



June 10, 2022

Via Certified and Electronic Mail
Return Receipt Requested

Mr. Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Office of the Administrator: Mail Code 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Email: Regan.Michael@epa.gov

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

Dear Administrator Regan:

This letter is submitted on behalf of People's Collective for Environmental Justice¹, East Yard Communities for Environmental Justice², and Sierra Club³ to notify you, under 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 section 110(k) of the Act (42 U.S.C. § 7410(k)(1)(B),(k)(2)). More specifically, these organizations seek to compel EPA to perform its duty to review and act upon California's State Implementation Plan (SIP) submittal on contingency measures, approved by the South Coast Air Quality Management District (SCAQMD) and the California Air Resources Board (CARB), and submitted for EPA approval on December 31, 2019.⁴ To date, EPA has taken no action on this plan. While this plan has been pending at EPA, the South Coast Air Basin has

¹ People's Collective for Environmental Justice, 2241 Barton Rd., #296, Grand Terrace, CA 92313

² East Yard Communities for Environmental Justice, 2317 S. Atlantic Blvd., Commerce, CA 90040.

³ Sierra Club, 617 W. 7th Street, Suite 702, Los Angeles, CA 90017.

⁴ South Coast Air Quality Management District, Final Contingency Measure Plan: Plan for Attainment of the 1997 80 ppb 8-Hour Ozone Standard in the South Coast Air Basin, December 2019, available at <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/1997-ozone-contingency-measure-plan/1997-8-hour-ozone-draft-contingency-measure-plan---120619.pdf?sfvrsn=10>.

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
June 10, 2022

had one of the worst ozone seasons in close to three decades,⁵ in addition to hundreds of dirty air days. We need our regulators, including EPA, to comply with our clean air laws as written.

To make matters worse, regulators from both the SCAQMD and CARB have conceded that the South Coast Air Basin will fail to meet the 1997 8-hour ozone standard. In fact, this failure is the result of a lack of follow through on the “black box” emissions reduction commitments CARB and SCAQMD made when the original plan to meet the 1997 ozone standard was submitted to EPA more than a decade ago. The “black box” allows plans to get approved for extreme ozone areas without effective control measures being fully developed. In the meantime, ports, airports, refineries, and other large polluting facilities have expanded and added pollution to the most ozone-polluted region of the country. The “black box” approach only works if agencies fulfill their promises to develop concrete strategies to reduce emissions sufficient to meet the ozone standards. The chronic problem in the South Coast Air Basin is that agencies use the “black box” as a strategy for getting plans approved, but never ultimately follow through on closing the “black box.” The losers in this approach are the millions of breathers in the South Coast Air Basin.

These regulatory failures have consequences. For example, ozone is a dangerous form of air pollution linked to many health impacts, particularly in the South Coast Air Basin. Ozone reacts with internal body tissues, causing lung damage, making them more susceptible to infection and reducing their capacity — while also exacerbating asthma, increasing respiratory-related hospital admissions, and even leading to premature death.⁶ The health impacts of this pollution are disproportionately felt by the most vulnerable, including children, persons with lung diseases, outdoor workers, and the elderly.⁷ A recent report by the American Lung Association ranked the Los Angeles region as the worst in the nation for ozone pollution, a slot the region has maintained for all but one of the 23 years tracked by the “State of the Air” report.⁸ People of color make up roughly 70% of the population for this heavily impacted region,⁹ making it difficult to ignore the environmental justice implications of continued agency inaction in addressing the perennial gaps in air pollution reduction. Having air plans based on the fantasy that the “black box” will finally solve our air pollution crisis will continue to mean that millions of the region’s residents are harmed by dangerous ozone.

⁵ Tony Barboza, *Los Angeles Suffers Worst Smog in Almost 30 Years*, Sept. 10, 2020, available at <https://www.latimes.com/california/story/2020-09-10/los-angeles-had-its-worst-smog-in-26-years-during-heat-wave>.

⁶ 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 May 5, 2021).

⁷ *Ibid.*

⁸ Am. Lung Assn., *State of the Air 2022*, p. 11. <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf> (as of April 18, 2022).

⁹ *Id.* at p. 38 (Table 2c).

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
June 10, 2022

EPA's failure to act follows a distressing pattern in EPA Region 9 where statutory deadlines are not being met for plans affecting several million residents living in the most polluted areas in the country. The South Coast Air Basin has failed to meet *every* ozone standard—even the 1-hour ozone standard from 1979. Air planning in the region is broken because some agencies make promises they don't keep while others, including the EPA, routinely violate the Clean Air Act by failing to meet important deadlines.

Local air regulators have been incapable, or unwilling, to fully address the gaps left in air planning due to repeated use of "black box" measures. PC4EJ, EYCEJ, and Sierra Club, whose members are detrimentally affected by this regulatory stalemate, believe that 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 you to direct Region 9 to take immediate action required under the Act and move quickly to address South Coast's air quality problems.

Because EPA has not taken any action and therefore failed to complete its nondiscretionary duty related to the Section 182(e)(5) contingency plan for the South Coast, it has been in violation of section 110(k)(2) of the Act since June 30, 2021. Unless this deficiency is promptly addressed through a final action, PC4EJ, EYCEJ, and Sierra Club 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 me at the number listed below to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

Sincerely,



Fernando Gaytan

Earthjustice

T: 415-217-2025

E: fgaytan@earthjustice.org

Counsel for East Yard Communities for Environmental Justice, People's Collective for Environmental Justice, and Sierra Club.

Cc via email:

Martha Guzman, Regional Administrator, EPA Region 9 (Guzman.Martha@epa.gov;
r9.info@epa.gov)