

Tue Mar 05 10:29:58 EST 2019  
"Hope, Brian" <Hope.Brian@epa.gov>  
FW: Clean Air Act notice of intent to sue letter  
To: "CMS.OEX" <cms.oex@epa.gov>

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**From:** Robert Ukeiley <RUkeiley@biologicaldiversity.org>  
**Sent:** Tuesday, March 05, 2019 10:16 AM  
**To:** Wheeler, Andrew <wheeler.andrew@epa.gov>  
**Cc:** Omonigho Oiyemhonlan <OOiyemhonlan@biologicaldiversity.org>  
**Subject:** Clean Air Act notice of intent to sue letter

Please see attached.

Robert Ukeiley

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

March 5, 2019

Administrator Andrew R. Wheeler  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to promulgate a Federal Implementation Plan and impose sanctions and failure to take final action under 42 U.S.C. §§ 7410(c)(1) and 7410(k)(2)-(4), respectively.

Dear Administrator Wheeler:

On behalf of the Center for Biological Diversity and the Center for Environmental Health, I am writing to inform you that we intend to file suit against you for “a failure of the Administrator [of the United States Environmental Protection Agency (EPA)] to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2).

First, the EPA has failed to promulgate a Federal Implementation Plan (FIP) that addresses Yolo-Solano Air Quality Management District’s (YSAQMD) New Source Review (NSR) requirements for 2006 PM<sub>2.5</sub> national ambient air quality standard (NAAQS) nonattainment areas. Additionally, the EPA has shirked its duty to impose sanctions for failing to submit NSR State Implementation Program (SIP) revisions by the EPA’s required deadline. 81 Fed. Reg. 36,803 (June 8, 2016).

Second, the EPA has failed to take final action on SIP revisions, the Portola Fine Particulate Matter (PM<sub>2.5</sub>) Attainment Plan (Plan), for Plumas County, California. The Plan addresses Plumas County’s “requirements for the 2012 annual fine particulate matter [ ] national ambient air quality standards [ ] in its moderate nonattainment area.” 83 Fed. Reg. 64,774 (Dec. 18, 2018).

Finally, the EPA has failed to take final action on fifty-one SIP revisions for the 2008 8-hour Ozone NAAQs for the Phoenix-Mesa, Arizona nonattainment area.

EPA must remedy these violations of its mandatory duties to better protect the public from the harmful effects of fine particulate matter (PM<sub>2.5</sub>) and ground-level ozone. Fine particulate matter is “produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants,” thus “[s]ources of fine particles include... motor vehicles, power

generation, combustion sources at industrial facilities, and residential fuel burning.” 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006).

Ozone and particulate matter pollution have profound effects on human health. PM<sub>2.5</sub> contributes to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, and visibility impairment. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children. *See* 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); 62 Fed. Reg. 38,653, 38,668 (July 18, 1997).

For example, long-term exposure has been associated “with an array of health effects, notably premature mortality, increased respiratory symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” 62 Fed. Reg. 38,653, 38,668 (July 18, 1997). Additionally, PM<sub>2.5</sub>’s damage may have intergenerational impacts. A recent study suggests that high blood pressure in some children may stem from a mother’s exposure to PM<sub>2.5</sub> during pregnancy.<sup>1</sup>

Ground-level ozone is a colorless gas that forms when nitrogen oxide and volatile organic compounds react with each other in the presence of sunlight. Ozone pollution negatively affects human health.

