VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

April 30, 2019

Andrew R. Wheeler
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 promulgate a Federal Implementation Plan for Northern Sonoma County permitting rules.

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). Specifically, pursuant to 42 U.S.C. § 7410(c)(1)(A), EPA has failed to promulgate a Federal Implementation Plan (FIP) that addresses the deficiencies with the permitting rules for Northern Sonoma County Air Pollution Control District ("Northern Sonoma County APCD").

On May 19, 2016, EPA issued a proposed rule providing for a limited approval/disapproval of Rules 130 ("Definitions") and 220 ("New Source Review").[1] According to the EPA, Rules 130 and 220 "conflict with section 110 and part C of the Act."[2] EPA provided the following bases for its limited disapproval of the Rules 130 and 220:

> "(A) The definition of Significant in Rule 130 does not include lead as a pollutant or provide a significant emission rate. The rule also does not provide a public notice threshold for lead.
>
> (B) Rule 220 does not contain any provision specifying that required air quality modelling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W; therefore, the requirements for 40 CFR 51.160(F) and 51.166(1) have not been [met].

1 *See* 81 Fed. Reg. 69,3960 (Oct. 6, 2016).
2 *Id.*

(C) The text in Rule 220, Subsection (b)(3) contains a significant typographical error (the word "not" is missing) concerning the requirements pertaining to stack height.

(D) The requirements for 40 CFR 51.166(r)(1) and (2), regarding sources obligations, have not been met because the rules does not include the specific language required by these provisions."[3]

On October 6, 2016, EPA "finaliz[ed] a limited disapproval of Rules 130 and 220."[4] EPA's final rule became effective on November 7, 2016.[5]

EPA's failure to correct the deficiencies in Northern Sonoma County APCD's air pollution permitting program has serious consequences. For example, lead is a criteria pollutant for which EPA has created a National Ambient Air Quality Standard (NAAQ). Lead is emitted into the air from a wide range of sources. However, the top five include: mobile sources (leaded aviation gasoline); industrial, commercial, institutional, and process boilers; utility boilers; iron and steel foundries; and primary lead smelting.[6] Moreover, lead can travel by air, deposit in the land, and then "resuspend" into an airborne state.[7] Exposure generally occurs via inhalation or ingestion of lead-contaminated foods, water, or nonfood materials. As a cumulative toxicant, lead steadily builds up in the body's organs, bones, and teeth and can remain there for decades.[8] Short-term exposure to lead can result in abdominal pain, constipation, fatigue, headaches, irritability, loss of appetite, memory loss, pain or tingling in the hands or feet, and weakness.[9] Lead toxicity can affect every organ in the body, particularly the brain, kidney, and reproductive organs. Sustained lead exposure can result in renal and neurological impairment, hypertension, immunotoxicity, and toxicity to the reproductive organs.[10]

Young children and pregnant women are particularly susceptible to the pernicious effects of lead. According to the American Academy of Pediatrics "there is no identified threshold or safe level of lead in the blood."[11] Children suffering from lead exposure commonly display cognitive and behavioral issues, lower IQ, hyperactivity, development delays, hearing problems, anemia, etc. Acute exposure to very high levels of lead can result in encephalopathy.[12] Dr. Mona Hanna-Attisha, the Flint, Michigan pediatrician who helped blow the whistle on the city's

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3 *Id.* at 69,390-91.

4 *Id.* at 69,390.

5 *Id.*

6 73 Fed. Reg. 29, 184, 29,190 (May 20, 2008) (citation omitted).

7 *Id.*

8 Agency for Toxic Substances & Disease Registry, Center for Disease Control and Prevention, Public Health Statement for Lead, *available at*: https://www.atsdr.cdc.gov/phs/phs.asp?id=92&tid=22.

9 The National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, Lead: Information for Workers, *available at*: https://www.cdc.gov/niosh/topics/lead/health.html.

10 World Health Organization, Lead Poisoning and Health, *available at*: https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health.

11 Agency for Toxic Substances & Disease Registry, Center for Disease Control and Prevention, Lead Toxicity: What Are Possible Health Effects from Lead Exposure, *available at*: https://www.atsdr.cdc.gov/csem/csem.asp?csem=34&po=10.

