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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COMMITTEE FOR A BETTER ARVIN, MEDICAL ADVOCATES FOR HEALTHY AIR, and SIERRA CLUB, Plaintiffs, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the United States Environmental Protection Agency, and MICHAEL MARTUCCI, in his official capacity as Acting Regional Administrator for Region 9 of the United States Environmental Protection Agency, Defendants.	Case No. **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

INTRODUCTION

1. Plaintiffs Committee for a Better Arvin, Medical Advocates for Healthy Air, and the Sierra Club (collectively "Air Advocates") file this Clean Air Act citizen suit to compel Defendants to perform their nondiscretionary duty and protect public health in the San Joaquin Valley of California.

2. Air pollution in the San Joaquin Valley is a public health crisis. The American Lung Association ranks Valley counties among the worst in the United States for ozone and fine particulate matter with an aerodynamic diameter of 2.5 microns or less ("PM2.5").

3. The Clean Air Act is a model of cooperative federalism, whereby EPA sets health-based National Ambient Air Quality Standards and the states develop the plans and strategies to attain those standards by the applicable attainment dates. States submit their plans and strategies to EPA for review and approval as part of the California State Implementation Plan ("SIP"). EPA shall approve a SIP revision if it meets the Act's minimum requirements. EPA and citizens may enforce the EPA-approved SIP as a matter of federal law to hold states and regulated entities accountable.

4. Defendants United States Environmental Protection Agency ("EPA"), Lee Zeldin, and Michael Martucci have violated, and continue to violate, the Clean Air Act by failing to approve, disapprove, or partially approve/disapprove the San Joaquin Valley Unified Air Pollution Control District Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-hour Ozone Standards ("Contingency Measure Plan").

5. Defendants have violated, and continue to violate, the Clean Air Act by failing to approve, disapprove, or partially approve/disapprove San Joaquin Valley Unified Air Pollution Control District Rule 3172 which implements the Clean Air Act section 185 stationary source fee program for the 2008 8-hour ozone standard ("Rule 3172").

6. Defendants have violated, and continue to violate, the Clean Air Act by failing to approve, disapprove, or partially approve/disapprove San Joaquin Valley Unified Air Pollution Control District Rule 3173 which implements the Clean Air Act section 185 stationary source fee program for the 2015 8-hour ozone standard ("Rule 3173").

7. Defendants shall take final action on the Contingency Measure Plan as it relates to the 2008 8-hour ozone National Ambient Air Quality Standard ("NAAQS" or "standard") in the Valley, by full or partial approval or disapproval, by October 16, 2025.

8. Defendants shall take final action on the Contingency Measure Plan as it relates to the 2015 8-hour ozone standard in the Valley, by full or partial approval or disapproval, by October 29, 2025.

9. Defendants shall take final action on Rule 3172, by full or partial approval or disapproval, by September 13, 2025.

10. Defendants shall take final action on Rule 3173, by full or partial approval or disapproval, by September 13, 2025.

11. To date, Defendants have failed to take final action on the Contingency Measure Plan, Rule 3172, and Rule 3173.

JURISDICTION

12. This Court has jurisdiction over this action to compel the performance nondiscretionary duties pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question jurisdiction).

13. The declaratory and injunctive relief Air Advocates request is authorized by 28 U.S.C. §§ 2801(a) and 2202, and 42 U.S.C. § 7604.

NOTICE

14. On November 3, 2025, Air Advocates provided Defendants EPA, Zeldin, and Martucci written notice of the claims stated in this action at least 60 days before commencing this action (hereafter "Notice Letter"), as required by Clean Air Act section 304(b)(2), 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2 and 54.3. A copy of the Notice Letter, sent by certified mail, return receipt requested, is attached as Exhibit 1. Although more than 60 days have elapsed since Air Advocates provided written notice, EPA has failed to take final action on the Contingency Measure Plan, Rule 3172, and Rule 3173. EPA has violated and continues to violate the Clean Air Act.

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VENUE

15. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1), because the Acting Regional Administrator for Region 9 is located in San Francisco County and because EPA's alleged violations relate to the duties of the Regional Administrator in San Francisco.

INTRADISTRICT ASSIGNMENT

16. Because the failure to perform a nondiscretionary duty alleged in this Complaint relates to the duties of the Acting Regional Administrator located in San Francisco County, assignment to the San Francisco Division or the Oakland Division of this Court is proper under Civil L.R. 3-2(c) and (d).

PARTIES

17. Plaintiff COMMITTEE FOR A BETTER ARVIN is a nonprofit corporation organized and existing under the laws of the State of California, and based in Arvin, California. COMMITTEE FOR A BETTER ARVIN brings this action on behalf of itself and its members. The mission of COMMITTEE FOR A BETTER ARVIN is to improve the quality of life in Arvin, to inform and unite the community, to address problems facing the community, and to secure equality for all residents. COMMITTEE FOR A BETTER ARVIN and its members have advocated for improved local and regional air quality for many years.

18. Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR is a nonprofit organization organized and existing under the laws of the State of California, and based in Fresno, California. MEDICAL ADVOCATES FOR HEALTHY AIR brings this action on behalf of itself and its members. MEDICAL ADVOCATES FOR HEALTHY AIR's members consist of medical professionals living in the San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused or exacerbated by the Valley's unhealthy levels of air pollution. The mission of MEDICAL ADVOCATES FOR HEALTHY AIR is to advocate for the expeditious attainment of state and federal health-based air quality standards in the San Joaquin Valley through public education, litigation, and other means.

19. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws of the State of California, with its headquarters located in San Francisco, California. SIERRA CLUB brings this action on behalf of itself and its members. As a national organization dedicated to the

protection of public health and the environment, including air quality, SIERRA CLUB has members living in all eight counties comprising the San Joaquin Valley.

20. Plaintiffs COMMITTEE FOR A BETTER ARVIN, MEDICAL ADVOCATES FOR HEALTHY AIR, and SIERRA CLUB are persons within the meaning of section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and may commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a).

21. The Clean Air Act violations alleged in this Complaint have injured and continue to injure Air Advocates' members.

22. Members of Plaintiffs COMMITTEE FOR A BETTER ARVIN, MEDICAL ADVOCATES FOR HEALTHY AIR and SIERRA CLUB live, raise their families, work, and recreate in the San Joaquin Valley. They are adversely affected by exposure to levels of ozone and PM2.5 air pollution that exceed the health-based National Ambient Air Quality Standards. The adverse effects of such pollution include actual or threatened harm to their health, their families' health, their professional, educational, and economic interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley.

23. Members of Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR are medical professionals who treat patients suffering from ozone and PM2.5 related health effects, have participated in substantial research on the health effects of ozone and PM2.5, and are concerned about the adverse health effects that ozone and PM2.5 have on their patients, sensitive groups, and the public.

24. EPA's failure to take action on the Contingency Measure Plan, Rule 3172, and Rule 3173 as alleged in this Complaint deprives Air Advocates' members of certain procedural rights associated with EPA's required action on the Contingency Measure Plan, Rule 3172, and Rule 3173, including notice of, and opportunity to comment on, EPA's proposed actions and judicial review to challenge any EPA final actions.

25. EPA's failure to take final action on the Contingency Measure Plan as alleged in this Complaint causes Air Advocates members' injuries because Defendants have failed to implement the Clean Air Act's remedial scheme, including ensuring the contingency measures for the 2008 8-hour ozone standard and 2015 8-hour ozone standard meet all Clean Air Act requirements and provide the

amount of nitrogen oxides ("NOx") and volatile organic compound ("VOC") emissions reductions required by the Clean Air Act.

26. EPA's failure to take final action on Rule 3172 and Rule 3173 as alleged in this Complaint causes Air Advocates members' injuries because Defendants have failed to implement the Clean Air Act's remedial scheme, including ensuring Rule 3172 and Rule 3173 meet all Clean Air Act requirements, including enforceable requirements for all major stationary sources of NOx and VOC to pay all fees for NOx and VOC emissions as required by the Clean Air Act.

27. A failure to attain the 2008 8-hour ozone standard and the 2015 8-hour ozone standard is reasonably foreseeable given the historical record of ozone design value data and repeated failures to attain the National Ambient Air Quality Standards in the San Joaquin Valley.

28. The injunctive relief requested in this lawsuit would redress members' injuries by compelling Defendants to take final action on the Contingency Measure Plan. Such action on the Contingency Measure Plan would ensure the contingency measures comply with all applicable requirements of the Clean Air Act and provide the NOx and VOC emissions reductions required by the Clean Air Act.

29. The injunctive relief requested in this lawsuit would further redress members' injuries by compelling Defendants to take final action on Rule 3172 and Rule 3173. Such action on Rule 3172 and Rule 3173 would ensure the rules comply with all applicable requirements of the Clean Air Act and require all fees from all major stationary sources of NOx and VOC for all emissions as mandated by the Clean Air Act.

30. The injunctive relief requested in this lawsuit would redress members' procedural injuries by providing notice and an opportunity to comment on EPA's proposed action to approve, disapprove, or approve in part and disapprove in part, the Contingency Measure Plan.

31. The injunctive relief requested in this lawsuit would redress members' procedural injuries by compelling EPA to take final action on the Contingency Measure Plan, Rule 3172, and Rule 3173. EPA final action will allow Air Advocates to secure any necessary judicial review as provided by Clean Air Act section 307(b)(1), 42 U.S.C. § 7607(b)(1).

32. The declaratory relief requested in this lawsuit would redress Air Advocates members'

injuries by declaring that Defendants have a duty to take final action on the Contingency Measure Plan, Rule 3172, and Rule 3173. Declaratory relief would further redress these injuries by declaring that Defendants have violated those duties.

33. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the federal agency Congress charged with implementation and enforcement of the Clean Air Act. As described below, the Act assigns to the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY certain nondiscretionary duties.

34. Defendant LEE ZELDIN is sued in his official capacity as Administrator of the United States Environmental Protection Agency. LEE ZELDIN is charged in that role with taking various actions to implement and enforce the Clean Air Act, including the actions sought in this Complaint.

35. Defendant MICHAEL MARTUCCI is sued in his official capacity as Acting Regional Administrator for Region 9 of the United States Environmental Protection Agency. MICHAEL MARTUCCI is responsible for implementing and enforcing the Clean Air Act in Region 9, including the actions sought in this Complaint. Region 9 includes California and the San Joaquin Valley air basin.

STATUTORY FRAMEWORK

36. The Clean Air Act establishes a partnership between EPA and the states for the attainment and maintenance of the National Ambient Air Quality Standards. *See* 42 U.S.C. §§ 7401-7515. Under the Act, EPA has set health-based standards for six pollutants, including ozone and PM2.5. States must adopt a State Implementation Plan ("SIP") that contains enforceable emissions limitations necessary to attain the standards and meet applicable requirements of the Act. 42 U.S.C. §§ 7401(a)(1), (a)(2)(A); 7502(c)(6). States must submit all such plans and plan revisions to the EPA. 42 U.S.C. § 7410(a)(1).

37. State Implementation Plans must include enforceable emissions standards and limitations necessary to attain the NAAQS by the applicable attainment date, must demonstrate reasonable further progress, and must include contingency measures to take effect if the plan fails to meet reasonable further progress or attain the NAAQS by the applicable attainment date. 42 U.S.C. § 7502(c).

38. State Implementation Plans must demonstrate that the state's control strategy will ensure attainment of the standard by the applicable attainment deadline. *See* 42 U.S.C. § 7511a(c)(2)(A); *see*

also 40 C.F.R. § 51.112(a) ("Each plan must demonstrate that the measures, rules, and regulations contained in it are adequate to provide for the timely attainment and maintenance of the national standard that it implements.").

39. A State Implementation Plan must demonstrate reasonable further progress by showing that the emission inventory for the area continues to decline according to milestones every three years. 42 U.S.C. § 7511a(c)(2)(B). Such demonstration must show emissions reductions of at least three percent of baseline emissions of NOx or VOC each year or less than three percent if a state demonstrates certain conditions have been met. 42 U.S.C. §§ 7511a(c)(2)(B)(i), (ii), 7511a(c)(2)(C).

40. A State Implementation Plan must include contingency measures that take effect without any further action by the state. 42 U.S.C. § 7502(c)(9).

41. The Clean Air Act requires implementation of contingency measures upon the failure of an area to make reasonable further progress, attain a NAAQS by the applicable attainment date, or fails to meet any applicable milestone. 42 U.S.C. §§ 7502(c)(9), 7511a(c)(9).

42. The contingency measures in the Contingency Measure Plan take effect upon an EPA finding that the San Joaquin Valley fails to make reasonable further progress, fails to attain a NAAQS by the applicable attainment date, or fails to meet any applicable milestone.

43. A State Implementation Plan for a severe or extreme ozone nonattainment area must include provisions which provide for a fee on each major stationary source of VOC and NOx when such area fails to attain an ozone standard by the applicable attainment date. 42 U.S.C. § 7511d.

44. Section 185 of the Clean Air Act requires a per ton fee on each major stationary source of VOC and NOx for each calendar year following the attainment date until EPA takes final action to designate the area in attainment with the applicable ozone standard. 42 U.S.C. § 7511d.

45. Rule 3172 and Rule 3173 take effect upon an EPA finding that the San Joaquin Valley has failed to attain the 2008 8-hour ozone standard or the 2015 8-hour ozone standard, respectively.

46. Within 60 days of EPA's receipt of a proposed State Implementation Plan or SIP revision, the Clean Air Act requires EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make this "completeness" finding, the proposed SIP revision becomes complete by operation of law six months

after a state submits the revision. If EPA determines that the proposed SIP revision does not meet the minimum criteria, the state is considered to have not made the submission. 42 U.S.C. 7410(k)(1)(C).

47. Within twelve months of an EPA finding that a proposed State Implementation Plan or SIP revision is complete (or deemed complete by operation of law), EPA must act to approve, disapprove, or approve in part and disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

48. If EPA disapproves the State Implementation Plan or SIP revision, in whole or in part, then the Clean Air Act requires EPA to impose sanctions against the offending state or region, including increased offsets for new and modified major stationary sources or a prohibition on the use of federal highway funds, unless the state submits revisions within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and highway funding sanctions within 24 months unless the state has corrected the deficiency. Moreover, the Act requires EPA to promulgate a Federal Implementation Plan within 24 months of disapproval unless the state has corrected the deficiency, and EPA has approved the revision. 42 U.S.C. § 7410(c).

49. Once EPA approves a State Implementation Plan or SIP revision, the state and any regulated person must comply with the emissions standards and limitations contained in the SIP, and all such standards and limitations become enforceable as a matter of federal law by EPA and citizens. 42 U.S.C. § 7413; 7604(a), (f).

50. If EPA fails to perform a non-discretionary duty, including failing to take final action on a proposed State Implementation Plan or SIP revision by the Clean Air Act deadline, then the Act allows any person to bring suit to compel EPA to perform its non-discretionary duty. 42 U.S.C. § 7604(a)(2).

FACTUAL BACKGROUND

Ozone Background

51. Ground-level ozone is formed by a reaction between NOx and VOC in the presence of heat and sunlight. Unlike ozone in the upper atmosphere which is formed naturally and protects the Earth from ultraviolet radiation, ozone at ground level is primarily formed from anthropogenic pollution.

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

53. According to the American Lung Association's State of the Air 2025 report, the San Joaquin Valley counties of Tulare, Kern, and Fresno rank as the fourth, fifth, and seventh most ozone-polluted counties in the United States, respectively.

54. On July 18, 1997, EPA promulgated a national primary ozone NAAQS of 0.080 parts per million averaged over an 8-hour period to replace the less stringent 1-hour ozone NAAQS ("1997 8-hour ozone standard"). 62 Fed. Reg. 38856 (July 18, 1997); 40 C.F.R. § 50.9(b) (2003).

