



MEMORANDUM

TO: Suong Vong and Anhthu Hoang, EPA - Office External Civil Rights Compliance

FROM: Radhika Kannan and Adrian Martinez, Earthjustice

DATE: March 27, 2023

RE: Title VI Complaint Against South Coast Air Quality Management District, EPA Meeting with Complainants on 3/27 - Follow Up Answers

We greatly appreciate the opportunity to discuss our Title VI Complaint today. Please note that we answered these follow-up questions relatively quickly, so we may provide additional information down the road.

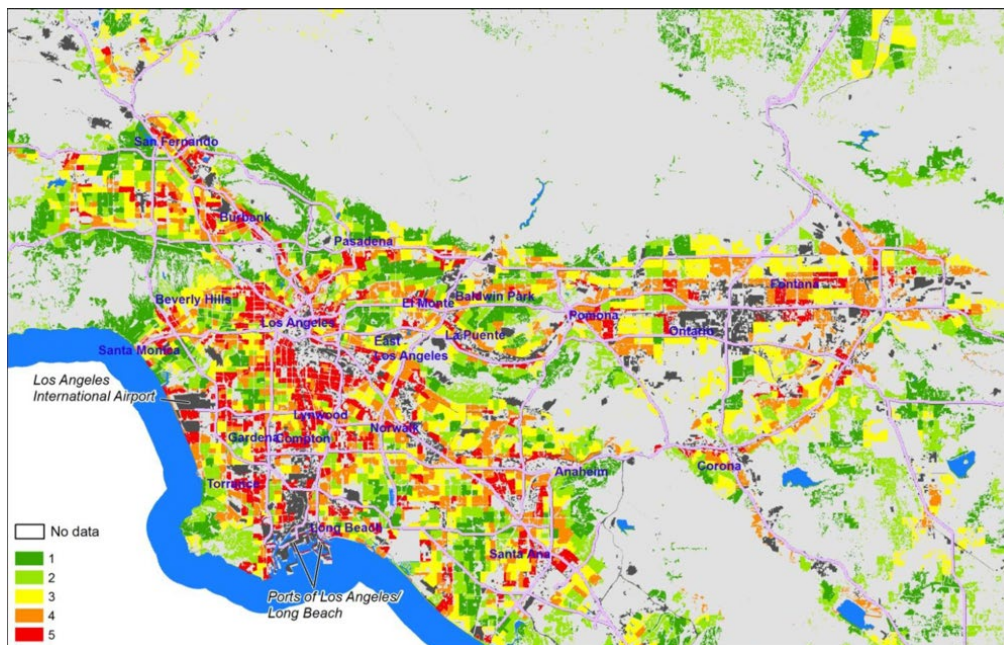
Question 1: Please provide an explanation for the map on p. 14 of the Complaint.

The South Coast Air Basin has struggled with air pollution for decades. But these air pollution woes are not felt equally. Empirical evidence going back decades has shown a correlation between race and harm caused by polluting facilities. Indeed, some studies have shown that controlling for other factors, high percentile minority areas attract high polluting industries, but the causation does not run the other way (i.e., high polluting industries do not generally attract minorities.) (See [Manuel Pastor \(Jr.\), Jim Sadd & John Hipp, *Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice*, 23 J. Urban Aff. \(1\) \(2001\)](#)).

Studies have also shown that neighborhoods with more diverse populations face additional and cumulative burdens from various sources including transportation (rail, highways, ports, and airports), industrial and hazardous facilities, refineries, and distribution facilities. (See [James L. Sadd, Manuel Pastor, Rachel Morello-Frosch, Justin Scoggins, and Bill Jesdale, *Playing It Safe: Assessing Cumulative Impact and Social Vulnerability through an Environmental Justice Screening Method in the South Coast Air Basin, California*, 8 Int'l J. Env. Res. and Pub. Health 5: 1441-1459 \(2011\)](#)).