12 *Id.*

water crisis, describes lead exposure as "the silent pediatric epidemic" that is difficult to address because "it is an irreversible neurotoxin." [13]

In pregnant women, lead that is stored in the bone is released into the bloodstream, resulting in fetal lead exposure. Lead exposure in utero can lead to "reduced fetal growth, lower birthweight, and other indicators of growth and delayed puberty."[14] Lead toxicity can also put pregnant women at risk for eclampsia and pre-eclampsia, which can result in maternal or infant death.

Wildlife is also adversely impacted by lead toxicity in the environment, particularly aquatic species like fish and predators that consume them. In Northern Sonoma, the Russian River, which crosses through and discharges into the Pacific Ocean from Goat Rock Beach (northwestern Sonoma), is home to three federally-listed species—the Coho salmon[15], Chinook salmon[16], and Steelhead Trout[17]. These fish are exposed to lead from food sources such as water fleas and other insects, which have high lead uptake levels, and degradation of freshwater conditions. Agricultural and mining activities and urban, industrial, and storm water runoff are possible sources of lead contamination in the Russian River.[18]

The availability and health of the Chinook salmon is especially important for the critically imperiled Southern Resident Killer whales.[19] Despite its protection under the Endangered Species Act since 2005, the population has been in an alarming decline in recent years. The main challenges threatening the survival of the Southern Resident are two-fold: insufficient and highly-contaminated Chinook, its primary prey.[20] With designated critical habitat along the coasts of Washington, Oregon, and California, these apex predators prey on Chinook released from the Russian River. An adult orca can consume between 100 to 300

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[13] National Public Radio, Flint Residents Confront Long-Term Helth Issues After Lead Exposure, *available at* https://www.npr.org/2017/10/31/561155244/flint-residents-confront-long-term-health-issues-after-lead-exposure.

[14] Agency for Toxic Substances & Disease Registry, Center for Disease Control and Prevention, Lead Toxicity: What Are Possible Health Effects from Lead Exposure, *available at*: https://www.atsdr.cdc.gov/csem/csem.asp?csem=34&po=10.

[15] United States Fish & Wild, ECOS Environmental Conservation Online System: Coho salmon, *available at*: https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=E08A.

[16] United States Fish & Wild, ECOS Environmental Conservation Online System: Chinook salmon, *available at*: https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=E06D.

[17] United States Fish & Wild, ECOS Environmental Conservation Online System: Steelhead Trout, *available at*: https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=E08D.

[18] United States National Marine Fisheries Service and United States Army Corps. Of Engineers, Endangered Species Act Section 7 Consultation: Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River watershed at pp. 58, 102, 103, 186, *available at*: https://evogov.s3.amazonaws.com/185/media/159660.pdf.

[19] United States Fish & Wild, ECOS Environmental Conservation Online System: Killer whale, *available at*: https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=A0IL.

[20] Northwest Fisheries Science, United State Department of Commerce: National Oceanic Atmospheric Administration, Toxic Killer Whales, *available at*: https://www.nwfsc.noaa.gov/news/features/toxic_killer_whales/index.cfm.

pounds per day and 85 percent of that may be lead-toxic Chinook.[21] As a result, the Southern Resident is considered the most polluted killer whale subgroup.[22]

The ingested lead accumulates in the Southern Resident's fatty tissues. When Chinook stock is low, hungry orcas metabolize their fatty tissue, which releases lead into the whale's bloodstream.[23] Lead exposure can lead to reproductive impairment, endocrine disruption,[24] immunotoxicity, neurotoxicity, and skeletal abnormalities.[25] Reproductive impairment poses a particular concern, as it may hinder population growth—something that threatens the continued viability of the Southern Resident killer whale population.

According to the 2014 National Emissions Inventory database, lead pollution in Northern Sonoma is attributed to three local airports—the Sea Ranch, Healdsburg Municipal, and Cloverdale Municipal airports.[26] These airports are considered "general aviation airports" because they typically service small, piston-engine powered aircrafts, commonly used for self-piloted personal or business flights, corporate flights, commercial and industrial flights for agriculture and aerial surveying and observation, tourism and access to special events.[27] These aircrafts can use leaded gasoline like one hundred low lead (100LL) Aviation Gas, "the most commonly available type of aviation gasoline in the United States."[28] With more than 167,000

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21 *Id.*

22 *Id.*

23 National Geographic, Half the World's Orcas Could Soon Disappear—Here's Why, *available at*: https://www.nationalgeographic.com/environment/2018/09/orcas-killer-whales-poisoned-pcbs-pollution/.

