



NATURAL RESOURCES DEFENSE COUNCIL

May 6, 2010

Lisa Jackson
Administrator, EPA
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Jared Blumenfeld
Region 9 Administrator, EPA
75 Hawthorne Street
San Francisco, CA 94105

By Certified Mail, Return Receipt Requested

Re: Notice of Intent to Sue for Failure to Take Action on (1) the 2007 State and Federal Strategy for the California State Implementation Plan; and (2) the 2007 South Coast Air Quality Management Plan

Dear Ms. Jackson and Mr. Blumenfeld:

The Natural Resources Defense Council (“NRDC”) and the Coalition for a Safe Environment (“CSE”) give notice to the Environmental Protection Agency (“EPA”) of NRDC and CSE’s intent to sue the EPA for its failure to fulfill its mandatory duty to take final action to approve or disapprove (1) the State Strategy for the 2007 State Implementation Plan (“2007 State SIP”) and (2) the 2007 South Coast Air Quality Management Plan (“2007 South Coast SIP”).

Pursuant to § 304(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3, NRDC and CSE give the EPA Administrator for EPA Region IX notice of their intent to sue EPA for its failure to perform non-discretionary duties under the Act.

Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that the EPA *shall* determine whether the minimum criteria has been established by a State Implementation Plan (“SIP”) within 60 days of receipt of such plan or plan revision. (Emphasis added). A SIP or revised SIP shall be deemed complete by operation of law if EPA fails to determine whether it meets the minimum criteria within 6 months of the date EPA receives the plan or revised plan. 42 U.S.C. § 7410(k)(1)(B). Within 12 months of the completeness finding, EPA *shall* act on a state’s plan by either full or partial approval or disapproval. 42 U.S.C. § 7410(k)(2) (emphasis added).

State Strategy for the 2007 State Implementation Plan

The State of California adopted the State Strategy for the 2007 State Implementation Plan to attain federal ozone and fine particulate matter (PM_{2.5}) air quality standards. The California State Agency responsible for adoption and submission of the SIP is the California Air Resources Board (“ARB”). On September 27, 2007, ARB adopted the 2007 State SIP. ARB submitted its plan to the U.S. EPA on November 16, 2007 for approval. The SIP was deemed complete by operation of law on May 16, 2007. On April 23, 2009, ARB adopted a staff proposal to consider a revision to the SIP reflecting implementation of the 2007 State Strategy since it was adopted.

The EPA requested this revision to aid its approval of the SIP. To date, EPA has failed to take any action on the 2007 SIP, which violates EPA’s nondiscretionary duty to act pursuant to § 110(k)(2) of the Act and 42 U.S.C. § 7410(k)(2).

2007 South Coast Air Quality Management Plan

The South Coast Air Quality Management District adopted the 2007 Air Quality Management Plan (“2007 South Coast SIP”) on June 1, 2007. On September 27, 2007, ARB approved the 2007 South Coast SIP. On November 28, 2007, ARB submitted the 2007 South Coast SIP to EPA for approval. On February 1, 2008, ARB submitted supplemental technical information related to reasonable further progress for the 8-hour ozone NAAQS. The 2007 South Coast SIP was amended by a submittal dated April 30, 2008 that replaced the original motor vehicle emissions budgets for 8-hour ozone and PM_{2.5} and distinguished between “baseline” budgets and “SIP-based” budgets. The EPA found the “SIP-based” budgets to be inadequate for transportation conformity purposes, but found that the “baseline” budgets were adequate. 73 Fed. Reg. 28110 (May 15, 2008). However, the adequacy review is separate from EPA’s completeness review. *Id.* The 2007 South Coast SIP was deemed complete by operation of law on May 28, 2008. To date, EPA has failed to take any action on the 2007 South Coast SIP, which violates EPA’s nondiscretionary duty to act pursuant to § 110(k)(2) of the Act and 42 U.S.C. § 7410(k)(2).

Health Effects of Ozone and Particulate Matter Pollution

Air pollution imposes immense impacts on those forced to breathe unhealthy air. Over 90% of Californians breathe unhealthy levels of one or more air pollutants during some part of the year.¹ Ozone and Particulate Matter (“PM”) pollution exacerbate respiratory conditions including asthma, increase hospitalizations and emergency room visits, increase school and work absenteeism, and contribute to premature death.²

The ARB and the American Lung Association report that premature deaths linked to particulate matter pollution are at the levels of deaths from car accidents and second-hand

¹ ARB, Fact Sheet: Air Pollution and Health, *available at* <http://www.arb.ca.gov/research/health/fs/fs1/fs1.htm>.

