EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

VIA FIRST CLASS AND ELECTRONIC MAIL

November 15, 2010

Ms. Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency (1101A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Mr. Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

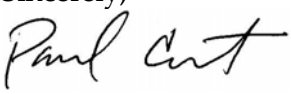
Re: Petition for Rulemaking to Address Failure of the San Joaquin Valley, CA to Attain the 1-Hour National Ambient Air Quality Standard for Ozone

Dear Administrator Jackson and Regional Administrator Blumenfeld:

Today was the statutory deadline for the San Joaquin Valley to finally attain the 1-hour ozone standard adopted by EPA over 30 years ago. Based on ambient air quality monitoring data collected to date, we now know that the Valley has not attained, and, in fact, is nowhere close to attaining this standard. EPA staff have indicated that the Agency does not plan to take any steps to address this failure. Valley residents and clean air advocates hope that this does not reflect decisions at your levels. Nonetheless, to alert you to the issue and to ensure timely action, these groups hereby submit the attached petition for rulemaking calling on EPA to take the actions required by the Clean Air Act in these situations where the state implementation plan has failed to deliver compliance with the national standard by the statutory deadline.

Petitioners ask that EPA grant or deny this petition within 30 days. Petitioners believe the issues are straightforward and that the health situation in the Valley deserves immediate attention. Should you or your staff wish to discuss this petition, please do not hesitate to contact me.

Sincerely,



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BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: The San Joaquin Valley's Failure to Attain the 1-Hour National Ambient Air Quality Standard for Ozone

PETITION FOR RULEMAKING

Pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. § 553(e), Fresno Metro Ministry, Latinos United for Clean Air, Medical Advocates for Healthy Air, Pesticide Watch, Association of Irritated Residents, Sierra Club, Tri-Valley CARES, Coalition for Clean Air, Center on Race, Poverty & the Environment, California Rural Legal Assistance Foundation, People for Clean Air & Water of Kettleman City, and the Central Valley Air Quality Coalition ("Petitioners") petition the Administrator to take immediate rulemaking action under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, to address the failure of the San Joaquin Valley to attain the national ambient air quality standard limiting 1-hour concentrations of ozone ("1-hour ozone standard").

INTRODUCTION

Twenty years ago, Congress adopted amendments to the federal Clean Air Act promising that even the worst polluted areas of the country would be required to meet the national standard for ozone no later than today, November 15, 2010. *See* 42 U.S.C. § 7511(a). Unfortunately, over these last 20 years, the San Joaquin Valley in California, one of the most polluted regions in the country, 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. The San Joaquin Valley has not attained the ozone standard by the deadline set by law.

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. Incredibly, and sadly, EPA staff have indicated that they have no intention to follow these steps unless forced to do so by a court of law. That EPA can tout environmental justice and protecting public health as the Agency's highest priorities, and at the same time turn its back on the failure of the Valley and other similar areas to attain the 1-hour standard, undermines any credibility that this Administration has fought to reclaim. It is with great disappointment, therefore, that Petitioners submit this Petition for Rulemaking to set those legal proceedings in motion. Petitioners hope that this appeal can act as a wake up call and inspire EPA to fulfill the Act's guarantee to eliminate harmful 1-hour peak ozone concentrations once and for all.

BACKGROUND

I. Peak 1-Hour Ozone Concentrations Above the National Standard Are Harmful

As you know, ozone is a secondary pollutant formed by the chemical reaction between oxides of nitrogen ("NOx") and volatile organic compounds ("VOCs") in the presence of sunlight. Ozone reacts with internal body tissues causing damage to lungs, exacerbation of asthma, reduction of lung capacity, increased respiratory-related hospital admissions, and even premature death. The health impacts are disproportionately felt by the most vulnerable – children, the elderly, and persons already suffering from respiratory ailments.

