



March 13, 2013

**Via Certified and Electronic Mail**

Mr. Bob Perciasepe  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit**

Dear Acting Administrator Perciasepe:

This letter is submitted on behalf of the American Lung Association<sup>1</sup>, Natural Resources Defense Council<sup>2</sup>, and Sierra Club<sup>3</sup> to notify you, pursuant to section 304(b) of the Clean Air Act (“CAA” or “Act”)(42 U.S.C. §7604(b)), that these organizations intend to sue the U.S. Environmental Protection Agency (“EPA”) for its failure to perform non-discretionary duties related to the review of the national ambient air quality standards for ozone. These organizations ask that you direct your staff to take the immediate action required under the Act.

As you are aware, ozone pollution in the U.S. continues to cause significant adverse health impacts, including decreased lung function, increased incidence of respiratory ailments such as asthma attacks and respiratory infections, and even premature death. *See, e.g.*, 75 Fed. Reg. 2938, 2991-98 (Jan. 19, 2010). Many of these impacts are suffered most acutely by our most vulnerable including children and the elderly. *Id.* EPA has previously acknowledged that the current primary ozone standard of 0.075 parts per million does not adequately protect the public from these harms. *See id.* at 2996.

As you are also aware, section 109(d)(1) of the Clean Air Act imposes on EPA a non-discretionary duty to review national ambient air quality standards every five years and “make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and subsection (b) of [section 109].” 42 U.S.C. § 7409(d)(1). EPA last promulgated ozone standards on March 12, 2008. *See* 73 Fed. Reg. 16436, 16503 (Mar. 27, 2008) (final ozone rule noting state obligations triggered by promulgation on March 12, 2008); *see also Am. Petroleum Inst. v. Costle*, 609 F.2d 20, 24 (D.C. Cir. 1979) (interpreting “promulgation”).

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<sup>1</sup> American Lung Association, 1301 Pennsylvania Ave. NW, Suite 800, Washington, DC 20004

<sup>2</sup> Natural Resources Defense Council, 40 West 20<sup>th</sup> Street, New York, NY 10011

<sup>3</sup> Sierra Club, 85 Second Street, 2<sup>nd</sup> Floor, San Francisco, CA 94105

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In the five years since promulgation of the 2008 standards, EPA has failed to complete the mandatory review of those standards or promulgate revised standards. Thus, as of March 13, 2013, EPA is in violation of its non-discretionary duty to review and revise the ozone standards under Clean Air Act section 109(d)(1), 42 U.S.C. § 7409(d)(1).

Unless the identified deficiencies are promptly addressed, the American Lung Association, Natural Resources Defense Council and Sierra Club intend to file suit in U.S. District Court sixty days after your receipt of this letter. Please feel free to contact me at (415) 217-2000 to further discuss the basis for this claim, or to explore possible options for resolving this claim short of litigation.

Sincerely,



Paul Cort

Counsel for American Lung Association,  
Natural Resources Defense Council, and  
Sierra Club

cc: Gina McCarthy, EPA