April 2, 2020

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). 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. 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

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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 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). 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 for the Denver Metro/North Front Range Nonattainment Area

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 plan within 12 months of a plan being deemed or determined to meet the minimum criteria for completeness.

On July 3, 2018, EPA issued a final rule regarding SIP revisions for the 2008 Ozone NAAQS for the Denver Metro/North Range nonattainment area. 83 Fed. Reg. 31,068 (July 3, 2018). The final rule approved the majority of the SIP submittal except for Regulation No. 7, Section XVI.D–XIX. Id. at 31,070-71. Table 1 below describes the SIP elements which EPA has failed to take final action on by the CAA statutory deadline.

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Table 1: The 2008 Ozone NAAQS Nonattainment SIP Elements for the Denver metro/Northern Front Range Nonattainment Area

<table>
<thead>
<tr>
<th>Element Number</th>
<th>Nonattainment SIP Element</th>
<th>Submittal Date</th>
<th>Date of Completeness Finding</th>
<th>Deadline to take final action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reasonably Achievable Control Technology (&quot;RACT&quot;) Volatile Organic Compound (&quot;VOC&quot;) Control Technique Guideline (&quot;CTG&quot;) Metal Furniture Coatings (2007)</td>
<td>5/31/2017</td>
<td>11/30/2017</td>
<td>11/30/2018</td>
</tr>
<tr>
<td>5</td>
<td>RACT VOC CTG Aerospace (1997)</td>
<td>5/31/2017</td>
<td>11/30/2017</td>
<td>11/30/2018</td>
</tr>
</tbody>
</table>
II. EPA Has Violated the Clean Air Act by Failing to Take Final Action for the Colorado 2015 Ozone NAAQS Infrastructure State Implementation Plan

As explained above, 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 plan within 12 months of a plan being deemed or determined to meet the minimum criteria for completeness. On September 17, 2018, Colorado submitted its infrastructure state implementation plan (SIP) for the 2015 ozone NAAQS for the following elements:
Colorado’s submittal became administratively complete by no later than March 17, 2019. Thus, EPA has a mandatory duty to take final action by March 17, 2020. However, it is after March 17, 2020 and yet EPA has not taken final action on this submittal. Thus, EPA is in violation of 42 U.S.C. § 7410(k)(2) – (4) with regard to this Colorado submittal.

EPA has issued a proposed rule with regard to this submittal. See 84 Fed. Reg. 36,516 (July 29, 2019). However, proposed rules have no environmental benefit and do not obviate EPA’s mandatory duty under 42 U.S.C. § 7410(k)(2) – (4).

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

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Tel: (720) 496-8568

Center for Environmental Health
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, however, we will have to file or amend a complaint.

Sincerely,

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