EPA set the national ambient air quality standard for 1-hour ozone at 0.12 parts per million ("ppm") over 30 years ago. 44 Fed. Reg. 8202 (Jan 26, 1979). In 1991, concerned about new science indicating adverse effects at levels allowed by that limit, the American Lung Association sued EPA to compel it to consider the new science in setting a more health-protective standard. *American Lung Ass'n v. Reilly*, 23 ELR 20784 (E.D.N.Y. 1992). Five years later, EPA issued a criteria document finding "strong" scientific evidence of adverse health effects from ozone at levels below the 1-hour ozone standard and concluded that public health protection beyond that provided by the 1-hour ozone NAAQS was needed. 62 Fed. Reg. 38856, 38859 (July 18, 1997). In its analysis, EPA found that new evidence continued to show an array of adverse health effects associated with short-term exposures (*i.e.*, 1 to 3 hours) at or above the standard level of 0.12 ppm. *Id.* In addition, new evidence showed adverse effects from prolonged exposures (*i.e.*, 6 to 8 hours) at even lower concentrations. *Id.*

Ultimately, EPA determined that a new ozone standard limiting 8-hour exposures to 0.08 ppm was necessary to protect public health. 62 Fed. Reg. at 38873. EPA believed that an 8-hour standard would generally address both 1-hour and 8-hour exposures of concern, but acknowledged that the 8-hour standard alone could still allow for high 1-hour exposures of concern at or above 0.12 ppm. *Id.* at 38863. Because EPA recognized that peak 1-hour ozone concentrations above 0.12 ppm remained a dangerous public health threat, EPA concluded that the Clean Air Act provisions governing implementation of the 1-hour standard would continue to apply to all areas that remained in nonattainment of the standard. *Id.* at 38873.

Several years later, the Bush Administration EPA tried to reverse course on the 1-hour ozone standard by announcing that it was both revoking the 1-hour standard and waiving the obligation to attain the standard. 69 Fed. Reg. 23951, 23969 (April 30, 2004). The D.C. Circuit Court of Appeals, however, rejected EPA's attempt to nullify Congress' scheme for ensuring attainment of the 1-hour ozone standard. *See South Coast Air Quality Mgmt. Dist. ("SCAQMD") v. EPA*, 472 F.3d 882, 900 (D.C. Cir. 2007). While the court agreed that EPA had discretion to revoke the 1-hour standard, it concluded that the various anti-backsliding provisions of the Act, such as section 172(e), "placed states onto a one-way street whose only outlet is attainment" and that EPA could not waive the statutory consequences associated with a failure to attain the 1-hour standard. *Id.* at 900-903.

The court recognized the importance of ensuring that efforts to attain the 1-hour standard not be abandoned, especially where, as here, the problem of elevated 1-hour ozone concentrations is even worse than Congress had originally realized. Many areas across the country have failed to clean up their pollution and continue to record violations of the 1-hour ozone standard. In these places, dealing with the consequences of this failure—air pollution-

related sicknesses, asthma medications, emergency room visits, missed school and work days, and premature death—continues to take its toll.

The people living in the San Joaquin Valley face a reality that is more than just a list of health effects recited in a Federal Register notice. It is frightened parents losing sleep as they sit up all night with children struggling to breathe. It is skyrocketing medical bills for prescription medicines and for emergency room visits when the rescue inhalers and nebulizers are not enough. It is being too tired or sick to go to work, but having to go anyway for fear of losing a job and the health insurance that may come with it. It is being called home from that job because one of the children had another asthma attack. It is that same child falling behind in school because he has missed so many days. And it is watching helplessly as a parent or grandparent suffocates from recurring bronchitis or chronic obstructive pulmonary disease exacerbated by high levels of ozone pollution.

This is what more than 20 years of excuses, delay, and failure to meet air quality standards has done to generations of people living in the San Joaquin Valley. This is why the people of the Valley need EPA to do what is right and not give up on enforcing the 1-hour ozone standard.

