
LAW OFFICE OF BRENT J. NEWELL

November 3, 2025

By Certified Mail, Return Receipt Requested

Lee Zeldin, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

Michael Martucci, Acting 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 to take Final Action on
California State Implementation Plan Revisions for the San Joaquin Valley.**

Dear Administrator Zeldin and Acting Regional Administrator Martucci:

The Committee for a Better Arvin, Medical Advocates for Healthy Air, and Sierra Club (collectively "Valley Groups") give notice to the Environmental Protection Agency, Lee Zeldin, and Michael Martucci (collectively "EPA") of the Valley Groups' intent to sue EPA for its failure to fulfill its mandatory duty to take final action on California State Implementation Plan revisions for the San Joaquin Valley:

(1) San Joaquin Valley Unified Air Pollution Control District's Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-hour Ozone Standard ("Contingency Measure Plan");

(2) California Smog Check Contingency Measure State Implementation Plan Revision (hereafter "Smog Check Contingency Measure") as a contingency measure for the 2008 and 2015 8-hour Ozone National Ambient Air Quality Standards;

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(3) San Joaquin Valley Unified Air Pollution Control District Rule 4601 (“Architectural Coatings Contingency Measure”) as a contingency measure for the 2008 and 2015 8-hour Ozone National Ambient Air Quality Standards;

(4) San Joaquin Valley Unified Air Pollution Control District Rule 3172 implementing the Clean Air Act section 185 stationary source fee program for the 2008 8-hour ozone standard; and

(5) San Joaquin Valley Unified Air Pollution Control District Rule 3173 implementing the Clean Air Act section 185 stationary source fee program for failure to attain the 2015 8-hour ozone standard.

The 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 Valley Groups intend to file suit under section 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2), to prosecute EPA’s failure to perform its non-discretionary duty.

The 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. EPA*, 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.¹

Ozone and fine particulate matter (“PM2.5”) pollution remains a public health crisis in the 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 adults.

¹ 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 PM2.5 standards failure to attain by 2015); 86 Fed. Reg. 67329 (Nov. 26, 2021) (disapproving 1997 annual PM2.5 implementation plan because of failure to attain the standard by December 31, 2020); 90 Fed. Reg. 46065 (Sept. 25, 2025) (1997 8-hour ozone standard failure to attain by June 15, 2024).

Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.²

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.³

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, Tulare, Fresno, and Kings, rank as the first, third, fifth, and sixth most PM2.5-polluted counties, respectively.⁴ With respect to long-term exposures, Kern, Tulare, Fresno, Kings, and Stanislaus rank as the first, second, third, fifth, and eighth most PM2.5-polluted counties, respectively.⁵ For exposure to ozone, Tulare, Kern, and Fresno rank as the fourth, fifth, and seventh most ozone-polluted counties.⁶

EPA Failure to Take Final Action on the Contingency Measures Plan.

On April 26, 2004, the California Air Resources Board (“CARB”) submitted the Contingency Measures Plan to EPA as a SIP revision. On October 16, 2024, EPA found the Contingency Measure Plan complete with respect to the 2008 8-hour ozone standard according to the SPeCS for SIPs Public Element Dashboard. On October 29, 2024, EPA found the Contingency Measure Plan complete with respect to the 2015 8-hour ozone standard according to the SPeCS for SIPs Public Element Dashboard.

EPA shall act on the Contingency Measures Plan, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the Contingency Measures Plan as it relates to the 2008 8-hour ozone

² AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2025 at 27-29, available at <https://www.lung.org/getmedia/5d8035e5-4e86-4205-b408-865550860783/State-of-the-Air-2025.pdf> (last visited June 9, 2025).

³ *Id.* at 25-27.

⁴ *Id.* at 23.

⁵ *Id.*

⁶ *Id.*

standard no later than October 16, 2025. EPA has failed to approve, disapprove, or partially approve/disapprove the Contingency Measures Plan as it relates to the Clean Air Act's requirement for contingency measures for the 2008 8-hour ozone standard. 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.

EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the Contingency Measures Plan as it relates to the 2015 8-hour ozone standard no later than October 29, 2025. EPA has failed to approve, disapprove, or partially approve/disapprove the Contingency Measures Plan as it relates to the Clean Air Act's requirement for contingency measures for the 2015 8-hour ozone standard. 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.

EPA Failure to Take Final Action on the Smog Check Contingency Measure.

On October 26, 2023, CARB adopted the Smog Check Contingency Measure and approved Resolution 23–20. On November 13, 2023, CARB submitted the Smog Check Contingency Measure to EPA as a revision to the California SIP. EPA found the Smog Check Revision complete on December 20, 2023. 88 Fed. Reg. 87981, 87982 (December 20, 2023). EPA approved the Smog Check Contingency Measure as a contingency measure but deferred any action on approving the Measure as meeting the contingency measure requirements for the 2008 and 2015 8-hour ozone standards. 88 Fed. Reg. at 87987-87988.

EPA shall act on the Smog Check Revision, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the Smog Check Revision no later than December 20, 2024. EPA has failed to approve, disapprove, or partially approve/disapprove the Smog Check Contingency Measure as it relates to the Clean Air Act's requirement for contingency measures for the 2008 8-hour ozone standard and the 2015 8-hour ozone standard. 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.

EPA Failure to Take Final Action on the Architectural Coatings Contingency Measure.

On April 23, 2020, CARB submitted the Architectural Coatings Contingency Measure. 87 Fed. Reg. 57161, 57162 Table 1 (Sept. 19, 2022). On June 29, 2020, EPA found the Architectural Coatings Contingency Measure was complete. 87 Fed. Reg. at 57162/1. EPA approved the Architectural Coatings Contingency Measure as a contingency measure but deferred any action on approving the Measure as meeting the contingency measure requirements for the 2008 and 2015 8-hour ozone standards. 87 Fed. Reg. at 57164/2.

EPA shall act on the Architectural Coatings Contingency Measure as it relates to the 2008 8-hour ozone standard and the 2015 8-hour ozone standard, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the Measure no later than June 29, 2021. 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.

EPA Failure to Take Final Action on Rule 3172.

On March 13, 2024, CARB submitted Rule 3172 to EPA for review and approval as a SIP revision. On September 13, 2024, EPA found Rule 3172 complete according to the SPeCS for SIPs Public Element Dashboard.

EPA shall act on Rule 3172, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove Rule 3172 no later than September 13, 2025. EPA has failed to approve, disapprove, or partially approve/disapprove Rule 3172. 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.

EPA Failure to Take Final Action on Rule 3173.

On March 13, 2024, CARB submitted Rule 3173 to EPA for review and approval as a SIP revision. On September 13, 2024, EPA found Rule 3173 complete according to the SPeCS for SIPs Public Element Dashboard.

EPA shall act on Rule 3173, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove Rule 3173 no later than September 13, 2025. EPA has failed to approve, disapprove, or partially approve/disapprove Rule 3173. 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.

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Identity of the Noticing Parties and their Attorney:

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Conclusion

Following the 60-day period, the Valley Groups will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty 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