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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 EAST YARD COMMUNITIES FOR) Case No:
19 ENVIRONMENTAL JUSTICE,)
20 PEOPLE’S COLLECTIVE FOR)
21 ENVIRONMENTAL JUSTICE,)
22 COMMUNITIES FOR A BETTER) **COMPLAINT FOR DECLARATORY**
23 ENVIRONMENT, and SIERRA CLUB,) **AND INJUNCTIVE RELIEF**
24) (Clean Air Act, 42 U.S.C. §§ 7401 et seq.)
25 Plaintiffs,)
26 v.)
27 SOUTH COAST AIR QUALITY)
28 MANAGEMENT DISTRICT, THE)
GOVERNING BOARD OF THE SOUTH)
COAST AIR QUALITY)
MANAGEMENT DISTRICT,)
CALIFORNIA AIR RESOURCES)
BOARD, and DOES 1 through 25)
inclusive,)
Defendants.

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1 **INTRODUCTION**

2 1. Residents of California’s South Coast air basin (“South Coast”) are
3 struggling to breathe. The South Coast is one of the most air-polluted regions in the
4 United States. During the warmer summer and fall months, the South Coast is choked
5 with ozone pockets (also called “smog”).

6 2. Elevated ozone levels burn the eyes, throat and lungs, trigger asthma
7 attacks, and complicate the survival of the young and elderly already suffering from
8 respiratory or other ailments. In addition to these health impacts, ozone pollution
9 obscures visibility and damages plants and other natural resources.

10 3. For more than 20 years, the South Coast has failed to meet federal air
11 quality standards for ozone (the “8-hour ozone standard”). In fact, the South Coast has
12 never met a federal ozone standard.

13 4. Under section 185 of the federal Clean Air Act (“CAA”), areas that fail
14 to meet ozone NAAQS must adopt mandatory pollution fees (“fee program” or “fee
15 rule”) on the region’s largest stationary sources (e.g., refineries, powerplants, etc.)
16 emitting precursors to ozone (NOx and VOCs) in nonattainment areas.

17 5. In California, local authorities have the delegated authority and primary
18 responsibility to control air pollution from all sources other than motor vehicles. Cal.
19 Health & Safety Code §§ 39002, 40000.

20 6. Air pollution control and air quality management districts adopt and
21 enforce rules and regulations to achieve and maintain federal and state NAAQS for
22 the areas under their jurisdiction. Cal. Health & Safety Code §§ 40001, 40440, 40462,
23 40469.

24 7. Once adopted, these rules (including fee rules) are submitted to the
25 California Air Resources Board (“CARB”). CARB is the state agency responsible for
26 submitting a State Implementation Plan (“SIP”) that complies with the CAA. Cal.
27 Health & Safety Code § 39602.

28 8. The U.S. Environmental Protection Agency designated the South Coast

1 as nonattainment for the 1997 8-hour ozone standard on April 15, 2004. *See* Air
2 Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air
3 Quality Standards; Early Action Compact Areas With Deferred Effective Dates, 69
4 Fed. Reg. 23,858 at 23,888-89 (April 30, 2004) and 40 C.F.R § 81.305.

5 9. As South Coast approaches the 20-year mark from EPA’s nonattainment
6 designation, it continues to fall short of meeting the 1997 ozone standard.

7 10. The South Coast Air Quality Management District (“SCAQMD”) was
8 required to adopt a fee rule within 10 years of EPA’s nonattainment designation for
9 the 1997 8-hour ozone standard. Thus, SCAQMD was required to have finalized a fee
10 program no later than June 15, 2014.

11 11. South Coast has yet to adopt a fee rule after its nonattainment designation
12 for the 1997 8-hour ozone standard.

13 12. CARB has failed to submit a SIP that complies with the CAA to EPA.

14 13. Environmental justice and community groups file this challenge to
15 vindicate their rights to be protected by the 1990 amendments to the Clean Air Act in
16 the most ozone-polluted part of the United States.

17 **JURISDICTION AND VENUE**

18 14. This Court has jurisdiction over this action to compel the performance of
19 non-discretionary duties by South Coast and CARB pursuant to 42 U.S.C. § 7604(a)
20 (citizen suit provision of the CAA) and 28 U.S.C. § 1331 (federal question
21 jurisdiction).