II. Ozone Pollution in the San Joaquin Valley – A History of Agency Failure

Congress enacted the Clean Air Act Amendments of 1970 as "a drastic remedy to what was perceived as a serious and otherwise uncheckable problem of air pollution." *Union Elec. Co. v. EPA*, 427 U.S. 246, 256 (1976). One of the first pollutants for which EPA adopted national standards was ozone. *See* 36 Fed. Reg. 8186 (April 30, 1971). The 1970 Act gave States considerable discretion in choosing the manner in which they would attain the standards for ozone and other pollutants. After decades of little progress, however, a frustrated Congress overhauled the Clean Air Act in 1977 and again in 1990 to mandate increasingly prescriptive requirements for areas identified by EPA as having air pollution levels exceeding the standards ("nonattainment areas"). With the 1990 amendments, Congress promised the American people that even the country's smoggiest air basins would breathe clean air by November 15, 2010.

The San Joaquin Valley was originally designated as a serious nonattainment area under the 1-hour ozone standard of the 1990 Clean Air Act Amendments. Under the Act, the Valley was to prepare and submit by November 1994 a state implementation plan for attaining the 1-hour standard by 1999. Even though the local air district's plan included a blanket exemption for most oil and gas production sources in the Valley, EPA approved the plan in January 1997. 62 Fed. Reg. 1150 (Jan. 8, 1997). This would be the only deadline EPA would meet for state implementation plans in the Valley.

In 2000, EPA determined that the local air district had in fact failed to implement its 1994 plan because it refused to adopt six of the control measures it had committed to under the plan. 56 Fed. Reg. 37926 (June 19, 2000). Unsurprisingly, as a result of this negligence and the EPA-approved blanket exemption for major industrial sources along the west side of the Valley, air quality in the Valley failed to improve. The area missed the November 15, 1999 deadline for

attaining the 1-hour ozone standard, and EPA was forced to reclassify the Valley from serious to severe nonattainment. 66 Fed. Reg. 56476 (Nov. 8, 2001).

In 2001, following EPA's determination of failure to implement, Valley air quality advocates had to sue the local air district to force them to adopt the six missing ozone control measures, which were supposed to have been in place by 1998. With reclassification to severe, a revised nonattainment plan was due by May 31, 2002 to demonstrate how the area would attain the standard by November 2005. 66 Fed. Reg. at 56481. The State and local air district submitted another legally defective ozone plan by the May 31, 2002 deadline, but knowing it was insufficient, withdrew it just before EPA could disapprove it. As a result, EPA issued a finding of failure to submit the required plan, effectively extending the plan submittal deadline by another 18 months. 67 Fed. Reg. 61784 (Oct. 2, 2002).

The State and local air district failed to meet the extended deadline for the severe area plan and, facing sanctions and a federally-developed plan, asked to voluntarily downgrade the Valley to "extreme"—the worst possible ozone classification—which had been created expressly for Los Angeles and had never before been applied elsewhere. 69 Fed. Reg. 20550 (April 16, 2004). EPA granted this reclassification request and once again extended the deadline for submitting a plan and attaining the 1-hour ozone standard. *Id.* The extreme plan was due in November 2004 and attainment was deferred this time to November 15, 2010. *Id.* at 20552.

EPA's ugly history of refusal to require a meaningful ozone strategy continued with EPA's approval of the San Joaquin Valley Air District's 2004 Extreme Ozone Attainment Demonstration Plan. The State submitted the 2004 Plan to EPA on November 15, 2004. Region 9, knowing the plan was not approvable, took no action on the plan until it was forced to by a lawsuit filed in January 2008. The consent decree set deadlines for EPA to finally take action on the 2004 Plan.

In October 2008, EPA proposed to fully approve the 2004 Plan despite its numerous defects. 73 Fed. Reg. 61381 (Oct. 16, 2008). Several Valley groups submitted comments objecting to the approval, and on July 14, 2009, EPA issued a new proposal still proposing to approve most elements of the Plan but now acknowledging that the Plan did not in fact include required contingency measures should the Valley fail to attain. 74 Fed. Reg. 33933. Valley groups again submitted comments objecting to EPA's proposed approval of the other key elements of the Plan. On March 8, 2010, the year the Valley is due to attain the 1-hour ozone standard, EPA finalized full approval of the Plan finding that even the contingency measure defect had been cured by clarifications from the State and local air district. 75 Fed. Reg. 10420. EPA was promptly sued by Valley groups in the 9th Circuit Court of Appeals. That litigation is on-going.

