



VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

July 14, 2014

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

Eric Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

US EPA, Office of General Counsel
Air and Radiation Law Office
1200 Pennsylvania Ave, NW (2344A)
Washington, DC 20760

Re: Clean Air Act Notice of Intent to Sue pursuant to 42 U.S.C. § 7604(b)(2) for failure to take final action on North Carolina's 2008 Lead and Ozone NAAQS under 42 U.S.C. § 7410(k)(2)–(3)

Dear Administrator McCarthy, Attorney General Holder, and EPA General Counsel,

Pursuant to 42 U.S.C. § 7604(b)(2), the Center for Biological Diversity is notifying you that it intends 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. § 7410(k)(2)–(3), EPA must, within twelve months of determining that a state implementation plan (SIP) is complete, take final action and publish notice of that action in the Federal Register. As explained below, EPA has failed to perform these mandatory duties for North Carolina's SIP submittals addressing the 2008 ozone and lead National Ambient Air Quality Standards (“NAAQS”).

EPA should remedy its violation of these mandatory duties to better protect the public from the harmful effects of these air pollutants. The World Health Organization considers

outdoor air pollution “the world’s largest single environmental health risk.”¹ Exposure to air pollution is linked to strokes, heart disease, chronic obstructive pulmonary disease, and cancer,² and, more generally, increased hospital visits and mortality.³

Ground-level ozone pollution is linked to many of these public health impacts, especially those related to respiratory function. Ozone can irritate the respiratory tract and throat, impair lung function, and cause coughing, chest pains, and lung inflammation.⁴ EPA has recognized the association between ozone exposure and hospital visits for respiratory problems—especially for children—noting that ozone pollution is responsible for as much as ten to twenty percent of all summertime respiratory hospital visits.⁵

Ozone is also linked to the development of respiratory diseases, such as asthma.⁶ In North Carolina, more than 860,000 people have lung diseases like asthma and chronic obstructive pulmonary disease that may be the result of ozone pollution and can be exacerbated by the pollutant.⁷

The health effects of ozone are not limited to respiratory illnesses. Ozone pollution is linked to other serious health impacts, such as heart disease⁸ and certain types of strokes.⁹ “[M]ost importantly,” according to the American Lung Association, ozone exposure and the associated health impacts can shorten lives by months and even years.¹⁰ “Even at very low levels including days that meet current regulatory requirements,” ozone is associated with premature mortality.¹¹

¹ Press Release, World Health Org., 7 Million Premature Deaths Annually Linked to Air Pollution (Mar. 25, 2014), <http://www.who.int/mediacentre/news/releases/2014/air-pollution/en/>.

² *Id.*

³ Marilena Kampa & Elias Castanas, *Human Health Effects of Air Pollution*, 151 ENVTL. POLLUTION 362, 363 (2008), available at <http://www.sciencedirect.com/science/article/pii/S0269749107002849#>.

⁴ Barbara Hackley et al., *Air Pollution: Impact on Maternal and Perinatal Health*, 52 J. MIDWIFERY & WOMEN’S HEALTH 435, 436 table 1 (2010), available at <http://www.sciencedirect.com/science/article/pii/S1526952307001079>.

⁵ *Ozone Action Days*, Region 4: Air Quality, U.S. ENVTL. PROT. AGENCY (last visited July 9, 2014), <http://www.epa.gov/region4/air/naqs/ozoneday.htm>.

⁶ See Michelle L. Bell et al., *The Exposure-Response Curve for Ozone and Risk of Mortality and the Adequacy of Current Ozone Regulations*, 114 ENVTL. HEALTH PERSPECTIVES 532, 532 (2006), available at <http://www.ncbi.nlm.nih.gov/pubmed/16581541>; see also David B. Peden, *The Epidemiology and Genetics of Asthma Risk Associated with Air Pollution*, 115 J. ALLERGY & CLINICAL IMMUNOLOGY 213, 214 (2005), available at [http://www.jacionline.org/article/S0091-6749\(04\)03219-1/fulltext](http://www.jacionline.org/article/S0091-6749(04)03219-1/fulltext).