22 15. Plaintiffs have provided South Coast and CARB with written notice of
23 the claims stated in this action at least sixty days before commencing this action as
24 required by 42 U.S.C. § 7604(b)(2). *See* Exhibit A (Letter from Counsel to Vanessa
25 Delgado, Chair of the Governing Board of South Coast Air Quality Management
26 District and Gideon Kracov at the California Air Resources Board).

27 16. Venue in this district is appropriate under 29 U.S.C. § 1391(b), as the
28 SCAQMD’s headquarters are located in the Western Division of the Central District

1 of California.

2 **PARTIES**

3 17. East Yard Communities for Environmental Justice (“EYCEJ”), founded
4 in 2001, is an environmental health and justice nonprofit corporation working towards
5 a safe and healthy environment for communities that disproportionately suffer the
6 negative impacts of industrial pollution. EYCEJ represents approximately 1,000
7 members in East Los Angeles, Southeast Los Angeles, Long Beach, Carson, and
8 Wilmington. Through grassroots organizing and leadership-building skills, EYCEJ
9 prepares community members to engage in policy issues of environmental justice and
10 air quality at the regional, statewide, and national levels. For decades, EYCEJ has
11 advocated for holding major stationary sources accountable for their part in ozone
12 pollution.

13 18. People’s Collective for Environmental Justice (“PC4EJ”) is an
14 association dedicated to building community power in the Inland Empire to fight
15 against pollution and environmental racism. Founded in 2020, PC4EJ represents over
16 1,000 community members in the Inland Empire who are impacted by ozone
17 pollution. Since its inception, PC4EJ has advocated for strong financial incentives for
18 major stationary sources to reduce precursors to ozone pollution.

19 19. Sierra Club is a national environmental organization founded in 1892 that
20 is dedicated to exploring, enjoying, and protecting the planet; to practicing and
21 promoting the responsible use of the earth’s ecosystems and resources; to educating
22 and enlisting humanity to protect and restore the quality of the natural and human
23 environment; and to using all lawful means to carry out those objectives. Sierra Club
24 currently has approximately 3.1 million members and supporters nationwide and
25 approximately 47,000 members in the South Coast. For many years, Sierra Club has
26 advocated for strong regulatory measures to control ozone pollution.

27 20. Communities for a Better Environment (“CBE”) is a California nonprofit
28 environmental health and justice organization. Founded in California in 1978, CBE

1 organizes residents living in frontline communities around environmental, racial, and
2 social justice issues. CBE has hundreds of members in Los Angeles, with a large
3 representation in frontline communities like Southeast Los Angeles and Wilmington.
4 Through organizing supported by staff science and legal resources, CBE is
5 empowering communities to transform environmental conditions and improve health
6 outcomes in low-income communities and communities of color. CBE is seeking to
7 require SCAQMD to implement a fee program that reduces ozone in communities
8 pursuing environmental justice where CBE has a vast membership base.

9 21. Plaintiffs' members live, raise their families, work, recreate, and conduct
10 educational, research, advocacy, and other activities in the South Coast. They are
11 adversely affected by exposure to levels of air pollution that exceed the national
12 health-based ozone standards established under the CAA. The adverse effects of such
13 pollution include actual or threatened harm to their health, their families' health, their
14 patients' health, their professional, educational, and economic interests, and their
15 aesthetic and recreational enjoyment of the environment in the air basin.

16 22. The CAA violations alleged in this Complaint have injured and continue
17 to injure the interests of Plaintiffs and their members. Granting the relief requested in
18 this lawsuit would redress these injuries by compelling SCAQMD and CARB to take
19 the action mandated by law for improving air quality in areas violating national air
20 quality standards, such as the South Coast.

21 23. Defendant California Air Resources Board ("CARB") is the state agency
22 responsible for reviewing, approving, and integrating district-level plans and programs
23 into the SIP and for ensuring district plans attain and maintain ambient air quality
24 standards. Cal. Health & Safety Code § 41500. The California Air Resources Board is
25 located in Sacramento, El Monte, and Riverside, California, and performs its duties
26 throughout the State of California.

