VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

May 28, 2020

Andrew R. Wheeler
Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B).

Dear Administrator Wheeler:

On behalf of the Center for Biological Diversity, the Center for Environmental Health, and the Sierra Club, I am writing to inform you that they 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). As detailed below, EPA has failed to undertake mandatory duties with regard to sulfur dioxide (SO_2) pollution in numerous areas.

EPA should remedy its violation of this mandatory duty to better protect the public from the harmful effects of sulfur dioxide. Exposure to SO_2 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 SO_2 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).

SO_2 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.

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Acute and chronic exposures to SO_2 lead to foliar injury, decreased photosynthesis, and decreased growth of vegetation. EPA's draft Integrated Review Plan acknowledged that oxides of sulfur (SOx) and oxides of nitrogen (NOx) 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 SOx 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 SOx.

In addition, because SO_2 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).

SOx 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 SO_2 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 SO_2 NAAQS was set at this level in order to protect public health from the serious threats posed by short-term exposure to SO_2.

Due to both the more stringent numerical limit and shorter averaging time as compared to the previous SO_2 NAAQS, the 2010 SO_2 NAAQS is far more protective of human health than the prior SO_2 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 SO_2 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 SO_2 NAAQS is up to $36 billion dollars. Those individuals who suffer from health impacts caused by exposure to SO_2 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 one-hour SO_2 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 MAKE FINDING OF FAILURE TO SUBMIT

EPA is required to determine whether a state implementation plan (SIP) submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has failed to submit any required SIP submittal, there is no submittal that may be deemed administratively complete, and EPA must make a determination stating that the state failed to submit the required SIP submittal. *Id.* This determination is referred to as a "finding of failure to submit."

EPA designated all of the areas listed in Table 1 nonattainment for the 2010 SO_2 NAAQS. The nonattainment SIPs were due by no later than the dates listed in Table 1.[1] EPA has a mandatory duty to make a completeness finding under 42 U.S.C. § 7410(k)(1)(B) by no later than six months after the due dates for the submittals. The States in Table 1 have failed to submit nonattainment SIPs for the areas listed in Table 1 as of the date of this letter. More than six months have passed since the due dates for these submittals. Yet EPA has failed to issue a finding of failure to submit, as required under 42 U.S.C. § 7410(k)(1)(B), regarding the nonattainment SIPs for the areas listed in Table 1.

TABLE 1

AREA & ELEMENT(S)	**SUBMITTAL DEADLINE (No later than)**
Jackson County, (part), MO[2]: Attainment Demonstration, Contingency Measures, Reasonably available control measures/Reasonably available control technology (RACM/RACT), Reasonable	4/6/2015

[1] *See* https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2__2010_so2_attainment_demonstration_enbystate.html. *See also* 78 Fed. Reg. 47,191, 47,193 (Aug. 5, 2013); 83 Fed. Reg. 1,098, 1,100 (Jan. 9, 2018).

[2] On April 15, 2020, EPA proposed to determine that the Jackson County, (part), MO nonattainment area has attained the 2010 1-hr primary SO_2 NAAQS. 85 Fed. Reg. 20,896, 20,897 (Apr. 15, 2020). Comments on this proposed rule were due on May 15, 2020. *Id.* at 20,896. A proposed rule does not have legal consequence and does not obviate EPA's mandatory duty to issue a finding of failure to submit pursuant to 42 U.S.C. § 7410(k)(1)(B).

Further Progress (RFP).	
Piti-Cabras, Guam: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment New Source Review (NSR), RACM/RACT, RFP.	10/9/2019
Huntington, IN: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/9/2019
Evangeline Parish, (Partial), LA: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/9/2019
Guayama-Salinas, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/9/2019
San Juan, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP.	10/9/2019

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

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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, 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,

Ashley Palamaki

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