



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

June 4, 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 take final action under 42 U.S.C. § 7410(k)(2)-(4) for Ventura County, CA.

Dear Administrator Wheeler:

On behalf of the Center for Biological Diversity and the Center for Environmental Health we are 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). Specifically, EPA has failed to take final action on five elements of the nonattainment State Implementation Plan for the 2008 8-hour Ozone national ambient air quality standard (NAAQS) for the Ventura County, California serious nonattainment area.

EPA must remedy these violations of its mandatory duties to better protect the public and nature from the harmful effects of ground-level ozone. Ground-level ozone, commonly referred to as smog, is a colorless gas that forms when nitrogen oxide and volatile organic compounds react in the presence of sunlight. 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.”¹ 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.”²

EPA has also found that many plant species are especially sensitive to ozone pollution, which stunts growth, interferes with photosynthesis, and increases susceptibility to disease,

¹ American Lung Association, *Ozone*, available at: <https://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/ozone.html> (last visited May 30, 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).

² *Id.* See also United States Environmental Protection Agency, “Ozone,” available at: <https://airnow.gov/index.cfm?action=aqibasics.ozone> (last visited May 30, 2019)

weather, and insects.³ The Ponderosa Pine is one of several tree species the EPA has identified as adversely impacted by ozone exposure.⁴ In California, the Ponderosa Pine can be found in the Coast Range, Klamath, Cascades, Sierra Nevada, and as far south as San Diego.⁵ It is crucial habitat for several species such as the federally-endangered California condor⁶ and the imperiled Sierra Nevada red fox,⁷ Siskiyou mountain salamander,⁸ and Shasta salamander^{9, 10}

Furthermore, ozone pollution can also have a damaging effect on the surrounding ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon cycling.¹¹ Studies have also linked long-term ozone exposure to adverse health effects in birds such as: inflammation, ruptured blood vessels, lung failure, decreases in egg production and hatching, brood abandonment, and reduced growth.¹²

I. 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 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

³ United States Environmental Protection Agency, Ground-level Ozone Pollution: Ecosystem Effects of Ozone Pollution, *available at*: <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (last visited May 29, 2019).

⁴ *Id.*

⁵ University of California Forest Research and Outreach, Ponderosa Pine (*Pinus ponderosa*), *available at*: https://ucanr.edu/sites/forestry/California_forests/http___ucanrorg_sites_forestry_California_for_ests_Tree_Identification_/Ponderosa_Pine_Pinus_ponderosa/ (last visited May 31, 2019).

⁶ United States Fish and Wildlife, California condor (*Gymnogyps californianus*), *available at*: <https://ecos.fws.gov/ecp0/profile/speciesProfile?sPCODE=B002> (last visited May 31, 2019).

⁷ United States Fish and Wildlife, Sierra Nevada red fox (*Vulpes vulpes necator*), *available at*: <https://ecos.fws.gov/ecp0/profile/speciesProfile?sPCODE=A0AY> (last visited May 31, 2019).

⁸ United States Fish and Wildlife, Siskiyou Mountains salamander (*Plethodon stormi*), *available at*: <https://ecos.fws.gov/ecp0/profile/speciesProfile?sPCODE=D00J> (last visited May 31, 2019).

⁹ United States, Fish and Wildlife, Shasta Salamander (*Hydromantes shastae*) *available at*: <https://ecos.fws.gov/ecp0/profile/speciesProfile?sPCODE=D01I> (last visited May 31, 2019).

¹⁰ Fitzhugh E., California Department of Fish and Game, Ponderosa Pine, *available at*: <https://webcache.googleusercontent.com/search?q=cache:9KXV2qNcN1wJ:https://nrm.dfg.ca.gov/FileHandler.ashx%3FDocumentID%3D67322+&cd=2&hl=en&ct=clnk&gl=us> (last visited May 31, 2019).

¹¹ *Id.*; Qin, Kenneth, Birds suffer from air pollution, just like we do, *available at*: <http://ca.audubon.org/news/birds-suffer-air-pollution-just-we-do> (last visited May 29, 2019).

¹² Qin, Kenneth, Birds suffer from air pollution, just like we do, *available at*: <http://ca.audubon.org/news/birds-suffer-air-pollution-just-we-do> (last visited May 29, 2019).

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).

EPA has failed to take final action on State Implementation Plan (SIP) elements listed below in Table 1 for the Ventura County serious 2008 ozone NAAQS nonattainment area.

TABLE 1

2008 8-hour Ozone National Ambient Air Quality Standards (“NAAQS”)		
SIP Elements	Completion Date (no later than)	Final Action Due Date
Contingency Measures Volatile Organic Compounds ("VOC") and Nitrogen Oxides ("NOx")	10/11/2017	10/11/2018
Emission Inventory	1/17/2015	1/17/2016
Emission Statement	10/11/2017	10/11/2018
Ozone Attainment Demonstration	10/11/2017	10/11/2018
Reasonable Further Progress ("RFP) Volatile Organic Compound ("VOC") and Nitrogen Oxides ("NOx") - Serious	10/11/2017	10/11/2018

Therefore, EPA is in violation of its mandatory duty to take final action on the above-referenced SIP submittals.

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

Center for Biological Diversity
Attn: Omonigho Oiyemhonlan
1212 Broadway, Suite 800
Oakland, California 94601

Center for Environmental Health
Attn: Caroline Cox
2201 Broadway, Suite 302
Oakland, California 94612

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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 or amend a complaint.

Sincerely,

A handwritten signature in cursive script, reading "Omonigho Oiyemhonlan", is written over a horizontal line.

Omonigho Oiyemhonlan
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