27 24. Defendant SCAQMD is a political subdivision of California responsible
28 for air pollution control in counties that include the Los Angeles metropolitan area. Its

1 authority is defined and circumscribed by enabling legislation found in California
2 Health & Safety Code § 40400, *et seq.*, aka the “Lewis-Presley Air Quality
3 Management Act.” Under California law, SCAQMD has the authority to sue and be
4 sued in the name of the district in all actions and proceedings in all courts and
5 tribunals of competent jurisdiction. Cal. Health & Safety Code § 40701.

6 25. Defendant members of SCAQMD’s Governing Board are all residents of
7 the State of California.

8 STATUTORY AND LEGAL FRAMEWORK

9 26. The CAA directs EPA to prescribe NAAQS, “the attainment and
10 maintenance of which . . . are requisite to protect the public health” with “an adequate
11 margin of safety.” 42 U.S.C. §§ 7409(a), (b).

12 27. The CAA also directs EPA to designate areas with ambient air
13 concentrations that exceed a national standard as “nonattainment” areas. 42 U.S.C.
14 § 7407(d)(1).

15 28. Section 185 of the CAA requires states to develop, as a revision to their
16 SIP, a fee program for areas classified as “severe” and “extreme” for nonattainment
17 with the NAAQS for ozone. 42 U.S.C.A. § 7511d.

18 29. In 1997, EPA adopted the 8-hour ozone NAAQS, setting the daily
19 maximum for 8-hour average concentrations of ozone at 0.08 parts per million.
20 National Ambient Air Quality Standards for Ozone, 62 Fed. Reg. 38,856 (July 18,
21 1997) (codified at 40 C.F.R. § 50.10). In 2008, EPA strengthened the standard, setting
22 a new standard of 0.075 parts per million. National Ambient Air Quality Standards for
23 Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008) (codified at same).

24 30. In 2006, the D.C. Circuit ruled in *South Coast Air Quality Management*
25 *District v. EPA* that when EPA revokes an ozone standard, the section 185 fee
26 program requirement is subject to an anti-backsliding provision and therefore
27 continues to apply.

28 31. As such, when EPA transitioned from the 1997 to the 2008 ozone

1 standards, the section 185 fee program still applies to nonattainment for 1997 8-hour
2 ozone standards, and SCAQMD was required to have finalized a fee program no later
3 than June 15, 2014. 40 C.F.R. § 51.1100(o)(15); National Ambient Air Quality
4 Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008).

5 32. EPA required States to submit their SIP revisions within 10 years of the
6 effective date of designation as “severe” or “extreme.” 40 C.F.R. § 51.1117; 40 C.F.R.
7 § 51.1317.

8 33. As described above, the South Coast has the delegated authority and
9 primary responsibility to control air pollution from all sources other than motor
10 vehicles. Cal. Health & Safety Code §§ 39002, 40000.

11 34. As such, South Coast has a non-discretionary duty to adopt a fee rule for
12 the 1997 8-hour ozone standard. Cal. Health & Safety Code §§ 39002, 40000, 40001,
13 40440, 40462, 40469.

14 35. Similarly, CARB has a non-discretionary duty to ensure that the
15 statewide SIP submission (including the fee rule) to EPA complies with the CAA and
16 that districts’ plans and programs are sufficiently effective to achieve and maintain the
17 ambient air quality standards. Cal. Health & Safety Code §§ 39602, 39602.5, 41500.

18 36. Since South Coast and CARB have failed to take this non-discretionary
19 action, citizens are empowered to seek a court order to compel prompt action. 42
20 U.S.C. § 7604(a)(2).

21 **FACTUAL BACKGROUND**

22 **Ozone Pollution in the South Coast Air Basin**

23 37. Ozone is a colorless, odorless reactive gas comprised of three oxygen
24 atoms. It is formed by the chemical reaction between nitrogen oxides and volatile
25 organic compounds in the presence of sunlight.

26 38. Breathing ozone can trigger a variety of health problems, including chest
27 pain, coughing, throat irritation, and congestion. It can reduce lung function and
28 inflame the linings of the lungs. Repeated exposure to ozone may permanently scar

1 lung tissue. Exposures can also worsen bronchitis, emphysema, and asthma. Ozone
2 concentrations above the national 8-hour standard result in increases in school
3 absenteeism, increases in respiratory hospital emergency department visits among
4 asthmatics and patients with other respiratory diseases, increases in hospitalizations
5 for respiratory illnesses, increases in symptoms associated with adverse health effects,
6 including chest tightness and medication usage, and increases in mortality due to non-
7 accidental, cardio-respiratory deaths.

