EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

June 14, 2019

Via Certified and Electronic Mail
Return Receipt Requested

Mr. Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Office of the Administrator: mail code 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Email: wheeler.andrew@epa.gov

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator Wheeler:

This letter is submitted on behalf of the Center for Community Action and Environmental Justice ("CCAEJ")[1], Sierra Club[2], and Climate Change Law Foundation[3] to notify you, pursuant to section 304(b) of the Clean Air Act ("CAA" or "Act") (42 U.S.C. § 7604(b)(2)), that these organizations intend to sue the U.S. Environmental Protection Agency ("EPA") for its failure to perform a nondiscretionary duty under the Act. As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k) of the Act (42 U.S.C. § 7410(k)(1)(B), (k)(2)) to review and act upon the state implementation plan submitted by California to meet the 2008 National Ambient Air Quality Standards ("NAAQS") for ozone, in addition to an update to the plan to meet the 1997 ozone NAAQS, in the Los Angeles-South Coast Air Basin ("South Coast") nonattainment area.

This latest failure to meet statutory deadlines follows a distressing pattern in the EPA region responsible for several of the most polluted areas in the country. CCAEJ, Sierra Club, and Climate Change Law Foundation therefore believe it is up to citizens to demand enforcement of the Act and ensure proper planning is taking place to meet clean air standards on time. These organizations ask that you direct Region 9 to take the immediate action required under the Act and move quickly to address the South Coast's air quality problem.

As you are aware, ozone is a dangerous form of air pollution linked to a host of health impacts, particularly in the South Coast. Ozone reacts with internal body tissues causing damage to lungs, exacerbation of asthma, reduction of lung capacity, increased respiratory-related hospital

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[1] Center for Community Action and Environmental Justice, 3840 Sunnyhill Drive, Jurupa Valley, CA 92509.
[2] Sierra Club, 2101 Webster Street, Suite 1300, Oakland, CA 94612.
[3] Climate Change Law Foundation, 548 Market Street, #11200, San Francisco, CA 94104.

admissions, and even premature death.[4] The health impacts are disproportionately felt by the most vulnerable – children, the elderly, and persons already suffering from respiratory ailments.[5] A recent report released by the American Lung Association ranked the Los Angeles region as the worst in the nation for ozone pollution, a slot it has maintained for nearly two decades.[6]

Pursuant to the Act, over time, the EPA has issued increasingly stringent NAAQS for ozone in light of new evidence on health implications. In particular, EPA strengthened the 1997 8-hour ozone NAAQS of 80 parts per billion ("ppb") in 2008, setting a new standard of 75 ppb. 73 Fed. Reg. 16,436 (Mar. 27, 2008). The agency further strengthened the standard in 2015, setting the 8-hour ozone NAAQS at 70 ppb. 80 Fed. Reg. 65,292 (Oct. 26, 2015). Effective July 20, 2012, EPA designated the South Coast as still in nonattainment of the 8-hour ozone NAAQS established in 2008. 77 Fed. Reg. 30,088, 30,092 (May 21, 2012). In fact, this failure to comply with the Clean Air Act is made all the more troubling because the South Coast has failed to meet *any* ozone standard—not even the 1-hour ozone standard promulgated in 1979.

On April 27, 2017, the California Air Resources Board submitted the state implementation plan to meet the 2008 8-hour ozone NAAQS, as well as an update to the plan to meet the 1997 ozone NAAQS, for the South Coast. *See* Submittal from Mary Nichols to Alexis Strauss (Apr. 27, 2017), *available at* https://www.arb.ca.gov/planning/sip/planarea/scabsip/2016aqmp_arbltr.pdf. Under section 110(k) of the Act, upon submission EPA had eighteen months, or until October 27, 2018, to approve the plan, disapprove the plan, or approve in part and disapprove in part. 42 U.S.C. § 7410(k)(1)(B), (k)(2).

EPA has declined to take any action and therefore failed to complete its nondiscretionary duty to approve, disapprove, or approve in part and disapprove in part the 8-hour ozone state implementation plan for the South Coast. As a result, EPA has been in violation of section 110(k)(2) of the Act since October 27, 2018. Unless this deficiency is promptly addressed through a final action, CCAEJ, Sierra Club, and Climate Change Law Foundation intend to file suit in the U.S. District Court of the Central District of California sixty days after your receipt of this letter. Please feel free to contact the counsel listed below to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

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[4] *See Health Effects of Ozone Pollution*, U.S. ENVTL. PROTECTION AGENCY, https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution (last updated Oct. 10, 2018).
[5] *Ibid.*
[6] Am. Lung Assn., State of the Air 2019, p. 4, https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2019-full.pdf (as of May 24, 2019).

Sincerely,

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