The map reproduced below (and on p. 14 of the Complaint) demonstrates the geographic distribution of health risks. Specifically, the colors ranging from green to red demonstrate the hazard proximity (i.e., burdens from various sources of pollution) combined with Social and Health Vulnerability Indicators such as race and poverty in the South Coast Air Quality Management District (SCAQMD).

Areas with the highest scores surround heavily industrialized areas, including central and East Los Angeles, the transportation corridor connecting downtown to the ports along the 710 (truck, rail, freeway, and airports).



Overall, this map demonstrates that some of the most heavily impacted cities are:

- Long Beach
- Inglewood
- Wilmington
- City of LA
- Vernon
- Commerce
- Inland Empire
 - o Riverside
 - o Ontario
 - o Fontana
- San Bernardino

Given the tremendous pre-existing cumulative burdens in these areas, seen on the map above, we focus on the communities surrounding the large stationary sources covered under South Coast AQMD Rule 317 in the South Coast Air Basin. The tables, below, in response to question 2 provide more detailed demographic information about the composition of these communities.

Question 2: Please provide more specifics regarding the most impacted areas geographically and the demographics of impacted groups in those areas.

The following chart provides some additional demographic information on the areas of concern where these facilities are predominantly located.¹

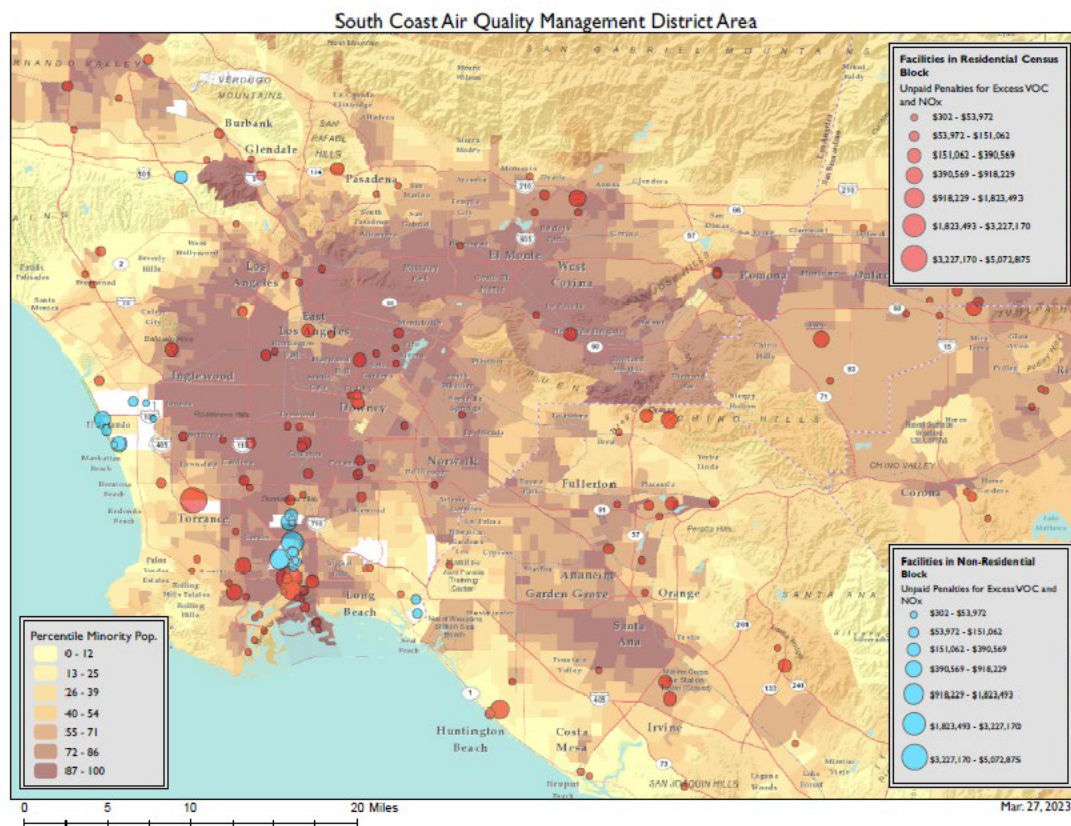
¹ Census data taken from: U.S. Census, available online at <https://www.census.gov/quickfacts/fact/table/US/PST045222> (last accessed March 27, 2023); *City of Los Angeles Neighborhoods Population & Race Based Upon 2021 U.S. Census Estimates*, LOS ANGELES ALMANAC available online at <http://www.laalmanac.com/population/po24la.php> (last accessed March 27, 2023).