8 39. Sources of the nitrogen oxides and volatile organic compounds that react
9 to form ozone include industrial facilities and electric utilities, motor vehicle exhaust,
10 gasoline vapors, and chemical solvents.

11 40. The South Coast air basin encompasses two-thirds of Los Angeles
12 County as well as Orange County, southwestern San Bernardino County, and western
13 Riverside County.

14 41. A recent report released by the American Lung Association ranked the
15 Los Angeles region as the worst in the nation for ozone pollution, as it has been for
16 nearly two decades. Am. Lung Assn., *State of the Air 2023*, at 18 (2023),
17 [https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-](https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf)
18 [2023.pdf](https://www.lung.org/getmedia/338b0c3c-6bf8-480f-9e6e-b93868c6c476/SOTA-2023.pdf). In fact, areas in the South Coast violate federal ozone standards more days
19 each year than any other place in the country (Los Angeles: 175 high ozone days;
20 Riverside: 232 high ozone days; and San Bernardino: 194 high ozone days). *Id.* at 60-
21 61.

22 42. As a result, people living in the South Coast suffer from high rates of
23 asthma and other health ailments. It is therefore vital that SCAQMD timely implement
24 all measures required by the federal CAA, including adopting fee requirements for
25 ozone, to protect public health and welfare.

26 **SCAQMD's Duty to Take Action on the 1997 8-Hour Ozone Standard**

27 43. In 1997, EPA adopted the 8-hour ozone NAAQS, setting the daily
28 maximum for 8-hour average concentrations of ozone at 0.08 parts per million.

1 National Ambient Air Quality Standards for Ozone, 62 Fed. Reg. 38,856, 38,856 (July
2 18, 1997) (codified at 40 C.F.R. § 50.10).

3 44. To this day, and as described above, 8-hour ozone concentrations in the
4 South Coast frequently exceed healthy and legal levels, especially during summer.

5 45. EPA designated the South Coast as extreme nonattainment for the 1997
6 8-hour ozone standard on April 15, 2004. 40 C.F.R § 81.305; 40 C.F.R. § 52.282; *see*
7 *also* Air Quality Designations and Classifications for the 8-Hour Ozone National
8 Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective
9 Dates, 69 Fed. Reg. 23,858 at 23,888-89 (April 30, 2004). The designations and
10 classifications became effective on June 15, 2004.

11 46. The Section 185 fee program requires major stationary sources of VOCs
12 and NOx in nonattainment areas either to reduce emissions by 20% or to pay an
13 annual fee representative of 20% of their NOx and VOCs emissions to the state for
14 every year after the area fails to meet the attainment deadline. 40 C.F.R. § 51.1117; 40
15 C.F.R. § 51.1317.

16 47. The explicit purpose of Section 185 is to compel the largest stationary
17 polluters in an area to reduce ozone levels.

18 48. South Coast had 10 years since its designation as extreme nonattainment
19 to revise its SIP with a fee program for the 1997 8-hour ozone standard, i.e.,
20 SCAQMD was required to revise its SIP with a Section 185 fee by June 15, 2014.

21 49. South Coast has yet to adopt a fee rule for the 1997 8-hour ozone
22 standard.

23 50. The South Coast must remedy its failure to execute its mandatory duty to
24 protect public health from ozone's harmful effects.

25 **CARB's Duty to Take Action on the 1997 8-Hour Ozone Standard**

26 51. CARB is designated as the state agency responsible for the preparation of
27 the SIP required by the CAA (42 U.S.C., Sec. 7401, et seq.) and "coordinates the
28 activities of all districts necessary to comply with that act." Cal. Health & Safety Code

1 § 39602.

2 52. CARB must review the nonattainment area plans as well as rules and
3 regulations and programs submitted by the districts to determine whether they are
4 sufficiently effective to achieve and maintain the state ambient air quality standards.
5 Cal. Health & Safety Code §§ 41500, 41650.