Region 9's approval of the 2004 Plan typified the way the Region has applied the state implementation plan ("SIP") requirements of the Clean Air Act. After sitting on EPA desks for nearly four years, most of the information in the Plan had become stale and outdated. The 2004 Plan claimed to model the emission reductions necessary for attainment of the 1-hour ozone standard by 2010 and how the State and local air district would reduce emissions over the period between 2004 and 2010 to achieve those target. By the time Region 9 acted in March of this

year to approve the 2004 Ozone Plan, it knew that the emission inventory relied upon in the 2004 Plan was fundamentally flawed and that new modeling showed the exact opposite relationship between ozone concentrations and precursor emissions assumed in the 2004 Plan; it could see that the monitoring data for 2008 and 2009 proved that the claimed emission reductions were not translating into improved ambient concentrations; it knew that the State and local air district had not adopted all reasonably available control measures; and it knew that there were no forthcoming major emission reduction control measures that would alter the pattern of violations such that ozone levels would be radically different in 2010.[1] In approving a plan that everyone knew would fail, Region 9 simply gave up on it responsibility to protect Valley residents. The result, not surprisingly, is that this past summer the Valley experienced another 7 days of violations if the 1-hour ozone standard and failed to attain by the statutory deadline.

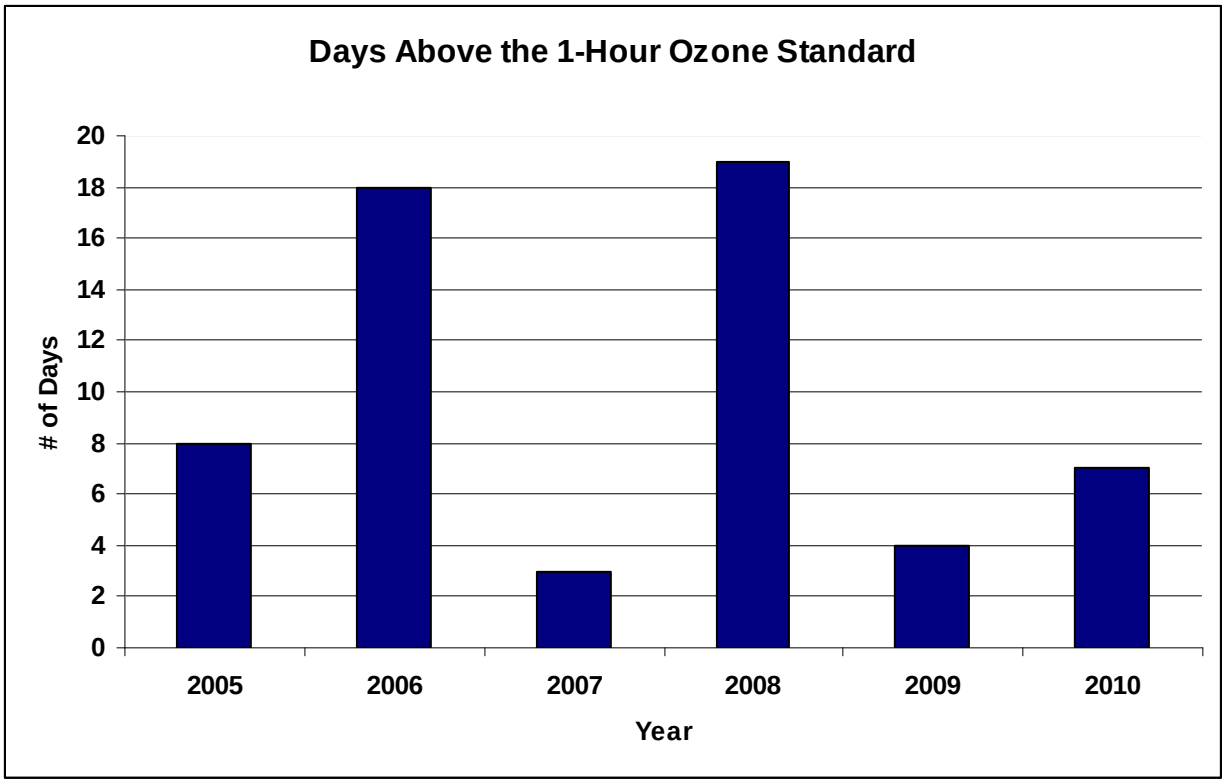
III. The Valley's Failure to Attain the 1-Hour Ozone Standard

