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VIA CERTIFIED MAIL

February 25, 2025

Lee M. Zeldin
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Zeldin.Lee@epa.gov

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2)
for failure to take final action on SIP submittals under 42 U.S.C. §
7410(k)(2)-(4).

Dear Administrator Zeldin:

On behalf of the Center for Biological Diversity and the Sierra Club, I am writing to inform you that they 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.” 42 U.S.C. § 7604(a)(2). As detailed below, EPA has failed to undertake mandatory duties with regards to sulfur dioxide (SO₂) and ozone pollution in numerous areas.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of sulfur dioxide. Exposure to SO₂ in even very short time periods—such as [five minutes](#)—has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. EPA has also determined that exposure to SO₂ pollution [can aggravate existing heart disease](#), leading to increased hospitalizations and premature deaths.

SO₂ also contributes to the formation of [acid rain](#), which damages trees, crops, historic buildings, and monuments and alters the acidity of both soils and water bodies. Acute and chronic exposures to SO₂ lead to [foliar injury, decreased photosynthesis, and decreased growth of vegetation](#). EPA’s draft Integrated Review Plan acknowledged that oxides of sulfur (SO_x) and oxides of nitrogen (NO_x) have a potential to [negatively affect endangered species](#). EPA’s Integrated Science Assessment even identifies [four federally listed endangered species](#) — three “endangered species in the genus *Isoetes*”

and the endangered green pitcher-plant (*Sarracenia oreophila*)—that are adversely affected by SO_x pollution. The U.S. Fish and Wildlife Service (FWS) has already identified many other federally protected species that are [negatively affected by atmospheric pollution from SO_x](#).

In addition, because SO₂ emissions may be transmitted long distances, they contribute to [visibility impairment problems](#) in many national parks and wilderness areas.

EPA has previously found “that current levels of oxides of nitrogen and sulfur are [sufficient to cause acidification](#) of both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse[.]” 77 Fed. Reg. 20,218, 20,241-42 (April 3, 2012).

[SO_x also facilitates mercury methylation](#). This creates the [form of mercury](#) which is especially dangerous to humans and wildlife.

On June 2, 2010, EPA revised the primary SO₂ National Ambient Air Quality Standard (NAAQS) by establishing a new one-hour standard at a level of 75 parts per billion (ppb) which is met when the 3-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 ppb. The primary SO₂ NAAQS was set at this level in order to protect public health from the serious threats posed by short-term exposure to SO₂.

Due to both the more stringent numerical limit and shorter averaging time as compared to the previous SO₂ NAAQS, the 2010 SO₂ NAAQS is far more protective of human health than the prior SO₂ NAAQS and promises huge health benefits. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year will be prevented by the new standard.

Timely implementation of the new NAAQS is critical. Considering the scientific evidence, each year implementation of the one-hour SO₂ NAAQS is delayed, 5,900 more people will die prematurely and 54,000 asthma attacks will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 75 ppb SO₂ NAAQS is up to \$36 billion dollars. Those individuals who suffer from health impacts caused by exposure to SO₂ levels above the NAAQS will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the one-hour SO₂ NAAQS will go unrealized. Further, the ability of those individuals to enjoy everyday activities such as exercise, school, and work will continue to be negatively impacted.

As to ozone, according to EPA’s exhaustive scientific review, ground-level ozone pollution—commonly referred to as smog¹—causes “adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity,” such as emergency department visits and hospital admissions.² A recent peer-reviewed medical study found that even short-term exposure to high levels of ground-level ozone increases the risk of death.³ Those most at risk from ozone pollution are children and older adults; people who are regularly active outside, such as laborers; and individuals with pre-existing lung and heart diseases such as asthma.⁴

Ozone is also harmful to vegetation and ecosystems.⁵ 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.⁶ Ozone pollution can also indirectly harm soils, water, and wildlife, and their associated ecosystems, leading to diminished clean air and water.⁷ And ozone pollution also contributes to the climate crisis, as ozone is a greenhouse gas and ozone pollution also hinders plant growth throughout a plant’s lifecycle, thereby shrinking the carbon sequestration potential of plants.⁸

EPA’S FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS

Missouri submitted a state implementation plan (SIP) to EPA for the New Madrid County SO₂ nonattainment area on May 3, 2023 with the following elements: Attainment Demonstration, Contingency Measures, Emission Inventory, Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable Further Progress (RFP) and Nonattainment New Source Review (NSR).⁹ Because EPA did not determine by November 3, 2023 whether the SIP submittal met the minimum

¹ See, e.g., EPA, “Ground-level ozone basics,” <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics> (“Ozone at ground level is a harmful air pollutant, because of its effects on people and the environment, and it is the main ingredient in “smog.”).

