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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

February 12, 2016

Gina McCarthy
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to make “bump up” determinations for various marginal nonattainment areas for the 2008 ozone NAAQS

Dear Administrator McCarthy,

On behalf of the Center for Biological Diversity and Elizabeth Crowe, I write to inform you that they intend to file suit against you for “a failure of the Administrator [of the United States Environmental Protection Agency (“EPA”)] to perform any act or duty under this chapter which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). Specifically, under 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA must determine by no later than January 20, 2016 whether the 2008 ozone National Ambient Air Quality Standard (NAAQS) marginal nonattainment areas have attained the 2008 ozone NAAQS and for each area that failed to attain, the reclassification of such area. Pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA is then required to publish notice in the Federal Register of those determinations. As explained in detail below, EPA has failed to perform these mandatory duties for the Metro Cleveland, Houston, Philadelphia, Pittsburg, San Luis Obispo, Sheboygan, St. Louis, Washington, D.C., Atlanta, Chicago, Denver, Greater Connecticut, Imperial County, Kern County, Mariposa County, CA, Nevada County, CA, New York, Phoenix, and San Diego nonattainment areas.

This notice involves EPA’s failure to timely implement the 2008 national ambient air quality standard for ground-level ozone, the principle component of what people commonly refer to as smog. According to EPA, based on exhaustive scientific review, ozone pollution causes decreased lung function, increased respiratory symptoms, emergency department visits, hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008). Those most at risk from ozone pollution are children; active people, *e.g.*, runners and people who do

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manual labor outside; people with pre-existing lung and heart diseases such as asthma; and older people. *Id.* at 16,440. Ozone also damages vegetation, both native and commercial crops. *Id.* at 16,485-16,486. Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life sustaining services that ecosystems provide to people for free, such as clean air, clean water and carbon sequestration. *Id.*

The attainment date for areas designated as marginal nonattainment areas for the 2008 ozone NAAQS is July 20, 2015. 80 Fed. Reg. 51,992 (Aug. 27, 2015). Pursuant to 42 U.S.C. §§ 7509(c)(1) & 7511(b)(2)(A), EPA must determine by no later than six months after the attainment date, that is January 20, 2016, whether the 2008 ozone NAAQS marginal nonattainment areas attained the 2008 ozone NAAQS by the July 20, 2015 attainment date. Furthermore, pursuant to 42 U.S.C. §§ 7509(c)(2) & 7511(b)(2)(B), EPA is required to publish notice in the Federal Register no later than January 20, 2016 identifying whether the nonattainment areas attained the 2008 ozone NAAQS by their attainment date. EPA has failed to fulfill both these mandatory duties for the Metro Cleveland, Houston, Philadelphia, Pittsburg, San Luis Obispo, Sheboygan, St. Louis, Washington, D.C., Atlanta, Chicago, Denver, Greater Connecticut, Imperial County, Kern County, Mariposa County, CA, Nevada County, CA, New York, Phoenix, and San Diego nonattainment areas.

As required by 40 C.F.R. § 54.3, the persons providing this notice are:

The Center for Biological Diversity, Attn: Jonathan Evans
351 California Street, Suite 600
San Francisco, California 94104 Tel: (415) 436-9682 x318

Elizabeth Crowe
255 Mountain Meadows Road
Boulder, CO 80302 (303) 449-1502

While EPA regulations require this information, please direct all correspondences and communications regarding this matter to the undersigned counsel.

The Center for Biological Diversity, Elizabeth Crowe and their counsel would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA coming into compliance within 60 days. If you do not do so, however, we will have to file a complaint.

Sincerely,



Robert Ukeiley
Counsel for CBD and Elizabeth Crowe