



March 4, 2019

U.S. Environmental Protection Agency  
The Hon. Andrew R. Wheeler, Administrator  
William Jefferson Clinton Building  
Mail Code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Wheeler.andrew@epa.gov

**By Certified Mail, Return Receipt Requested, and Email**

**RE: Notice of intent to sue under the Clean Air Act.**

Dear Administrator Wheeler:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice that Sierra Club and the Center for Biological Diversity intend to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for your failure to perform a nondiscretionary duty under the Clean Air Act (“the Act”). As discussed below, EPA has failed to meet the statutory deadline to take legally required final action to determine which moderate ozone nonattainment areas met the 2008 National Ambient Air Quality Standard (“NAAQS”) by the attainment deadline, 42 U.S.C. § 7511(b)(2)(A), and to publish notice in the Federal Register that identifies areas that failed to meet their attainment deadline and identifies the reclassification of such areas under the Act, *id.* § 7511(b)(2)(B).

The Act requires that, no later than six months following an attainment deadline, the Administrator make a determination as to whether each ozone nonattainment area attained the standard by the deadline. *Id.* § 7511(b)(2)(A). No later than six months following the attainment deadline, the Administrator must also publish this determination in the Federal Register. *Id.* § 7511(b)(2)(B). The 2008 NAAQS moderate nonattainment area deadline was July 20, 2018. *See* 40 C.F.R. § 51.1103(a) tbl.1; 77 Fed. Reg. 30,160 (May 21, 2012). Within six months, or by January 20, 2019, EPA was required to determine whether each moderate nonattainment area met the deadline. As of the date of this letter, EPA has not made any such determinations.

Although EPA has initiated proposals for certain moderate nonattainment areas, these not only fail to address all such areas, but EPA also failed to finalize them by the January 20, 2019 deadline. *E.g.*, 83 Fed. Reg. 56,781 (Nov. 14, 2018). EPA has failed to fulfill both of the above-described mandatory duties for the Baltimore, MD; Chicago-Naperville, IL-IN-WI; Dallas-Fort Worth, TX; Denver-Boulder-Greeley-Ft. Collins-Loveland, CO; Greater Connecticut, CT; Houston-Galveston-Brazoria, TX; Imperial County, CA; Mariposa County, CA; Nevada County

(Western part), CA; New York-N. New Jersey-Long Island, CT-NJ-NY; Phoenix-Mesa, AZ; San Diego County, CA; and Sheboygan County, WI nonattainment areas. Accordingly, you are in violation of your nondiscretionary duties under 42 U.S.C. § 7511(b)(2)(A)-(B) of the Act to make determinations as to the attainment status of areas in moderate nonattainment for the 2008 ozone NAAQS and to publish such determinations and identification of reclassifications in the Federal Register for areas that failed to attain timely.

As required by 40 C.F.R. § 54.3(a), this notice letter is submitted of behalf of the following organizations:

The Center for Biological Diversity  
1536 Wynkoop St., Ste. 421  
Denver, CO 80202

Sierra Club  
2101 Webster St., Ste. 1300  
Oakland, CA 94612

While EPA regulations require these disclosures, please direct all correspondence and communications regarding this matter to the undersigned counsel. Sierra Club and the Center for Biological Diversity intend to file suit in federal court after 60 days from the postmark date of this letter if EPA has not remedied its failure to perform the above-described nondiscretionary duties.

Sincerely,



Isabel Segarra Treviño

Seth L. Johnson

Attorneys

Earthjustice

1625 Massachusetts Ave., NW, Ste. 702

Washington, DC 20036

T: 202.667.4500

F: 202.667.2356

isegarra@earthjustice.org

sjohnson@earthjustice.org

COUNSEL FOR CENTER FOR  
BIOLOGICAL DIVERSITY AND SIERRA  
CLUB

Cc (via email):

Matthew Z. Leopold, General Counsel, Office of General Counsel, EPA, leopold.matt@epa.gov

Rebecca Fischer, Climate & Energy Program Attorney, WildEarth Guardians,  
rfischer@wildearthguardians.org