55. Effective December 10, 2001, EPA found that the San Joaquin Valley failed to attain the 1-hour ozone standard by the November 15, 1999 attainment date. 66 Fed. Reg. 56476 (Nov. 8, 2001).

56. Effective May 27, 2008, EPA completed a review of the 1997 8-hour ozone standard, found it necessary to lower the allowable ambient concentration of ozone to 0.075 parts per million, and promulgated the national primary NAAQS for ozone ("2008 8-hour ozone standard"). 73 Fed. Reg. 16436 (March. 27, 2008); 40 C.F.R. § 50.15. EPA revoked the 1997 8-hour ozone standard as part of the transition to the 2008 standard, but retained the attainment contingency measures and the major stationary source fee requirement for the 1997 8-hour ozone standard as controls to help ensure attainment of the 2008 8-hour ozone standard. 40 C.F.R. §§ 51.1100(o)(13), (15), 51.1105(a)(1).

57. Effective June 4, 2010, EPA reclassified the San Joaquin Valley to an extreme ozone nonattainment area for the 1997 8-hour ozone standard and established June 15, 2024 as the applicable attainment date. 75 Fed. Reg. 24409, 24415 (May 5, 2010).

58. Effective January 30, 2012, EPA found that the San Joaquin Valley failed to attain the 1-hour ozone standard by the November 15, 2010 attainment date. 76 Fed. Reg. 82133 (December 30, 2011).

59. Effective July 20, 2012, EPA designated the San Joaquin Valley as an extreme nonattainment area for the 2008 8-hour ozone standard. 77 Fed. Reg. 30088, 30092 (May 21, 2012); 40 C.F.R. § 51.1103(d). As an extreme nonattainment area, the Valley must attain the standard as

expeditiously as practicable but no later than July 20, 2032. 40 C.F.R. § 51.1103(a); 80 Fed. Reg. 12264, 12268 (March 6, 2015).

60. Effective December 28, 2015, EPA revised "the level of the [8-hour ozone] standard to 0.070 ppm to provide increased public health protection against health effects associated with long- and short-term exposures" and promulgated the national primary NAAQS for ozone ("2015 8-hour ozone standard"). 80 Fed. Reg. 65292, 65294 (Oct. 26, 2015); 40 C.F.R. § 50.19.

61. Effective August 3, 2018, EPA classified the San Joaquin Valley as an extreme nonattainment area for the 2015 8-hour ozone standard and established an August 3, 2038 attainment date. 83 Fed. Reg. 25776 (June 4, 2018).

62. On March 13, 2024, the California Air Resources Board submitted Rule 3172 and Rule 3173 to EPA as a SIP revision.

63. By letter dated April 26, 2024, the California Air Resources Board submitted the Contingency Measure Plan to EPA as a SIP revision.

64. On April 29, 2024, the California Air Resources Board submitted the Contingency Measure Plan to EPA as a SIP revision, according to the SPeCS for SIPs Public Element Dashboard.

65. On October 25, 2024, EPA published a proposed rule in the *Federal Register* to approve the Contingency Measure Plan as it relates to the 2008 8-hour ozone standard in the San Joaquin Valley. 89 Fed. Reg. 85119 (Oct. 25 2024).

66. On November 25, 2024, Plaintiffs COMMITTEE FOR A BETTER ARVIN, MEDICAL ADVOCATES FOR HEALTHY AIR, and SIERRA CLUB submitted comments on EPA's proposed approval of the Contingency Measure Plan as it relates to the 2008 8-hour ozone standard in the San Joaquin Valley. The comments are available as part of the rulemaking docket at https://www.regulations.gov/docket/EPA-R09-OAR-2024-0338 and attached as Exhibit 2.

67. Effective October 27, 2025, EPA found that the San Joaquin Valley failed to attain the 1997 8-hour ozone standard by the December 15, 2024 attainment date. 90 Fed. Reg. 46065 (Sept. 25, 2025).

68. On December 11, 2025, EPA published a proposed rule in the *Federal Register* to approve Rule 3172 and Rule 3173. 90 Fed. Reg. 57414 (Dec. 11, 2025).

69. On January 12, 2026, Plaintiffs COMMITTEE FOR A BETTER ARVIN, MEDICAL ADVOCATES FOR HEALTHY AIR, and SIERRA CLUB submitted comments on EPA's proposed approval of Rules 3172 and 3173. The comments are available as part of the rulemaking docket at https://www.regulations.gov/docket/EPA-R09-OAR-2025-1938 and attached as Exhibit 3.

70. The San Joaquin Valley has not attained the 2008 8-hour ozone standard. EPA data show 8-hour ozone design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, 2021-2023, and 2022-2024 at 0.088 ppm, 0.093 ppm, 0.093 ppm, 0.094 ppm, 0.090 ppm, and 0.088 ppm, respectively, well above the 0.075 ppm design value necessary to attain the 2008 8-hour ozone standard. The design value data are available on EPA's website at https://www.epa.gov/air-trends/air-quality-design-values#report and attached as Exhibit 4.

71. The San Joaquin Valley has not attained the 2015 8-hour ozone standard. EPA data show 8-hour ozone design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, 2021-2023, and 2022-2024 at 0.088 ppm, 0.093 ppm, 0.093 ppm, 0.094 ppm, 0.090 ppm, and 0.088 ppm, respectively, well above the 0.070 ppm design value necessary to attain the 2015 8-hour ozone standard. The design value data are available on EPA's website at https://www.epa.gov/air-trends/air-quality-design-values#report and attached as Exhibit 5.

Fine Particulate Matter (PM2.5) Background

72. PM2.5 is a directly emitted pollutant and forms secondarily in the atmosphere by the precursor pollutants NOx, ammonia, sulfur oxides, and VOC. Secondary PM2.5 forms primarily during the winter in the San Joaquin Valley.

73. Short-term exposure to PM2.5 pollution causes premature death, causes decreased lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term exposure causes development of asthma in children, causes decreased lung function growth in children, exacerbates respiratory disease such as asthma, increases the risk of death from cardiovascular disease, and increases the risk of death from heart attacks. Individuals particularly sensitive to PM2.5 exposure include older adults, people with heart and lung disease, and children.

74. According to the American Lung Association's State of the Air 2025 report, the San Joaquin Valley counties of Kern, Tulare, Fresno, and Kings rank as the first, third, fifth, and sixth most

polluted counties in the United States for short-term exposure to PM2.5, respectively. For long-term exposure to PM2.5, the report ranks Kern, Tulare, Fresno, Kings, and Stanislaus as the first, second, third, fifth, and eighth most polluted counties in the United States, respectively.

75. On July 18, 1997, the EPA established the national primary annual PM2.5 NAAQS of 15 $\mu g/m^3$ ("1997 annual PM2.5 standard") after considering evidence from "numerous health studies demonstrating that serious health effects" occur from exposures to PM2.5. *See* 81 Fed. Reg. 6936 (February 9, 2016); *see also* 62 Fed. Reg. 38652 (July 18, 1997); 40 C.F.R. § 50.7.

76. In 2006, to better protect the public from short-term exposures, EPA increased the stringency of the national primary annual 24-hour PM2.5 NAAQS by lowering the allowable ambient concentration from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. 71 Fed. Reg. 61144, 61145 (Oct. 17, 2006) ("2006 24-hour PM2.5 standard").

77. Effective March 18, 2013, the EPA strengthened the national primary annual PM2.5 NAAQS by lowering the level from 15.0 $\mu g/m^3$ to 12.0 $\mu g/m^3$ ("2012 annual PM2.5 standard"). 78 Fed. Reg. 3086 (Jan. 13, 2013); 40 C.F.R. § 50.18.

78. The San Joaquin Valley is a serious PM2.5 nonattainment area for the 1997 annual PM2.5 standard, the 2006 24-hour standard, and the 2012 annual PM2.5 standard.

79. Effective December 23, 2016, EPA found that the San Joaquin Valley failed to attain the 1997 24-hour PM2.5 standard and the 1997 annual PM2.5 standard by the December 31, 2015 attainment date. 81 Fed. Reg. 84481 (November 23, 2016).

80. Effective December 27, 2021, EPA disapproved the SIP revision for the 1997 annual PM2.5 standard because design value data for the San Joaquin Valley showed the Valley had already failed to attain the standard by the December 31, 2020 attainment date. 86 Fed. Reg. 67329 (Nov. 26, 2021).

81. The San Joaquin Valley has not attained the 2012 annual PM2.5 standard. EPA data show PM2.5 design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, 2021-2023, and 2022-2024 at 16.9 $\mu g/m^3$, 20.3 $\mu g/m^3$, 18.8 $\mu g/m^3$, 18.8 $\mu g/m^3$, 16.2 $\mu g/m^3$, and 14.7 $\mu g/m^3$, respectively, well above the 12 $\mu g/m^3$ design value necessary to attain the 2012 annual PM2.5 standard. The design value data are available on EPA's website at https://www.epa.gov/air-trends/air-quality-design-values#report and

attached as Exhibit 6.

82. The San Joaquin Valley has not attained the 2006 24-hour PM2.5 standard. EPA data show PM2.5 design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, 2021-2023, and 2022-2024 at 64 µg/m^3, 72 µg/m^3, 66 µg/m^3, 65 µg/m^3, 48 µg/m^3, and 48 µg/m^3 respectively, well above the 35 µg/m^3 design value necessary to attain the 2006 24-hour PM2.5 standard. The design value data are available on EPA's website at https://www.epa.gov/air-trends/air-quality-design-values#report and attached as Exhibit 7.

FIRST CLAIM FOR RELIEF

Failure to Perform a Non-Discretionary Duty

to Act on the Contingency Measure Plan

(42 U.S.C. § 7410(k)(2))

83. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-82.

84. On April 29, 2024, the California Air Resources Board submitted the Contingency Measure Plan to EPA as a SIP revision, according to the SPeCS for SIPs Public Element Dashboard.

85. The Contingency Measure Plan relies on San Joaquin Valley Unified Air Pollution Control District Rule 4601 (Architectural Coatings) to meet contingency measure requirements for the 2008 8-hour ozone standard and the 2015 8-hour ozone standard.

86. The Contingency Measure Plan relies on the California Smog Check Contingency Measure State Implementation Plan Revision to meet contingency measure requirements for the 2008 8-hour ozone standard and the 2015 8-hour ozone standard.

87. The Contingency Measure Plan includes a commitment by the California Air Resources Board and the San Joaquin Valley Unified Air Pollution Control District to adopt five additional contingency measures for the Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleaning Rule.

88. 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.

89. On October 29, 2024, the Contingency Measure Plan became complete by operation of law with respect to the 2015 8-hour ozone standard. The SPeCS for SIPs Public Element Dashboard

reflects this completeness date.

90. Defendants have a mandatory duty to act on the Contingency Measure Plan with respect to the 2008 8-hour ozone standard no later than October 16, 2025. 42 U.S.C. § 7410(k)(2).

91. Defendants have a mandatory duty to act on the Contingency Measure Plan with respect to the 2015 8-hour ozone standard no later than October 29, 2025. 42 U.S.C. § 7410(k)(2).

92. Defendants have failed and continue to fail to act on the Contingency Measure Plan with respect to the 2008 8-hour ozone standard and the 2015 8-hour ozone standard.

93. By failing to act on the Contingency Measure Plan with respect to the 2008 8-hour ozone standard, Defendants have violated and continue to violate its nondiscretionary duty to act on the Contingency Measure Plan pursuant to Clean Air Act section 110(k)(2), 42 U.S.C. § 7410(k)(2).

94. By failing to act on the Contingency Measure Plan with respect to the 2015 8-hour ozone standard, Defendants have violated and continue to violate its nondiscretionary duty to act on the Contingency Measure Plan pursuant to Clean Air Act section 110(k)(2), 42 U.S.C. § 7410(k)(2).

95. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Act's citizen suit provision. 42 U.S.C. § 7604(a)(2). Defendants' violation of the Act is ongoing and will continue unless remedied by this Court.

SECOND CLAIM FOR RELIEF

Failure to Perform a Non-Discretionary Duty

to Act on Rule 3172

(42 U.S.C. § 7410(k)(2))

96. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-95.

97. On March 13, 2024, CARB submitted Rule 3172 as a SIP revision to EPA. 90 Fed. Reg. 57414 Table 1 (Dec. 11, 2024).

98. On September 13, 2024, Rule 3172 became complete by operation of law.

99. Defendants have a mandatory duty to act on Rule 3172 no later than September 13, 2025. 42 U.S.C. § 7410(k)(2).

100. Defendants have failed and continue to fail to act on Rule 3172.

101. By failing to act on Rule 3172, Defendants have violated and continues to violate its nondiscretionary duty to act on Rule 3172 pursuant to Clean Air Act section 110(k)(2), 42 U.S.C. § 7410(k)(2).

102. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Act's citizen suit provision. 42 U.S.C. § 7604(a)(2). Defendants' violation of the Act is ongoing and will continue unless remedied by this Court.

THIRD CLAIM FOR RELIEF

Failure to Perform a Non-Discretionary Duty

to Act on Rule 3173

(42 U.S.C. § 7410(k)(2))

103. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-102.

104. On March 13, 2024, CARB submitted Rule 3173 as a SIP revision to EPA. 90 Fed. Reg. 57414 Table 1 (Dec. 11, 2024).

105. On September 13, 2024, Rule 3173 became complete by operation of law.

106. Defendants have a mandatory duty to act on Rule 3173 no later than September 13, 2025. 42 U.S.C. § 7410(k)(2).

107. Defendants have failed and continue to fail to act on Rule 3173.

108. By failing to act on Rule 3173, Defendants have violated and continues to violate its nondiscretionary duty to act on Rule 3173 pursuant to Clean Air Act section 110(k)(2), 42 U.S.C. § 7410(k)(2).

109. This Clean Air Act violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of the Act's citizen suit provision. 42 U.S.C. § 7604(a)(2). Defendants' violation of the Act is ongoing and will continue unless remedied by this Court.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court grant the following relief:

A. DECLARE that Defendants have a duty to act on the Contingency Measure Plan with respect to the 2008 8-hour ozone standard by October 16, 2025;

B. DECLARE that Defendants have a duty to act on the Contingency Measure Plan with respect to the 2015 8-hour ozone standard by October 29, 2025;

C. DECLARE that Defendants have a duty to act on Rule 3172 and Rule 3173 by September 13, 2025;

D. DECLARE that Defendants have violated and continue to violate the Clean Air Act by failing to act on the Contingency Measure Plan, Rule 3172, and Rule 3173;

E. ISSUE preliminary and permanent injunctions directing the Defendants to act on the Contingency Measure Plan with respect to the 2008 8-hour ozone standard by April 21, 2026;

F. ISSUE preliminary and permanent injunctions directing the Defendants to act on the Contingency Measure Plan with respect to the 2015 8-hour ozone standard by July 17, 2026;

G. ISSUE preliminary and permanent injunctions directing the Defendants to act on Rule 3172 and Rule 3173 by July 17, 2026;

H. RETAIN jurisdiction over this matter until such time as the Defendants have complied with their nondiscretionary duties under the Clean Air Act;

I. AWARD to Plaintiffs their costs of litigation, including reasonable attorney's and expert witness fees; and

J. GRANT such additional relief as the Court may deem just and proper.

Dated: January 21, 2026

Respectfully Submitted,

LAW OFFICE OF BRENT J. NEWELL

/s/ Brent J. Newell
Brent J. Newell
Attorney for Plaintiffs

JS-CAND 44 (Rev. 04-2025)

CIVIL COVER SHEET – for people without lawyers only

See Civil Local Rule 3-2 (amended April 28, 2025), which requires the filing of a civil cover sheet only by those unrepresented by counsel.

I. PLAINTIFF(S)

Committee for a Better Arvin, Medical Advocates for Healthy Air, and Sierra Club

County of Residence of First Listed Plaintiff: Kern
Leave blank in cases where United States is plaintiff.

