



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 11, 2019

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

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) on Oil and Gas RACT CTG Submittals.

Dear Administrator Wheeler:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice that the Center for Environmental Health and the Center for Biological Diversity intend to commence a civil action against Andrew Wheeler, the Administrator of the United States Environmental Protection Agency, (“Administrator,” or “EPA,”) for failure to perform non-discretionary duties under the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). As discussed below, EPA has failed to meet statutory deadlines to take legally required action to approve in full, disapprove in full, or approve in part and disapprove in Oil and Natural Gas Control Technology Guidelines (“CTG”) Reasonably Available Control Technology (“RACT”).¹

Timely implementation of the ozone National Ambient Air Quality Standards (“NAAQS”), including the Oil and Natural Gas CTG RACT, is critical. The scientific evidence indicates that each year implementation of the eight-hour ozone NAAQS is delayed, up to 3,180 more people will die prematurely and 390,000 asthma attacks *in children* will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 2015 70 ppb ozone NAAQS is up to \$4.5 billion dollars. Those individuals who suffer from health impacts caused by exposure to ozone levels above the NAAQS will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the eight-hour ozone NAAQS will go unrealized. Further, the ability of those individuals to enjoy everyday activities such as exercise, school, and work will continue to be negatively impacted.

¹ 42 U.S.C. § 7410(k)(2)-(4). See also, EPA SIP Status Report, *National Status of ozone- 8hr (2008) SIP Required Element: RACT VOC CTG Oil and Natural Gas Industry*, available at https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html, [last visited October 20, 2019].

Further, delays in implementing the ozone NAAQS also has detrimental environmental effects. Acute and chronic exposures to ozone lead to foliar injury, decreased photosynthesis, and decreased growth of vegetation. EPA’s draft Integrated Science Assessment for Ozone² acknowledges ozone has a potential to negatively affect plant species such as: black cherry (*Prunus serotina*), quaking aspen (*Populus tremuloides*), tulip poplar (*Liriodendron tulipifera*), white pine (*Pinus strobus*), ponderosa pine (*Pinus ponderosa*) and red alder (*Alnus rubra*). These plant species, in particular, ponderosa pine serve as critical habitat for endangered species like the California Condor (*Gymnogyps californianus*) and threatened Mexican spotted owl (*Strix occidentalis lucida*).

EPA must remedy its violation of the mandatory duties detailed below to better protect the public from the harmful effects of ozone. Exposure to ozone in even very short time periods has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity.

I. FAILURE TO TAKE FINAL ACTION ON SIP SUBMITTALS

The Clean Air Act requires that if, six months after a state submits a State Implementation Plan (“SIP”) submittal, including the RACT element of a nonattainment area SIP, EPA has not made a completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA has a non-discretionary duty to 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 submittal being found or deemed complete. 42 U.S.C. § 7410(k)(2)-(4).

Table 1 lists areas that have submitted Oil and Natural Gas Industry CTG RACT submittals for the 2008 ozone National Ambient Air Quality Standards but for which EPA has failed to take final action. It has been more than 12 months since these submittals were found administratively complete by EPA or deemed administratively complete by operation of law. Yet, EPA has not taken final action approving or disapproving, in full or part, these submittals. Therefore, EPA is in violation of its mandatory duty in 42 U.S.C. § 7410(k)(2)-(4) to take final action for the submittals listed in Table 1.

TABLE 1

STATE	Area	COMPLETION DATE	FINAL ACTION DUE DATE
Arizona	Phoenix-Mesa [Maricopa]	12/22/2017	12/22/2018
California	Nevada County (Western part)	12/7/2018	12/7/2019

² 84 Fed. Reg. 50,836 (Sept. 26, 2019).

Colorado	Denver-Boulder- Greeley-Ft. Collins-Loveland	11/14/2018	11/14/2019
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As required by 40 C.F.R. § 54.3, the persons providing this notice are:

The Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Attn: Robert Ukeiley
Tel: (720) 496-8568

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Caroline Cox
Tel: (510) 655-3900

While EPA regulations require this information, please direct all 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 EPA contacting us within 60 days about coming into compliance. If you do not do so, however, we will have to file a complaint.

Sincerely,



Robert Ukeiley
Senior Attorney – Environmental Health
Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
(720) 496-8568
rukeiley@biologicaldiversity.org

Counsel for Center for Biological Diversity and Center for Environmental Health