Since the San Joaquin Valley Air District adopted and submitted its 2004 Ozone Plan, air quality in the Valley has seen little improvement. 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. These violations continue to occur in spite of the economic downturn, which the California Air Resources Board claims has *reduced* emissions from truck and bus activity by at least a 20 percent across the State from 2007-2009. *See* http://www.arb.ca.gov/ regact/2010/truckbus10/truckbusappg.pdf.

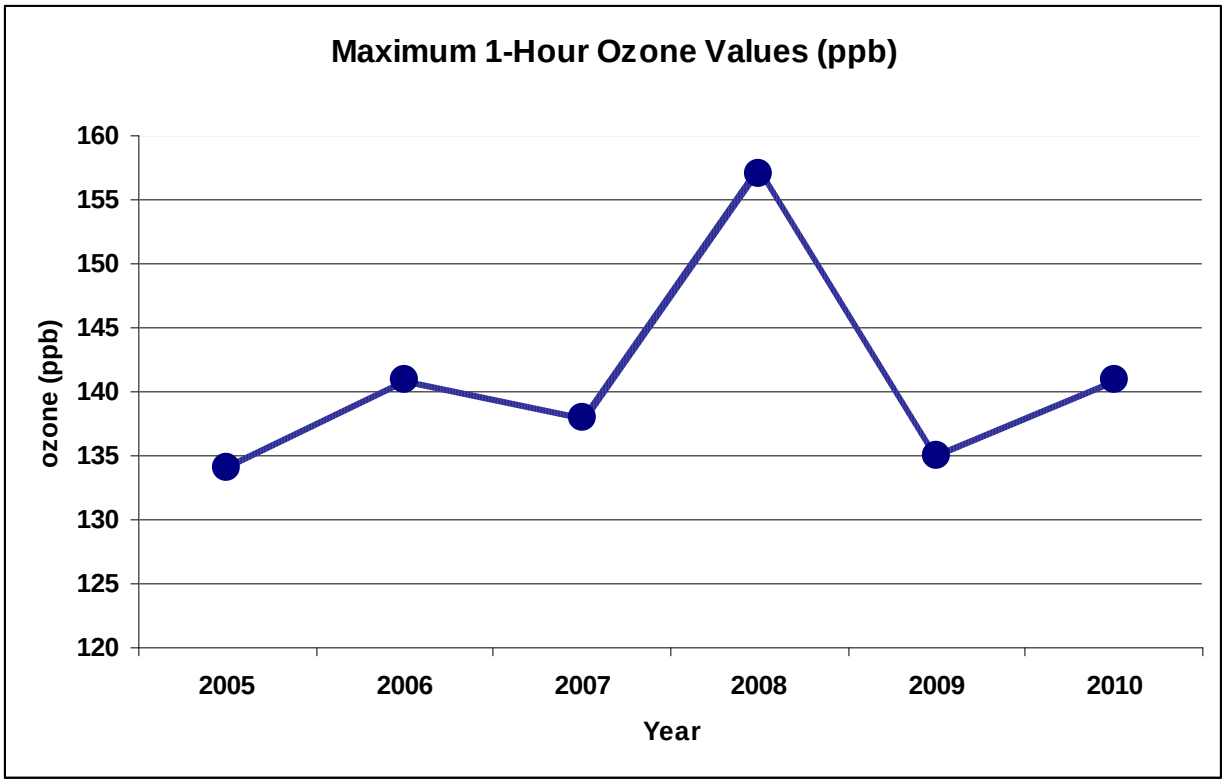
The graph below shows the number of days the Valley has exceeded the 1-hour ozone standard each year since the adoption of the 1-hour ozone plan and demonstrates no meaningful progress.[2]

