



January 30, 2020

Via Certified Mail

Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Office of the Administrator (1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Honorable Sarah Dunham
Director, Office of Transportation and Air Quality
U.S. Environmental Protection Agency
Office of Transportation and Air Quality (6101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to File Suit Under Section 304 of the Clean Air Act with Respect to Proposed Rulemaking to Reduce Greenhouse Gas Emissions from Aircraft

Dear Administrator Wheeler and Director Dunham:

Section 231(a)(2)(A) of the Clean Air Act (CAA), 42 U.S.C. 7571(a)(2)(A), requires the United States Environmental Protection Agency (EPA) to propose emission standards for air pollutants that cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA has determined that greenhouse gases from aircraft endanger public health and welfare and therefore must set standards for these emissions. This mandatory duty was brought to EPA's attention in 2007, when Earthjustice, on behalf of Friends of the Earth, the Center for Biological Diversity, Oceana, and the Natural Resources Defense Council, petitioned EPA to take this action. EPA has acknowledged this "post-endangerment finding duty to regulate," even as it argued—unsuccessfully—that it had no obligation to conduct

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an endangerment finding for greenhouse gas emissions. *Center for Biological Diversity v. U.S. E.P.A.*, 794 F. Supp. 2d 151, 159 (D.D.C. 2011). Because, more than three years after issuing an endangerment finding, EPA has still not promulgated regulations to address greenhouse gas emission from aircraft under section 231, the Center for Biological Diversity and Friends of the Earth intend to file suit for unreasonable delay.

Section 304(a)(3) of the CAA provides that “the district courts of the United States shall have jurisdiction to compel . . . agency action unreasonably delayed,” and requires that any person intending to file a legal action against EPA for unreasonable delay must provide notice of his or her intention to sue 180 days before commencing such action. 42 U.S.C. § 7604; *see* 40 C.F.R. § 54. When intent to sue is based on a failure to act, the notice must identify the provisions of the CAA that require agency action and must describe the agency’s failure to act. 40 C.F.R. § 54.3(a). This letter constitutes that notice.

Section 231 of the CAA, 42 U.S.C. § 7571, applies to aircraft engines. Subsection 231(a)(1) directs EPA to study air pollutants from aircraft “to determine (A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and (B) the technological feasibility of controlling such emissions.” 42 U.S.C. § 7571(a)(1). Under subsections (a)(2) and (a)(3), if EPA finds that emissions from aircraft and aircraft engines cause or contribute to “air pollution which may reasonably be anticipated to endanger public health or welfare,” it “shall” propose and issue standards to control such emissions. *Id.* at § 7571(a)(2), (a)(3).

The 2007 petition, submitted pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e) and section 231 of the CAA, 42 U.S.C. § 7571, requested that EPA:

- (1) Make a finding that greenhouse gas emissions from aircraft engines cause and contribute to air pollution that may reasonably be anticipated to endanger public health and welfare pursuant to section 231(a)(2)(A) of the CAA, 42 U.S.C. § 7571(a)(2)(A);
- (2) Issue proposed standards for greenhouse gas emissions from aircraft engines pursuant to section 231(a)(2)(A) of the CAA, 42 U.S.C. § 7571(a)(2)(A); and
- (3) Promulgate final regulations within 90 days of the issuance of such proposed standards pursuant to section 231(a)(3) of the CAA, 42 U.S.C. § 7571(a)(3).

