



May 16, 2011

Via Certified and Electronic Mail

Ms. Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

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

Dear Administrator Jackson:

This letter is submitted on behalf of Medical Advocates for Healthy Air¹ and Sierra Club² to notify you, pursuant to section 304(b) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7604(b), that they intend to sue the U.S. Environmental Protection Agency (“EPA”) for its failure to perform non-discretionary duties related to the failure of the San Joaquin Valley to attain the national ambient air quality standard limiting 1-hour concentrations of ozone. Medical Advocates and Sierra Club ask that you take the immediate action required under the Act.

Background on Missed Deadlines

Over twenty years ago, Congress adopted amendments to the federal Clean Air Act promising that even the most polluted areas of the country would be required to meet the national standard for ozone no later than November 15, 2010. *See* 42 U.S.C. § 7511(a). This deadline applied to the San Joaquin Valley extreme ozone nonattainment area in California. *See* 69 Fed. Reg. 20550 (April 16, 2004). Unfortunately, over these last 20 years, the San Joaquin Valley has suffered one agency decision after another to undermine the protections guaranteed by the Act. This track record of failure has, not surprisingly, resulted in persistent 1-hour ozone concentrations that exceed the national standard.

Since the San Joaquin Valley Air District adopted and submitted its Extreme Area Ozone Attainment Demonstration in 2004 (“1-hour plan”), air quality in the Valley has seen little

¹ Medical Advocates for Healthy Air, 5919 E. Robinson Avenue, Fresno, CA 93727

² This notice is submitted on behalf of the Sierra Club (85 Second Street, San Francisco, CA 94105), including its Tehipite Chapter (P.O. Box 5396, Fresno, CA 93755-5396), Kern-Kaweah Chapter (P.O. Box 3357, Bakersfield, CA 93385-3357) and Mother Lode Chapter (801 K Street, Suite 2700, Sacramento, CA 95814).

improvement.³ From 2005 through 2010, the Valley has averaged 10 violations of the 1-hour standard per year. In 2005—the first summer after the adoption of the Valley’s 1-hour ozone plan—there were eight 1-hour ozone violations. In 2008—the same year that EPA proposed to approve the 1-hour plan for the Valley—the Valley experienced 19 violations of the standard. And this past summer, when the Valley was finally supposed to attain the standard, there were another seven violations.

The Clean Air Act outlines the specific steps that must be taken should an area fail to attain the ozone standard by the statutory deadline. The Act provides that by May 15, 2011, EPA “shall determine, based on the area’s air quality as of the attainment date, whether the area attained the standard . . .” 42 U.S.C. § 7509(c)(1); *see also id.* § 7511(b)(2). Within 1 year after publishing such notice in the Federal Register, the State must submit a revised implementation plan including “such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area . . .” *Id.* § 7509(d). The revised plan must demonstrate attainment of the 1-hour standard as expeditiously as practicable but no later than 5 years after the date of the failure to attain notice. *Id.* § 7509(d)(3). In addition, section 110(k)(5) of the Clean Air Act provides that “[w]henver the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain . . . the relevant national ambient air quality standard . . . the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.” *Id.* § 7410(k)(5).

On November 15, 2010, Medical Advocates, Sierra Club, and others filed an administrative petition under section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, asking EPA to take rulemaking action under Clean Air Act sections 110(k)(5), 179(c) and 181(b)(2). To date, EPA has not responded in any way to this petition even though the deadlines for mandatory action have now passed. Indeed, EPA has refused to take any of the actions mandated by the Clean Air Act in response to the Valley’s failure to attain the 1-hour ozone standard by the November 15, 2010 attainment deadline. It is with great disappointment, therefore, that Medical Advocates and Sierra Club notify you of their intent to sue EPA in federal district court for the following failures.

³ The air quality monitoring data used for this discussion comes from the California Air Resources Board and is available at: <http://www.arb.ca.gov/adam/>. As the State’s website explains, “The iADAM web site lets you see official summaries indicating how good or bad the air quality is throughout California for a number of pollutants.”

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EPA has Violated the Clean Air Act by Failing to Act on the San Joaquin Valley's Failure to Attain the 1-Hour Ozone Standard

Under Clean Air Act sections 179(c)(1) and 181(b)(2), 42 U.S.C. §§ 7509(c)(1) and 7511(b)(2), EPA had a mandatory duty to make a determination by May 15, 2011 as to whether the San Joaquin Valley had attained or failed to attain the 1-hour ozone national ambient air quality standard by the applicable attainment date of November 15, 2010. Because EPA has not made such determination, EPA is now in violation of sections 179(c)(1) and 181(b)(2).

Under section 110(k)(5) of the Act, EPA has a non-discretionary duty to require the State to revise the 1-hour ozone plan where, as here, the plan is substantially inadequate to attain the 1-hour ozone standard. 42 U.S.C. § 7410(k)(5). Based on the monitoring data collected to date, there is no longer any dispute that the Valley's 2004 Ozone Plan is "inadequate to attain" the 1-hour ozone standard and that the plan failed to meet the Act's requirement that the Valley attain the 1-hour standard by November 15, 2010. 42 U.S.C. § 7511(a). Accordingly, EPA must require the State to prepare a new 1-hour ozone plan that will ensure attainment of the 1-hour standard as expeditiously as practicable. This matter was presented to EPA in a petition for rulemaking dated November 15, 2010 pursuant to 5 U.S.C. § 553(e). EPA's delay in taking the action demanded by that petition and mandated by section 110(k)(5) of the Act is unreasonable. *See* 5 U.S.C. §§ 555(b) and 706(1).

Unless the identified deficiencies are promptly mitigated, Medical Advocates for Healthy Air and Sierra Club anticipate filing suit in the U.S. District Court for the Northern District of California sixty days after your receipt of this letter. Please feel free to contact me at the address and telephone number provided above to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

Sincerely,



Paul Cort
Staff Attorney

Cc: Jared Blumenfeld, Regional Administrator, Region IX