Attorney or Pro Se Litigant Information *(Firm Name, Address, and Telephone Number)*

Law Office of Brent J. Newell, 245 Kentucky Street, Suite A4
Petaluma, CA 94952 (661) 586-3724

DEFENDANT(S)

U.S. Environmental Protection Agency, Lee Zeldin, Michael Martucci

County of Residence of First Listed Defendant: San Francisco
Use ONLY in cases where United States is plaintiff.

Defendant's Attorney's Name and Contact Information *(if known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ U.S. Government Plaintiff
- ☐ Federal Question *(U.S. Government Not a Party)*
- ☒ U.S. Government Defendant
- ☐ Diversity

III. CAUSE OF ACTION

Cite the U.S. Statute under which you are filing: *(Use jurisdictional statutes only for diversity)*

42 U.S.C. section 7604(a)(2)

Brief description of case: Clean Air Act citizen suit to compel nondiscretionary duty

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT

- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY

- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury -Medical Malpractice

PERSONAL INJURY

- ☐ 365 Personal Injury – Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS

- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities–Employment
- ☐ 446 Amer. w/Disabilities–Other
- ☐ 448 Education

PRISONER PETITIONS

HABEAS CORPUS

- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

OTHER

- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY

- ☐ 625 Drug Related Seizure of Property 21 USC § 881
- ☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION

- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY

- ☐ 422 Appeal 28 USC § 158
- ☐ 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent—Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS–Third Party 26 U.S.C. § 7609

OTHER STATUTES

- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC § 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☒ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ Original Proceeding
- ☐ Removed from State Court
- ☐ Remanded from Appellate Court
- ☐ Reinstated or Reopened
- ☐ Transferred from Another District
- ☐ Multidistrict Litigation–Transfer
- ☐ Multidistrict Litigation–Direct File

VI. FOR DIVERSITY CASES ONLY: CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Plaintiff	Defendant	
☐	☐	Citizen of California
☐	☐	Citizen of Another State
☐	☐	Citizen or Subject of a Foreign Country
☐	☐	Incorporated or Principal Place of Business In California
☐	☐	Incorporated and Principal Place of Business In Another State
☐	☐	Foreign Nation

VII. REQUESTED IN COMPLAINT

- ☐ Check if the complaint contains a **jury demand.**
- ☐ Check if the complaint contains a **monetary demand**. Amount:
- ☐ Check if the complaint seeks **class action** status under Fed. R. Civ. P. 23.
- ☐ Check if the complaint seeks a **nationwide injunction** or Administrative Procedure Act vacatur.

VIII. RELATED CASE(S) OR MDL CASE

Provide case name(s), number(s), and presiding judge(s).

IX. DIVISIONAL ASSIGNMENT pursuant to Civil Local Rule 3-2

(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 01/16/2026 **SIGNATURE OF ATTORNEY OR PRO SE LITIGANT** s/ Brent J. Newell

Exhibit 1

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;

245 KENTUCKY STREET, SUITE A4
PETALUMA, CA 94952
(661) 586-3724 BRENT@LAWOFFICENEWELL.COM

(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 Irritated 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

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[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:

Sierra Club

Mercedes Macias
Sierra Club
2101 Webster Street Suite 1300
Oakland, CA 94612
Telephone: (661) 972-4762
Email: mercedes.macias@sierraclub.org

Committee for a Better Arvin

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Medical Advocates for Healthy Air
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Attorney for Noticing Parties

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245 Kentucky Street, Suite A4
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Email: brent@lawofficenewell.com

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

Exhibit 2

November 25, 2024

Via Electronic Submission

Andrew Ledezma
Air Planning Office (ARD-2)
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
Ledezma.Andrew@epa.gov

Re: Comments on Proposed Rule, Conditional Approval; Contingency Measure State Implementation Plan for the 2008 Ozone Standard; San Joaquin Valley, California, EPA-R09-OAR-2024-0338.

Dear Mr. Ledezma:

Central California Environmental Justice Network, Committee for a Better Arvin, Medical Advocates for Healthy Air, and Sierra Club submit these comments on the proposed rule to approve (1) the Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-hour Ozone Standards ("Contingency Measure Plan"); (2) the California Smog Check Contingency Measure State Implementation Plan Revision (hereafter "Smog Check Revision"); and (3) Air District Rule 4601 (collectively "2008 Ozone Contingency Measures") as meeting contingency measures requirements for the 2008 8-hour ozone National Ambient Air Quality Standard ("NAAQS" or "standard"). These comments relate to EPA's proposed approval of contingency measures for the 2008 8-hour ozone standard since EPA defers action on contingency measures for the 2015 8-hour ozone standard.[1]

Unfortunately, the U.S. Environmental Protection Agency ("EPA") has failed to implement the Clean Air Act as Congress intended, resisting an opportunity to reduce ozone-forming air pollution that will help improve the San Joaquin Valley's air quality and environmental justice crisis. The Clean Air Act requires California to implement contingency measures, which are additional emissions reduction measures that serve as a Plan B when the

[1] 89 Fed. Reg. 85119, 85120 n.6 (Oct. 25, 2024).

primary strategies in an attainment plan fail. Contingency measures are not hypothetical future strategies but have been triggered multiple times because of a history of repeated failures to attain air quality standards in the Valley.

And once again, the San Joaquin Valley is on the precipice of two failures to attain, which makes contingency measures an opportunity to further reduce emissions. First, the California Air Resources Board ("CARB") and the San Joaquin Valley Unified Air Pollution Control District ("Air District") failed to attain the 1997 8-hour ozone standard (80 ppb) by the June 15, 2024 deadline. Second, the Valley failed to attain the 1997 annual PM2.5 standard (15 $\mu g/m^3$) by the December 31, 2023 deadline and EPA recently published a final rule extending that deadline more than ten months after the deadline.[2]

On remand following the Ninth Circuit Court of Appeal's 2021 rejection of EPA's first attempt to weaken the contingency measure requirements for the 2008 8-hour ozone standard in the San Joaquin Valley, EPA immediately began to meet with CARB and California air districts. They reached an agreement on a second attempt to weaken contingency measure requirements. During meetings of the so-called "Padilla Contingency Measures Subgroup" EPA committed to revise its long-standing interpretation, including specific elements that would lower the amount of required reductions. That agreement yielded the *Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter* (hereafter "Draft Guidance").[3]

EPA now proposes, as it agreed unlawfully and arbitrarily during the Padilla Contingency Measures Subgroup, to approve the 2008 Ozone Contingency Measures and eviscerate the amount of emissions reductions such measures should provide.

This proposed attempt to weaken contingency measures violates Executive Orders 14008 and 14096, the Procedural Due Process Clause of the Fifth Amendment, the Clean Air Act, the Administrative Procedure Act, and is arbitrary and capricious. EPA's proposal runs counter to Ninth Circuit and D.C. Circuit decisions disallowing contingency measures claiming emissions reductions from already implemented measures (the primary control strategy) and contingency measures delivering less than one year's worth of reasonable further progress. The proposal also runs counter to the plain language of the Clean Air Act, Congressional intent to require meaningful emissions reductions to compensate for any shortfalls, and the contingency measures requirement as part of the Act's overall statutory scheme.

EPA's proposal completely abdicates its obligation to require meaningful contingency measures. EPA should stand up for public health and environmental justice as the President ordered the agency to do instead of capitulating to the political pressure that drove the Padilla Contingency Measures Subgroup.

I. The Air Quality and Environmental Justice Crisis in the San Joaquin Valley.

[2] 89 Fed. Reg. 91263 (Nov. 19, 2024).

[3] Docket ID B.19 EPA-R09-OAR-2024-0338-0002_attachment_19.

The San Joaquin Valley desperately needs more emissions reductions to protect public health and secure environmental justice. 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."[4] California regulators' history of failure spans decades during which time the EPA has found that the Valley has failed to attain several National Ambient Air Quality Standards by their respective deadlines.[5] Moreover, ozone levels remain well above the 1997 and 2008 8-hour ozone standard with progress towards attainment plateauing. EPA data show 8-hour ozone design values for 2018-2020, 2019-2021, 2020-2022, 2021-2023 remaining flat at 0.93 ppb, 0.93 ppb, 0.94 ppb, and 0.90 ppb respectively. These data are well above the 0.84 ppb and 0.75 ppb design values necessary to attain the 1997 and 2008 8-hour ozone standards, respectively.[6]

Ground-level ozone is formed by a reaction between nitrogen oxides ("NOx") and volatile organic compounds ("VOC") in the presence of heat and sunlight. Unlike ozone in the upper atmosphere which is formed naturally and protects the Earth from ultraviolet radiation, ozone at ground level is primarily formed from anthropogenic pollution.

Ozone pollution causes a public health crisis in the San Joaquin Valley, which ranks among the most polluted air basins in the United States. 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. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.[7]

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[4] *Association of Irritated 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)).

[5] *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).

[6] *See* 2023 Design Value Reports, Ozone Design Values available at https://www.epa.gov/air-trends/air-quality-design-values#report (last visited November 25, 2024). Commenters attach as Exh. 1 an EPA spreadsheet file showing the design value data for the 2008 8-hour ozone standard in the San Joaquin Valley. For legibility reasons, the columns representing design value data earlier than 2018-2020 have been omitted.

[7] 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 November 18, 2024)., attached as Exh. 2.

According to the American Lung Association, counties in the San Joaquin Valley air basin rank among the worst in the United States for ozone. Tulare, Kern, and Fresno counties rank as the fourth, fifth, and sixth most ozone-polluted counties.[8]

EPA correctly recognized the environmental injustice San Joaquin Valley residents endure when EPA proposed to disapprove the PM2.5 attainment plan for the 2012 annual PM2.5 standard in the Valley. "The EPA is committed to environmental justice for all people, and we acknowledge that the SJV nonattainment area includes minority and low income populations that are subject to higher levels of $PM_{2.5}$ and other pollution relative to State and national averages, and that such concerns could be affected by this action."[9] More specifically, EPA found that all eight Valley counties score well above the national average for the EJ SCREEN Demographic Index, seven counties score above the 90th percentile for the PM2.5 EJ Index, and five counties score above the 90th percentile for the Ozone EJ Index.[10] EPA performs no such environmental justice analysis or makes findings in its proposal to approve the 2008 Ozone Contingency Measures.[11]

II. The Proposed Approvals of the 2008 Ozone Contingency Measures Violate Executive Orders 14008 and 14096.

"The EPA did not perform an EJ analysis and did not consider EJ in this proposed action."[12] The proposed approval of the 2008 Ozone Contingency Measures continues a pattern of EPA capitulation to California regulators on contingency measures. EPA also ignores Presidential orders directing EPA to prioritize environmental justice. President Biden has made environmental justice a central policy of his Administration and has directed all federal agencies to reverse decades of neglect and indifference towards communities of color enduring racially disparate pollution burdens. Shortly after the inauguration in 2021, the President issued Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, to make environmental justice a central policy for all federal agencies, including the EPA:

> To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. . . . Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and

[8] *Id*. at 25.

[9] 87 Fed. Reg. 60494, 60528 (Oct. 5, 2022) (noting that California regulators must provide reasonable assurance that the SIP does not violate Title VI of the Civil Rights Act of 1964).

[10] *Id*. at 60527-60528.

[11] 89 Fed. Reg. 85119 (Oct. 25, 2024).

[12] *Id*. at 85135/3.

> overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.[13]

On April 21, 2023, the President signed Executive Order 14096, Revitalizing our Nation's Commitment to Environmental Justice for All.

> To fulfill our Nation's promise of justice, liberty, and equality, every person must have clean air to breath; clean water to drink; safe and healthy foods to eat, and an environment that is healthy, sustainable, climate-resilient, and free from harmful pollution and chemical exposure. Restoring and protecting a healthy environment – wherever people live, play, work, learn, grow, and worship – is a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people.[14]

Executive Order 14096 bears directly on the 2008 Ozone Contingency Measures. EPA proposes to approve two contingency measure – the Smog Check Revision and Rule 4601 – and a commitment to adopt five additional contingency measures.[15] As described below, EPA's proposal is unlawful and arbitrary. EPA ignores the consequences of relaxing the quantity of reductions contingency measures must provide and offers no explanation for how its actions are consistent with the Executive Order. EPA has been specifically directed to, among other things:

> (ii) evaluate relevant legal authorities and, as available and appropriate, take steps to address disproportionate and adverse human health and environmental effects (including risks) and hazards unrelated to Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns; [and]
>
> (iii) identify, analyze, and address historical inequities, systemic barriers, or actions related to any Federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment[.][16]

EPA plainly exacerbates the environmental justice crisis by denying San Joaquin Valley residents meaningful pollution reductions that should happen upon a failure to attain the 2008 8-hour ozone standard. EPA's finding that this action "is expected to have a neutral to positive impact on the air quality of the affected area" lacks credulity when EPA proposes to approve a weakening of its contingency measures interpretation. The finding lacks any factual support in the record and is thus arbitrary and capricious.[17] EPA has taken affirmative steps contrary to the

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[13] 86 Fed. Reg. 7619, 7629 (Feb. 1, 2021).

[14] 88 Fed. Reg. 25251 (April 21, 2023).

[15] 89 Fed. Reg. 85124/1.

[16] *Id.* at 25253-25254.

[17] 89 Fed. Reg. at 85135/3.

Executive Orders by reaching an agreement with California regulators to weaken contingency measures reductions, as described in Section IV, *infra*.

III. The Clean Air Act Requires Meaningful Contingency Measures Adequate to Compensate for any Emission Reduction Shortfall.

The Clean Air Act requires states to develop the strategies to attain the health based NAAQS established by EPA. States include these strategies in attainment plans that must attain the standard by the deadline and must include contingency measures as back-up strategies in the event the attainment plan fails. The Act requires a minimum level of pollution control that vary based on the pollutant and the severity of the pollution. For ozone, the minimum pollution controls are called Reasonably Available Control Measures and Reasonably Available Control Technology.[18] The Act also requires the attainment plan to achieve the NAAQS without regard to feasibility.[19]

Sections 172(c)(9) and 182(c)(9) of the Clean Air Act, 42 U.S.C. § 7502(c)(9) and 7511a(c)(9), require contingency measures after the primary strategies in a state implementation plan fail to deliver Reasonable Further Progress or attainment.[20] Congress intended to require, and the statutory scheme supports, robust and meaningful emissions reductions from contingency measures when the primary strategy fails to achieve the outcomes Congress mandated.

Section 172(c)(9) of the Act requires all attainment plans to include contingency measures – a Plan B – as a backstop for (1) an area's failure to meet Reasonable Further Progress; or (2) an area's failure to attain a National Ambient Air Quality Standard by the attainment deadline.

> Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

42 U.S.C. § 7502(c)(9); *see also* 42 U.S.C. § 7511a(c)(9) (repeating requirement for contingency measures for failure "to meet any applicable milestone.").

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[18] 42 U.S.C. §§ 7502(c)(1), 7511a(b)(2).

[19] 42 U.S.C. § 7502(c)(1) ("Such plan provisions . . . shall provide for attainment of the national primary ambient air quality standards."). For serious and above ozone nonattainment areas, a state shall submit a plan revision that demonstrates the plan will attain the standard by the applicable deadline. 42 U.S.C. § 7511a(c)(2)(A). At no point do the ozone-specific provisions in Subpart 1 excuse an area from its obligation to attain the standard based on infeasibility of control measures.

[20] 42 U.S.C. § 7502(c)(9).