In 2010, when EPA failed to respond to the petition, the Center for Biological Diversity and Friends of the Earth filed suit, asserting that EPA had unreasonably delayed both in responding and in taking the requested actions. The D.C. District Court held that EPA had an obligation to make the endangerment finding, but its delay in doing so was not yet unreasonable. *Center for Biological Diversity v. EPA*, No. 1:10-CV-985 (FJS), 2012 WL 967662, at *1 (D.D.C. Mar. 20, 2012). The court ordered EPA to respond to the petition within 90 days. *Id.*

Three years later, EPA issued its proposed endangerment finding for greenhouse gas emissions.¹ On August 15, 2016, EPA finalized its finding that greenhouse gas emissions from subsonic aircraft cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare.² In May of 2019, EPA noted in the Unified Agenda of Regulatory and Deregulatory Actions that it would issue a proposed rule on greenhouse gas emissions from aircraft engines by September.³ As of the date of sending this Notice, EPA has yet to promulgate any rule on greenhouse emissions from aircraft.

Ambitious, technology-forcing regulation to reduce emissions of greenhouse gas pollutants from aircraft are long overdue and urgently needed. Aircraft account for approximately 7 percent of greenhouse gas emissions from the transportation sector in the United States, making them the third-largest source of emissions from that sector.⁴ U.S. aircraft are also one of the fastest-growing sources of emissions: emissions from domestic aviation alone have increased 17 percent since 1990,⁵ to account for 29 percent of all global aircraft greenhouse gas emissions and 0.5 percent of total global greenhouse gas emissions.⁶ Flights departing from airports in the United States and its territories are responsible for almost one-quarter of global passenger transport-related carbon dioxide emissions, two-thirds of which come from domestic flights.⁷ According to the Intergovernmental Panel on Climate Change (IPCC)'s 2018 Special Report, to limit global warming to 1.5°C, CO₂ emissions would have to decline “by about 45% from 2010 levels by 2030” – eleven years from now.⁸ Yet carbon dioxide emissions from global commercial aviation have increased 32 percent in the past five years.⁹ Left unchecked, global aviation will generate an estimated 43 gigatonnes of carbon dioxide emissions through 2050.¹⁰ And still, as EPA acknowledged in 2016, “aircraft remain the single largest GHG-emitting transportation source [in the U.S. that is] not yet subject to any GHG standards.” *See* 81 Fed. Reg. 54,422, 54,424.

More than a decade after it received petitions to act and over three years after finding that aircraft greenhouse gas emissions endanger public health and welfare, EPA continues to neglect

¹ *Proposed Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare and Advance Notice of Proposed Rulemaking*, 80 Fed. Reg. 37,758 (July 1, 2015).

² *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare*, 81 Fed. Reg. 54,422 (Aug. 15, 2016).

³ Office of Information and Regulatory Affairs, *Control of Air Pollution From Aircraft and Aircraft Engines: Proposed GHG Emissions Standards and Test Procedures*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=2060-AT26> (last visited Oct. 4, 2019).

⁴ US EPA, *Inventory of US Greenhouse Gas Emissions and Sinks 1990-2017*, EPA 430-R-19-001 (Apr. 11, 2019) (“EPA Inventory”) at 3-21.

⁵ *Id.* at 3-22.

⁶ *Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare*, 81 Fed. Reg. 54,422, 54,425 (Aug. 15, 2016).

⁷ Brandon Graver, et al, *CO₂ emissions from commercial aviation, 2018* 1 (2019), https://theicct.org/sites/default/files/publications/ICCT_CO2-commercl-aviation-2018_20190918.pdf.

⁸ Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C – Summary for Policymakers* 14 (2018), https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf.

⁹ Graver, et al (2019) at 1.

¹⁰ Vera Pardee, *Up in the Air: How Airplane Carbon Pollution Jeopardizes Global Climate Goals* 3 (2015), https://www.biologicaldiversity.org/programs/climate_law_institute/transportation_and_global_warming/airplane_emissions/pdfs/Airplane_Pollution_Report_December2015.pdf.

its duty to regulate global warming pollutants from aircraft emissions. Based on this unreasonable and unjustifiable delay, the Center for Biological Diversity and Friends of the Earth intend to file suit against EPA 180 days from the date of this notice. Please feel free to contact the undersigned to discuss the basis for these claims, or to explore options for resolving these claims short of litigation.

Sincerely,



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