



November 21, 2019

***Sent via United States mail, return receipt requested, and electronic mail***

Administrator Andrew R. Wheeler  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460  
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) and promulgate a Federal Implementation Plan pursuant to 42 U.S.C. § 7410(c)(1). 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>

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<sup>1</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 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://airnow.gov/index.cfm?action=aqibasics.ozone> (last visited Feb. 1, 2019).

Delays in implementing the ozone NAAQS also have 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 strobus*), 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 California Condor (*Gymnogyps californianus*) and threatened Mexican spotted owl (*Strix occidentalis lucida*).

**I. EPA Has Violated the Clean Air Act by Failing to Promulgate a Federal Implementation Plan for part of Mendocino County's New Source Review Program**

Under the 42 U.S.C. § 7410(c)(1), EPA has a mandatory duty to promulgate a Federal Implementation Plan ("FIP") within two years of determining that a State has failed to submit a required State Implementation Plan ("SIP") or the submitted SIP "does not satisfy the minimum criteria established under [42 U.S.C. 7410](k)(1)(A)." 42 U.S.C. § 7410(c)(1).

On July 3, 2017, EPA published a final rule, issuing a limited approval and limited disapproval of Mendocino County Air Quality Management District's (the "District") revised rule for preconstruction review and permitting under the 2008 Ozone NAAQS. 82 Fed. Reg. 30,770 (July 3, 2017). EPA issued a limited disapproval because the District's Rule 1-220 conflicted with Clean Air Act's requirements for prevention of significant deterioration of air quality in areas designated "attainment" or "unclassifiable" for pollutants regulated under the National Ambient Air Quality Standards. Specifically EPA determined that:

A. Rule 1-220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W; therefore, the requirements of 40 CFR 51.160(f) and 51.166(l) have not been met.

B. The requirements of 40 CFR 51.166(r)(1) and (2) have not been met because the rule does not include the necessary information about a source's obligations.

82 Fed. Reg. at 30,771.

EPA's limited disapproval of Rule 1-220 became effective on August 2, 2017. *Id.* As a result, EPA was required to promulgate a FIP no later than August 2, 2019 unless the State submits and EPA approves a revised SIP, correcting the deficiencies, before it is required to promulgate a FIP. 42 U.S.C. § 7410(c)(1). It is after August 2, 2019 and EPA has neither

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<sup>3</sup> 84 Fed. Reg. 50,836 (Sept. 26, 2019); *see also* United States Environmental Protection Agency, Integrated Assessment for Ozone and Related Photochemical Oxidants (External Review Draft) EPA/600/R-19/093 (2019) at IS-77, available at: <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=344670>.

approved a revised SIP nor published a FIP. Therefore, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(c)(1).

## **II. EPA Has Violated the Clean Air Act by Failing to Take Final Action**

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

### **A. The 2008 Ozone NAAQS for the Eastern Kern (Kern County) nonattainment area**

On December 11, 2017, EPA issued a finding of failure to submit a SIP addressing most of the requirements for the 2008 Ozone NAAQS for the Eastern Kern (Kern County) nonattainment area (“Eastern Kern nonattainment area”). 82 Fed. Reg. 58,118 (Dec. 11, 2017). California subsequently submitted a SIP submittal addressing these nonattainment SIP elements for the 2008 Ozone NAAQS for the Eastern Kern nonattainment area. For other elements California has submitted SIP submittals prior to the finding of failure to submit.<sup>4</sup> These elements are set out in Table 1 below:

**TABLE 1: THE 2008 OZONE NAAQS NONATTAINMENT SIP ELEMENTS FOR THE EASTERN KERN NONATTAINMENT AREA**

<b>Element Number</b>	<b>Nonattainment SIP Element</b>	<b>Submittal Date</b>	<b>Date of Completeness Finding</b>	<b>Due Date for final action</b>
1	Contingency Measures Volatile Organic Compound (“VOC”) and Nitrogen Oxide (“NOx”)	10/25/17	4/25/2018	4/25/2019
2	Emission Inventory	7/17/2014	1/17/2015	1/17/2016
3	Emission Statement	10/25/2017	4/25/2018	4/25/2019
4	Nonattainment NSR rules - Serious	5/23/2018	8/28/2018	8/28/2019

<sup>4</sup> See United States Environmental Protection Agency, California: Ozone-8Hr (2008)/ Kern County (Eastern Kern), available at: [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca\\_elembypoll.html#ozone-8hr\\_2008\\_1411](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elembypoll.html#ozone-8hr_2008_1411) (last visited Nov. 14, 2019).

5	Ozone Attainment Demonstration	10/25/2017	4/25/2018	4/25/2019
6	Reasonably Available Control Technology ("RACT") Non-Control Technique Guidelines ("CTG") Volatile Organic Compound ("VOC") for Major Sources	8/9/2017	2/9/2018	2/9/2019
7	RACT VOC CTG Aerospace	8/9/2017	2/9/2018	2/9/2019
8	RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008)	8/9/2017	2/9/2018	2/9/2019
9	RACT VOC CTG Bulk Gasoline Plants	8/9/2017	2/9/2018	2/9/2019
10	RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	8/9/2017	2/9/2018	2/9/2019
11	RACT VOC CTG Factory Surface Coating of Flat Wood Paneling	8/9/2017	2/9/2018	2/9/2019
12	RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008)	8/9/2017	2/9/2018	2/9/2019
13	RACT VOC CTG Flat Wood Paneling Coatings	8/9/2017	2/9/2018	2/9/2019