EPA has consistently interpreted section 172(c)(9), 42 U.S.C. § 7502(c)(9), for decades such that "contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year." 57 Fed. Reg. 13498, 13543-44 (April 16, 1992) ("General Preamble"). This standard is called "One Year's Worth of Reasonable Further Progress" or "OWY of RFP." EPA imported the General Preamble interpretation into the 2008 Ozone SIP Requirements Rule such that contingency measures must equate to one year's worth of Reasonable Further Progress ("RFP"). 80 Fed. Reg. 12264, 12285 (March 6, 2015) ("contingency measures should represent 1-year's worth of progress, amounting to reductions of 3 percent of the baseline emissions inventory"). For the 2008 ozone standard in the San Joaquin Valley nonattainment area, One Year's Worth of Reasonable Further Progress represents 3 percent of the 2011 baseline inventory that equates to 11.4 tons per day of VOC and 11.3 tons per day of NOx reductions. 83 Fed. Reg. 61346, 61357/1 n.64 (November 29, 2018); 84 Fed. Reg. 11198, 11206/2 (March 25, 2019).

The Courts have rejected EPA attempts to weaken contingency measures. In *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016), the Ninth Circuit held that contingency measures must be additional measures to be implemented and to take effect if the plan fails, and may not be comprised of already-implemented measures providing surplus reductions. "The statutory language in § 7502(c)(9) is clear: it requires the SIP to provide for the implementation of measures 'to be undertaken' in the future, triggered by the state's failure 'to make reasonable further progress' or to attain the NAAQS." *Id*. at 1235-1236. EPA has conceded that *Bahr* disallows already-implemented measures. "In light of the *Bahr* decision, already-implemented measures no longer qualify as contingency measures for SIP purposes in the state located within the jurisdiction of the Ninth Circuit Court of Appeals." 84 Fed. Reg. at 11205/3

In *Sierra Club v. U.S. Environmental Protection Agency*, 83 Fed. Reg. 62998 (Dec. 6, 2018), the D.C. Circuit Court of Appeals vacated the contingency measures component of the rule "Implementation of the 2015 National Ambient Air Quality Standards for Ozone, Nonattainment Area State Implementation Plan Requirements." 21 F.4th 815, 827-828 (D.C. Cir. 2021). *Sierra Club* cited *Bahr* with approval and held that "previously implemented measures cannot qualify as contingency measures." *Id*. at 827. "The Act's plain text expressly provides that valid contingency measures become operative only when the triggering conditions set forth in the statute occur, and not any earlier." *Id*. As a basis for its holding, the D.C. Circuit noted that already implemented measures "are not measures 'to take effect' or 'to be undertaken' if the area fails to satisfy the applicable requirements." *Id*. at 828. Rather, such measures "are simply measures that have failed." *Id*. (citing *Bahr*, 836 F.3d at 1235).

In *Association of Irritated Residents v. U.S. Environmental Protection Agency*, 10 F.4th 937 (9th Cir. 2021), the Ninth Circuit rejected EPA's attempt after *Bahr* to weaken contingency measures for the 2008 8-hour ozone standard in the San Joaquin Valley. CARB submitted a small paint can rule and a promise to increase enforcement as contingency measures for the 2008 8-hour ozone standard in the San Joaquin Valley. CARB also claimed that surplus reductions from already implemented mobile source rules qualified as contingency measures to support approval. EPA rejected the increased enforcement program as noncompliant with the requirements of the Clean Air Act after receiving persuasive public comments.[21] The Ninth Circuit Court of Appeals then rejected EPA's approval of the rest as arbitrary and capricious because excess reductions from already implemented measures do not count as contingency

[21] 84 Fed. Reg. 11198, 11203-11025 (March 25, 2019).

measure reductions and the nominal reductions from the small paint can rule comprised a small fraction of one year's worth of Reasonable Further Progress.[22]

Read in conjunction with the Act's Reasonable Further Progress emission reduction requirements and attainment plan requirements, the required contingency measures must be sufficient to correct any shortfalls in achieving the required emission reductions on schedule. The legislative history confirms this reading. In explaining the contingency measure requirement in section 172(c)(9) of the Act, the House Report stated that "[s]uch measures are to take effect without further action by the State or Administrator, *and are to be adequate to compensate for any emission reduction shortfall*." H.R. Rep No. 101-490, reprinted in Congressional Research Service, A Legislative History of the Clean Air Act Amendments of 1990 (compiled November 1993) 3247-48 (emphasis added). Likewise, in describing the purpose of the contingency measure requirement for milestones in section 182(c)(9) for serious and above areas, the House report stated that "[s]uch contingency measures *must be adequate to assure that the emission reduction shortfall is compensated for*." *Id*. 3266 (emphasis added). Thus, Congress clearly intended that contingency measures be sufficient to correct any emission reduction shortfall.

IV. Documents Obtained through the Freedom of Information Act Show EPA, CARB, and California Air Districts Agreed to Eviscerate Required Contingency Measures prior to Notice and Comment Rulemaking.

The Central California Environmental Justice Network recently obtained documents from EPA through the Freedom of Information Act that show (1) EPA, CARB, and California air district working closely together in a formal "Padilla Contingency Measures Subgroup" to reach an agreement to weaken the contingency measures requirement; and (2) EPA sharing that policy with the California agencies several months before publicly releasing the proposed policy for public comments. None of the documents EPA disclosed show that either EPA or the California agencies had any reservations about the public health consequences from weakening contingency measures.

A flurry of activity began in the late summer of 2021, shortly after the Ninth Circuit's decision in *Association of Irritated Residents*, which invalidated EPA's first attempt to approve weak, nominal contingency measures after *Bahr*. On September 8, 2021 and November 8, 2021, regional counsel for EPA Region 9 briefed staff for CARB and the air districts on the decision.[23] A PowerPoint presentation prepared for the November 8, 2021 meeting shares key details about EPA's view on the decision and the proposed changes EPA had already begun considering, including allowing less reductions than one year's worth of progress if a state provides a reasoned justification that the state cannot meet the requirements.[24] Emails confirm a series of

[22] *Association of Irritated Residents*, 10 F.4th at 946-947 (holding that EPA did not provide a reasoned explanation consistent with the Clean Air Act for an amount of reductions less than the long-standing three percent requirement for contingency measures).

[23] California Air Pollution Control Officers Association, Planning Committee Meeting Minutes, September 9, 2021, attached as Exh. 3 [1395-1400]; California Air Pollution Control Officers Association, Planning Committee Virtual Symposium Minutes, November 8-9, 2021, attached as Exh. 4 [1567-1569].

[24] PowerPoint, Contingency Measures Discussion, CAPCOA Planning Managers Meeting, November 8, 2021, attached as Exh. 5 [1195-1207].

meetings of the "Padilla Contingency Measure Subgroup," a state and federal partnership that developed recommendations to, and secured commitments by, EPA on how EPA would change its contingency measures interpretation.[25]

In a policy summary dated July 22, 2022, the Padilla Subgroup documented the outcome of these meetings, including EPA's commitment to undertake several policy changes which ultimately became the Draft Guidance and the proposed rulemaking here. The EPA Region 9 Air Director shared this summary with the head of the Bay Area Air Quality Management District during the open public comment period on the Draft Guidance and discussed the genesis of the Padilla Workgroup.[26] The following excerpt from that document shows EPA's policy commitments:

Action Items and Recommendations

The sub-group discussions included EPA, CARB, CAPCOA, and 9 California air districts. One major benefit of the sub-group was the opportunity for dialogue on the options being considered as part of EPA's contingency measure task force and timing needs. For proposed actions, the sub-group recommends:

- EPA and the California agencies acknowledge the need for collaboration on new approaches and updated guidance for meeting the contingency measure requirements for California SIP submittals. EPA is committed to establishing clear opportunities for how and when it will engage with state and local partners in both the short- and long-term, and the California agencies are committed to continue working with EPA on solutions.
- In the short-term, EPA will continue to explore interpretations and approaches that are consistent with the court decisions, including acknowledging feasibility constraints where they are demonstrated to exist and explore potential for better justifying the AIR decision pilot approach that mobile surplus is a reasoned justification for approving less than one year's worth of RFP emissions reductions to satisfy the contingency measure requirement.
- In the longer-term, EPA will commit to revising prior national guidance on meeting the contingency measure requirements. This effort would include: (1) revisiting the general bases for calculating the amount of RFP that contingency measures should account for, (2) acknowledging feasibility constraints where they are demonstrated to exist, and (3) clarifying the variety of measures that can fulfill the contingency measure requirements. The process to develop nationally-applicable revisions to the contingency measure guidance could take more than one year to complete.
- While not directly within EPA's control, EPA could be supportive of narrow legislative changes to the Clean Air Act's contingency measure provision that would acknowledge the important air quality improvements attributable to ongoing emissions reductions from motor vehicle fleet turnover, including the increased employment of zero-emission vehicles.

A draft version of the Padilla Contingency Measures Subgroup summary and an email exchange sheds additional light on the degree to which EPA committed to eviscerate

[25] Email from Anita Lee (EPA) to Tung Le (California Air Pollution Control Officers Association), May 22, 2022, attached as Exh. 6 [160-176].

[26] Email from Elizabeth Adams (EPA) to Phil Fine (BAAQMD) and attachment, March 29, 2023, attached as Exh. 7 [457-473]. Note: The reference to a letter from Padilla occurring in December 2022 is an error since the Padilla Subgroup had been meeting at least since May 2022.

contingency measures in California and beyond. Scott Mathias[27] emailed a draft version of the summary, including edits and comments from Mathias and Michael Ling,[28] to EPA and CARB staff and explained that the "Action Items and Recommendations" section reflected the *consensus* view of the federal and state agency participants.[29] A comment bubble from Ling inserted in the "short-term" bullet point shared the contrary opinion of the EPA's Office of General Counsel that precluded content in the bullet from the Contingency Measures Task Force Report, and Ling's view that he agrees with California on that issue.[30] Another comment and edits to the "longer term" bullet point struck out "transparent public" before "process" and Ling's acknowledgment that "[w]hatever we write will apply everywhere, including places that have a very different footing than CA."[31]

On November 10, 2022, the South Coast Air Quality Management District sent a letter to Mathias.[32] The letter listed several policy recommendations very similar to the Padilla Subgroup commitments and what EPA ultimately proposed in the Draft Guidance and these proposals, including (1) changing the method of calculating required reductions by substituting the baseline emissions inventory with the attainment year emissions inventory; and (2) a feasibility-based justification for adopting even fewer reductions.

On December 5, 2022, Ling, Mathias, and Elizabeth Adams[33] met with the air districts and CARB senior staff "for an extensive discussion of EPA's planned update to the Contingency Measures (CM) Guidance."[34] At the meeting, Mathias and Adams "presented an outline of the

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[27] Scott Mathias is the Director of EPA's Air Policy Division.

[28] Michael Ling is the Chair of the EPA's Contingency Measures Task Force.

[29] Email from Scott Mathias to Matt Lakin, Michael Ling, Niloufar Nazmi, and Michael Benjamin (CARB), July 13, 2022 (with attachment Padilla Workgroup, Contingency Measures Sub-Group, July 2022); Email from Matt Lakin to Scott Mathias and Edie Chang (CARB), July 12, 2022; Email from Niloufar Nazmi to various EPA, CARB, Air District, Bay Area Air Quality Management District, and South Coast Air Quality Management District staff, July 11, 2022; Email from Elizabeth Adams to various EPA, CARB, Air District, Bay Area Air Quality Management District, and South Coast Air Quality Management District staff, July 1, 2022, attached as Exh. 8 [909-912]. A fully legible version of the draft Padilla Contingency Measures Subgroup summary is attached as Exh. 9.

[30] *Id.*

[31] *Id.*

[32] Letter from Sarah Rees and Barbara Baird (SCAQMD) to Schott Mathias (EPA), November 10, 2022, November 10, 2022, attached as Exh. 10 [662-667].

[33] Elizabeth Adams was, at that time, the Director of the Region 9 Office of Air and Radiation.

[34] Email from Scott Mathias (EPA) to Rachel McIntosh-Kastrinsky, December 6, 2022, attached as Exh. 11 [2520-2522].

elements of the CM Guidance and the recommendations that the air program's CM Task Force intends to provide to OAR leadership this week (meeting scheduled with Joe [Goffman][35] for 12/6/2022)."[36] The email further documents that the "EPA participants, led by HQ's Task Force Chair Michael Ling, answered the Padilla Group's clarifying questions and received feedback on the concepts and specific proposals."[37]

The EPA also helped the Air District calculate the new one year's worth of progress standard for PM2.5 contingency measures before EPA released the Draft Guidance for public comment. On January 27, 2023, the EPA Region 9 Air and Radiation Division Assistant Director emailed the head of the Air District to state that EPA would share the methodology for calculating the amount of one year's worth of progress for the PM2.5 contingency measures even though the Draft Guidance had not been released for public comment discussing that aspect of EPA's interpretation.[38] The Air District, at that time, was preparing to adopt the PM2.5 contingency measures which EPA has since approved. *See* 88 Fed. Reg. 87988 (Dec. 20, 2023); 89 Fed. Reg. 80749 (Oct. 4, 2024).

EPA posted the Draft Guidance on its website two months later on March 17, 2023 and requested comments. 88 Fed. Reg. 17571 (March 23, 2023). EPA has neither responded to comments nor adopted a final guidance.

V. The EPA Unlawfully and Arbitrarily Proposes Approval of the 2008 Ozone Contingency Measures when EPA has Already Agreed to a Predetermined Outcome in this Rulemaking.

The EPA has predetermined the outcome of these proposed rulemakings in an agreement with CARB and the air districts during the Padilla Contingency Measures Subgroup proceedings. The EPA now proposes a sham notice and comment rulemaking process when the agency has already agreed to a predetermined outcome. Such predetermined rulemaking violates Commenters' rights to procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution, the rulemaking requirements of the Clean Air Act, 42 U.S.C. § 7607, and the Administrative Procedure Act, 5 U.S.C. §§ 551-706. Such predetermined rulemaking also violates Executive Orders 14008 and 14096.

VI. The EPA's Predetermined and Revised Interpretation of the Contingency Measures Emissions Reduction Requirement.

Faced with several adverse court decisions, and on remand in *Association of Irritated Residents*, EPA reached an agreement with California regulators to reinterpret the agency's long-

[35] Joseph Goffman, Principal Deputy Assistant Administrator Performing Delegated Duties of Assistant Administrator, is the head of the Office of Air and Radiation for EPA.

[36] *Id*.

[37] *Id*.

[38] Email from Matt Lakin to Samir Sheikh, January 27, 2023, attached as Exh. 12 [802].

standing position on the amount of, and timing for, contingency measure emissions reductions. EPA's long-standing interpretation requires ozone contingency measures to provide one year's worth of Reasonable Further Progress ("OYW of RFP"), which equates to 3 percent of the base year inventory.[39] EPA approved the contingency measures element of the 2016 Ozone Plan for the 2008 8-Hour Ozone Standard based on that interpretation, and required contingency measures based on that standard.[40]

In a transparent effort to circumvent the three recent, adverse court decisions,[41] EPA proposes to change key aspects of its interpretation for contingency measures that drastically reduce the amount of required reductions.[42] First, EPA proposes to reduce the required emissions reductions for contingency measures by severing the statutory link with Reasonable Further Progress ("RFP") and ignoring that contingency measures must also compensate for shortfalls in meeting RFP. The EPA calls the new standard "one year's worth of progress" ("OYW of progress").[43] EPA defines OYW of progress as "the average annual reductions between the base year emissions inventory and the projected attainment year, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered."[44] The OYW of progress standard, by departing from the amount of reductions required for Reasonable Further Progress, delivers fewer reductions by inventing a less-stringent "progress" standard that depends on a percentage of the future attainment baseline.

