



VIA CERTIFIED MAIL

January 15, 2021

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) and 42 U.S.C. § 7604(a) to Compel Agency Action Unreasonably Delayed.

Dear Administrator Wheeler:

Pursuant to 42 U.S.C. §§ 7604(a), (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,” “EPA,” or “you”) for your failure to perform non-discretionary duties under the Clean Air Act (“the Act”) and to compel agency action unreasonably delayed. As discussed below, EPA has failed to meet the statutory deadlines to take legally required action to approve or disapprove multiple submitted Oil and Natural Gas Control Techniques Guidelines (“CTG”) Reasonably Available Control Technology (“RACTs”). 42 U.S.C. § 7410(k)(2)–(4). EPA is also unreasonably delayed in updating the 2016 CTG for the Oil and Natural Gas Industry. Both steps are necessary to ensure timely and effective implementation of the ozone National Ambient Air Quality Standards (“NAAQS”).

Timely implementation of the ozone NAAQS is critical to protect human health and the environment. Considering the scientific evidence, each year implementation of the eight-hour ozone NAAQS is delayed, up to 390,000 more asthma attacks will occur *in children*. Further, EPA estimates that the net benefit of implementing the 2015 70 parts per billion 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.

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 Integrated Science Assessment for Ozone and Related Photochemical Oxidants 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 sugar maple (*Acer saccharum*).¹ 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 the violations detailed below to better protect the public from the harmful effects of ozone. Exposure to ozone in even 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 the areas that have submitted Oil and Natural Gas Industry CTG RACT submittals for the 2008 ozone NAAQS 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	COMPLETENESS DATE	FINAL ACTION DUE DATE
California	Los Angeles – South Coast Air Basin	6/11/2019	6/11/2020
California	Riverside County (Coachella Valley)	6/11/2019	6/11/2020

¹ EPA, EPA/600/R-20/012, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants IS-77* (2020).

STATE	Area	COMPLETENESS DATE	FINAL ACTION DUE DATE
California	Sacramento Metro (Sacramento)	6/11/2019	6/11/2020
California	San Joaquin Valley	6/11/2019	6/11/2020
California	Ventura County	6/11/2019	6/11/2020
Illinois	Chicago-Naperville	7/10/2019	7/10/2020

Table 2 lists one area that has submitted an Oil and Natural Gas Industry CTG RACT for the 2015 ozone NAAQS. It has been more than 12 months since this submittal was found administratively complete by EPA or deemed administratively complete by operation of law. Yet, EPA has not taken action approving or disapproving, in full or part, this submittal. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, in full or part the submittal listed in Table 2.

TABLE 2

STATE	Area	COMPLETENESS DATE	FINAL ACTION DUE DATE
California	Los Angeles – San Bernardino Counties (West Mojave Desert) [Mojave Desert]	6/20/2019	6/20/2020

II. FAILURE TO UPDATE THE 2016 CTGs FOR THE OIL AND NATURAL GAS INDUSTRY

RACT is “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.”² The CTG for the Oil and Natural Gas Industry provides recommendations to inform state, local, and tribal air agencies as to what constitutes RACT for select oil and natural gas industry emission sources. The CTG is therefore a critical tool for reducing emissions in ozone nonattainment areas and in the ozone transport region.

² SIPs; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas – Supplement (on Control Techniques Guidelines), 44 Fed. Reg. 53,761, 53,762 (September 17, 1979).

EPA has an obligation to review and revise, as necessary, the CTG for the oil and natural gas industry to ensure that it provides accurate information. 42 U.S.C. § 7511b(b)(2) requires EPA to prioritize categories that make the most significant contribution to the formation of ozone air pollution. EPA “shall periodically review and, if necessary, revise such guidelines.” *Id.* Likewise, 42 U.S.C. § 7408(c) requires EPA “from time to time [to] review, and, as appropriate, modify” information on control techniques.