[1] For a more complete discussion of the inadequacies of the 2004 Ozone Plan, see the public comments filed by Earthjustice and the Center on Race, Poverty and the Environment. Available in Docket ID # EPA-R09-OAR-2008-0693. Petitioners incorporate those comments herein by reference.

[2] 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."



These numbers are not statistical outliers or freak days when air quality just barely missed the mark. These violations are occurring every year at the same time, at multiple locations, and are, very often, significantly above the 0.125 ppm limit. In fact, the maximum 1-hour ozone values in every year following 2005 have been *higher* than the maximum value in 2005. The following graph shows the maximum 1-hour ozone values measured since 2005. Both this and the above graph illustrate that the Valley is nowhere near attaining the 1-hour ozone standard. *See* 40 CFR § 50.9(a) ("The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million . . . is equal to or less than 1 . . . .").



The Valley has not even seen any recent progress in the geographic scope of the ozone violations. These violations continue to occur in the same locations. In 2005, the violations occurred at the monitors in Arvin (6 days), Clovis (2 days), Fresno – Sierra Skypark (2 days), Fresno – 1st Street (3 days), Parlier (1 day), and Sequoia National Park (1 day). In 2010, the only difference was to swap the violation at Sequoia National Park for violations at the Hanford monitor (2 days). Violations in 2010 again occurred in Arvin (2 days), Clovis (3 days), Fresno – Sierra Skypark (2 days), Fresno – 1st Street (2 days), and Parlier (1 day).

The history of failure thus continues in the Valley. The Valley has now failed to meet the 1-hour ozone standard by the statutory deadline of November 15, 2010. Petitioners therefore demand that EPA take the following rulemaking actions to address the failure of the Valley to attain the 1-hour ozone standard.

RULEMAKING ACTION REQUIRED

I. SIP Call under Clean Air Act Section 110(k)(5)

Section 110(k)(5) of the Clean Air Act provides that:

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain . . . the relevant national ambient air quality standard . . . or fails to comply with any requirement of this Act, the Administrator *shall* require the State to revise the plan as necessary to correct such inadequacies.

42 U.S.C. § 7410(k)(5) (emphasis added). 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 a new 1-hour ozone plan that will ensure attainment of the 1-hour standard as expeditiously as practicable.

In addition to demonstrating these blatant failures, the monitoring data collected to date and the failure to attain by the deadline also demonstrate that the arguments used to justify the Plan's failure to comply with other statutory requirements are now untenable. For example, the 2004 Ozone Plan fails to comply with the Act's control measure requirements. 42 U.S.C. §§ 7502(c)(1) and 7511a(b)(2). In its approval of the 2004 Plan, EPA found that the State and local air district had failed to submit the reasonably available control technology demonstration required under sections 172(c)(1) and 182(b)(2), but nonetheless approved the 2004 Ozone Plan arguing that "there were no outstanding RACT measures that, either individually or in combination with other potential measures, would advance attainment of the 1-hour ozone standard in the SJV area." 75 Fed. Reg. at 10424. This conclusion is obviously now invalid. EPA can no longer use the pretext that everything was in place to expeditiously attain in order to excuse the failure to comply with the Act's requirement that SIPs provide for the implementation of reasonably available control technology. EPA must assign the Valley a new attainment deadline and must require the State and local air district to prepare an evaluation of reasonable controls that can be adopted to ensure expeditious attainment.

