Region 9  
75 Hawthorne Street  
Mail Code ORA-1  
San Francisco, CA 94105

SEP 18 2024

ORC



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## LAW OFFICE OF BRENT J. NEWELL

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September 6, 2024

*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 (1) to Make an Attainment Determination for the 1997 Annual PM2.5 National Ambient Air Quality Standard; and (2) to Take Final Action on the 2022 Ozone Plan and Staff Report.**

Dear Administrator Regan and Regional Administrator Guzman:

The Central California Environmental Justice Network, Little Manila Rising, Medical Advocates for Healthy Air, and Sierra Club (collectively "San Joaquin Valley Groups") give notice to the Environmental Protection Agency, Michael Regan, and Martha Guzman (collectively "EPA") of the San Joaquin Valley Groups' intent to sue EPA for its failure to fulfill its mandatory duties to take final action (1) to determine whether the San Joaquin Valley attained the 1997 annual PM2.5 National Ambient Air Quality Standard; and (2) to approve, disapprove, or partially approve/disapprove the San Joaquin Valley's plan to attain the 2015 8-hour ozone National Ambient Air Quality Standard.

EPA establishes National Ambient Air Quality Standards and ensures that California adopts strategies to attain those standards by the statutory deadlines. In other words, EPA must



take action to protect public health. In 1997, EPA established a standard for long-term exposure to fine particulate matter (PM<sub>2.5</sub>) known as the 1997 annual PM<sub>2.5</sub> standard and set the allowable limit at 15 µg/m<sup>3</sup>. The San Joaquin Valley has already failed twice to attain that standard by deadlines in 2015 and 2020. Recent data show that the Valley has once again failed to attain the standard by the 2023 deadline, yet EPA has not made a mandatory determination as to whether the Valley met the standard by the third deadline. A finding of failure to attain would trigger contingency measures to reduce more PM<sub>2.5</sub> pollution and require California to adopt a new plan to attain the standard.

In 2015, EPA established the most stringent ozone standard of 70 ppb measured over an 8-hour period. While California submitted a plan to EPA in early 2023 to meet that standard by the 2037 deadline for an extreme ozone nonattainment area, EPA has failed to review and take final action to approve or disapprove the plan. Approval of the plan makes its strategies federally enforceable by EPA and citizens. *See Committee for a Better Arvin v. EPA*, 786 F.3d 1169, 1179-1182 (9th Cir. 2015). Disapproval in whole or in part would require California to amend the plan to comply with the Clean Air Act and protect public health.

The San Joaquin Valley Groups send 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, the San Joaquin Valley Groups intend to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA’s failure to perform its non-discretionary duties.

The San Joaquin Valley has “long been ‘an area with some of the worst air quality in the United States,’ and it has repeatedly failed to meet air quality standards.” *Association of Irrigated Residents v. U.S. Environmental Protection Agency*, 10 F.4th 937, 944 (9th Cir. 2021) (quoting *Committee for a Better Arvin v. EPA*, 786 F.3d 1169, 1173 (9th Cir. 2015)). California regulators’ history of failure spans decades during which time EPA has found that the Valley has failed to attain several National Ambient Air Quality Standards by their respective deadlines.<sup>1</sup>

Ozone and fine particulate matter (“PM<sub>2.5</sub>”) pollution remains a public health crisis in the San Joaquin Valley. 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

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<sup>1</sup> See 66 Fed. Reg. 56476 (Nov. 8, 2001) (1-hour ozone standard failure to attain by 1999); 67 Fed. Reg. 48039 (July 23, 2002) (PM-10 standard failure to attain by 2001); 76 Fed. Reg. 82133 (December 30, 2011) (1-hour ozone standard failure to attain by 2010); 81 Fed. Reg. 84481 (November 23, 2016) (1997 24-hour and annual PM<sub>2.5</sub> standards failure to attain by 2015); 86 Fed. Reg. 67329 (Nov. 26, 2021) (disapproving 1997 annual PM<sub>2.5</sub> implementation plan because of failure to attain the standard by December 31, 2020).