Area	Hispanic/Latinx Population*	Black/African American*
Long Beach	43.9%	12.1%
Inglewood	49.4%	40.9%
Wilmington	90.54%	2.17%
City of LA	48.44%	8.63%
Vernon	90.24%	3.05%
Commerce	94.8%	1%
Inland Empire		
- Riverside	54.9%	5.9%
- Ontario	69.9%	5.7%
- Fontana	68.2%	8.6%
San Bernardino	67.6%	12.5%

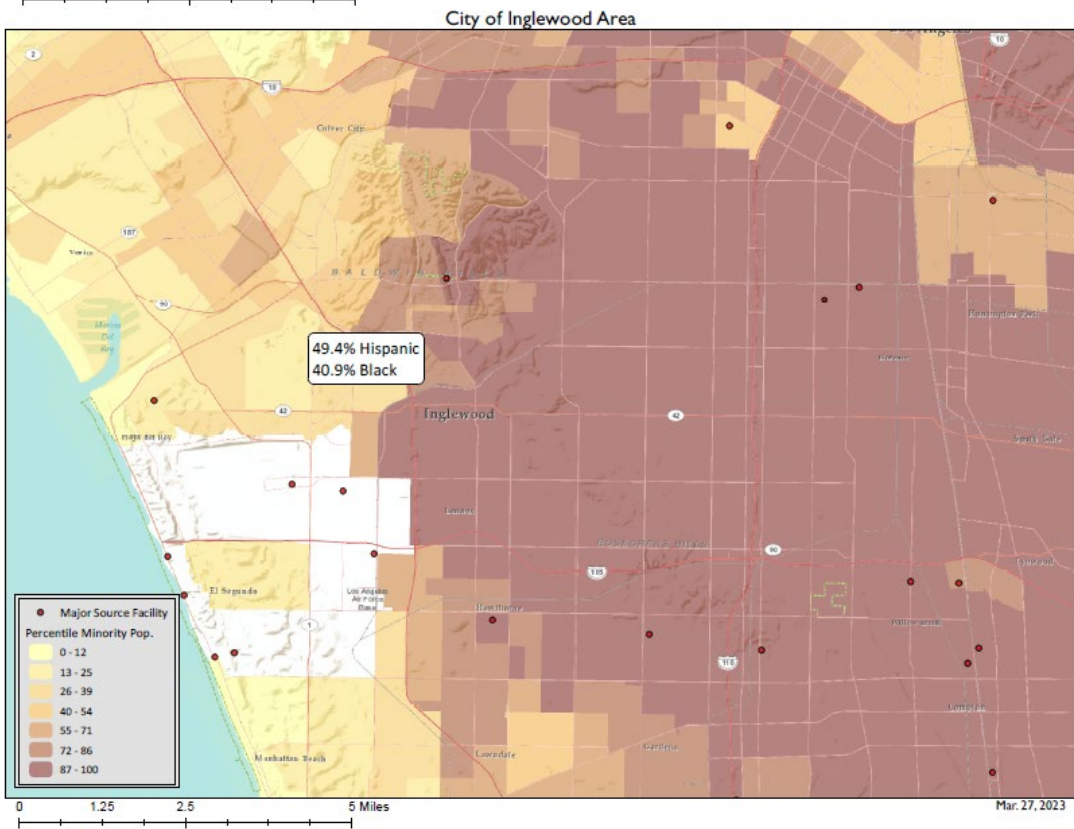
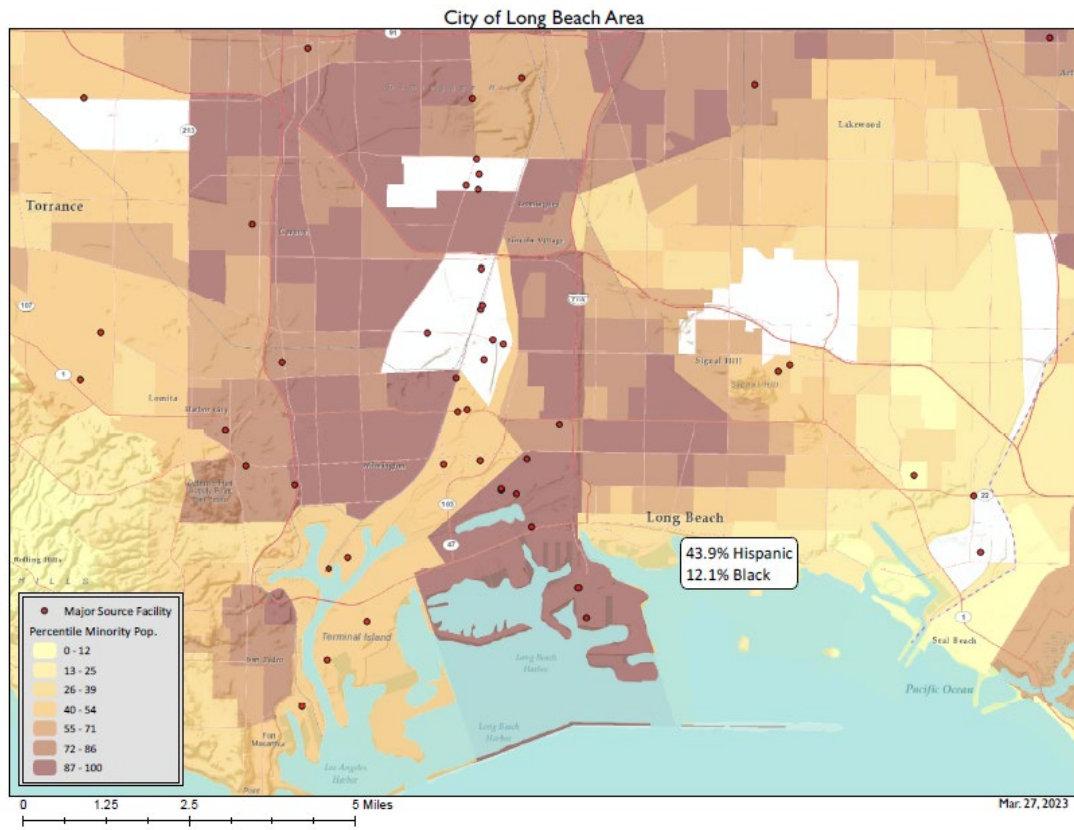
***Note: The census tract numbers presented in the table and map above mask the higher concentration of these racial demographics in the immediate vicinity of major source facilities.**