Likewise, EPA's refusal to require a "comprehensive, accurate, current inventory" can no longer be justified. *See* 42 U.S.C. §§ 7502(c)(3) and 7511a(a)(1). Nor can EPA claim that the Plan demonstrates attainment in accordance with section 182(c)(2), 42 U.S.C. § 7511a(c)(2). The failure of the Valley to attain proves that the inventory was not accurate and that the demonstration of attainment was false. EPA therefore must issue a SIP call requiring the State to address the Plan's failure to comply with sections 172(c)(3), 182(a)(1) and 182(c)(2).

In accordance with section 110(k)(5), EPA must notify the State of the inadequacies in the 1-hour ozone plan and require the State to revise the plan to correct such inadequacies. 42 U.S.C. § 7410(k)(5). EPA must require the State to resubmit the 1-hour ozone plan within 18 months after the date of such notice. *Id.*

II. Notice of Failure to Attain

Pursuant to Clean Air Act sections 179(c)(2) and 181(b)(2), EPA is required to make a determination as to whether an area has attained or failed to attain the national ambient air quality standard by the applicable attainment date. 42 U.S.C. §§ 7509(c)(2) and 7511(b)(2). Section 179(c)(2) provides:

> As expeditiously as practicable after the applicable attainment date for any nonattainment area, but no later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

42 U.S.C. § 7509(c)(2). The Act further provides that within 1 year after publishing such notice in the Federal Register, the State must submit a revised SIP 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).

Petitioners are aware that EPA adopted regulations in 2004 that waived the mandatory duty to make the failure to attain findings under sections 179(c)(2) and 181(b)(2). *See* 40 C.F.R. § 51.905(e)(2)(i)(A) (2004). This provision, however, does not excuse EPA from making the required failure to attain finding here because: (1) this regulatory provision was vacated by the court in *SCAQMD*; and (2) even if the court had not vacated the provision, a refusal here to exercise the discretion codified in § 51.905(e)(2)(i)(A) would be arbitrary and capricious in the extreme.

In *SCAQMD*, EPA argued that it could allow new 8-hour ozone nonattainment areas to drop fee programs adopted under section 185 to comply with 1-hour ozone requirements. EPA argued that it was reasonable to drop these controls because EPA had adopted § 51.905(e)(2)(i)(A), and would no longer be making the findings of failure to attain. EPA explained: "[A]s a practical matter, because there would be no findings of 1-hour nonattainment after revocation, there would be no basis to impose penalties under Section 185 after revocation." *See* EPA Resp. Br. at 112, *SCAQMD v. EPA*, 472 F.3d 882 (D.C. Cir. 2007) (No. 04-1200); *see also id.* at 114-15 (making same argument as justification for waiving contingency measure requirements). The court in *SCAQMD* rejected the argument out of hand calling it a "red herring." *SCAQMD*, 472 F.3d at 904. The court held: "[S]ection 172(e) does not condition its strict distaste for backsliding on EPA's determinations of expediency; EPA must determine its procedures *after* it has identified what findings must be made under the Act." *Id.* at 903. The court then proceeded to "vacate . . . those portions of the 2004 Rule that allow backsliding with respect to the measures addressed . . . ." *Id.* at 905. EPA argued that 51.905(e)(2)(i)(A) was a barrier to implementing the section 185 program in 1-hour nonattainment areas. The court vacated all provisions that allowed areas to avoid the 185 fee program requirements and directed EPA to determine its procedures "after" it determined what findings are required to implement the section 185 program. Section 51.905(e)(2)(i)(A) therefore is no longer a valid provision.