EPA has found that ozone “posed multiple serious health threats,” including: “worsening respiratory and cardiovascular health, increased likelihood of early death; increased asthma-related hospital admissions; increased likelihood of children developing asthma as adolescents; and lower birthweights and decreased lung function in newborns.”<sup>2</sup> The people most impacted by even “low” levels of ozone are “children and teens; anyone 65 and older; people who work or exercise outdoors; people with existing lung diseases, such as asthma and COPD; and people with cardiovascular disease.”<sup>3</sup>

## **I. EPA Failed to Promulgate a Federal Implementation Plan and Impose Sanctions**

EPA has failed to promulgate a Federal Implementation Plan (FIP) to address the 2006 PM<sub>2.5</sub> national ambient air quality standards (NAAQs) for YSAQMD’s nonattainment areas. Pursuant to 42 U.S.C. § 7410(c)(1)(A), “the Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—finds that a State has failed to make a required submission.” *See also* 81 Fed. Reg. 36,803, 36,804 (June 8, 2016).

On June 8, 2016, EPA made the following finding:

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<sup>1</sup> Zhang, Mingyu, *et al.*, Maternal Exposure to Ambient Particulate Matter <= 2.5 μm During Pregnancy and the Risk for High Blood Pressure in Childhood, 72 Hypertension 194 (2018).

<sup>2</sup> American Lung Association, Ozone, *available at*: <https://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/ozone.html> (last visited Feb. 1, 2019) (summarizing the results of —U.S. Environmental Protection Agency, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, 2013. EPA/600/R-10/076F).

<sup>3</sup> *Id.* *See also* United States Environmental Protection Agency, “Ozone,” *available at*: <https://airnow.gov/index.cfm?action=aqibasics.ozone> (last visited Feb. 1, 2019)

“[T]he State of California has not made the necessary NSR SIP submission for the Yolo-Solano Air Quality Management District (YSAQMD) to address the permitting of PM<sub>2.5</sub> emissions from major sources in areas designated nonattainment for the 2006 PM<sub>2.5</sub> NAAQS, as required by the EPA no later than December 31, 2014.”*Id.*

EPA’s finding became effective on July 8, 2016. *Id.* Nonetheless, more than two years have passed and EPA has yet to promulgate a FIP for NSR for permitting PM<sub>2.5</sub> emissions from major sources in areas designated nonattainment for the 2006 PM<sub>2.5</sub> NAAQS.

EPA also has a mandatory duty to impose sanctions. 42 U.S.C. § 7509 (a) and (b). *See also* 81 Fed. Reg. at 36,804. To date, the EPA has not imposed sanctions.

Therefore, EPA is in violation of its mandatory duties by (1) not promulgating a FIP and (2) not imposing sanctions.

## **II. EPA Failed to Take Final Action on State Implementation Plans**

The Clean Air Act requires that if EPA has not made a completeness finding and has not found a State Implementation Plan (SIP) submittal to be incomplete within six months of a state making a SIP submittal, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA must then take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the completeness finding. 42 U.S.C. § 7410(k)(2) – (4).

### **A. Plumas County, California**

EPA has failed to take final action on State Implementation Plan (SIP) revisions, the Portola Fine Particulate Matter PM<sub>2.5</sub> Attainment Plan (“Plan”), for Plumas County, California. The Plan addresses “the 2012 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) in the Plumas County Moderate PM<sub>2.5</sub> nonattainment area.” 83 Fed. Reg. 64,774 (Dec. 18, 2018).

On February 28, 2017, the State of California submitted the Plan and it “became complete by operation of law on August 28, 2017.” 83 Fed. Reg. at 64,776.

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**TABLE 1**

<b>SIP Element</b>	<b>Completion Date (no later than)</b>	<b>Final Action Due Date</b>
The 2013 base year emissions inventories, the reasonably available control measure/reasonably available control technology (RACM/RACT) demonstration, the attainment demonstration, the reasonable further progress (RFP) demonstration, quantitative milestones and contingency measures.	8/28/2017	8/28/2018

Though it has been more than 12 months since the Plan was deemed administratively complete, EPA has not taken final action either approving or disapproving, in full or part, the submittal.