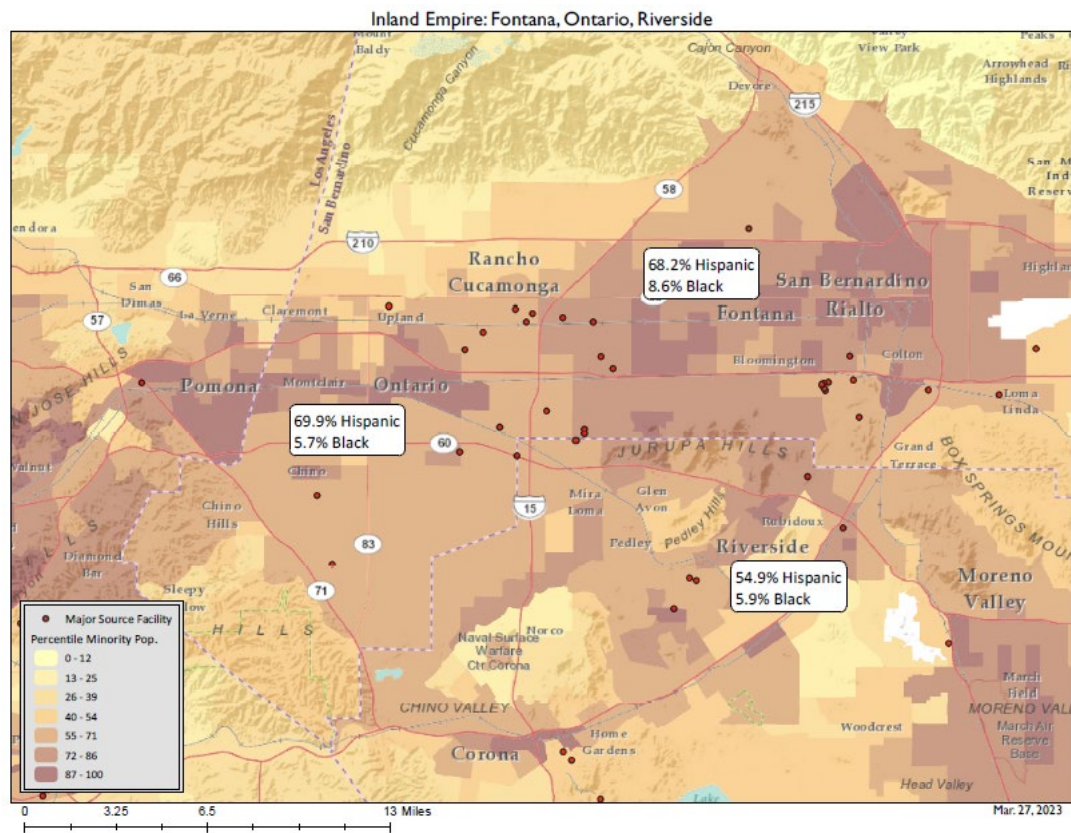
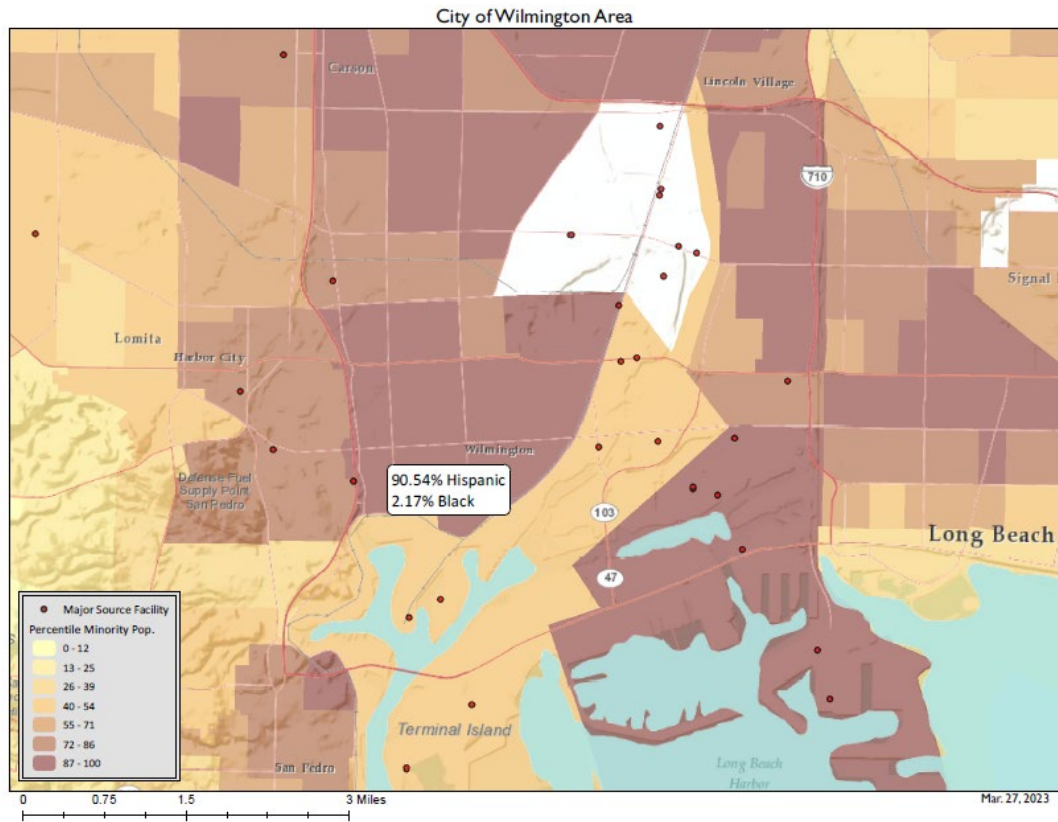
The following maps show the concentration of these communities and their proximity to major source facilities that are adding a significant amount of pollution to these already over-burdened areas.