EPA proposes to define OYW of progress based on the projected future attainment year emissions inventory a state claims will demonstrate attainment. This inventory is lower than the OYW of RFP base year inventory, which is the amount of pollution currently burdening the public in the air basin at the start of the attainment plan and the starting point for the RFP demonstration. The attainment year inventory is equal to the base year inventory minus the reductions from the state's primary attainment strategy, so the new OYW of progress standard benefits from a lower amount of emissions against which EPA's arbitrary OYW of progress percentage would apply. In other words, a lower number against which a percentage applies yields a lower amount. EPA rationalizes the change to OYW of progress when it claims that OYW of RFP imposes an excessive amount of reductions and more than "needed to make up for a failure to make RFP or for attainment purposes."[45] According to EPA, this problem most

[39] *See* 57 Fed. Reg. 13498, 13543-44 (April 16, 1992) ("General Preamble"); 80 Fed. Reg. 12264, 12285 (March 6, 2015) ("contingency measures should represent 1-year's worth of progress, amounting to reductions of 3 percent of the baseline emissions inventory").

[40] 84 Fed. Reg. 11198 (March 15, 2019).

[41] *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016); *Sierra Club v. EPA*, 21 F.4th 815 (D.C. Cir. 2021); *Association of Irritated Residents v. EPA*, 10 F.4th 937 (9th Cir. 2021).

[42] *See* Draft Guidance; 89 Fed. Reg. at 85123- (describing the Draft Guidance).

[43] Draft Guidance at 21.

[44] *Id*. at 21 (noting the guidance should not be read as changing existing RFP requirements).

[45] *Id*. at 21.

significantly occurs in ozone nonattainment areas with higher classifications (e.g. extreme ozone nonattainment areas like the San Joaquin Valley) when the number of years between the base year and attainment year yield a large difference in ozone precursor emissions. Such severe ozone pollution and the time Congress authorized for extreme nonattainment areas, in EPA's opinion, warrant *lower* emission reduction mandates. Simply put, EPA arbitrarily and capriciously believes areas like the San Joaquin Valley should enjoy *less* benefits from contingency measures and suffer *more* ozone pollution when an attainment plan fails than an area with cleaner air.

Second, EPA proposes to allow states to adopt ozone and PM2.5 contingency measures that achieve *even less* than OYW of progress when the lower amount still does not satisfy "some air agencies [who] may still be concerned that they cannot meet the recommended amount of reductions from CMs."[46] For states like California who decline to make the tough decisions to protect public health, EPA proposes the "infeasibility demonstration," which allows contingency measures that achieve less than OYW of progress if a state provides a "reasoned justification" of a "demonstrated lack of feasible measures."[47] Despite the Clean Air Act not subjecting contingency measures to a feasibility standard, EPA believes that requiring only feasible contingency measures would constitute a reasonable interpretation of sections 172(c)(9) and 182(c)(9) of the Act.[48]

EPA equates feasibility for contingency measures to the minimum control measures the Act imposes on ozone and PM nonattainment areas to adopt their primary attainment strategy comprised of RACM/RACT (for ozone and PM), BACM/BACT (for PM), and most stringent measures (for PM).[49] EPA believes "infeasible" means either technologically or economically infeasible and a state's infeasibility demonstration "could be similar to" the analysis to determine RACM/RACT, BACM/BACT, and most stringent measures, but "in some cases additional explanation should be provided as to why an available measure will not be feasible as a CM at a given source."[50] EPA indicates that "lower amounts of CM emission reductions" will warrant a greater infeasibility burden.[51]

[46] *Id*. at 29.

[47] *Id*. at 29.

[48] *Id*. at 29.

[49] *Id*. at 29.

[50] *Id*. at 31.

[51] *Id*. at 31.

VII. The EPA Unlawfully and Arbitrarily Proposes Approval of the 2008 Ozone Contingency Measures Based on the EPA's Predetermined Interpretation.

A. EPA's new interpretation violates the plain meaning of the Act and EPA fails to explain why the interpretation is more consistent with the Act than EPA's long-standing interpretation.

EPA unlawfully and arbitrarily proposes approval of the 2008 Ozone Contingency Measures based on the agency's new, predetermined interpretation in the Draft Guidance when it lowers the required emissions reductions ozone contingency measures must deliver, invents an infeasibility exemption completely absent from sections 172(c)(9) and 182(c)(9), 42 U.S.C. §§ 7502(c)(9), 7511a(c)(9), and extends the implementation period from one year to two years. 88 Fed. Reg. at 87994.

EPA's proposed approval violates sections 172(c)(9) and 182(c)(9) when Congress wanted meaningful and enforceable contingency measures to compensate for any shortfalls. Such measures must be included in the State Implementation Plan ready for implementation without any further action by California or the EPA. EPA's proposed approvals of the 2008 Ozone Contingency Measures drastically depart from EPA's long-standing interpretation requiring OYW of RFP.

EPA's proposed approvals of the 2008 Ozone Contingency Measures rely on the Draft Guidance to replicate the arbitrary and capricious interpretation the *Association of Irritated Residents* court invalidated. The Draft Guidance-based approval violates sections 172(c)(9) and 182(c)(9) by severing the amount of required emission reductions from the parallel and related Reasonable Further Progress requirement when EPA shifts from its OYW of RFP to its new OYW of progress interpretation. Reasonable Further Progress in ozone nonattainment areas must demonstrate emissions reductions of at least three percent of baseline emissions of NOx or VOC each year or less than three percent if a state demonstrates all feasible measures are in the plan.[52] A failure to meet Reasonable Further Progress – and a failure to attain – will trigger contingency measures.[53] When EPA interpreted the requisite amount of contingency measure reductions in the General Preamble, it made OYW of RFP consistent with the amount of reductions necessary demonstrate Reasonable Further Progress in the first instance.[54] Any approval here of the OYW of progress interpretation severs the connection between contingency measures and Reasonable Further Progress when the OYW of progress standard produces less reductions than that which the Act requires for RFP in the first instance. Congress wanted sufficient reductions to compensate for any shortfalls, and thus EPA's OYW of progress standard violates the Act and is arbitrary and capricious. The plain meaning does not allow, and EPA cannot provide a reasoned justification, for an interpretation that requires less than that which the Act requires for Reasonable Further Progress. Here, the proposed approvals of the 2008 Ozone Contingency Measures plainly provide reductions far, far less than OYW of RFP. Citing the Draft Guidance,

[52] 42 U.S.C. §§ 7511a(c)(2)(B)(i), (ii), 7511a(c)(2)(C).

[53] 42 U.S.C. §§ 7502(c)(9), 7511a(c)(9).

[54] 57 Fed. Reg. 13498, 13511 (April 16, 1992) (requiring three percent of baseline emissions – one year's worth of RFP – for contingency measures).

EPA fundamentally, unlawfully, and arbitrarily changes the standard from OYW of RFP to a new OYW of progress standard to require less reductions that Reasonable Further Progress.

Table 1

	Base Year[55]	NOx Reductions (tpd)	VOC Reductions (tpd)
One Year's worth of RFP[56]	2011	11.3	11.4
OYW of progress[57]	2012	4.22	1.87

With the Reasonable Further Progress requirement unchanged, EPA interprets the contingency measures requirement to provide 37.3 percent of RFP for NOx and 16.4 percent of RFP for VOC. EPA thus now proposes to provide a fraction of the amount required for Reasonable Further Progress when Congress wanted meaningful contingency measures that would compensate for any shortfall. Not only does OYW of progress violate the plain meaning of the Act by departing from its mooring on Reasonable Further Progress, but EPA fails to explain how this lower amount will compensate for RFP shortfalls and is more consistent with the Act.

The OYW of progress standard is unlawful and arbitrary because the plain meaning of the statute does not authorize, and EPA provides no reasoned explanation for, weakening contingency measures for extreme ozone nonattainment areas with more severe air pollution (the San Joaquin Valley for the 2008 8-hour ozone standard) because those areas have longer periods to attain the standards compared to severe or serious ozone nonattainment areas. This intended result occurs because OYW of progress depends on the annual emissions reductions averaged over the number of years in the attainment period. For ozone, the Act allows extreme areas 20 years to attain the standard, while serious areas have 9 years to attain.[58] EPA admits that OYW of RFP provides the greatest emission reduction benefit in extreme ozone nonattainment areas and EPA cannot and has not articulated a reasoned justification that OYW of progress is more consistent with the Act's remedial scheme, which imposes *more* stringent requirements on extreme ozone nonattainment areas by virtue of the severity of the pollution burden. *See* 42 U.S.C. § 7511a. Thus, OYW of progress violates the Act's remedial scheme by requiring lower contingency measures in areas that have more ozone pollution than areas with less. EPA offers no cogent explanation for why the OYW of progress interpretation is more consistent with the Act.

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[55] EPA proposes to approve OYW of progress based on a 2012 inventory when it previously approved contingency measures for the 2008 8-hour ozone standard based on a 2011 inventory. *See* Section VII.D, *infra.*

[56] 89 Fed. Reg. 85119, 85124 (Oct. 25, 2024).

[57] 83 Fed. Reg. 61346, 61357/1 n.64 (Nov. 29, 2024); 84 Fed. Reg. 11198, 11205/3 n.43 (March 25, 2019).

[58] *See, e.g.*, 42 U.S.C. § 7511(a)(1) (1-hour ozone classification attainment deadlines); 40 C.F.R. § 51.903 (1997 8-hour ozone attainment deadlines); 40 C.F.R. § 51.1103 (2008 8-hour ozone attainment deadlines).

EPA's OYW of progress interpretation highlights this fatal flaw even more starkly when an area voluntarily reclassifies to a higher ozone classification. Ozone nonattainment areas can reclassify to a higher classification and obtain more years to attain the standards while the amount of reductions necessary to attain does not change. *See* 42 U.S.C. § 7511(b)(3). The San Joaquin Valley has a history of voluntary reclassifications for ozone, as EPA is well aware.[59] Thus, a voluntary reclassification would lower the average annual reductions and allow for a lower percentage of the base year inventory that would then be applied to the same attainment year inventory.

Table 2 shows OYW of progress for NOx in a hypothetical ozone reclassification from serious to extreme (in tons per day of NOx). The act of reclassification, which EPA shall grant if requested by a state, would lower OYW of progress from 5.7 tons per day to 2.5 tons per day merely because of the extended period of time allowed for reclassification. The weakening of contingency measures reductions in such situations runs contrary to the structure of the Act which *increases* the stringency of nonattainment area requirements as a result of reclassification from, for example, serious to extreme.[60]

Table 2

Classification	Base Year Inventory	Attainment Inventory	Reductions to Attain	Years to Attain	Average Annual Reductions	Base year %	OYW of Progress
Serious	200	100	100	9	11.12	5.7%	5.7
Extreme	200	100	100	20	5	2.5%	2.5

EPA's proposed approval eviscerates contingency measures even more by proposing an exemption that does not exist in the statute. The proposed approval relies on the Draft Guidance to propose even less reductions than OYW of progress. As described above, the exemption could apply if California claims that it has already adopted all feasible measures. EPA calls this loophole the "infeasibility demonstration." 88 Fed. Reg. at 85123/2. The 2008 Ozone Contingency Measures fully exploit this loophole when EPA proposes to find that no other feasible measures exist and CARB and the Air District need not adopt any other contingency measures. 89 Fed. Reg. at 85130-85134. EPA's Draft Guidance provides the agency's view that section 179(c)(9) does not require infeasible measures, so the EPA interprets the Act to allow a state to provide the "infeasibility demonstration" to claim that all feasible measures have already been adopted as part of the state's primary control strategy.

After approving CARB's and the District's infeasibility demonstration, the Smog Check Revision and Rule 4601 provide the only emissions reductions from the 2008 Ozone Contingency Measures. The measures would provide 0.079 tons per day of NOx and 0.675 tons

[59] *See, e.g.*, 75 Fed. Reg. 24409 (May 5, 2010) (final rule granting California's request to reclassify the San Joaquin Valley from serious to extreme ozone nonattainment for the 1997 8-hour ozone standard).

[60] 42 U.S.C. § 7511a(c), (e).

per day of VOC.[61] As a percentage of OYW of progress, the measures provide 1.9 percent for NOx and 36.1 percent for VOC.

This justification for allowing 2008 Ozone Contingency Measures to constitute the only contingency measures for the 2008 8-hour ozone standard violates the Clean Air Act in the same manner as EPA's prior attempts that the Ninth Circuit invalidated in *Bahr, Sierra Club,* and *Association of Irritated Residents*. In those cases, courts rejected EPA interpretations that relied on already adopted measures as contingency measures. Here, EPA's interpretation allows a state to avoid adopting contingency measures when a state has already adopted all feasible measures. These two interpretations reflect a distinction without a difference when under both EPA allows already adopted measures to substitute for contingency measures. And *Association of Irritated Residents* becomes even more apt when already adopted measures in that case did not justify approval of a single, nominal paint can contingency measure. A primary control strategy that includes all feasible measures cannot and should not justify an EPA interpretation that rejects contingency measures. Congress wanted meaningful contingency measures "to have a backup that can be put in place immediately in case already-implemented measures in a plan fail to achieve [RFP and attainment].[62] But EPA unlawfully and arbitrarily excuses contingency measures needed upon a failure to attain when the measures California has already adopted still result in a failure to attain. *See Association of Irritated Residents*, 10 F.4th at 946 (noting that already adopted measures upon a failure to attain are nothing more than measures that have failed). By declining to require more robust contingency measures as infeasible, EPA conflates the primary control strategy required by the Clean Air Act with the Plan B contingency measures also required by the Act.

The "infeasibility demonstration" aspect of EPA's interpretation violates the plain language of the statute and is inconsistent with the statutory scheme when Congress intended that contingency measures provide meaningful emissions reductions adequate to compensate for any emission reduction shortfall and provide for progress toward attainment while the state develops a new attainment plan. Congress made no provision for exceptions to that mandate. Nor did Congress provide any authority for EPA to relax contingency measure requirements based on claims of technological or economic challenges in meeting those requirements. Congress did expressly provide for limited authority to relax the Reasonable Further Progress requirement in section 182(b)(1)(A) if the state demonstrates that it has adopted New Source Review provisions at extreme area levels and thresholds, RACT for all sources emitting at extreme area thresholds, all measures that can feasibly be implemented in the area in light of technological achievability, and measures achieved in practice by sources in the same source category in nonattainment areas of the next highest classification. 42 U.S.C. § 7511a(b)(1)(A)(ii). Likewise, Congress expressly provided authority for relaxation of the RFP requirements in section 182(c)(2)(B) if the state demonstrates that the SIP includes all measures that can feasibly be implemented in the area in light of technological achievability and includes all measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. That Congress expressly provided for such relaxation routes from RFP percentage reduction mandates refutes the notion that EPA can invent another relaxation route for contingency measures in sections 172(c)(9) and 182(c)(9) to correct RFP and attainment failures. EPA asserts that it can infer a feasibility test for the Act's contingency measure provisions by analogy to the Act's RACM/RACT and PM most stringent measures provisions, but RACM/RACT by their terms

[61] 89 Fed. Reg. at 85126 Table 3.

[62] *Id.* at 947 (citing *Sierra Club,* 21 F.4th at 838*; Bahr*, 836 F.3d at 1235).

include a "reasonably available" qualifier, and the most stringent measure provision is expressly limited to "feasible" measures, terms that appear nowhere in the Act's contingency measure provisions. This stated rationale further demonstrates EPA's conflation of contingency measures with the primary, required attainment strategies.

Moreover, EPA's feasibility interpretation makes no sense and contradicts the statute by suggesting that the same feasibility criteria applicable to RACM/RACT should also apply to contingency measures. Sections 172(c)(1) and 182(b)(2) of the Act already require the SIP's primary attainment strategy to include "all" RACM/RACT along with any other available control measures that would attain the standard.

Congress did not excuse an area from either its obligation to attain a standard or provide contingency measures on infeasibility grounds. States cannot throw up their hands if all feasible measures cannot demonstrate attainment by the statutory deadline. Rather, the Act requires a state to adopt such measures that would attain the standard without regard to feasibility.[63] Nowhere does the Act excuse areas from attaining a standard upon claims of infeasibility. Congress did the same thing for contingency measures. Congress wanted measures that would compensate for any shortfall in failure to attain or make Reasonable Further Progress and included no feasibility limitations. In other words, EPA unlawfully and arbitrarily equates contingency measures to the minimum pollution controls required for the primary attainment strategy and ignores Congress's unequivocal mandate that states attain the standards.

