



November 18, 2020

***Sent via United States certified mail, and electronic mail***

Administrator Andrew R. Wheeler  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
[wheeler.andrew@epa.gov](mailto:wheeler.andrew@epa.gov)

**Re: 60-Day Notice of Intent to File a Clean Air Act Citizen Suit**

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).

These violations include multiple failures to take final action on State Implementation Plans pursuant to 42 U.S.C. § 7410(k)(2)-(4). EPA must remedy the violations of its mandatory duties to better protect the public and natural systems from the harmful effects of ground-level ozone, which is commonly referred to as smog, and other dangerous air pollutions.

Ozone pollution negatively affects human health. EPA has found that ozone "posed multiple, serious threats to health" 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>1</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>2</sup>

Delays in implementing the ozone national ambient air quality standard ("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 Ozone 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*

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<sup>1</sup> American Lung Association, Ozone, available at: <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (last visited Sept. 12, 2020) (summarizing the results of Table 1-1 in United States Environmental Protection Agency, Integrated Science Assessment for Ozone and Related Photochemical Oxidants EPA/600/R-10/076F (2013) at 1-5).

<sup>2</sup> *Id.* See also United States Environmental Protection Agency, "Ozone," available at: <https://www.airnow.gov/index.cfm?action=aqbasics.ozone> (last visited Sept. 12, 2020).

*strobilus*), ponderosa pine (*Pinus ponderosa*) and red alder (*Alnus rubra*).<sup>3</sup> These plant species, in particular ponderosa pine, serve as important habitat for endangered species like the threatened Pawnee montane skipper butterfly (*Hesperia leonardus montana*) and threatened Mexican spotted owl (*Strix occidentalis lucida*).

**I. EPA Has Violated the Clean Air Act by Failing to Take Final Action for the 2008 Ozone NAAQS Nonattainment SIP submittal for the Western Nevada County Nonattainment Area**

42 U.S.C. § 7410(k)(2) – (4) imposes a mandatory duty on EPA to take final action to fully or partially approve or disapprove a SIP submittal within 12 months of the submittal being deemed or determined to meet the minimum criteria for administrative completeness.

Western Nevada County is a serious nonattainment area for the 2008 ozone NAAQS. 84 Fed. Reg. 44,238, 44,250 (Aug. 23, 2019). The Northern Sierra Air Quality Management District is responsible for the Western Nevada County nonattainment area. Table 1 lists Western Nevada County 2008 ozone NAAQS nonattainment SIP submittal elements which EPA has failed to take action on by the CAA statutory deadline.

**Table 1: The 2008 Ozone NAAQS Nonattainment SIP Elements for the Western Nevada County Nonattainment Area**

Element	SIP Requirement	Submittal Date	Completion Date (no later than)	Final Action Due Date
1	Contingency Measures Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NOX”)	12/07/2018	06/07/2019	06/07/2020
2	Emission Inventory	12/07/2018	06/07/2019	06/07/2020
3	Emission Statement	12/07/2018	06/07/2019	06/07/2020
4	Ozone Attainment Demonstration	12/07/2018	06/07/2019	06/07/2020
5	Reasonable Further Progress (“RFP”)	12/07/2018	06/07/2019	06/07/2020

<sup>3</sup> 76 Fed. Reg. 21,849 (Apr. 20, 2020); *see also* United States Environmental Protection Agency, Integrated Assessment for Ozone and Related Photochemical Oxidants (External Review Draft) EPA/600/R-20/012 (2019) at 8-43, available at: <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=348522>.

	VOC and NOX - Moderate			
6	RFP VOC and NOX - Serious	12/07/2018	06/07/2019	06/07/2020

If EPA has not made a completeness finding, a SIP submittal will be deemed complete by operation of law within six months of its submittal. 42 U.S.C. § 7410(k)(1)(B). EPA has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within 12 months of the submittal being deemed or found complete. 42 U.S.C. § 7410(k)(2).