⁷ Stephanie Carroll Carson, *Ozone, Warming Temperatures, Coal-Fired Power Plants Impact NC Air*, PUB. NEWS SERV. (May 2, 2014), <http://www.publicnewsservice.org/2014-05-02/climate-change-air-quality/ozone-warming-temperatures-coal-fired-power-plants-impact-nc-air/a39132-1>.

⁸ Jean-Bernard Ruidavets et al., *Ozone Air Pollution Is Associated with Acute Myocardial Infarction*, 111 CIRCULATION 563, 566 (2005), available at <http://circ.ahajournals.org/content/111/5/563.long>.

⁹ J. B. Henrotin et al., *Short Term Effects of Ozone Air Pollution on Ischaemic Stroke Occurrence: A Case-Crossover Analysis from a 10-Year Population-Based Study in Dijon, France*, 64 OCCUPATIONAL & ENVTL. MED. 439, 442 (2007), available at <http://oem.bmj.com/content/64/7/439.short>.

¹⁰ Carson, *supra* note 7.

¹¹ Bell, *supra* note 6, at 535.

Lead pollution also poses a threat to public health. According to EPA, lead can adversely affect the nervous, immune, reproductive, and cardiovascular systems, kidney function, and the oxygen carrying capacity of the blood.¹² In children, lead exposure can cause neurological effects that can lead to behavioral and learning problems and lower IQs, even in low levels.¹³ In high levels, lead is linked to seizures and intellectual disabilities.¹⁴ In pregnant women, lead exposure can increase the risk of spontaneous abortion, reduced fetal growth, congenital malformations, and impairments in newborn motor and cognitive function.¹⁵ And as a heavy metal, lead can be stored in the body and bio-accumulate, causing lasting damage.¹⁶

Not only do ozone and lead pollution affect public health, but they also adversely impact the environment. According to EPA, ozone “affects sensitive vegetation and ecosystems, including forests, parks, wildlife refuges, and wilderness areas,” especially during growing seasons.¹⁷ Ozone can interfere with a plant’s ability to produce and store food, visibly damage leaves, and make plants susceptible to damage from disease, insects, competition, and severe weather.¹⁸ EPA has also recognized the damaging effects of lead on ecosystems, noting that “[l]ead is persistent in the environment and accumulates in soils, aquatic systems (including sediments), and some biological tissues of plants, animals and other organisms.”¹⁹ This accumulation leads to long-term effects on ecosystems, such as decreases in species diversity and vegetation and increased susceptibility to invasive species.²⁰

North Carolina has worked to decrease the impacts of these pollutants and has improved air quality in the state. The North Carolina Department of Environment and Natural Resources reported that the state’s ozone levels in 2013 were the lowest on record since air monitoring began in the 1970s.²¹ In conjunction with state statutes, these reductions are partly attributed to stricter federal requirements for industrial facilities and motor vehicles.²²

The state’s improved air quality has had positive effects on public health. By complying with the Clean Air Act, the state has experienced “significant correlations between reduction of air pollutants and . . . deaths due to respiratory diseases.”²³ This recent finding “tends to show that environmental policies work” at both improving the environment and public health.²⁴

¹² *Health, Lead in Air*, U.S. ENVTL. PROT. AGENCY (last visited July 8, 2014), <http://www.epa.gov/airquality/lead/health.html>.

¹³ *Id.*

¹⁴ Hackley et al., *supra* note 4, at 436 table 1.

¹⁵ Kampa & Castanas, *supra* note 3, at 364.

¹⁶ *See id.* at 363.

¹⁷ *Ecosystem Effects, Ground-Level Ozone*, U.S. ENVTL. PROT. AGENCY (last visited July 10, 2014), <http://www.epa.gov/airquality/ozonepollution/ecosystem.html>.

¹⁸ *Id.*

¹⁹ 73 Fed. Reg. 66,964, 67,008 (Nov. 12, 2008).

²⁰ *Id.*

²¹ Press Release, N.C. Div. of Air Quality, North Carolina’s Ozone Levels Lowest on Record in 2013 (Dec. 13, 2013), http://daq.state.nc.us/news/pr/2013/ozone_12132013.shtml.