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.<sup>2</sup>

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 respiratory and cardiovascular disease, and increased risk of death from heart attacks.<sup>3</sup>

According to the American Lung Association, counties in the San Joaquin Valley air basin rank among the worst in the United States for PM2.5. For short-term exposure to PM2.5, the Valley counties of Kern, Fresno, Kings, and Tulare rank as the first, second, fourth, and ninth most PM2.5-polluted counties, respectively.<sup>4</sup> With respect to long-term exposures, Kern, Tulare, Fresno, Kings, and Stanislaus rank as the second, third, fourth, sixth, and ninth most PM2.5-polluted counties, respectively.<sup>5</sup> For exposure to ozone, Tulare, Kern, and Fresno rank as the fourth, fifth, and sixth most ozone-polluted counties.<sup>6</sup>

#### **EPA Failure to Determine whether the San Joaquin Valley Attained the 1997 Annual PM2.5 National Ambient Air Quality Standard.**

EPA has failed to make a mandatory attainment determination by June 30, 2024. EPA designated the San Joaquin Valley as a serious PM2.5 nonattainment area in 2015. 80 Fed. Reg. 18528 (Apr. 7, 2015). EPA subsequently found that the Valley failed to attain the 1997 annual PM2.5 standard by the December 31, 2015 deadline. 81 Fed. Reg. 84481 (Nov. 23, 2016). A serious area failing to attain the standard by the deadline must submit a revised plan subject to section 189(d). 42 U.S.C. § 7513a(d); *see also* 89 Fed. Reg. at 55903. EPA disapproved the Valley's first section 189(d) plan because the Valley failed to attain the standard by the December 31, 2020 attainment deadline. 86 Fed. Reg. 67329 (Nov. 26, 2021). EPA approved the Valley's second section 189(d) plan and an attainment deadline of December 31, 2023. 88 Fed. Reg. 86581 (Dec. 14, 2023).

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<sup>2</sup> AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2024 at 30-31, available at <https://www.lung.org/getmedia/dabac59e-963b-4e9b-bf0f-73615b07bfd8/State-of-the-Air-2024.pdf> (last visited August 27, 2024).

<sup>3</sup> *Id.* at 28-29.

<sup>4</sup> *Id.* at 25.

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

<sup>6</sup> *Id.*



Current design value data show that the Valley has failed to attain the 1997 annual PM2.5 standard by the December 31, 2023 deadline. EPA data show PM2.5 design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, and 2021-2023 at 16.9  $\mu\text{g}/\text{m}^3$ , 20.3  $\mu\text{g}/\text{m}^3$ , 18.8  $\mu\text{g}/\text{m}^3$ , 18.8  $\mu\text{g}/\text{m}^3$ , and 16.2  $\mu\text{g}/\text{m}^3$  respectively, well above the 15  $\mu\text{g}/\text{m}^3$  design value necessary to attain the 1997 annual PM2.5 standard.<sup>7</sup>

EPA has a mandatory duty under sections 179(c)(1) and 188(b)(2) of the Clean Air Act to determine whether the San Joaquin Valley either attained or failed to attain the 1997 annual PM2.5 standard within six months of the December 31, 2023 attainment deadline, or June 30, 2024. 42 U.S.C. §§ 7509(c)(1), 7513(b)(2). EPA's failure to perform its non-discretionary duty under sections 179(c)(1) and 188(b)(2) of the Act, 42 U.S.C. §§ 7509(c)(1) and 7513(b)(2), has violated and continues to violate the Act.

#### **EPA Failure to Take Final Action on the 2022 Ozone Plan and the Staff Report.**

On December 15, 2022, the San Joaquin Valley Unified Air Pollution Control District adopted the 2022 Plan for the 2015 8-hour Ozone Standard ("2022 Ozone Plan").

On January 26, 2023, the California Air Resources Board ("CARB") approved the 2022 Ozone Plan and adopted the Staff Report entitled "CARB Review of the San Joaquin Valley 2022 Plan for the 70 ppb 8-Hour Ozone Standard" (hereafter "Staff Report"). The Staff Report includes a commitment by CARB to achieve an aggregate emission reduction in the San Joaquin Valley by 2037 of 25.3 tons per day of NOx and 4.6 tons per day of VOC.

On February 22, 2023, CARB submitted the 2022 Ozone Plan and the Staff Report to the EPA as a revision to the California State Implementation Plan ("SIP").

EPA shall act on the 2022 Ozone Plan and the Staff Report, 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).

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<sup>7</sup> See 2023 Design Value Reports, PM2.5 Design Values available at <https://www.epa.gov/air-trends/air-quality-design-values#report> (last visited August 27, 2024).

To date, EPA has not made a completeness finding and has not taken final action on the 2022 Ozone Plan and the Staff Report. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the 2022 Ozone Plan and the Staff Report no later than August 22, 2024. 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.

**Identity of the Noticing Parties and their Attorney:**

**Central California Environmental Justice Network**

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## Conclusion

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

Sincerely,



Brent Newell

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