It has been more than 12 months since the nonattainment SIP submittal elements in Table 1 were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP submittal elements for the Western Nevada County ozone nonattainment area in Table 1. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)- (4).

**II. EPA Has Violated the Clean Air Act by Failing to Take Final Action for the 2008 ozone NAAQS Nonattainment SIP for the Riverside County (Coachella Valley) Nonattainment Area**

Riverside County (Coachella Valley) is a severe-15 nonattainment area for the 2008 ozone NAAQS. 85 Fed. Reg. 57,714 (Sept. 16, 2020). The South Coast Air Quality Management District is responsible for the Coachella Valley nonattainment area. Table 2 lists Coachella Valley 2008 ozone NAAQS nonattainment SIP submittal elements which EPA has failed to take action on by the CAA statutory deadline.

**Table 2: The 2008 Ozone NAAQS Nonattainment SIP Elements for the Coachella Valley Nonattainment Area**

Element	SIP Requirement	Submittal Date	Completion Date (no later than)	Final Action Due Date
1	Contingency Measures VOC and NOx for Failure to Attain	5/05/2017 <sup>4</sup>	10/23/2017	10/23/2018

<sup>4</sup> This submittal was updated by a letter dated August 2, 2019 from South Coast Air Quality Management District to the California Air Resources Board. See EPA-R09-OAR-2019-0241-0060.

2	Contingency Provisions for RFP Milestones 182(c)(9)	4/27/2017 <sup>5</sup>	10/27/2017	10/27/2018
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If EPA has not made a completeness finding, a SIP submittal will be deemed complete by operation of law within six months of its submittal. 42 U.S.C. § 7410(k)(1)(B). EPA has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within 12 months of the submittal being deemed or found complete. 42 U.S.C. § 7410(k)(2).

It has been more than 12 months since the nonattainment SIP elements submittals in Table 2 were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP elements submittals for the Coachella Valley ozone nonattainment area in Table 2. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)-(4).

**III. EPA Has Violated the Clean Air Act by Failing to Take Final Action for the 2008 ozone NAAQS Nonattainment SIP for the Denver Metro/North Front Range Nonattainment Area**

Denver Metro/North Front Range is a serious nonattainment area for the 2008 ozone NAAQS. On May 10, 2019, Colorado submitted two SIP submittals to address categorical RACT requirements for major sources of NO<sub>x</sub> and for other purposes. These SIP submittals are listed in Table 3 below.

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<sup>5</sup> This submittal was updated by a letter dated August 2, 2019 from South Coast Air Quality Management District to the California Air Resources Board. See EPA-R09-OAR-2019-0241-0060.

**Table 3: The 2008 Ozone NAAQS Nonattainment SIP Elements for the Denver Metro/North Front Range Nonattainment Area**

<b>Element</b>	<b>SIP Requirement</b>	<b>Submittal Date</b>	<b>Completion Date (no later than)</b>	<b>Final Action Due Date</b>
1	Colorado Reg. 7, Sections XVI and XIX, and Sections 1, II, VI, VII, IX, X, XII, XIII, XVI, XVII, XVIII, and XX	May 10, 2019 <sup>6</sup>	November 10, 2019	November 10, 2020

EPA has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve the outstanding SIP submittals within 12 months of a completeness finding. 42 U.S.C. § 7410(k)(2).

It has been more than 12 months since the SIP element submittals in Table 3 was deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve this nonattainment SIP element submittal for the Denver Metro/North Front Range ozone nonattainment area. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2)- (4).

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

Center for Biological Diversity  
1536 Wynkoop Street, Suite 421  
Denver, Colorado 80202  
Tel: (720) 496-8568

Center for Environmental Health  
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.

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<sup>6</sup> Colorado submitted two submittals on May 10, 2019. These submittals are described in 85 Fed. Reg. 63,066 (Oct. 6, 2020) and were adopted by the Colorado Air Quality Control Commission on July 19, 2018 and November 15, 2018.

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, however, we will have to file or amend a complaint.

Sincerely,

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