² *Id.*

smoke.³ They also report that “fine particulate matter . . . not only bypasses the body’s defense mechanisms and becomes embedded in the deepest recesses of the lung, but also can disrupt cellular processes.”⁴ Additionally, particle pollution may significantly and permanently reduce lung function growth in children.⁵

The ARB and the American Lung Association describe ozone as

a powerful oxidant that can damage the respiratory tract, causing inflammation and irritation, and induces symptoms such as coughing, chest tightness, shortness of breath, worsening of asthma symptoms, and even death. Ozone in sufficient doses increases the permeability of lung cells, rendering them more susceptible to toxins and microorganisms. The greatest risk is to those who are more active outdoors during smoggy periods, such as children, athletes, and outdoor workers. Exposure to levels of ozone above the current ambient air quality standard leads to lung inflammation and lung tissue damage, and a reduction in the amount of air inhaled into the lungs. Recent evidence has, for the first time, linked the onset of asthma to exposure to elevated ozone levels in exercising children (McConnell 2002). These levels of ozone also reduce crop and timber yields, damage native plants, and damage materials such as rubber, paints, fabric, and plastics.⁶

The two organizations report that “attaining the California [particulate matter] and ozone standards would annually prevent about 8,800 premature deaths, or 3.7% of all deaths.”⁷

The American Lung Association’s STATE OF THE AIR: 2010 report lists 8 of the 10 most ozone polluted cities as located in California, including Los Angeles, Riverside and Long Beach as the most ozone polluted cities in the nation.⁸ California also has many cities in the top ten for year-round particulate pollution.⁹

The ARB reports that in 2007 the South Coast Air Basin exceeded the national 8-hour ozone (smog) standard on 79 days, and exceeded the state national 8-hour ozone standard on 127 days.¹⁰ Additionally it reports that 90% of the state’s population live in areas that exceed the state’s PM2.5 standards, and 57% live in areas that exceed the national PM2.5 standards.¹¹

³ Recent Research Findings: Health Effects of Particulate Matter and Ozone Air Pollution (2007), available at http://www.arb.ca.gov/research/health/fs/pm_ozone-fs.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ American Lung Association, STATE OF THE AIR: 2010, available at <http://www.stateoftheair.org/2010/city-rankings/most-polluted-cities.html>.

⁹ *Id.*

¹⁰ Recent Research Findings: Health Effects of Particulate Matter and Ozone Air Pollution (2007).

¹¹ *Id.*

Given that the South Coast region specifically, and California generally, have some of the most intractable air quality problems in the nation, local, state, and federal agencies must do everything in their capacity to combat this harmful pollution. This includes EPA's compliance with the Act's statutory deadlines to either approve or disapprove California's ozone and PM2.5 clean-up plans.

Identity of Noticing Parties and their Attorneys

<p>Natural Resources Defense Council 1314 Second St. Santa Monica, CA 90401 Telephone: (310) 434-2300 Attention: David Pettit, Morgan Wyenn, and Adriano Martinez</p>	<p>Attorney for NRDC Adriano Martinez Natural Resources Defense Council 1314 Second St. Santa Monica, CA 90401 Telephone: (310) 434-2300 Fax: (310) 434-2399 Email: amartinez@nrdc.org</p>
<p>Coalition for a Safe Environment 1601 North Wilmington Blvd. Wilmington, CA 90744 Attention: Jesse Marquez</p>	<p>Attorney for CSE Adriano Martinez Natural Resources Defense Council 1314 Second St. Santa Monica, CA 90401 Telephone: (310) 434-2300 Fax: (310) 434-2399 Email: amartinez@nrdc.org</p>

Conclusion

At the conclusion of the 60-day period, NRDC and CSE will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to Adriano Martinez.

Sincerely,



Adriano Martinez
Natural Resources Defense Council

cc: Governor Arnold Schwarzenegger (By Certified Mail, Return Receipt Requested)
State Capitol Building
Sacramento, CA 95814

Notice of Intent

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Mary Nichols, Chair (By Certified Mail, Return Receipt Requested)

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James Goldstene, Executive Officer (By Certified Mail, Return Receipt Requested)

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