Nearly five years has passed since EPA last updated the CTG for the oil and natural gas industry in 2016. Ensuring that the CTG reflects the latest available technology is critical because, according to EPA, the oil and natural gas industry is the largest industrial source of emissions of volatile organic compounds (“VOCs”), which contribute to the formation of ground-level ozone.³ As explained above, the consequences of ozone pollution for human health and the environment are serious. The CTG has a co-benefit of reducing methane, a dangerous greenhouse gas that is 87 times more damaging for climate change than carbon dioxide.⁴

As one example, the 2016 CTG identifies pneumatic controllers as a significant source of VOC emissions.⁵ Pneumatic controllers are widely used at all stages of the oil and natural gas industry — from production to processing to transmission to storage — to control liquid level, temperature, and pressure. In addition to being a significant source of VOCs, according to the EPA’s Greenhouse Gas Inventory, pneumatic controllers are the largest source of methane from the oil industry and the second-largest source of methane from the natural gas industry.⁶ Considering emissions, there are three types of pneumatic controllers: (1) continuous bleed controllers, which vent gas continuously; (2) intermittent bleed controllers, which release gas when a valve is opened or when the gas flow is throttled; and (3) zero emission controllers, which release gas to the downstream pipeline or control device instead of to the atmosphere or do not use gas at all.

The 2016 CTG only addressed continuous bleed controllers and recommended as RACT continuous low-bleed controllers that emit less than six standard cubic feet per hour at production sites and compressor stations.⁷ Yet ample evidence indicates that non-emitting pneumatic controllers — using both solar-powered and grid-powered electronic controllers and instrument air technology — are in widespread use at production sites and compressor stations in both the United States and Canada, and are both cost effective and readily available in the market.⁸

³ EPA, Controlling Air Pollution from the Oil and Natural Gas Industry: Basic Information about Oil and Natural Gas Air Pollution Standards, <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/basic-information-about-oil-and-natural-gas> (last accessed January 11, 2021).

⁴ Myhre, G., D. Shindell et al., *Ch. 8: Anthropogenic and Natural Radiative Forcing*, in *Climate Change 2013: The Physical Science Basis, Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* at Table 8.7 (2013), available at www.climatechange2013.org/images/report/WG1AR5_Chapter08_FINAL.pdf.

⁵ EPA, *CTGs for the Oil and Natural Gas Industry* 3-5 (2016).

⁶ EPA, EPA-430-R-20-002, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2018*, Tables 3-37, 3-65 (2020).

⁷ *Id.* at 6-22, 6-23.

⁸ Carbon Limits AS, *Zero Emission Technologies for Pneumatic Controllers in the USA: Applicability and Cost-Effectiveness* (2016).

Several Canadian provinces require the use of zero emission controllers. For example, in Alberta, no new gas-driven venting pneumatic controllers can be installed after January 1, 2022 (this regulation tightened earlier in 2020 — previously operators were to be allowed to use gas-driven venting controllers for up to ten percent of new controllers after January 1, 2022).⁹ The Alberta regulations apply to all new controllers. Accordingly, replacement controllers at existing facilities are required to be non-emitting. In British Columbia, new facilities cannot use venting gas-driven pneumatic controllers after January 1, 2021. Large compressor stations must retrofit of all venting gas-driven pneumatic controllers by January 1, 2022.¹⁰ Both provinces also subject existing pneumatic controllers, including intermittent pneumatic controllers, to various emission limits.

Taking action to increase the use of zero emission controllers should be a priority because emissions from low-bleed continuous controllers are often higher than expected, meaning that their impact on human health and the environment is likely underestimated.¹¹ In addition, the number of intermittent bleed controllers, which EPA did not address in the 2016 CTG for the Oil and Natural Gas Industry, are much more prevalent than continuous bleed controllers and emissions from these devices are higher than emissions from continuous bleed controllers.¹²

EPA is unreasonably delayed in updating the 2016 CTG for the Oil and Natural Gas Industry. An update is necessary to reflect the reality of emissions from pneumatic controllers and currently available technology. The effects on human health and welfare of EPA’s delay, the length of time these effects have been ignored, and the fact that the delay will necessitate revisions to SIPs across the country violate the “rule of reason.” See *TRAC v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

III. CONCLUSION

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

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⁹ Alberta Energy Regulator, *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting* § 8.6.1, available at <https://static.aer.ca/prd/2020-10/Directive060.pdf>.

¹⁰ Drilling and Production Regulation, B.C. Reg. 282/2010 §§ 52.05–52.07, available at <https://www.canlii.org/en/bc/laws/regu/bc-reg-282-2010/latest/bc-reg-282-2010.html>.

¹¹ Carbon Limits AS, *Zero Emission Technologies for Pneumatic Controllers in the USA: Applicability and Cost-Effectiveness* 6 (2016).

¹² *Id.*

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 with the mandatory duty and 180 days for the unreasonable delay. If you do not do so, however, we will have to file or amend a complaint.

Sincerely,

A handwritten signature in black ink that reads "Ashley Bruner". The signature is written in a cursive, flowing style.

Ashley Bruner
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