Given these fundamental flaws in EPA's interpretation, the proposed approvals violate the plain meaning of the Act's contingency measures requirement. Moreover, EPA has failed to provide a reasoned explanation for its relaxation of its interpretation for the amount of emissions reductions that contingency measures must provide. Nor has EPA explained why its new interpretation is more consistent with the Act. EPA's new interpretation violates the Act, is arbitrary and capricious, an unreasonable interpretation of sections 172(c)(9) and 182(c)(9), and a transparent attempt to evade recent Ninth Circuit decisions holding EPA's prior attempts to weaken contingency measures unlawful.

There is no basis in the statute or its history, however, for concluding that Congress meant for contingency measure requirements to be relaxed based on alleged difficulties in meeting them. Contingency measures should take effect when the primary strategy fails, which fundamentally means that contingency measures should be more stringent than the primary attainment strategy and not subject to claims of infeasibility. This is consistent with a state's obligation to adopt such measures as would attain the standard by the deadline.[64] The Act's

[63] 42 U.S.C. § 7502(c)(1) ("Such plan provisions . . . shall provide for attainment of the national primary ambient air quality standards."). For serious and above ozone nonattainment areas, a state shall submit a plan revision that demonstrates the plan will attain the standard by the applicable deadline. 42 U.S.C. § 7511a(c)(2)(A). At no point do the ozone-specific provisions in Subpart 2 excuse an area from its obligation to attain the standard on infeasibility grounds.

[64] 42 U.S.C. § 7502(c)(1) ("Such plan provisions . . . shall provide for attainment of the national primary ambient air quality standards."). For serious and above ozone nonattainment areas, a state shall submit a plan revision that demonstrates the plan will attain the standard by the applicable deadline. 42 U.S.C. § 7511a(c)(2)(A). At no point do the ozone-specific provisions in Subpart 1 excuse an area from its obligation to attain the standard on infeasibility grounds.

contingency measures requirements are absolute and make no provision for exception or relaxation on *any* grounds.

B. The EPA Unlawfully and Arbitrarily Proposes Approval of the 2008 Ozone Contingency Measures when the Smog Check Revision Provides Two Triggering Events and EPA has Not Required a Commitment to Supplement the 2008 Ozone Contingency Measures upon Triggering Events.

The Smog Check revision provides for only two "triggering events" yet serves as a contingency measure for six National Ambient Air Quality Standards in the San Joaquin Valley.[65] EPA estimates the net reductions from the Smog Check revision at 0.079 tons per day of NOx and 0.025 tons per day of VOC.[66] For comparison, the amount of emissions reductions required pursuant to the OYW of RFP are 11.3 and 11.4 tons per day of NOx and VOC, respectively.[67]

EPA's proposed approval of the 2008 Ozone Contingency Measures unlawfully and arbitrarily allows California discretion to decide whether California should adopt more contingency measures following a triggering event; and fails to analyze or consider the emissions reductions from a second triggering event and whether that meets either the OYW of RFP or OYW of progress standards. Furthermore, if two triggering events occur, the Smog Check revision can no longer serve as a contingency measure for the 2008 8-hour ozone standard. Section 172(c)(9) does not leave adoption of sufficient contingency measures to a state's discretion and does not give EPA discretion to waive contingency measures for any air quality standard. Moreover, EPA has failed to consider a significant aspect of its approval here, whether the 2008 Ozone Contingency Measures are adequate if the San Joaquin Valley triggers contingency measures for other standards.

EPA does not require California to supplement the contingency measures after either the first triggering event or the second triggering event of the Smog Check revision. No enforceable component of the 2008 Ozone Contingency Measures requires California to develop additional contingency measures if the Smog Check revision incurs two triggering events. And EPA does not identify any commitment by California in the SIP that would constitute an enforceable commitment. *See, e.g., Committee for a Better Arvin v. U.S. Environmental Protection Agency*, 786 F.3d 1189, 1178-1182 (holding commitments to adopt measures were enforceable). EPA's failure to ensure enforceability, required by section 110(a)(2)(A) of the Act, places the adoption of adequate contingency measures at the discretion of California, which violates the plain language of sections 172(c)(9) and 182(c)(9) and section 110(a)(2)(A), which admit to no exceptions for enforceability and including contingency measures in the State Implementation Plan.

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[65] 88 Fed. Reg. at 87981, 87983 (Dec. 20, 2024) (1997, 2008, and 2015 ozone NAAQS; 1997 annual, 2006 24-hour, and 2012 annual PM2.5 NAAQS).

[66] 89 Fed. Reg. at 85126 Table 3 (Oct. 25, 2024).

[67] 83 Fed. Reg. 61346, 61357/1 n.64 (Nov. 29, 2018).

EPA recently admitted that a triggering event would create a SIP deficiency for PM2.5 contingency measures that also rely on the Smog Check measure.[68] EPA must concede a similar deficiency exists for the 2008 Ozone Contingency Measures. EPA's approval of the contingency measures here, absent more robust contingency measures and/or a commitment by California to adopt and submit additional contingency measures, violates the Act and is arbitrary and capricious.

C. The Proposed Approval of the 2008 Ozone Contingency Measures Violates Anti-Backsliding Restrictions in Section 110(*l*) of the Act.

EPA unlawfully and arbitrarily proposes approval of the 2008 Ozone Contingency Measures because it weakens the amount of reductions required by the approved contingency measures element for the 2016 Ozone Plan for the 2008 8-Hour Ozone Standard. Section 110(*l*) prohibits EPA from approving "a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter." 42 U.S.C. § (*l*); *Safe Air for Everyone v. U.S. Environmental Protection Agency*, 488 F.3d 1088, 1100 (9th Cir. 2007).

As part of the 2016 Ozone Plan, EPA approved the Plan's contingency measures element and required 11.3 tons per day of NOx and 11.4 tons per day of VOC.[69] The court in *Association of Irritated Residents* did not alter EPA's approval of the contingency measures element as it relates to the amount of required emissions reductions from contingency measures in the 2016 Ozone Plan. Rather, the Court held that EPA's attempt to use the nominal reductions from Rule 4601 combined with surplus reductions from already implemented measures to meet that amount of required reductions was arbitrary and capricious.

EPA now proposes to approve the nominal reductions from the 2008 Ozone Contingency Measures that plainly do not meet OYW of RFP as approved by EPA in 2019. EPA's proposed approval thus constitutes backsliding and violates section 110(*l*), 42 U.S.C. § 7410(*l*).

In the alternative, EPA has unlawfully and arbitrarily failed to consider and make a finding with respect to whether the approval of the 2008 Ozone Contingency Measures constitutes illegal backsliding. 89 Fed. Reg. 85119 (Oct. 25 2024) (proposed rule provides no discussion, facts, or analysis on whether the proposed relaxation of contingency measures emissions reductions violate section 110(l)).

D. EPA Unlawfully and Arbitrarily Proposes to Approve the 2008 Ozone Contingency Measures based on a 2012 Base Year Inventory.

EPA proposes to approve the 2008 Ozone Contingency Measures based on OYW of progress with a 2012 base year. The 2016 Ozone Plan which EPA approved in 2019 approved the Reasonable Further Progress demonstration and the continency measures demonstration based on a 2011 baseline inventory.[70] The proposed approval here shifts the baseline year for

[68] 89 Fed. Reg. at 80759/2.

[69] 83 Fed. Reg. 61346, 61357/1 n.64 (Nov. 29, 2024); 84 Fed. Reg. 11198, 11205/3 n.43 (March 25, 2019).

[70] 83 Fed. Reg. 61346, 61349/1, 61352/2 (Nov. 29, 2018); 84 Fed. Reg. 11198, 11202/1.

contingency measures from 2011 to 2012.[71] EPA fails to explain why this change in the baseline inventory for the purposes of contingency measures is more consistent with the Act or with *South Coast Air Quality Management District* v. *EPA*, 882 F.3d 1138 (D.C. Cir. 2018). In *South Coast*, the D.C. Circuit vacated the portion of the 2008 Ozone SIP Requirements Rule that allowed for California's choice of 2012 as an alternative baseline inventory. EPA's proposed approval of the 2008 Ozone Contingency Measures based on a 2012 base year is thus unlawful and arbitrary and capricious.

E. EPA Unlawfully and Arbitrarily Proposes to Approve the Infeasibility Demonstration for Confined Animal Facilities.

EPA's proposed approval of the infeasibility demonstration with regard to potential VOC contingency measures is arbitrary and capricious and violates sections 172(c)(9) and 182(c)(9). As EPA acknowledges, the largest share of the San Joaquin Valley's VOC emissions come from the farming operations source category and are associated with livestock husbandry, particularly silage at dairies and dairy cattle waste.[72] That source category emits 93.76 tons per day of VOC, or 27.93 percent of all VOC emissions in the Valley.[73]

EPA dedicates two sentences and a footnote in its evaluation of CARB's and the Air District's claim that any contingency measures from this source category are infeasible.[74] EPA fails to explain that Rule 4570[75] is one of only two rules in the United States regulating emissions from confined animal facilities and fails to explain or consider whether additional reductions from the category are feasible. Instead, EPA finds that a potential contingency measure is technologically infeasible without any discussion of facts or analysis simply by virtue of the District's claim that the rule is the most stringent such measure.

Similarly, the Air District does not perform an economic or technological feasibility analysis of contingency measures from the source category. Rather, because it claims Rule 4570 is the most stringent rule, the District found that the District is currently implementing the most stringency feasible measure. EPA fails to consider or explain whether contingency measures from a category that represent such a large percentage of the VOC emission in the Valley are not technologically or economically feasible. While Rule 4570 may be the only such rule in the County or the most stringent, that does not mean that additional emissions reductions are not feasible. EPA's cursory dismissal of contingency measures for this category as infeasible is thus arbitrary and capricious.

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[71] 89 Fed. Reg. 85119, 85124/3 Table 1 (Oct. 25, 2024); Docket A-1 Ozone Contingency Measure State Implementation Plan Revision at 7, Table 2.

[72] 89 Fed. Reg. 85119, 85125 Table 2 (Oct. 25, 2024).

[73] *Id*.

[74] *Id*. at 85133/3.

[75] The most recent version of Rule 4570, last amended in 2010, is attached as Exh. 13.

VIII. Conclusion.

For the reasons stated above, the EPA's proposed approval of the 2008 Ozone Contingency Measures violates Executive Orders 14008 and 14096, the Procedural Due Process Clause of the Fifth Amendment, the Clean Air Act, and the Administrative Procedure Act. EPA's interpretation of the Clean Air Act and its proposed approvals are untethered from the facts and law, and EPA fails to provide a reasoned explanation for how the new interpretation in this proposed rule and the Draft Guidance is more consistent with the Clean Air Act than EPA's long-standing interpretation requiring far more emissions reductions. The environmental justice crisis in the San Joaquin Valley demands much, much more than the nominal, *de minimis*, and paltry reductions EPA has proposed to approve. EPA should not eviscerate essential pollution controls Congress required for areas like the San Joaquin Valley that fail to attain the health-based air standards.

Sincerely,

Nayamin Martinez
Genevieve Amsalem
Central California Environmental Justice Network

Estela Escoto
Committee for a Better Arvin

Kevin Hamilton
Medical Advocates for Healthy Air

Gordon Nipp
Sierra Club, Kern Kaweah Chapter

Exhibit 3

January 12, 2026

Via Electronic Submission

Tom Kelly
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Air Plan Approval; California; San Joaquin Valley Air Pollution Control District; Docket No. EPA-R09-OAR-2025-1938

Dear Mr. Kelly:

The Committee for a Better Arvin, Medical Advocates for Healthy Air, and Sierra Club ("Valley Air Advocates") submit these comments in opposition to EPA's proposed approval of San Joaquin Valley Unified Air Pollution Control District Rules 3172 and 3173, which implement Clean Air Act section 185 stationary source fee requirements for the 2008 and 2015 8-hour ozone standards, respectively.

EPA's proposed approval, if finalized, is unlawful and arbitrary. Rules 3172 and 3173 violate section 185 of the Act, 42 U.S.C. § 7511d, because the fees cease to apply when EPA takes a final action to redesignate the San Joaquin Valley as attainment for the respective ozone standard. The language of section 2.4 in each of the Rules stops application of the Rules' fees assessment and collection for the year or years preceding an EPA final action redesignating the Valley as attainment. In other words, a redesignation would cease the Rules' applicability regardless of any required and uncollected fees. EPA should approve the rule in part, disapprove in part, and direct the Air District to revise the Rules, including section 2.4, to include clear,

enforceable language which requires all major stationary sources to pay all fees for all years after the attainment year until EPA takes final action to redesignate the Valley as attainment.

I. Background.

Ozone and PM2.5 pollution remains a public health crisis in the San Joaquin Valley, which ranks among the most ozone and PM2.5-polluted air basins. 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."[1] California regulators' history of failure spans decades during which time the EPA has found that the Valley has failed to attain several National Ambient Air Quality Standards by their respective deadlines.[2]

Ground-level ozone is formed by a reaction between oxides of nitrogen ("NOx") and volatile organic compounds ("VOC") in the presence of heat and sunlight. Unlike ozone in the upper atmosphere which is formed naturally and protects the Earth from ultraviolet radiation, ozone at ground level is primarily formed from anthropogenic pollution. PM2.5 is a directly emitted pollutant and forms secondarily in the atmosphere by the precursor pollutants NOx, ammonia, sulfur oxides, and VOC. Secondary PM2.5 forms primarily during the winter in the Valley.

The Valley is classified as an extreme ozone nonattainment area for the 2008 8-hour ozone standard and an extreme ozone nonattainment area for the 2015 8-hour ozone standard. With respect to PM2.5, the Valley is classified as a serious nonattainment area for the 1997 annual PM2.5 standard, a serious nonattainment area for the 2006 24-hour PM2.5 standard, and a serious nonattainment area for the 2012 annual PM2.5 standard.

Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD),

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[1] *Association of Irritated 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)).

[2] *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). In addition, a citizen suit has been filed against the EPA to compel the agency to make a finding of failure to attain the 2006 24-hour PM2.5 standard by the December 31, 2024 attainment date. *See* Complaint (Dkt. No. 1) in *Committee for a Better Arvin v. EPA*, No. 3:25-cv-7375-EMC (N.D. Cal.).

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. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.[3]

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 cardiovascular disease, and increased risk of death from heart attacks.[4]

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.[5] 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.[6] For exposure to ozone, Tulare, Kern, and Fresno rank as the fourth, fifth, and seventh most ozone-polluted counties.[7]

II. The Clean Air Act's stationary source fees requirement.

Section 185 of the Clean Air Act, 42 U.S.C. § 7511d, requires major stationary sources of NOx and VOC to pay a per ton fee upon the failure of a severe or extreme area to fail to attain an ozone standard.

> Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed

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[3] 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 December 15, 2025), attached as Exhibit 1.

[4] *Id*. at 25–27.

[5] *Id*. at 23.

[6] *Id*.

[7] *Id*.

> to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

42 U.S.C. § 7511d(a). The plain language of the statute requires each major stationary source to pay the fee for applicable VOC and NOx emissions "for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone." *Id*. EPA agrees this plain language requires payment of a fee for VOC and NOx emissions for each calendar year after the attainment date until redesignation to attainment. 90 Fed. Reg 57414, 57415/1 (Dec. 11, 2025); TSD at 1. EPA also agrees that the Rules must be enforceable. 90 Fed. Reg. at 57415/1 (citing 42 U.S.C. § 7410(a)(2)); TSD at 3.