6 53. If the plans are deficient, CARB must notify the district of all
7 deficiencies in writing. Cal. Health & Safety Code § 41503.2.

8 54. CARB was required by law to notify South Coast of its deficiency – i.e.,
9 the missing fee rule for the 1997 8-hour ozone standards. CARB failed to do so, and
10 instead approved and integrated South Coast’s deficient plan into the statewide SIP.

11 **FIRST CLAIM FOR RELIEF**

12 **SCAQMD Failed to Adopt a Section 185 Fee Program**

13 55. Plaintiffs reallege each and every allegation set forth above, as if fully set
14 forth herein.

15 56. Since EPA designated the South Coast as extreme nonattainment on June
16 15, 2004, SCAQMD submitted SIP revisions in 2007 and 2012. Neither revision
17 contained a fee program for the 1997 8-hour ozone standard.

18 57. SCAQMD and CARB were obligated to act and institute a fee program
19 through a SIP revision by June 15, 2014. *See* Cal. Health & Safety Code §§ 39602,
20 41500, 41650; 40 C.F.R. § 51.1117; 40 C.F.R. § 51.1317.

21 58. SCAQMD has taken no action.

22 59. CARB has taken no action.

23 60. Accordingly, SCAQMD and CARB have been in continuous violation of
24 42 U.S.C. § 7410(a)(2)(A) since June 15, 2014.

25 61. This CAA violation constitutes a violation of an emission standard by a
26 governmental instrumentality or agency within the meaning of the CAA’s citizen suit
27 provision. 42 U.S.C. § 7604(a)(1)(ii). This violation is ongoing and will continue
28 unless remedied by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to grant the following relief:

1. DECLARE that SCAQMD and CARB are in violation of the CAA for failing to act and revise its SIP with a fee program for the 1997 8-hour ozone standard;
2. ISSUE an injunction directing SCAQMD and CARB to revise the SIP with a fee program for the 1997 8-hour ozone standard, as required by law;
3. ISSUE an injunction directing CARB to submit a SIP revision with a fee program for the 1997 8-hour ozone standard to EPA;
4. RETAIN jurisdiction over this matter until such time as SCAQMD and CARB have complied with their non-discretionary duties under the CAA;
5. AWARD to plaintiffs their costs of litigation, including reasonable attorney and expert witness fees; and/or
6. GRANT such additional relief as the Court may deem just and proper.

Dated: August 15, 2023

/s/ Radhika Kannan

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EXHIBIT A



March 6, 2023

Via Certified and Electronic Mail

Return Receipt Requested

Vanessa Delgado, Chair
Governing Board
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
E: vdelgado@aqmd.gov

Re: 60-Day Notice of Intent to File Deadline Suit for Violations of the Clean Air Act

Dear Chair Delgado and Members of the Board:

This letter is submitted on behalf of People’s Collective for Environmental Justice (“PC4EJ”), East Yard Communities for Environmental Justice (“EYCEJ”), Communities for a Better Environment (“CBE”), and Sierra Club (collectively “Plaintiffs”) to notify you, pursuant to Section 304(a)¹ of the Clean Air Act (“CAA”), that these organizations intend to sue the South Coast Air Quality Management District (“SCAQMD” or “South Coast”) and its Governing Board (“Defendants”) for failing to perform their nondiscretionary duty under the CAA.

As articulated below, South Coast failed to carry out its nondiscretionary duty under section 185 of the Act, 42 U.S.C. § 7511(d), to adopt a fee rule ten years after its designation as nonattainment for the 1997 8-hour ozone standard.

I. Background

a. The Plaintiffs

PC4EJ is an Environmental Justice organization that addresses the increasing environmental health impacts of industrial pollution. EYCEJ is a non-profit organization resisting pollution and systemic racism to protect public health. CBE is a not-for-profit community-based organization that strives to bring about environmental justice by empowering underrepresented communities to fight pollution in their communities and achieve environmental self-determination. Sierra Club is a grassroots environmental organization that advocates and organizes to defend and advance environmental policies that protect air quality.

Plaintiffs’ members in the South Coast Air Basin suffer the cumulative impacts of toxic air pollution that Defendants allow to be emitted in and around their communities.