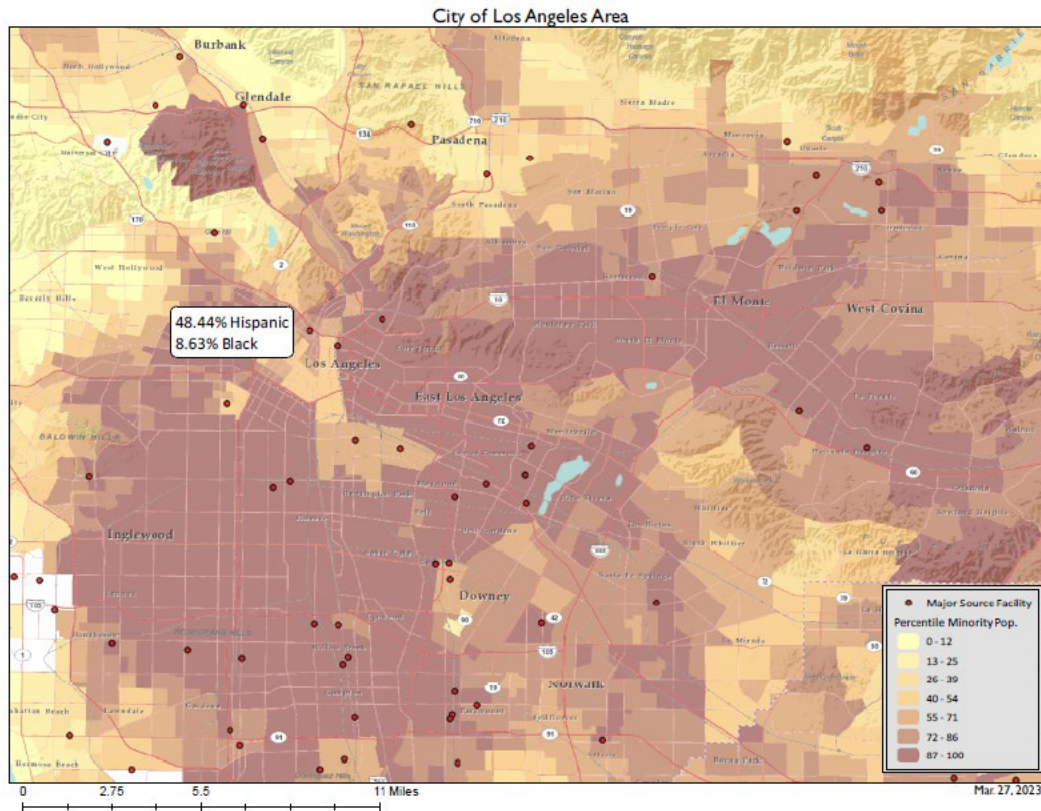
These maps are screenshots. High quality versions of these maps can be found [here](#).