III. Rules 3172 and 3173 are unenforceable and violate section 185.

EPA's proposed approval of Rules 3172 and 3173, if finalized, is arbitrary and unlawful. Rules 3172 and 3173 lack clear, enforceable language to ensure major stationary sources pay fees for each calendar year after the attainment year as required by sections 110(a)(2)(A) and 185 of the Clean Air Act. The Rules are thus unenforceable and violate section 185.

Section 2.4 in each of Rules 3172 and 3173 includes language that does not ensure each major stationary source shall pay a fee "for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone." 42 U.S.C. § 7511d(a). Section 2.4 in each of the Rules reads as follows:

> The fees established by this rule shall cease to be applicable when the EPA takes a final action to redesignate the SJVAB as an attainment area for the 2008 8-hour Ozone NAAQS.

Rule 3172 § 2.4.

> The fees established by this rule shall cease to be applicable when the EPA takes a final action to redesignate the SJVAB as an attainment area for the 2015 8-hour Ozone NAAQS.

Rule 3173 § 2.4.

The plain language of section 2.4 operates to make "the fees established by this rule" no longer applicable once EPA redesignates the Valley as an attainment area for the relevant ozone standard. And the structure of the Rules allows section 2.4 to become operative prior to all major

stationary sources' payment of all applicable fees for all Fee Assessment Years.[8] Section 5.1 in each of the Rules determines required fees for each Fee Assessment Year and requires payment of those fees during the subsequent Fee Collection Year.[9] But section 2.4, once triggered upon a redesignation to attainment, makes "the fees established by this rule" no longer applicable. Rules 3172 and 3173 violate section 185 and are not enforceable as required by section 110(a)(2)(A) when the Rules fail to require payment of all fees for all Fee Assessment Years prior to the EPA final action to redesignate the Valley to attainment.

In addition, Rules 3172 and 3173 do not compel payment of all fees. Section 5.1.3 imposes a monetary penalty for fees paid after June 30 of the Fee Collection Year and gives the APCO enforcement discretion to take no further action against a noncompliant major stationary source.

The following scenario shows how the Rules violate section 185 and are unenforceable. The Valley fails to attain the 2008 8-hour ozone standard by the December 31, 2031 attainment date. During Fee Assessment Years 2032, 2033, 2034, and 2035, the Valley violates the standard. Applicable fees not paid by June 30 of the Fee Collection Years 2033, 2034, and 2035 incur late penalties. During 2035, EPA takes final action to redesignate the Valley to attainment for the standard. Upon this final action, section 2.4 makes "the fees established by this rule" no longer applicable. Given this language in the Rules, any unpaid fees due for the 2034 and 2035 Fee Assessment Years (and any unpaid fees for the 2032 and 2033 Fee Assessment Years) "shall cease to be applicable."

The language of section 2.4 ceases application of Rules 3172 and 3173 to unpaid fees for one or more Fee Assessment Years. Furthermore, the Rules do not require any unpaid fees to be paid regardless of redesignation of the Valley to attainment. Instead, section 2.4 makes "the fees established by this rule" no longer applicable upon such final action.

The most cynical reading of Rules 3172 and 3173 would allow major stationary sources to refuse to pay the required fees and any late fees, to persuade the Air District to not suspend their operating permits, and to wait until a redesignation to attainment. At that point, section 2.4 makes "the fees established by this rule" no longer applicable upon redesignation. The EPA should ensure the Rules have clear and enforceable requirements that leave no room for creative obstructionism.

[8] The term "Fee Assessment Year" is defined by section 3.8 of Rules 3172 and 3173.

[9] The term "Fee Collection Year" is defined by section 3.9 of Rules 3172 and 3173.

The Air District has engaged in creative obstructionism with respect to major stationary sources in the past. In 2023, EPA disapproved Air District Rule 2201 and its Emission Reduction Credit ("ERC") system and offset equivalency demonstration tracking system because Rule 2201 did not ensure offset equivalency with federal offset requirements for NOx and VOC, the same pollutants subject to section 185.[10] In that disapproval, EPA found that the District must revise Rule 2201 to correct several deficiencies, including the failure to ensure full federal offset equivalency. 87 Fed. Reg. at 45734/2; 88 Fed. Reg. at 43438/2. The offset equivalency system failure occurred because (1) the District withdrew "additional creditable emission reductions associated with orphan shutdowns and engine electrification projects" after the ERC Report raised fundamental deficiencies with such claimed reductions; and (2) so-called carryover offsets for NOx were not surplus and thus not creditable for equivalency.[11] EPA must consider the District's prior failure to adequately regulate major stationary sources as part of its review of the adequacy of the Air District's section 185 fees program for major stationary sources.

IV. Conclusion.

The Rules violate section 110(a)(2)(A), 42 U.S.C. § 7410(a)(2)(A), by failing to include enforceable language which requires payment of all fees for all Fee Assessment Years. The Rules also violate section 185 by failing to require payment of all applicable fees by all major stationary sources regardless of a redesignation to attainment. EPA approval of the Rules, if finalized, is thus arbitrary and unlawful.

For the reasons stated above, EPA should abandon its proposed approval of Rules 3172 and 3173 and instead approve the Rules in part and disapprove the Rules in part because the Rules do not meet the requirements of section 185 for the 2008 8-hour ozone standard and the 2015 8-hour ozone standard in the Valley, the Rules lack sufficient clarity, and the Rules are unenforceable. Thank you.

Sincerely,

Estela Escoto
Committee for a Better Arvin ("CBA")

[10] *See* 87 Fed. Reg. 45730 (July 29, 2022); 88 Fed. Reg. 43434 (July 10, 2023); Comments re EPA-R09-OAR-2022-0420, attached as Exhibit 2; *see also* Review of the San Joaquin Valley Air Pollution Control District Emission Reduction Credit System, June 2020 ("ERC Report"), attached as Exhibit 3.

[11] 87 Fed. Reg. at 45733.

Kevin Hamilton
Medical Advocates for
Healthy Air ("MAHA")

Gordon Nipp
Sierra Club, Kern Kaweah Chapter

Brent Newell
Law Office of Brent J. Newell
Attorney for CBA, MAHA, and Sierra Club

Exhibit 4

Table 3b. Design Value History in Areas Previously Designated Nonattainment for the 2008 8-Hour Ozone NAAQS
AQS Data Retrieval: 5/28/2025 Last Updated: 5/28/2025

Designated Area	EPA Region(s)	2013-2015 Design Value (ppm) [1,2]	2014-2016 Design Value (ppm) [1,2]	2015-2017 Design Value (ppm) [1,2]	2016-2018 Design Value (ppm) [1,2]	2017-2019 Design Value (ppm) [1,2]	2018-2020 Design Value (ppm) [1,2]	2019-2021 Design Value (ppm) [1,2]	2020-2022 Design Value (ppm) [1,2]	2021-2023 Design Value (ppm) [1,2]	2022-2024 Design Value (ppm) [1,2]
Allentown-Bethlehem-Easton, PA	3	0.068	0.069	0.070	0.071	0.069	0.066	0.064	0.064	0.067	0.065
Atlanta, GA	4	0.073	0.075	0.075	0.073	0.073	0.070	0.068	0.065	0.070	0.072
Baltimore, MD	3	0.071	0.073	0.075	0.075	0.075	0.072	0.072	0.068	0.073	0.071
Baton Rouge, LA	6	0.070	0.071	0.070	0.070	0.071	0.069	0.069	0.069	0.072	0.074
Calaveras County, CA	9	0.073	0.076	0.078	0.074	0.071	0.069	0.070	0.068	0.066	0.066
Charlotte-Rock Hill, NC-SC	4	0.068	0.070	0.070	0.070	0.070	0.067	0.066	0.064	0.069	0.069
Chicago-Naperville, IL-IN-W	5	0.075	0.077	0.078	0.079	0.075	0.077	0.075	0.075	0.077	0.078
Chico (Butte County), CA	9	0.073	0.075	0.076	0.076	0.062	0.061	0.070	0.071	0.067	0.066
Cincinnati, OH-KY-IN	4,5	0.071	0.072	0.073	0.075	0.074	0.074	0.070	0.069	0.070	0.072
Cleveland-Akron-Lorain, OH	5	0.073	0.074	0.073	0.074	0.073	0.074	0.072	0.074	0.073	0.073
Columbus, OH	5	0.071	0.071	0.071	0.069	0.068	0.067	0.066	0.066	0.067	0.069
Dallas-Fort Worth, TX	6	0.083	0.080	0.079	0.076	0.077	0.076	0.076	0.077	0.081	0.083
Denver-Boulder-Greeley-Ft. Collins-Loveland, CO	8	0.080	0.080	0.079	0.079	0.078	0.081	0.083	0.084	0.081	0.081
Dukes County, MA	1				0.070	0.071	0.066	0.065	0.062	0.067	0.066
Greater Connecticut, CT	1	0.076	0.074	0.076	0.075	0.075	0.073	0.073	0.072	0.072	0.072
Houston-Galveston-Brazoria, TX	6	0.080	0.079	0.081	0.078	0.081	0.079	0.077	0.078	0.083	0.084
Imperial County, CA	9	0.078	0.076	0.077	0.077	0.079	0.078	0.080	0.077	0.077	0.077
Inland Sheboygan County, WI	5		0.069	0.070	0.071	0.066	0.066	0.065	0.069	0.070	0.070
Jamestown, NY	2	0.067	0.068	0.068	0.068	0.067	0.066	0.065	0.067	0.069	0.069
Kern County (Eastern Kern), CA	9	0.083	0.084	0.081	0.085	0.081	0.086	0.082	0.081	0.075	0.075
Knoxville, TN	4	0.065	0.067	0.067	0.067	0.065	0.063	0.062	0.063	0.067	0.068
Lancaster, PA	3	0.067	0.069	0.069	0.069	0.067	0.065	0.064	0.062	0.064	0.065
Los Angeles-San Bernardino Counties (West Mojave Desert), CA	9	0.090	0.091	0.096	0.098	0.095	0.090	0.090	0.090	0.090	0.089
Los Angeles-South Coast Air Basin, CA	9	0.102	0.108	0.112	0.111	0.108	0.114	0.114	0.113	0.106	0.108
Mariposa County, CA	9	0.075	0.074	0.075	0.079	0.077	0.080	0.081	0.080	0.070	0.069
Memphis, TN-MS-AR	4,6	0.067	0.067	0.067	0.069	0.069	0.067	0.068	0.070	0.072	0.073
Morongo Band of Mission Indians, CA	9	0.098	0.097	0.101	0.101	0.101	0.099	0.095	0.095	0.094	0.100
Nevada County (Western part), CA	9	0.081	0.084	0.087	0.084	0.079	0.075	0.080	0.081	0.076	
New York-N. New Jersey-Long Island, NY-NJ-CT	1,2	0.084	0.083	0.083	0.082	0.082	0.082	0.082	0.081	0.082	0.080
Pechanga Band of Luiseno Mission Indians, CA	9				0.070				0.073		[3]
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	2,3	0.075	0.077	0.080	0.081	0.076	0.074	0.071	0.072	0.073	0.073
Phoenix-Mesa, AZ	9	0.077	0.076	0.075	0.077	0.077	0.079	0.080	0.081	0.080	0.080
Pittsburgh-Beaver Valley, PA	3	0.073	0.070	0.070	0.071	0.068	0.068	0.066	0.067	0.067	0.067
Reading, PA	3	0.069	0.070	0.070	0.070	0.069	0.067	0.058			0.065
Riverside County (Coachella Valley), CA	9	0.088	0.087	0.088	0.091	0.089	0.088	0.086	0.087	0.085	0.084
Sacramento Metro, CA	9	0.081	0.085	0.083	0.088	0.081	0.084	0.082	0.081	0.076	0.074
San Diego County, CA	9	0.079	0.081	0.084	0.084	0.082	0.079	0.078	0.079	0.079	0.081
San Francisco Bay Area, CA	9	0.073	0.074	0.075	0.073	0.073	0.069	0.071	0.069	0.070	[3]
San Joaquin Valley, CA	9	0.093	0.094	0.092	0.090	0.088	0.093	0.093	0.094	0.090	0.088
San Luis Obispo (Eastern San Luis Obispo), CA	9	0.073	0.073	0.072	0.071	0.069	0.071	0.072	0.072	0.071	0.072
Seaford, DE	3	0.069	0.069	0.067	0.067	0.065	0.063	0.062	0.061	0.065	0.064
Shoreline Sheboygan County, WI	5	0.077	0.079	0.080	0.081	0.075	0.075	0.072	0.075	0.077	0.078
St. Louis-St. Charles-Farmington, MO-IL	5,7	0.071	0.072	0.072	0.074	0.071	0.071	0.069	0.071	0.074	0.074
Tuscan Buttes, CA	9	0.074	0.079	0.079	0.077		0.071	0.073	0.074	0.071	0.068
Upper Green River Basin Area, WY	8	0.064	0.063	0.064	0.065	0.072	0.070	0.074	0.067	0.068	0.066
Ventura County, CA	9	0.077	0.077	0.077	0.078	0.076	0.075	0.074	0.076	0.075	0.076
Washington, DC-MD-VA	3	0.070	0.072	0.071	0.072	0.072	0.070	0.070	0.067	0.070	0.069

Notes:

1. The level of the 2008 8-hour ozone NAAQS is 0.075 parts per million (ppm). The design value is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration. The design value listed for each area is the highest among monitors with valid design values.

2. The design values shown here are computed using Federal Reference Method or equivalent data reported by State, Tribal, and Local monitoring agencies to EPA's Air Quality System (AQS) as of May 28, 2025. Concentrations flagged by State, Tribal, or Local monitoring agencies as having been affected by an exceptional event (e.g., wildfire, volcanic eruption) and concurred by the associated EPA Regional Office are not included in these calculations.

3. The EPA acknowledges that 2024 data for one or more monitors in this area have not been fully uploaded, validated, and certified in AQS. Thus, the design values presented here may not represent the final design value for this area.

Disclaimer: The information listed in this report and in these tables is intended for informational use only and does not constitute a regulatory determination by EPA as to whether an area has attained a NAAQS. The information set forth in this report has no regulatory effect. To have a regulatory effect, a final EPA determination as to whether an area has attained a NAAQS or attained a NAAQS as of its applicable attainment date can be accomplished only after rulemaking that provides an opportunity for notice and comment. No such determination for regulatory purposes exists in the absence of such a rulemaking. This report does not constitute a proposed or final rulemaking.