EPA's proposal to approve the Plan does not satisfy the Administrator's mandatory duty to take final action on an administratively complete submittal. *See* 83 Fed. Reg. 64,744 (Dec. 18, 2018). Proposed rules have no legal effect and provide no environmental benefit. In the past, EPA has taken years or even a decade or more to finalize proposed rules. In some cases, the agency has never finalized a proposed rule. Accordingly, EPA is still in violation of its mandatory duty to take final action.

**B. Phoenix-Mesa, Arizona**

EPA has failed to take final action on 2008 8-hour Ozone nonattainment area SIP revisions for Phoenix-Mesa, Arizona. Table 2 lists fifty-one nonattainment SIP revision requirements that have been submitted and deemed administratively complete by operation of law.

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**TABLE 2**

<b>SIP Element</b>	<b>Submittal Date</b>	<b>Completion Date (no later than)</b>	<b>Final Action Due Date (no later than)</b>
Contingency Measures VOC and NOX	12/31/2016	6/30/2017	6/30/2018
RFP VOC and NOX - Moderate	12/31/2016	6/30/2017	6/30/2018
Nonattainment NSR rules - Moderate (proposed approval)	5/18/2016	11/18/2016	11/18/2017
Ozone Attainment Demonstration	12/13/2016	6/13/2017	6/13/2018
RACT Non-CTG VOC for Major Sources	6/22/2017	12/22/2017	12/22/2018
RACT NOX for Major Sources	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Aerospace	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Bulk Gasoline Plants	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Factory Surface Coating of Flat Wood Paneling	6/22/2017	12/22/2017	12/22/2018

RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Flat Wood Paneling Coatings (2006)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Flexible Packaging Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Graphic Arts - Rotogravure and Flexography	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Industrial Cleaning Solvents (2006)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Large Appliance Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Large Petroleum Dry Cleaners	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Leaks from Petroleum	6/22/2017	12/22/2017	12/22/2018

Refinery Equipment			
RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Manufacture of Pneumatic Rubber Tires	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Metal Furniture Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Paper, Film, and Foil Coatings (2007)	6/22/2017	12/22/2017	12/22/2018



RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Plastic Parts Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG SOCMI Air Oxidation Processes	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG SOCMI Distillation and Reactor Processes	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Shipbuilding/repair	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Solvent Metal Cleaning	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Stage I Vapor Control Systems - Gasoline Service Stations	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	6/22/2017	12/22/2017	12/22/2018

RACT VOC CTG Surface Coating for Insulation of Magnet Wire	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Cans	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Coils	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Fabrics	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Large Appliances	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Metal Furniture	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Surface Coating of Paper	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Tank Truck Gasoline Loading Terminals	6/22/2017	12/22/2017	12/22/2018
RACT VOC CTG Use of Cutback Asphalt	6/22/2017	12/22/2017	12/22/2018

RACT VOC CTG Wood Furniture	6/22/2017	12/22/2017	12/22/2018
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Though it has been more than 12 months since these submittals were deemed administratively complete, EPA has not taken final action either approving or disapproving, in full or part, the submittals.

Additionally, as explained above in section II.A, *supra*, EPA’s “plan to follow with final action”<sup>4</sup> on the marginal/moderate NSR nonattainment rules does not constitute final action by the agency as required under 42 U.S.C. § 7410(k)(2) – (4). Therefore, EPA is in violation of its mandatory duty to take final action on the above-referenced SIP revision requirements.

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

Center for Biological Diversity  
Attn: Omonigho Oiyemhonlan  
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Center for Biological Diversity  
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Denver, Colorado 80202  
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Center for Environmental Health  
Attn: Caroline Cox  
2201 Broadway, Suite 302  
Oakland, California 94612  
Tel: (510) 655-3900

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

The Center for Biological Diversity, the Center for Environmental Health and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to the EPA contacting us within sixty days about coming into compliance on the above-referenced violations. If you do not do so, we will have to file a complaint.

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<sup>4</sup> 83 Fed. Reg. 26,912 (Jun. 11, 2018).

Sincerely,



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