While the above map clearly demonstrates the pattern and practice of siting major sources in communities of color, the maps below also show a more granular view of the cities in the Air Basin. The red dots represent facilities covered under South Coast AQMD Rule 317.







The disparate impact demonstrated by these maps are clear. Communities that are majority Black and Hispanic/Latinx are disproportionately burdened. Importantly, by failing to collect the required fee on these stationary sources, the precursors to ozone pollution – VOC and NO_x are emitted in these communities, in addition to cumulative impacts from air toxic reductions that would be foregone if large facilities had to actually pay a fee. So, by not taking the straight Sec. 185 path, South Coast has foregone “section 185’s powerful incentive for major stationary sources to reduce emissions,”² which has caused this disparate impact.

Question 3: Please describe the discriminatory acts against national origin.

The following chart provides some additional demographic information on the areas of concern where these facilities are predominantly located.³

Area	Foreign Born/Immigrants
Long Beach*	25%
Inglewood	28%
Wilmington	44.5%
City of LA	37%

² *NRDC v. EPA*, 643 F.3d 311, 318 (D.C. Cir. 2011).

³ Mapping L.A.: Wilmington, L.A. TIMES (2023) available online at <https://maps.latimes.com/neighborhoods/neighborhood/wilmington/index.html> (last accessed March 27, 2023); Mapping L.A.: City of Vernon, L.A. TIMES (2023) available online at <https://maps.latimes.com/neighborhoods/neighborhood/vernon/index.html> (last accessed March 27, 2023); Foreign Born Data, CAL. IMMIG. DATA PORTAL (2023) <https://immigrantdata.org/indicators/foreign-born> (last accessed March 27, 2023).

Vernon	9.6%
Commerce	36.5%
Inland Empire	
- Riverside	23%
- Ontario	28%
- Fontana	26.1%
San Bernardino	23%

***Note: Long Beach is a large city, but the most impact from these facilities occurs in West Long Beach as evidenced in the Long Beach map above.**

As described above, and in the Title VI Complaint, by failing to collect a fee on these stationary sources, the precursors to ozone pollution – VOC and NOx – in addition to other toxic pollutants, South Coast AQMD is allowing emissions in these communities. It so happens that in addition to being predominantly communities of color (Hispanic/Latinx/Black/African American), these communities are comprised of at least a quarter immigrants. Thus, the disparate impact is not only along racial lines but along national origin as well.

Question 4: Please explain the disparate impact resulting from the failure of South Coast Air Quality Management District to produce its mandated Rule 317 annual Fee Reconciliation Report.

When EPA revoked the 1-hour ozone standard, there was D.C. Circuit litigation that ensued about what parts of the attainment provisions for this standard remained “applicable.” Several entities, including the South Coast AQMD filed suit in the D.C. Circuit. The D.C. Circuit concluded that section 185 fees continued to remain applicable due to antibacksliding provisions. (*See South Coast AQMD v. EPA*, 472 F.3d 882 (D.C. Cir 2006)) (“For these reasons, section 185 penalties must be enforced under the one-hour NAAQS.”) The D.C. Circuit, per the arguments of Petitioners, including the South Coast AQMD, confirmed that section 185 fee programs were meant to be important policies to compel attainment and protect breathers from air pollution. The Court reiterated the following in rejecting removal of section 185 as a provision that remains “applicable” to the 1-hour ozone standard.

While EPA maintains that it would be impractical to enforce these penalties because EPA will no longer make findings of attainment and conformity assessments as to the one-hour standard [...] section 172(e) does not condition its strict distaste for backsliding on EPA's determinations of expediency; EPA must determine its procedures *after* it has identified what findings must be made under the Act.

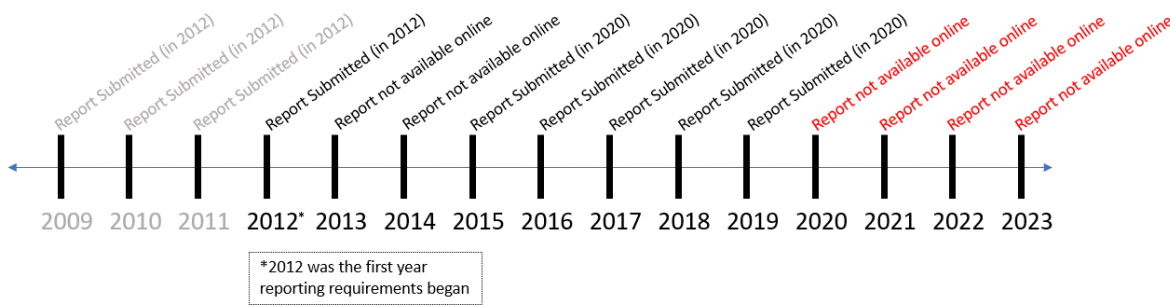
Id. at 903 (citations omitted).