24 The endocrine system plays a vital role in whale health and well-being, producing hormones essential to growth, metabolism, heat loss control, and reproduction. Tuazon, F., "*Spoiled Milk: Scientists at the Northwest Fisheries Science Center in Seattle, Washington, try to understand how contaminants are affecting Southern Resident orca populations*", THE PLANET MAGAZINE (2018), *available at*: https://theplanetmagazine.net/spoiled-milk-d840abc205e6.

25 Ross, P.S. *et al.*, High PCB Concentrations in Free-Ranging Pacific Killer Whales, *Orcinus orca*: Effects of Age, Sex, and Dietary Preference, 40 Marine Pollution Bull 504 (2000); Krahn, M.M. *et al.* Effects of Age, Sex and Reproductive Status on Persistent Organic Pollutant Concentrations in "Southern Resident" Killer Whales, 58 Marine Pollution Bull 1522 (2009); Lundin, J.I. *et al.,* Persistent Organic Pollutant Determination in Killer Whale Scat Samples: Optimization of a Gas Chromatography/Mass Spectrometry Method and Application to Field Samples, 70 Archives Envtl. Contamination & Toxicology 9 (2016); Tuazon, F., "*Spoiled Milk: Scientists at the Northwest Fisheries Science Center in Seattle, Washington, try to understand how contaminants are affecting Southern Resident orca populations*", THE PLANET MAGAZINE (2018), *available at*: https://theplanetmagazine.net/spoiled-milk-d840abc205e6.

26 United States Environmental Protection Agency, 2014 National Emissions Inventory (NEI) Data—Facility Mapping, *available at*: https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data (last visited April 24, 2019). Additionally, Allan Ranch Flight Park and Sonoma County airport are just outside the jurisdiction of the Northern Sonoma County APCD and may indirectly contribute to lead pollution. *See* Northern Sonoma County Air Pollution Control District, Jurisdiction Map, *available at*: http://sonomacounty.ca.gov/uploadedFiles/Sonoma_County_Portal/Air_Quality/Interactive_Maps/Air_Quality_District_Boundaries/_Map_Source_Files/AirQualityLookupMap.html.

27 United States Department of Transportation, General Aviation Airports: A National Asset (2012) at pp. 9-10, *available at*: https://www.faa.gov/airports/planning_capacity/ga_study/media/2012AssetReport.pdf.

28 Sonoma County, Charles M. Schulz – Sonoma County Airport Draft Environmental Impact Report: Appendix G (2011) at p. 20, *available at*: https://sonomacountyairport.org/pdf/u_appendix_g_1-50.pdf; United

piston-engine aircrafts in operation, aviation gas is the only source of leaded transportation in the United States.[29] According to EPA, "[lead] emissions from piston-engine aircraft…comprise approximately half of the national inventory of lead emitted to air."[30]

Despite the serious dangers lead emissions pose, more than two years have passed and EPA has yet to promulgate a FIP that corrects the inadequacies identified in Rules 130 and 220. By failing to publish a FIP, EPA is in violation of its mandatory duties. EPA must remedy violations of its mandatory duties to better protect the public and wildlife from the harmful effects of lead and other pollutants these rules are designed to protect against.

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

Center for Biological Diversity
Attn: Omonigho Oiyemhonlan
1212 Broadway, Suite 800
Oakland, California 94601
Tel: (510) 844-7154

Center for Biological Diversity
Attn: Robert Ukeiley
1536 Wynkoop Street, Suite 421
Denver, Colorado 80202
Tel: (720) 496-8568

Center for Environmental Health
Attn: Caroline Cox
2201 Broadway, Suite 302
Oakland, California 94612
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,

Omonigho Oiyemhonlan

States Environmental Protection Agency, Lead Emissions from the Use of Leaded Aviation Gasoline in the United States: Technical Support Document (2008) at p. 1, *available at*: https://nepis.epa.gov/Exe/ZyPDF.cgi/P1004MXJ.PDF?Dockey=P1004MXJ.PDF.

[29] *Id.*

[30] 75 Fed. Reg. 22,440 (April, 28, 2010) (Advance Notice of Proposed Rulemaking on Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline).

Omonigho Oiyemhonlan
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94601
ooiyemhonlan@biologicaldiversity.org
Tel: (510) 844-7154

Robert Ukeiley
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, Colorado 80202
rukeiley@biologicaldiversity.org
Tel: (720) 496-8568