



VIA CERTIFIED MAIL

February 11, 2021

Jane Nishida
Acting Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW, M/C 1101A
Washington, D.C. 20460
nishida.jane@epa.gov

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 Acting Administrator Nishida:

Pursuant to 42 U.S.C. § 7604(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 Jane Nishida, the Acting Administrator of the United States Environmental Protection Agency, (“Acting Administrator,” “EPA,” or “you”) for your failure to perform non-discretionary duties under the Clean Air Act (“the Act”). 42 U.S.C. § 7604(a)(2). As discussed below, EPA has failed to meet its statutory deadline to publish notice in the Federal Register, identifying ozone nonattainment areas or ozone transport region (“OTR”) areas that have failed to timely submit Oil and Natural Gas Control Techniques Guidelines (“CTG”) Reasonably Available Control Technology (“RACT”) provisions. 42 U.S.C. § 7410(k)(1)(B). EPA’s issuance of findings of failure to submit is necessary to ensure timely and effective implementation of the 2015 ozone National Ambient Air Quality Standards (“NAAQS”).

Timely implementation of the 2015 ozone NAAQS is critical to protect human health and the environment. 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. Considering the scientific evidence, each year implementation of this 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*).

Ozone even impacts national parks, where the ground-level ozone concentrations are often indistinguishable those found in major cities in the United States.² The National Park Service monitors ozone around the country. In 2020, 26 national parks had at least one day where the air quality violated the 8-hour ozone NAAQS.³

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.⁴ Implementation of the Oil and Natural Gas Industry CTG RACT is therefore critical to reducing ozone pollution. EPA must remedy the violations detailed below to better protect the public from the harmful effects of ozone.

I. FAILURE TO MAKE FINDINGS OF FAILURE TO SUBMIT

EPA is required to determine whether a State Implementation Plan (“SIP”) submittal, including the RACT element of a nonattainment SIP, 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 2015 ozone NAAQS or they are part of the OTR. The required Oil and Natural Gas Industry CTG RACT SIP elements were due by no later than August 3, 2020.⁵ As of the date of this letter, the states in Table 1 have failed to submit Oil and Natural Gas Industry CTG RACT provisions for the areas listed in Table 1. EPA has a mandatory duty to make a completeness finding under 42 U.S.C.

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

² Keiser, et al., *Air Pollution and Visitation at U.S. National Parks*, 4 *Science Advances* (2018), available at <https://advances.sciencemag.org/content/4/7/eaat1613/tab-pdf>.

³ Nat’l Park Serv., *Ozone Exceedances Monitored in National Parks*, <https://www.nps.gov/subjects/air/ozone-exceed.htm> (last accessed February 9, 2021).

⁴ 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 February 9, 2021).

⁵ EPA, *SIP Status Reports: National Status of a Ozone-8Hr (2015) SIP Required Element*, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2015_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html (last accessed February 9, 2021).

§ 7410(k)(1)(B) by no later than six months after the due dates for the submittals. More than six months has 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). Thus, EPA is in violation of its nondiscretionary duty.

TABLE 1

STATE	AREA	OIL AND GAS CTG RACT SUBMITTAL DUE DATE	FINDING OF FAILURE TO SUBMIT DUE DATE
California	Nevada County (Western part)	8/03/2020	2/03/2021
California	Sacramento Metro (El Dorado)	8/03/2020	2/03/2021
California	Sacramento Metro (Feather River)	8/03/2020	2/03/2021
California	Sacramento Metro (Yolo- Solano)	8/03/2020	2/03/2021
California	San Diego County	8/03/2020	2/03/2021
California	Ventura County	8/03/2020	2/03/2021
Delaware	OTR	8/03/2020	2/03/2021
Maryland	OTR	8/03/2020	2/03/2021
New York	New York- Northern New Jersey-Long Island	8/03/2020	2/03/2021
New York	OTR	8/03/2020	2/03/2021
Pennsylvania	OTR	8/03/2020	2/03/2021
Virginia	OTR	8/03/2020	2/03/2021

II. CONCLUSION

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

The Center for Biological Diversity
P.O. Box 1178
Flagstaff, AZ 86002
Attn: Ashley Bruner
Tel: (928) 666-0731

Center for Environmental Health
2201 Broadway, Suite 302
Oakland, CA 94612

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. If you do not do so, however, we will have to file or amend a complaint.

Sincerely,



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