¹ 42 U.S.C. § 7604(b)(2) and 40 C.F.R. part 54.

b. Communities in the South Coast Region Suffer from Adverse Health Outcomes due to Ozone Pollution

South Coast must remedy its failure to execute its mandatory duty to protect public health from ozone's harmful effects. The South Coast is home to some of the worst ozone or "smog" pollution in the country. Indeed, every county in the South Coast has received an "F" on the American Lung Association's air quality report.² Since 2020, residents within the South Coast Air Basin have experienced some of the worst ozone seasons in close to three decades.³ In 2022, Los Angeles has been identified by the American Lung Association as the city with the worst ozone pollution in the United States.⁴ The same 2022 report found that San Bernardino, Riverside, and Los Angeles were ranked the top three counties with the most ozone pollution nationally.⁵

Adverse health effects have followed exposure to high levels of ozone pollution, particularly for people with asthma, children, the elderly, and people who are active outdoors.⁶ For decades, numerous scientific studies have confirmed the deleterious effects of high ozone pollution levels on public health and the environment. Exposure to high levels of ozone pollution can lead to difficulty breathing, inflammation of the airways, increased susceptibility to pulmonary inflammation, aggravated lung diseases, and asthma attacks.⁷ In extreme cases, ozone exposure can increase the risk of premature death. In September 2022, South Coast issued an ozone advisory for much of Southern California due to the late summer heat wave. Climate change threatens to exacerbate these extreme weather events and further jeopardize the health of residents in the South Coast Air Basin. It is therefore imperative that South Coast is held accountable and is required, by law, to address ozone pollution immediately.

Ozone pollution stems from emissions of other toxic air pollutants. Oxides of nitrogen ("NOx") and volatile organic compounds ("VOCs") are precursors to ozone. Ground level ozone is formed by the reaction of VOCs with NOx in the presence of sunlight. In addition to creating

² Am. Lung Ass'n., *City Rankings* (2022), <https://www.lung.org/research/sota/city-rankings/states/california> (see Los Angeles, Orange, Riverside and San Bernardino counties).

³ Tony Barboza, *Los Angeles Suffers Worst Smog in Almost 30 Years*, L.A. Times, Sept. 10, 2020, <https://www.latimes.com/california/story/2020-09-10/los-angeles-had-its-worst-smog-in-26-years-during-heat-wave>; see also Susan Carpenter, *Los Angeles ozone pollution is the highest it's been since 2010*, Spectrum News 1, Apr. 21, 2022, <https://spectrumnews1.com/ca/la-west/environment/2022/04/20/los-angeles-ozone-pollution-is-the-highest-it-s-been-since-2010#:~:text=Los%20Angeles%20and%20other%20California,from%20the%20American%20Lung%20Association.>

⁴ Am. Lung Ass'n., *City Rankings* (2022), <https://www.lung.org/research/sota/city-rankings/states/california>.

⁵ Am. Lung Ass'n., *State of the Air*, at p.19 (2022), <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022>

⁶ See U.S. Env'tl. Protection Agency, *Health Effects of Ozone Pollution*, <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last updated June 14, 2022).

⁷ *Id.*; California Air Resources Board, *Health and Environmental Effects of Ozone*, <https://ww2.arb.ca.gov/resources/fact-sheets/health-effects-ozone>, Nov. 6, 2020.

additional ozone, both NO_x and VOCs are independently toxic and harmful to human health. As described further below, the CAA therefore controls ozone pollution by limiting VOC and NO_x emissions from major stationary sources.

c. Clean Air Act Requirements

Congress passed the CAA in order “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401 (b). To meet this goal, EPA is required, among other things, to set national ambient air quality standards (“NAAQS”) to protect public health and welfare. *Id.* § 7409. At issue here are the 1998 8-hour Ozone NAAQS.⁸

Under the 1990 Amendments to the CAA, areas with the worst ozone pollution (designated “extreme” ozone areas) were given 20 years after their designation as “Extreme Nonattainment” to meet ozone standards. The 1990 Clean Air Act Amendments also included specific requirements that states must adopt to meet the national ozone standards. The deadlines for actual attainment of the standards are allowed to stretch over a 3-year to 20-year period, depending on the severity of the area’s pollution. As a final backstop, Congress included section 185 of the Act, which requires states to develop, as a revision to their State Implementation Plan (“SIP”), a fee program for areas designated as “Severe” or “Extreme” ozone nonattainment.⁹ This obligation is non-discretionary. States are required to submit their fee programs for EPA approval through a SIP revision within 10 years of the effective date of designation.¹⁰ The fee program requires major stationary sources of VOCs and NO_x in nonattainment areas to pay an annual fee to the state for every year after the area fails to meet the attainment deadline.¹¹ The clear purpose of Section 185 is to create a drastic incentive for the largest stationary polluters in an area to reduce ozone levels.