To date, EPA has not promulgated any replacement rulemaking identifying the procedures required to trigger the section 185 fee program in 1-hour areas. Indeed, since the *SCAQMD* decision, EPA has proceeded with 1-hour ozone attainment determinations pursuant to sections 179(c) and 181(b)(2), noting on multiple occasions the mandatory duty to do so under the Act. *See, e.g.*, 70 Fed. Reg. 22803 (May 3, 2005) (Region 9 making determination for Washoe County, Nevada, noting that "[u]nder sections 179(c) [and] 181(b)(2) . . . EPA has the *responsibility* for determining whether a nonattainment area has attained the 1-hour ozone [standard] . . . by the applicable attainment dates") (emphasis added); 73 Fed. Reg. 61357 (Oct. 16, 2008) (Region 6 making 1-hour ozone determination for Dallas/Fort Worth); 74 Fed. Reg. 15864 (April 8, 2009) (Region 2 making the 1-hour ozone determination for Southern New Jersey in "fulfillment of a Clean Air Act *obligation* to determine if an area attained the ozone

standard by its applicable attainment date") (emphasis added); 73 Fed. Reg. 22896 (April 28, 2008) (Region 3 making 1-hour ozone determinations for Philadelphia and Washington, DC because "[u]nder Section 181(b)(2) of the CAA, EPA *must* determine whether ozone nonattainment areas have attained the ozone NAAQS by their attainment date.") (emphasis added).

Even if the court had not vacated section 51.905(e)(2)(i)(A), EPA retained discretion to make the findings required under sections 179(c) and 181(b)(1). Section 51.905(e)(2)(i) states that "EPA is no longer obligated" to make the statutory findings. Nothing in that section provides that EPA will not or cannot make such findings. As noted above, EPA has continued to make findings under these sections.

A refusal to find that the Valley, after 20 years, has failed to attain the 1-hour ozone standard would be arbitrary and capricious in the extreme. The elevated peak 1-hour concentrations in the Valley result in serious health impacts on Valley residents and have continued more or less unabated since the San Joaquin Valley Air District prepared the 2004 Ozone Plan. Waiting to address the 1-hour problem through the 8-hour ozone planning process is not a reasonable substitute. The state implementation plan to address 8-hour ozone concentrations in the Valley does not actually identify the controls necessary to meet that standard and claims that attainment is not possible before 2024. It would be outrageous to claim that the baseless plan for attaining the 8-hour standard nearly 15 years from now is a reasonable substitute for addressing the 1-hour ozone concentrations that Congress promised would be addressed no later than this year. There is simply no rational basis for believing that doing nothing will ensure expeditious attainment of the 1-hour ozone standard. Without a new strategy to specifically address 1-hour ozone concentrations, there is no reason to believe that the promises of the Clean Air Act (e.g., attainment within 5 years of the finding of failure to attain) will otherwise be fulfilled.

CONCLUSION

In June and again in September of this year, Region 9 Administrator Blumenfeld came to the Valley and met with community members and clean air advocates who told him about how pollution affects their lives and what they wanted EPA to do to help. Over and over again, people talked about the suffering they experience as a result of the dirty air and about the frustration they feel because the State and local air district do not listen. And over and over again, people asked for EPA's help in pushing the State and local air district to adopt meaningful plans and controls to make the air cleaner.

Instead of defending a 1-hour ozone plan that has already failed and ignoring the Agency's ability to actually remedy the problem, EPA can and must require development of a new, meaningful plan that demonstrates expeditious attainment of the 1-hour ozone standard once and for all. The investment of resources to achieve the 1-hour standard as expeditiously as practicable will pay dividends in terms of progress toward attaining the 8-hour standards, as well as with the people who suffer the health and economic effects of breathing air that still violates the weakest of the ozone standards.

Petitioners believe the issues presented here are straightforward – the Valley has failed to meet the 1-hour ozone standard by the statutory deadline and action is necessary to ensure that the standard will be achieved as expeditiously as practicable. Petitioners therefore ask the Administrator to grant or deny this Petition for Rulemaking within 30 days so that all parties can move on to the next steps necessary to address the 1-hour ozone pollution problem that will otherwise continue to harm Valley residents. Petitioners hope that, rather than extended litigation to force EPA to fulfill the promises of the Clean Air Act, those next steps will include working together to craft a meaningful plan to attain the 1-hour standard.

DATED: November 15, 2010

/s/ Paul Cort_____
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On behalf of Petitioners