



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

May 18, 2021

Michael S. Regan
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: 60-Day Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to approve or disapprove a state implementation plan submittal under 42 U.S.C. § 7410(k)(2)-(4), and failure to promulgate a federal implementation plan under 42 U.S.C. § 7410(c).

Dear Administrator Regan:

On behalf of the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club, I am writing to inform you that these organizations 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 [the Clean Air Act] which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). As detailed below, EPA has failed to undertake several mandatory duties related to sulfur dioxide (SO₂) air pollution in two areas.

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of SO₂. Exposure to SO₂ in even very short time periods—such as [five minutes](#)—has significant health impacts, including decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. EPA has also determined that exposure to SO₂ pollution can aggravate existing [heart](#) disease, leading to increased hospitalizations and premature deaths.

It is now more critical than ever for EPA to stop its illegal delays in ensuring there are effective plans in place to address air pollution. Numerous studies have shown that air pollution results in worse outcomes for people who have COVID-19 and similar diseases. See e.g. Xiao Wu et al., Exposure to air pollution and COVID-19 mortality in the United States (April 2020). The Wu study looked at fine particulate matter, which SO₂ is a precursor to.

SO₂ also contributes to the formation of [acid rain](#), which damages trees, crops, historic buildings, and monuments, and alters the acidity of both soils and water bodies. Acute and chronic exposures to SO₂ lead to [foliar injury, decreased photosynthesis, and decreased growth of vegetation](#). EPA's Integrated Review Plan acknowledged that oxides of sulfur (SO_x) and oxides of nitrogen (NO_x) have a potential to [negatively affect endangered species](#). EPA's Integrated Science Assessment even identifies [four federally listed endangered species](#) — three “endangered species in the genus *Isoetes*” and the endangered green pitcher-plant (*Sarracenia oreophila*) — that are adversely affected by SO_x pollution. The U.S. Fish and Wildlife Service (FWS) has already identified many other federally protected species that are [negatively affected by atmospheric pollution from SO_x](#).

In addition, because SO₂ emissions may be transmitted long distances, they contribute to [visibility impairment problems](#) in many national parks and wilderness areas.

EPA has previously found “that current levels of oxides of nitrogen and sulfur are [sufficient to cause acidification](#) of both aquatic and terrestrial ecosystems, nutrient enrichment of terrestrial ecosystems and contribute to nutrient enrichment effects in estuaries that could be considered adverse[.]” 77 Fed. Reg. 20,218, 20,241-42 (April 3, 2012).

SO_x also facilitates [mercury](#) methylation. This creates the [form of mercury](#) which is especially dangerous to humans and wildlife.

On June 2, 2010, EPA revised the primary SO₂ National Ambient Air Quality Standard (NAAQS) by establishing a new one-hour standard at a level of 75 parts per billion (ppb), which is met when the 3-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 ppb. The primary SO₂ NAAQS was set at this level in order to protect public health from the serious threats posed by short-term exposure to SO₂.

Due to both the more stringent numerical limit and shorter averaging time as compared to the previous SO₂ NAAQS, the 2010 SO₂ NAAQS is far more protective of human health than the prior SO₂ NAAQS and promises huge health benefits. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year will be prevented by the new standard.

Timely implementation of the new NAAQS is critical. Considering the scientific evidence, each year implementation of the one-hour SO₂ NAAQS is delayed, 5,900 more people will die prematurely and 54,000 asthma attacks will occur unnecessarily. Further, EPA estimates that the net benefit of implementing the 75 ppb SO₂ NAAQS is up to \$36 billion dollars. Those individuals who suffer from health impacts caused by

exposure to SO₂ will have greater medical costs with each year implementation is delayed and, as a result, the monetized benefits of implementing the one-hour SO₂ 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.

I. FAILURE TO APPROVE OR DISAPPROVE A STATE IMPLEMENTATION PLAN FOR ANNE ARUNDEL COUNTY AND BALTIMORE COUNTY SO₂ NONATTAINMENT AREA

Maryland submitted a state implementation plan (SIP) to EPA for the Anne Arundel County and Baltimore County SO₂ nonattainment area on February 3, 2020 with the following elements: Attainment Demonstration, Contingency Measures, Emission Inventory, Nonattainment New Source Review, Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable Further Progress (RFP).¹ On March 18, 2020, Maryland's SIP submittal was found to be administratively complete.² As a result, EPA was required to approve or disapprove, either in full or in part, Maryland's SIP submittal for Anne Arundel County and Baltimore County by March 18, 2021. See 42 U.S.C. § 7410(k)(2)-(4). EPA has failed to perform this mandatory duty for the Anne Arundel County and Baltimore County SO₂ nonattainment area.

II. FAILURE TO PROMULGATE A FEDERAL IMPLEMENTATION PLAN FOR DETROIT SO₂ NONATTAINMENT AREA

On March 18, 2016, effective April 18, 2016, EPA published an action finding that Michigan had failed to submit the required SO₂ nonattainment plan for the Detroit: Wayne County (p) nonattainment area by the submittal deadline. See 81 Fed. Reg. 14,736, 14,738 (Mar. 18, 2016). This finding triggered a requirement that EPA promulgate a Federal Implementation Plan (FIP) within two years of the finding unless, before promulgating the FIP (a) the state had made the necessary complete submittal and (b) EPA had approved the submittal as meeting applicable requirements. See 42 U.S.C. § 7410(c)(1). As a result, EPA was required to promulgate a FIP for the Detroit SO₂ nonattainment area by no later than April 18, 2018 for the Attainment Demonstration, Contingency Measures, RACM/RACT, and RFP elements.³ EPA has failed to perform this mandatory duty for the Detroit SO₂ nonattainment area.

¹ Status of SIP Required Elements for Maryland Designated Areas, EPA, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/md_elembypoll.html#so2_2010_1732 (last updated on March 12, 2021).

² *Id.*

³ EPA did approve the base year emissions inventory and nonattainment new source review elements. 86 Fed. Reg. 14,827, 14,830 (Mar. 19, 2021).

Administrator Regan
May 18, 2021
Page 4

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

The Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
Attn: Lalli Venkatakrisnan
Tel: (510) 676-0348

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612
Attn: Kaya Sugerman
Tel: (510) 740-9384

Sierra Club
2101 Webster St., Ste. 1300
Oakland, CA 94612
Attn: Zachary Fabish
Tel: (202) 675-7917

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, the Sierra Club, 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. If you do not do so, however, we will have to file a complaint.

Sincerely,

/s/ Lalli Venkatakrisnan

Lalli Venkatakrisnan

Counsel for Center for Biological Diversity,
Center for Environmental Health, and Sierra
Club.