²² *Id.*

²³ Julia Kravchenko et al., *Long-Term Dynamics of Death Rates of Emphysema, Asthma, and Pneumonia and Improving Air Quality*, 9 INT’L J. COPD 613, 618 (2014), available at <http://www.dovepress.com/long-term-dynamics-of-death-rates-of-emphysema-asthma-and-pneumonia-an-peer-reviewed-article-COPD>; see also Sarah

But North Carolina’s air quality is facing impending threats from its own elected officials. On December 26th, 2013 the state Department of Environment and Natural Resources under Gov. Pat McCrory sued the EPA to loosen air-quality requirements related to particulate matter.²⁵ The state legislature has also been attempting to hinder clean air monitoring. “Tucked inside a 65-page bill called the Regulatory Reform Act (Senate Bill 734) is one sentence that requires the state to eliminate the majority of its 132 air-quality monitors”—all those not explicitly required by EPA.²⁶ With the state legislature recently approving the issuance of natural gas drilling permits, Senate Bill 734 would remove many monitors that would track the air pollution coming from these new industrial sources.²⁷ The House version of the bill, while giving greater consideration to the environment, would still “eliminate[] air quality reporting requirements.”²⁸ These threats to air quality from the state demonstrate the importance of EPA complying with federal Clean Air Act requirements and ensuring that the majority of the state continue to stay in attainment with the NAAQS for lead and ozone.

I. Failure to take final action

EPA must, within twelve months of finding a SIP complete, take final action on a submittal by approving in full, disapproving in full, or approving in part and disapproving in part. 42 U.S.C. § 7410(k)(2)–(3).

EPA has failed to take final action on submittals listed below in violation of EPA’s mandatory duty:

Submittal	Completeness Date	Due Date for Final Action
North Carolina 110(a)(2) Ozone (2008) Infrastructure SIP	11/15/12	11/15/13
North Carolina 110(a)(2) Lead (2008) Infrastructure SIP	01/20/13	01/20/14

See *North Carolina Infrastructure Requirements by Pollutant*, U.S. ENVTL. PROT. AGENCY (last visited July 9, 2014), http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html.

Wheeler, *Duke Scientists Report Air Pollution Controls Linked to Lower NC Death Rates*, THE NEWS & OBSERVER (June 23, 2014), <http://www.newsobserver.com/2014/06/23/3957644/duke-scientists-report-air-pollution.html>.

²⁴ See Wheeler, *supra* note 23.

²⁵ *State of North Carolina v. EPA*, D.C. Cir. Case No. 13-1312 (filed December 26, 2013); John Murawski, *NC officials sue EPA over stricter air pollution standards*, THE NEWS AND OBSERVER (January 10, 2014), <http://www.newsobserver.com/2014/01/10/3522175/nc-officials-sue-epa-over-stricter.html>

²⁶ See S.B. 734, 2014 Leg., 2013-2014 Sess., (N.C. 2014); see also *Wishing Our Way to Cleaner Air*, THE CHARLOTTE OBSERVER (June 14, 2014), http://www.charlotteobserver.com/2014/06/14/4975974/wishing-our-way-to-cleaner-air.html#.U77V_PldVTN.

²⁷ Zachariah E. Adelman, *Columnist: Air Monitoring Essential with Fracking*, THE FAYETTEVILLE OBSERVER (June 21, 2014), http://www.fayobserver.com/%20opinion/news_columns/article_24f19680-2cc4-534a-bbff-1daba8786b38.html.

²⁸ Jane Porter, *N.C. House Passes Toned-Down Environmental Reform Bill*, INDY WEEK (June 19, 2014), <http://www.indyweek.com/triangulator/archives/2014/06/19/nc-house-passes-toned-downed-environmental-reform-bill>.

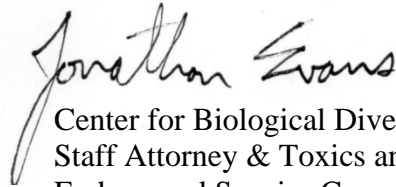
As required by 40 C.F.R. § 54.3, the person providing this notice is:

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a large initial "J".

Center for Biological Diversity
Staff Attorney & Toxics and
Endangered Species Campaign Director

/s/ Amanda Prasuhn
Amanda Prasuhn
Legal Intern