In 2006, the D.C. Circuit ruled in *South Coast Air Quality Management District v. EPA* that when EPA revokes an ozone standard, the section 185 fee program requirement is subject to an anti-backsliding provision and therefore continues to apply.¹² Thus, when EPA transitioned from the 1997 to the 2008 ozone standards, the section 185 fee program still applies to nonattainment for 1997 standards. 40 C.F.R. § 51.1100(o)(15); 73 Fed. Reg. 16,436 (Mar. 27, 2008). As such, by South Coast’s own admission, there continues to exist a nondiscretionary duty to implement a fee program for major stationary sources in non-attainment areas for the 1997 8-hour ozone standard.

⁸ Prior to 1997, EPA established a one-hour NAAQS for ozone. The one-hour standard was subsequently revoked, and EPA implemented the 1997 eight-hour standard to better protect against the human health impacts of exposure to ambient levels of ozone pollution. 62 Fed. Reg. 38,856 (July 18, 1997). Thereafter two other 8-hour ozone NAAQS were implemented: one in 2008 (0.075 ppm) (73 Fed. Reg. 16,483 (Mar. 27, 2008)) and another in 2015 (0.070 ppm) (80 Fed. Reg. 65,292 (Oct. 26, 2015)).

⁹ 42 U.S.C.A. § 7511(d).

¹⁰ 40 C.F.R. § 51.1117; 40 C.F.R. § 51.1317.

¹¹ *Id.*

¹² *Id.*; *South Coast Air Quality Management District v. EPA*, 472 F.3d 882, 903 (D.C. Cir. 2006).

Stated differently, South Coast was supposed to adopt a fee rule within 10 years of their nonattainment designation for the 1997 8-hour ozone standard. EPA designated the South Coast as nonattainment for the 1997 8-hour ozone standard on April 15, 2004. *See* 69 Fed. Reg. 23,858 at 23,888-89 (April 30, 2004) and 40 C.F.R. § 81.305. The designations and classifications became effective on June 15, 2004. Thus, the fee program must have been implemented by June 15, 2014.

As explained further below, South Coast has yet to adopt a fee rule after its nonattainment designation for the 1997 8-hour ozone standard. In their prior SIP submittal, South Coast only committed to the fee rule for the 2008 standard.¹³ As detailed below, SCAQMD's implementation of a fee program is not only required by the CAA but will further its mission to protect air quality. The nine-year delay in implementing this fee program has caused citizens to be unnecessarily exposed to and forced to breathe harmful levels of air pollution.

II. South Coast's Unmet Non-Discretionary Duty to Implement a Fee Program Under Section 185 of the CAA

The South Coast Air Basin has been designated as extreme nonattainment for the 1997 eight-hour ozone NAAQS.¹⁴ As explained above, under Section 185 of the Act, States have a nondiscretionary duty to adopt a fee rule through a SIP revision if they are designated as nonattainment for an ozone standard. There is a 10-year deadline from the effective date of designation of nonattainment for all ozone standards for when states are required to submit SIP revisions incorporating a fee rule program.¹⁵

South Coast AQMD has yet to adopt a fee rule after its nonattainment designation for the 1997 ozone standard. In its prior SIP submittals, South Coast only committed to the fee rule for the 2008 standard.¹⁶ Accordingly, South Coast AQMD has failed to perform its non-discretionary duty under section 185 to adopt a fee rule for the 1997 standard.

The section 185 fee rule requirement is integral to bringing about attainment after an area has failed to attain an ozone standard by its required date.¹⁷ In the interest of the health and welfare of its residents, it is imperative that South Coast AQMD act upon their non-discretionary

¹³ Upon reviewing the 2003, 2007, and 2012 SIP submittals, it is also unclear whether South Coast ever committed to the fee rule for the other standards aside from the 2008 standard.