Exhibit 5

Table 3a. Design Value History in Areas Previously Designated Nonattainment for the 2015 8-Hour Ozone NAAQS
AQS Data Retrieval: 5/28/2025 Last Updated: 5/28/2025

Designated Area	EPA Region(s)	2013-2015 Design Value (ppm) [1,2]	2014-2016 Design Value (ppm) [1,2]	2015-2017 Design Value (ppm) [1,2]	2016-2018 Design Value (ppm) [1,2]	2017-2019 Design Value (ppm) [1,2]	2018-2020 Design Value (ppm) [1,2]	2019-2021 Design Value (ppm) [1,2]	2020-2022 Design Value (ppm) [1,2]	2021-2023 Design Value (ppm) [1,2]	2022-2024 Design Value (ppm) [1,2]
Allegan County, MI	5	0.075	0.075	0.073	0.073	0.072	0.073	0.075	0.075	0.075	0.074
Amador County, CA	9	0.071	0.073	0.072	0.072	0.071	0.069	0.067	0.066	0.065	0.066
Atlanta, GA	4	0.073	0.075	0.075	0.073	0.073	0.070	0.068	0.065	0.070	0.072
Baltimore, MD	3	0.071	0.073	0.075	0.075	0.075	0.072	0.072	0.068	0.073	0.071
Berrien County, MI	5	0.073	0.074	0.073	0.073	0.069	0.072	0.071	0.073	0.073	0.072
Butte County, CA	9	0.074	0.075	0.076	0.076	0.071	0.061	0.070	0.071	0.067	0.066
Calaveras County, CA	9	0.073	0.076	0.078	0.074	0.071	0.069	0.070	0.068	0.066	0.066
Chicago, IL-IN-WI	5	0.075	0.077	0.078	0.079	0.075	0.077	0.075	0.075	0.077	0.078
Cincinnati, OH-KY	4,5	0.071	0.072	0.073	0.075	0.074	0.074	0.070	0.069	0.070	0.072
Cleveland, OH	5	0.073	0.074	0.073	0.074	0.073	0.074	0.072	0.074	0.073	0.073
Columbus, OH	5	0.071	0.071	0.071	0.069	0.068	0.067	0.066	0.066	0.067	0.069
Dallas-Fort Worth, TX	6	0.083	0.080	0.079	0.076	0.077	0.076	0.076	0.077	0.081	0.083
Denver Metro/North Front Range, CO	8	0.080	0.080	0.079	0.079	0.078	0.081	0.083	0.084	0.081	0.081
Detroit, MI	5	0.072	0.073	0.073	0.074	0.072	0.072	0.070	0.070	0.071	0.071
Door County, WI	5	0.069	0.072	0.073	0.073	0.070	0.072	0.070	0.073	0.072	0.071
El Paso-Las Cruces, TX-NM	6	0.072	0.072	0.072	0.074	0.077	0.078	0.080	0.081	0.079	0.076
Greater Connecticut, CT	1	0.076	0.074	0.076	0.075	0.075	0.073	0.073	0.072	0.072	0.072
Houston-Galveston-Brazoria, TX	6	0.080	0.079	0.081	0.078	0.081	0.079	0.077	0.078	0.083	0.084
Imperial County, CA	9	0.078	0.076	0.077	0.077	0.079	0.078	0.080	0.077	0.077	0.077
Kern County (Eastern Kern), CA	9	0.083	0.084	0.081	0.085	0.081	0.086	0.082	0.081	0.075	0.075
Las Vegas, NV	9	0.075	0.075	0.074	0.076	0.073	0.074	0.073	0.075	0.074	0.073
Los Angeles-San Bernardino Counties (West Mojave Desert), CA	9	0.090	0.091	0.096	0.098	0.095	0.090	0.090	0.090	0.090	0.089
Los Angeles-South Coast Air Basin, CA	9	0.102	0.108	0.112	0.111	0.108	0.114	0.114	0.113	0.106	0.108
Louisville, KY-IN	4,5	0.069	0.074	0.074	0.075	0.072	0.072	0.069	0.070	0.072	0.075
Manitowoc County, WI	5	0.072	0.072	0.074	0.073	0.071	0.070	0.068	0.073	0.073	0.073
Mariposa County, CA	9	0.075	0.075	0.075	0.079	0.077	0.079	0.081	0.080	0.070	0.069
Milwaukee, WI	5	0.070	0.073	0.074	0.078	0.074	0.073	0.073	0.075	0.074	0.074
Morongo Band of Mission Indians, CA	9	0.098	0.097	0.101	0.101	0.101	0.099	0.095	0.095	0.094	0.100
Muskegon County, MI	5	0.074	0.075	0.074	0.076	0.074	0.076	0.074	0.079	0.077	0.076
Nevada County (Western part), CA	9	0.081	0.083	0.086	0.084	0.079	0.075	0.080	0.080	0.075	
New York-Northern New Jersey-Long Island, NY-NJ-CT	1,2	0.084	0.083	0.083	0.082	0.082	0.082	0.082	0.081	0.082	0.080
Northern Wasatch Front, UT	8	0.076	0.075	0.078	0.078	0.077	0.077	0.078	0.079	0.077	0.075
Pechanga Band of Luiseno Mission Indians, CA	9	0.074	0.071		0.070	0.071	0.073	0.072	0.073	0.073	[3]
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	2,3	0.075	0.077	0.080	0.081	0.076	0.074	0.071	0.072	0.073	0.073
Phoenix-Mesa, AZ	9	0.077	0.076	0.075	0.077	0.077	0.079	0.080	0.081	0.080	0.080
Riverside County (Coachella Valley), CA	9	0.088	0.087	0.088	0.091	0.089	0.088	0.086	0.087	0.085	0.084
Sacramento Metro, CA	9	0.081	0.085	0.083	0.088	0.081	0.084	0.082	0.081	0.076	0.075
San Antonio, TX	6	0.078	0.073	0.074	0.072	0.073	0.072	0.073	0.075	0.076	0.075
San Diego County, CA	9	0.079	0.081	0.084	0.084	0.082	0.079	0.078	0.079	0.079	0.081
San Francisco Bay Area, CA	9	0.073	0.074	0.075	0.073	0.073	0.069	0.071	0.069	0.070	[3]
San Joaquin Valley, CA	9	0.093	0.094	0.092	0.090	0.088	0.093	0.093	0.094	0.090	0.088
San Luis Obispo (Eastern part), CA	9	0.073	0.073	0.072	0.071	0.069	0.070	0.072	0.071	0.071	0.072
Sheboygan County, WI	5	0.077	0.079	0.080	0.081	0.075	0.075	0.072	0.075	0.077	0.078
Southern Wasatch Front, UT	8	0.072	0.073	0.072	0.072	0.070	0.069	0.070	0.073	0.072	0.071
St. Louis, MO-IL	5,7	0.071	0.072	0.072	0.074	0.071	0.071	0.069	0.071	0.074	0.074
Sutter Buttes, CA	9	0.072	0.075	0.071	0.071		0.070	0.072	0.073	0.071	0.068
Tuolumne County, CA	9	0.073	0.079	0.080	0.079	0.073	0.070	0.068			
Tuscan Buttes, CA	9	0.074	0.079	0.079	0.077		0.070	0.072	0.073	0.072	0.069

Uinta Basin, UT	8	0.079	0.080	0.088	0.088	0.089	0.076	0.078	0.067	0.077	0.076
Ventura County, CA	9	0.077	0.077	0.077	0.078	0.076	0.075	0.074	0.076	0.075	0.076
Washington, DC-MD-VA	3	0.070	0.072	0.071	0.072	0.072	0.071	0.070	0.067	0.070	0.069
Yuma, AZ	9	0.076	0.074	0.072	0.071	0.071	0.068	0.067	0.068	0.07	0.069

Notes:

1. The level of the 2015 8-hour ozone NAAQS is 0.070 parts per million (ppm). The design value is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration. The design value listed for each area is the highest among monitors with valid design values.

2. The design values shown here are computed using Federal Reference Method or equivalent data reported by State, Tribal, and Local monitoring agencies to EPA's Air Quality System (AQS) as of May 28, 2025. Concentrations flagged by State, Tribal, or Local monitoring agencies as having been affected by an exceptional event (e.g., wildfire, volcanic eruption) and concurred by the associated EPA Regional Office are not included in these calculations.

3. The EPA acknowledges that 2024 data for one or more monitors in this area have not been fully uploaded, validated, and certified in AQS. Thus, the design values presented here may not represent the final design value for this area.

Disclaimer: The information listed in this report and in these tables is intended for informational use only and does not constitute a regulatory determination by EPA as to whether an area has attained a NAAQS. The information set forth in this report has no regulatory effect. To have a regulatory effect, a final EPA determination as to whether an area has attained a NAAQS or attained a NAAQS as of its applicable attainment date can be accomplished only after rulemaking that provides an opportunity for notice and comment. No such determination for regulatory purposes exists in the absence of such a rulemaking. This report does not constitute a proposed or final rulemaking.

Exhibit 6

Table 3a. Design Value History in Areas Previously Designated Nonattainment for the 2012 Annual $PM_{2.5}$ NAAQS
AQS Data Retrieval: 5/28/2025 Last Updated: 5/28/2025

Designated Area	EPA Region	2013-2015 Annual Design Value ($\mu g/m^3$) [1,2]	2014-2016 Annual Design Value ($\mu g/m^3$) [1,2]	2015-2017 Annual Design Value ($\mu g/m^3$) [1,2]	2016-2018 Annual Design Value ($\mu g/m^3$) [1,2]	2017-2019 Annual Design Value ($\mu g/m^3$) [1,2]	2018-2020 Annual Design Value ($\mu g/m^3$) [1,2]	2019-2021 Annual Design Value ($\mu g/m^3$) [1,2]	2020-2022 Annual Design Value ($\mu g/m^3$) [1,2]	2021-2023 Annual Design Value ($\mu g/m^3$) [1,2]	2022-2024 Annual Design Value ($\mu g/m^3$) [1,2]
Allegheny County, PA	3	12.6	12.8	13.0	12.6	12.4	11.1	11.2	10.9	11.6	10.6
Cleveland, OH	5	12.4	12.2	11.7	11.0	11.0	10.8	11.3	11.4	12.2	11.2
Delaware County, PA	3	11.6	11.5	10.3	10.6	10.1	9.8	8.7	8.1	8.5	8.1
Imperial County, CA	9	12.9	12.6	12.0	12.6	12.0	12.1	11.0	11.1	10.2	10.2
Lebanon County, PA	3	11.7	11.2	10.1	9.3	9.0				8.4	8.2
Los Angeles-South Coast Air Basin, CA	9	14.5	14.7	14.7	14.7	14.0	14.2	14.2	14.0	13.1	12.9
Plumas County, CA	9	14.9	15.0	15.1	14.7	14.2	15.9	16.5	17.0	14.0	12.3
San Joaquin Valley, CA	9	22.2	22.0	22.2	17.8	16.9	20.3	18.8	18.8	16.2	14.7
West Silver Valley, ID	10	13.7	11.9	12.4	11.9	12.0	10.9	10.6	10.7	10.3	9.4

Notes:

1. The level of the 2012 annual $PM_{2.5}$ NAAQS is 12.0 micrograms per cubic meter ($\mu g/m^3$). The design value is the annual mean concentration, averaged over three consecutive years. The design value listed for each area is the highest among monitors with valid design values.

2. The design values shown here are computed using Federal Reference Method or equivalent data reported by State, Tribal, and Local monitoring agencies to EPA's Air Quality System (AQS) as of May 28, 2025. Concentrations flagged by State, Tribal, or Local monitoring agencies as having been affected by an exceptional event (e.g., wildfire, volcanic eruption) and concurred by the associated EPA Regional Office are not included in these calculations.

3. San Joaquin Valley's 2013-2015, 2014-2016, and 2015-2017 design value site (Corcoran-Patterson) does not have data from February 7, 2015 to December 31, 2015 due to a fire that destroyed the site. Based on design value calculation methodologies described in 40 CFR 50, Appendix N the design value for Corcoran-Patterson is considered valid despite the missing 2015 data.

Disclaimer: The information listed in this report and in these tables is intended for informational use only and does not constitute a regulatory determination by EPA as to whether an area has attained a NAAQS. The information set forth in this report has no regulatory effect. To have a regulatory effect, a final EPA determination as to whether an area has attained a NAAQS or attained a NAAQS as of its applicable attainment date can be accomplished only after rulemaking that provides an opportunity for notice and comment. No such determination for regulatory purposes exists in the absence of such a rulemaking. This report does not constitute a proposed or final rulemaking.

Exhibit 7

Table 3b. Design Value History in Areas Previously Designated Nonattainment for the 2006 24-hour $P_{2.5}$ NAAQS
AQS Data Retrieval: 5/28/2025 Last Updated: 5/28/2025

Designated Area	EPA Region(s)	2013-2015 24-hour Design Value ($\mu g/m^3$) [1,2]	2014-2016 24-hour Design Value ($\mu g/m^3$) [1,2]	2015-2017 24-hour Design Value ($\mu g/m^3$) [1,2]	2016-2018 24-hour Design Value ($\mu g/m^3$) [1,2]	2017-2019 24-hour Design Value ($\mu g/m^3$) [1,2]	2018-2020 24-hour Design Value ($\mu g/m^3$) [1,2]	2019-2021 24-hour Design Value ($\mu g/m^3$) [1,2]	2020-2022 24-hour Design Value ($\mu g/m^3$) [1,2]	2021-2023 24-hour Design Value ($\mu g/m^3$) [1,2]	2022-2024 24-hour Design Value ($\mu g/m^3$) [1,2]
Allentown, PA	3	30	24	24	23	24	24	23	23	24	23
Birmingham, AL	4	23	23	22	22	21	22	21	21	20	21
Canton-Massillon, OH	5	26	24	22	21	21	22	22	21	25	23
Charleston, WV	3	20	19	17	16	15	15	16	16	19	18
Chico, CA	9	29	26	28	38	39	59	55	57	34	25
Cleveland-Akron-Lorain, OH	5	27	25	25	23	24	25	23	23	30	28
Detroit-Ann Arbor, MI	5	26	27	28	28	30	28	27	28	33	28
Fairbanks, AK	10	124	106	85	65	69	68	72	70	67	64
Harrisburg-Lebanon-Carlisle-York, PA	3	34	31	30	26	26	25	26	25	27	26
Imperial County, CA	9	30	32	31	35	33	34	30	32	30	33
Johnstown, PA	3	28	26	25	22	22	20	21	20	23	21
Klamath Falls, OR	10	41	32	41	75	78	88	67	67	49	34
Knoxville-Sevierville-La Follette, TN	4	20	33	34	31	19	18	21	21	23	21
Lancaster, PA	3	32	33	28	25	26	26	26	24	26	25
Liberty-Clairton, PA	3	33	36	37	35	35	32	32	30	33	31
Logan, UT-ID	8,10	45	34	34	33	34	31	32	31	34	31
Los Angeles-South Coast Air Basin, CA	9	44	43	39	38	38	37	41	41	34	35
Milwaukee-Racine, WI	5	25	24	22	20	21	20	22	22	29	26
New York-N. New Jersey-Long Island, NY-NJ-CT	1,2	28	24	23	23	23	22	22	21	27	23
Nogales, AZ	9	28	27	28	26	26	26	29	30	28	30
Oakridge, OR	10	37	31	46	47	52	81	93	163	121	111
Philadelphia-Wilmington, PA-NJ-DE	2,3	29	27	25	24	26	26	24	22	26	27
Pittsburgh-Beaver Valley, PA	3	25	25	24	24	24	22	23	22	25	24
Provo, UT	8	46	31	31	31	32	31	26	27	25	22
Sacramento, CA	9	35	31	34	50	54	85	60	65	39	31
Salt Lake City, UT	8	44	41	37	36	31	28	34	35	34	32
San Francisco Bay Area, CA	9	30	25	35	48	48	55	35	36	25	25
San Joaquin Valley, CA	9	79	72	72	65	64	72	66	65	48	48
Steubenville-Weirton, OH-WV	3,5	27	27	25	22	21	19	20	19	25	21
Tacoma, WA	10	32	28	31	33	35	34	29	32	29	29
West Central Pinal, AZ	9	34	31	32	36	34	35	36	35	29	26
Yuba City-Marysville, CA	9	27	26	28	30	32	52	54	55	32	25

Notes:

1. The level of the 2006 24-hour $PM_{2.5}$ NAAQS is 35 micrograms per cubic meter ($\mu g/m^3$). The design value is the annual 98th percentile concentration, averaged over three consecutive years. The design value listed for each area is the highest among monitors with valid design values.

2. The design values shown here are computed using Federal Reference Method or equivalent data reported by State, Tribal, and Local monitoring agencies to EPA's Air Quality System (AQS) as of May 28, 2025. Concentrations flagged by State, Tribal, or Local monitoring agencies as having been affected by an exceptional event (e.g., wildfire, volcanic eruption) and concurred by the associated EPA Regional Office are not included in these calculations.

3. San Joaquin Valley's 2013-2015, 2014-2016, and 2015-2017 design value site (Corcoran-Patterson) does not have data from February 7, 2015 to December 31, 2015 due to a fire that destroyed the site. Based on design value calculation methodologies described in 40 CFR 50, Appendix N the design value for Corcoran-Patterson is considered valid despite the missing 2015 data.

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