	(2006)			
14	RACT VOC CTG Flexible Packaging Printing Materials (2006)	8/9/2017	2/9/2018	2/9/2019
15	RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	8/9/2017	2/9/2018	2/9/2019
16	RACT VOC CTG Graphic Arts - Rotogravure and Flexography	8/9/2017	2/9/2018	2/9/2019
17	RACT VOC CTG Industrial Cleaning Solvents (2006)	8/9/2017	2/9/2018	2/9/2019
18	RACT VOC CTG Large Appliance Coatings (2007)	8/9/2017	2/9/2018	2/9/2019
19	RACT VOC CTG Large Petroleum Dry Cleaners	8/9/2017	2/9/2018	2/9/2019
20	RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	8/9/2017	2/9/2018	2/9/2019
21	RACT VOC CTG Leaks from Petroleum Refinery Equipment	8/9/2017	2/9/2018	2/9/2019

22	RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006)	8/9/2017	2/9/2018	2/9/2019
23	RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	8/9/2017	2/9/2018	2/9/2019
24	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	8/9/2017	2/9/2018	2/9/2019
25	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	8/9/2017	2/9/2018	2/9/2019
26	RACT VOC CTG Metal Furniture Coatings (2007)	8/9/2017	2/9/2018	2/9/2019
27	RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	8/9/2017	2/9/2018	2/9/2019
28	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	8/9/2017	2/9/2018	2/9/2019
29	RACT VOC CTG Paper, Film, and Foil Coatings (2007)	8/9/2017	2/9/2018	2/9/2019
30	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof	8/9/2017	2/9/2018	2/9/2019

	Tanks			
31	RACT VOC CTG Plastic Parts Coatings (2008)	8/9/2017	2/9/2018	2/9/2019
32	RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	8/9/2017	2/9/2018	2/9/2019
33	RACT VOC CTG SOCMI Air Oxidation Processes	8/9/2017	2/9/2018	2/9/2019
34	RACT VOC CTG SOCMI Distillation and Reactor Processes	8/9/2017	2/9/2018	2/9/2019
35	RACT VOC CTG Shipbuilding/repair	8/9/2017	2/9/2018	2/9/2019
36	RACT VOC CTG Solvent Metal Cleaning	8/9/2017	2/9/2018	2/9/2019
37	RACT VOC CTG Stage I Vapor Control Systems - Gasoline Service Stations	8/9/2017	2/9/2018	2/9/2019
38	RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	8/9/2017	2/9/2018	2/9/2019

39	RACT VOC CTG Surface Coating for Insulation of Magnet Wire	8/9/2017	2/9/2018	2/9/2019
40	RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks	8/9/2017	2/9/2018	2/9/2019
41	RACT VOC CTG Surface Coating of Cans	8/9/2017	2/9/2018	2/9/2019
42	RACT VOC CTG Surface Coating of Coils	8/9/2017	2/9/2018	2/9/2019
43	RACT VOC CTG Surface Coating of Fabrics	8/9/2017	2/9/2018	2/9/2019
44	RACT VOC CTG Surface Coating of Large Appliances	8/9/2017	2/9/2018	2/9/2019
45	RACT VOC CTG Surface Coating of Metal Furniture	8/9/2017	2/9/2018	2/9/2019
46	RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	8/9/2017	2/9/2018	2/9/2019
47	RACT VOC CTG Surface Coating of Paper	8/9/2017	2/9/2018	2/9/2019
48	RACT VOC CTG Tank Truck Gasoline Loading Terminals	8/9/2017	2/9/2018	2/9/2019
49	RACT VOC CTG Use of Cutback Asphalt	8/9/2017	2/9/2018	2/9/2019



50	RACT VOC CTG Wood Furniture	8/9/2017	2/9/2018	2/9/2019
51	Reasonable Further Progress ("RFP") Volatile Organic Compound ("VOC") and Nitrogen Oxide ("NOx") Moderate	10/25/2017	04/25/2018	04/25/2019

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 in Table 1 were deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve these nonattainment SIP elements for the Eastern Kern nonattainment area in Table 1. Therefore, EPA is in violation of its nondiscretionary duty pursuant to 42 U.S.C. § 7410(k)(2) – (4).

#### **B. The 2008 Ozone NAAQS New Source Review Requirement for the Northern Sierra Air Quality Management District**

On September 6, 2016, California submitted a SIP revising the Northern Sierra Air Quality Management District's New Source Review regulations to meet the moderate nonattainment requirements under the 2008 Ozone NAAQS.<sup>5</sup> EPA determined that California's submission of Rule No. 428 (New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas) met the minimum criteria for completeness on September 28, 2016.<sup>6</sup> In any event, the Rule No. 428 submittal would have been deemed complete by no later than March 6, 2017.

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 or it being deemed complete. 42 U.S.C. § 7410(k)(2).

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<sup>5</sup> 84 Fed. Reg. 44,238, 44,244 and fn. 37 (Aug. 23, 2019).

<sup>6</sup> United States Environmental Protection Agency, Ozone-8Hr (2008)/ Nevada County (Western part), *available at*: [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr\\_2008\\_elembynaqs.html#ozone-8hr\\_2008\\_1421](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_elembynaqs.html#ozone-8hr_2008_1421) (last visited Oct. 28, 2019).

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It has been more than 12 months since the Rule No. 428 SIP submittal was deemed or found administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve this SIP submittal. 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:

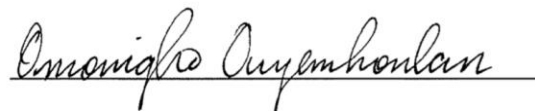
Center for Biological Diversity  
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While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

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

Sincerely,

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

Omonigho Oiyemhonlan  
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