¹⁴ South Coast was originally reclassified as "severe-17" nonattainment in 2004. 69 Fed. Reg. 23,882 (April 30, 2004). South Coast Air Basin was further reclassified as "extreme" nonattainment in 2010. 75 Fed. Reg. 24,409 (May 5, 2010).

¹⁵ *See* 40 C.F.R. § 51.1117; 40 C.F.R. § 51.1317; 40 C.F.R. § 51.919; 40 C.F.R. § 51.1119.

¹⁶ Upon reviewing the 2003, 2007, and 2012 SIP submittals, it is also unclear whether South Coast ever committed to the fee rule for the other standards aside from the 2008 standard.

¹⁷ *See* Memorandum from Director Stephen D. Page to Regional Air Division Directors, Office of Air Quality Planning and Standards on Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS (Jan. 5, 2010) available online at https://www3.epa.gov/ttn/naaqs/aqmguidance/collection/cp2_old/20100105_page_section_185_fee_program.s.pdf.

duty to adopt a fee rule for major stationary sources in areas for non-attainment of the 1997 8-hour ozone standard.¹⁸

Because South Coast has failed in its requirement to comply with CAA mandates, Plaintiffs, who are detrimentally affected by this regulatory gap, have taken up the mantle to demand enforcement of the CAA and ensure proper fee programs are implemented to meet CAA requirements on time. These organizations ask you to take the immediate action required under the CAA and move quickly to address the failure to comply.

III. Persons Responsible for the Violations

SCAQMD, through its Governing Board, are responsible for the violations.

IV. Dates of the Alleged Violations

The violations have occurred every day since 2004 and will continue to occur until SCAQMD institutes a section 185 fee program for major facilities in non-attainment areas for the 1997 8-hour ozone standard.

V. Persons Giving Notice of Intent to Sue

Pursuant to 40 C.F.R. § 54.3, the parties giving notice are as follows:

East Yard Communities for Environmental Justice
2317 S. Atlantic Blvd.
Commerce, CA 90040
(323) 263-2113

Communities for a Better Environment
6325 Pacific Boulevard, Suite 300
Huntington Park, CA 90255
(323) 826- 9771

People's Collective for Environmental Justice
2241 Barton Rd., #296
Grand Terrace, CA 92313
(909) 248-3885

Sierra Club
617 W. 7th Street, Suite 702
Los Angeles, CA 90017
(415) 977-568

Earthjustice
707 Wilshire Blvd., Ste. 4300
Los Angeles, CA 90017
(415) 217-2000

¹⁸ U.S. Env't Prot. Agency, *Current Nonattainment Counties for All Criteria Pollutants*, <https://www3.epa.gov/airquality/greenbook/ancl.html> (last updated January 31, 2023)

VI. Conclusion

This action seeks declaratory relief that SCAQMD violated and continues to violate the CAA by failing to institute a fee program for major stationary sources emitting NOx and VOCs in nonattainment areas for the 1997 8-hour ozone standard.

Should SCAQMD fail to adopt a fee rule for the 1997 ozone-standard and protect these underserved communities from poisonous toxins that have exacerbated their already fragile and struggling region for more than a decade thanks to SCAQMD's deficiencies, Plaintiffs intend to file suit in U.S. District Court sixty days after your receipt of this letter. Plaintiffs will seek relief through a court order that requires SCAQMD to finally implement a fee program to reduce NOx and VOC emissions for major stationary sources in nonattainment areas for the 1997 8-hour ozone standards. In addition, Plaintiffs will seek reimbursement of all litigation costs, including, but not limited to, attorneys' fees and expert witness fees.

The Plaintiffs would welcome the opportunity to meet with SCAQMD to discuss the potential for promptly resolving this matter. Please feel free to contact me at (415) 217-2000 to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

Sincerely,

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Counsel for CBE

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Guzman.Martha@epa.gov
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Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Gideon Kracov, South Coast AQMD Member
California Air Resources Board
1001 "I" Street (also mailed to P.O. Box 2815)
Sacramento, California 95812