Rule 317 stemmed from this obligation to ensure the South Coast did not backslide as a result of the revocation of the 1-hour ozone standard. As such, Rule 317 requires the agency to submit annual fee equivalency/reconciliation reports. Earthjustice sent a request to South Coast on May 20, 2019 requesting all annual reports filed with EPA and CARB between September 3, 2012 and May 20, 2019 under Rule 317(c)(5). Thereafter on September 3, 2020, South Coast released a batch of fee reconciliation reports for fiscal years 2012-2019. Earthjustice sent a new PRA request in 2021 and received a response on July 28, 2021 that produced reports from 2009-2019. There are no new reports online beyond the 2019 fee assessment year report. Thus, the last publicly available Reconciliation Report was released on September 3, 2020. Since this report, it is our understanding that no annual reports have been released to the public including reports that should have been released covering the year ending in December 31, 2022. **This complaint was filed within 180 days of that inaction.**

Moreover, it is our understanding that the South Coast has continued its inaction around reporting for 2020 and 2021 as well.

“(5) Reporting Requirements Beginning no later than September 3, 2012, and continuing annually thereafter, the EO shall file a report with CARB and US EPA...”

–Rule 317. Clean Air Act Non-Attainment Fees
(Adopted December 5, 2008) (Amended February 4, 2011)



The reconciliation reports provide the data for VOC and NO_x emissions of facilities in the South Coast Air Basin. These reports also explain fees that would have otherwise been due by major sources in severe and extreme 1-hour ozone non-attainment. However, because of Rule 317, these fees are ultimately not collected from major sources. Instead, the reconciliation report outlines the various “qualified programs” for a specific calendar year and explains how those programs act as credits to offset the Section 185 nonattainment fee obligation.

The reconciliation reports are the primary method by which the public can track whether and how precursors to ozone pollution are being limited at a facility level, and whether the so-called “qualified programs” chosen by South Coast are tethered to abating ozone pollution.

Because 75% of all major stationary sources (137 out of 184 facilities) are concentrated in areas with the highest concentration of communities of color, the failure to provide these annual reports disparately impacts these communities’ understanding of localized air pollutants and prevents them from understanding the extent of public health harms of unabated facility level emissions of NO_x and VOC. Many of the largest emitters in the program are concentrated in areas with the highest concentration of communities of color. Moreover, communities are disparately harmed by foregoing the fee for “qualified programs.”

Question 5: Please share the spreadsheet with all the facilities.

The spreadsheet is available [here](#).

The reconciliation report provides the total “Emissions Fee” that would have been levied on a major facility. This is a proxy for the total amount of NO_x and VOC emissions in tons. The report also breaks down the VOC and NO_x emissions in tons. However, the reconciliation report only contains facility ID without any geographic information. Based on each facility id, we pulled the corresponding facility name, address, latitude, and longitude. The spreadsheet contains this compiled set of information which we then used in creating maps and other visuals in our Title VI complaint.

Question 6: Is there a way to display geographically the “credit programs” under Rule 317?

No. It is our contention that these programs would have been implemented whether the fee program was in place or not. Their benefits (if any) are at best diffuse. For example, the “Prop 1B Program,” which is one of the “qualified programs” that SCAQMD takes credit for, provides funding for projects that reduce emissions from goods movement operations. It is not clear that *South Coast* quantifies the overall reduction in emissions in the air basin from the “qualified programs,” and it is difficult to show for any given calendar year what the benefits to the region would be.

Please let us know if you have trouble accessing the ShareFile links, here is the link to the general ShareFile folder:

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Please do not hesitate to contact us if there are any additional questions.
