



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.<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 March 31, 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 March 31, 2019).

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*).<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 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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<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>.

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

<b>Element Number</b>	<b>Nonattainment SIP Element</b>	<b>Submittal Date</b>	<b>Date of Completeness Finding</b>	<b>Deadline to take final action</b>
1	Reasonably Achievable Control Technology (“RACT”) Volatile Organic Compound (“VOC”) Control Technique Guideline (“CTG”) Metal Furniture Coatings (2007)	5/31/2017	11/30/2017	11/30/2018
2	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	5/31/2017	11/30/2017	11/30/2018
3	RACT VOC CTG Wood Furniture Manufacturing Operations (1996)	5/31/2017	11/30/2017	11/30/2018
4	RACT VOC CTG Industrial Cleaning Solvents (2006)	5/31/2017	11/30/2017	11/30/2018
5	RACT VOC CTG Aerospace (1997)	5/31/2017	11/30/2017	11/30/2018

6	Reg. No. 7, Section X (Use of Cleaning Solvents)	5/31/2017	11/30/2017	11/30/2018
7	Reg. No. 7, Section XIX (Control of Emissions from Specific Major Sources of VOC and/or NOx in the 8-Hour Ozone Control Area)	5/31/2017	11/30/2017	11/30/2018

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 nonattainment SIP elements listed 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 for the Denver Metro/North Front Range 2008 ozone nonattainment area. 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 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:

**TABLE 2<sup>4</sup>**

<b>2015 Ozone NAAQS Infrastructure SIP Elements</b>
(A): Emission Limits and Other Control Measures
(B): Ambient Air Quality Monitoring/Data System
(C): Program for Enforcement of Control Measures
(D)(i)(I): Prong 1 Interstate Transport—significant contribution
(D)(i)(I): Prong 2 Interstate Transport—interference with maintenance
(D)(i)(II): Prong 3 Interstate Transport—prevention of significant deterioration
(D)(i)(II): Prong 4 Interstate Transport—visibility
(D)(ii): Interstate and International Pollution Abatement
(E): Adequate Resources
(F): Stationary Source Monitoring System
(G): Emergency Episodes
(H): Future SIP revisions
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection
(K): Air Quality and Modeling/Data
(L): Permitting Fees
(M): Consultation/Participation by Affected Local Entities

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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<sup>4</sup> *See* 84 Fed. Reg. 36,516, 36,517 (July 29, 2019).

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

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Denver, Colorado 80202  
Tel: (720) 496-8568

Center for Environmental Health  
2201 Broadway, Suite 302  
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Tel: (510) 655-3900

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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