² 73 Fed. Reg. 16,436 (March 27, 2008); see also EPA, “Health Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

³ “Increased exposure to ozone may increase the risk of death, Medical News Today (Feb. 2020), <https://www.medicalnewstoday.com/articles/increased-exposure-to-ozone-may-increase-the-risk-of-death#Ozone-pollution>, citing Ana M. Vicedo-Cabrera, et al., “Short term association between ozone and mortality: global two stage time series study in 406 locations in 20 countries,” *BMJ* 368 (Feb. 2020), <https://www.bmj.com/content/368/bmj.m108>.

⁴ 73 Fed. Reg. 16,436, 16,440.

⁵ EPA, “Ecosystem Effects of Ozone Pollution,” <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution>.

⁶ *Id.*

⁷ 73 Fed. Reg. 16,436, 16,485-86.

⁸ *Id.* 16,486; see generally “Biological Carbon Sequestration,” UC Davis, <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/>.

⁹ EPA’s SPeCs for SIPs Public Dashboard, (last visited Dec. 3, 2024).

statutory criteria, Missouri's SIP submittal was "deemed by operation of law" to meet the minimum statutory criteria no later than November 3, 2023. See 42 U.S.C. § 7410(k)(1)(B). See also SPeCS for SIPs Public Dashboard. As a result, EPA was required to approve or disapprove this Missouri SIP submittal either in full or in part by November 3, 2024. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform this mandatory duty for the New Madrid SO₂ nonattainment area.

Tennessee submitted a SIP to EPA for the Sullivan County SO₂ nonattainment area on February 9, 2023 with the following elements: Attainment Demonstration, Contingency Measures, Emission Inventory, Reasonably available control measures/Reasonably available control technology (RACM/RACT), and Reasonable Further Progress (RFP). Because EPA did not determine by August 9, 2023 whether the SIP submittal met the minimum statutory criteria, Tennessee's SIP submittal was "deemed by operation of law" to meet the minimum statutory criteria no later than August 9, 2023. See 42 U.S.C. § 7410(k)(1)(B). As a result, EPA was required to approve or disapprove this Tennessee SIP submittal either in full or in part by no later than August 9, 2024. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform this mandatory duty for the Sullivan County SO₂ nonattainment area.

Texas submitted SIPs to EPA for the Howard, Hutchinson, and Navarro Counties SO₂ nonattainment areas on October 24, 2022 with the following elements: Attainment Demonstration, Contingency Measures, Nonattainment New Source Review, RACM/RACT, RFP, and Emission Inventory.¹⁰ No later than April 24, 2023 these SIP submittals were determined or "deemed by operation of law" to meet the minimum statutory criteria. See 42 U.S.C. § 7410(k)(1)(B). As a result, EPA was required to approve or disapprove these Texas SIP submittals either in full or in part by April 24, 2024. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform this mandatory duty for the Howard, Hutchinson, and Navarro Counties SO₂ nonattainment areas.

California submitted a SIP to EPA for the Coachella Valley 1997 8-hour ozone NAAQS nonattainment area on December 29, 2020 which included a Reasonable Further Progress (RFP) demonstration and Reasonably Available Control Technology (RACT). No later than June 29, 2021 this SIP submittal was determined or "deemed by operation of law" to meet the minimum statutory criteria. See 42 U.S.C. § 7410(k)(1)(B). As a result, EPA was required to approve or disapprove this California SIP submittal either in full or in part by June 29, 2022. See 42 U.S.C. § 7410(k)(2)-(4).

California submitted a SIP to EPA for the Coachella Valley 1997 8-hour ozone NAAQS nonattainment area on March 18, 2021 which included a Vehicle Miles Traveled (VMT) Offset Demonstration. No later than September 18, 2021 this SIP submittal was determined or "deemed by operation of law" to meet the minimum statutory criteria. See 42 U.S.C. § 7410(k)(1)(B). As a result, EPA was required to approve or disapprove this California SIP submittal either in full or in part by September 18, 2022. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform these mandatory duties for the Coachella Valley 1997 8-hour ozone NAAQS nonattainment area.

¹⁰ EPA's SPeCs for SIPs Public Dashboard, (last visited Dec. 3, 2024).

NOTICE REQUIREMENTS

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

The Center for Biological Diversity
2100 Franklin St., Suite 375
Oakland, CA 94612

Sierra Club
2101 Webster St., Ste. 1300
Oakland, CA 94612

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 Sierra Club, and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will have to file a complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Ukeiley", is centered below the "Sincerely," text.

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Counsel for Center for Biological Diversity and Sierra
Club