

BRENT J. NEWELL (State Bar No. 210312)
LAW OFFICES OF BRENT J. NEWELL
245 Kentucky Street, Suite A4
Petaluma, CA 94952
Tel: (661) 586-3724
brentjnewell@outlook.com

Attorney for Plaintiff
Center for Community Action
and Environmental Justice

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR COMMUNITY ACTION AND)
ENVIRONMENTAL JUSTICE, a nonprofit)
corporation,)

Plaintiff,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, MICHAEL)
REGAN, in his official capacity as)
Administrator of the United States)
Environmental Protection Agency, and)
MARTHA GUZMAN, in her official capacity)
as Regional Administrator for Region 9 of the)
United States Environmental Protection)
Agency,)

Defendants.)

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1
2 1. Plaintiff Center for Community Action and Environmental Justice (“CCA EJ”) files this
3 Clean Air Act citizen suit to compel Defendants United States Environmental Protection Agency
4 (“EPA”), Michael Regan, and Martha Guzman to approve, disapprove, or partially approve/disapprove
5 the Innovative Clean Transit regulation (“ICT regulation”).

6 2. Fine particulate matter (“PM_{2.5}”) and ozone air pollution in the South Coast air basin has
7 caused, and continues to cause, a public health crisis. According to the American Lung Association’s
8 State of the Air 2022 report, counties in the South Coast Air Basin rank among the worst in the United
9 States for ozone and PM_{2.5}. San Bernardino, Riverside, and Los Angeles counties are the first, second,
10 and third most ozone-polluted counties in the United States, respectively. For long-term exposure to
11 PM_{2.5}, San Bernardino, Riverside, and Los Angeles counties rank as the ninth, eleventh, and sixteenth
12 most polluted counties in the United States, respectively.

13 3. The Clean Air Act is a model of cooperative federalism, whereby the EPA sets health-
14 based National Ambient Air Quality Standards (“NAAQS” or “standards”) and the states develop the
15 plans and strategies to achieve those standards. States submit their plans and strategies to EPA for
16 review and approval. EPA shall approve a submission if it meets the Act’s minimum requirements. EPA
17 and citizens may enforce the EPA-approved State Implementation Plan as a matter of federal law to hold
18 states and regulated entities accountable.

19 4. The California Air Resources Board (“Board”) adopted the ICT regulation as part of
20 California’s strategy to reduce PM_{2.5} and ozone-forming air pollution, and the Board submitted the ICT
21 regulation to the EPA for review and approval as part of the State Implementation Plan.

22 5. EPA’s review and approval of the ICT regulation, with public notice and opportunity to
23 comment, ensures that the ICT regulation meets minimum Clean Air Act requirements, including but not
24 limited to ensuring the regulation is enforceable by citizens and the EPA.

25 6. To date, EPA has failed to take final action on the ICT regulation. §

JURISDICTION

26
27 7. This Court has jurisdiction over this action to compel the performance of a
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nondiscretionary duty pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question jurisdiction).

8. The declaratory and injunctive relief CCAEJ requests is authorized by 28 U.S.C. §§ 2801(a) and 2202, and 42 U.S.C. § 7604.

9. On May 16, 2022, CCAEJ provided EPA, Regan, and Guzman written notice of the claims stated in this action at least 60 days before commencing this action, as required by Clean Air Act section 304(b)(2), 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2 and 54.3. A copy of the notice letter, sent by certified mail, return receipt requested, is attached as Exhibit 1. Although more than 60 days have elapsed since CCAEJ provided written notice, EPA has failed to take action and remains in violation of the Clean Air Act.

VENUE

10. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1), because the Regional Administrator for Region 9 is located in San Francisco County and because EPA's alleged violations relate to the duties of the Regional Administrator in San Francisco.

INTRADISTRICT ASSIGNMENT

11. Because the failure to perform a nondiscretionary duty alleged in this Complaint relates to the duties of the Regional Administrator located in San Francisco County, assignment to the San Francisco Division of this Court is proper under Civil L.R. 3-2(c) and (d).

PARTIES

12. Plaintiff CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE is a progressive, base-building, non-profit corporation that brings communities together to find opportunities for cooperation, agreement, and problem solving to improve their social and natural environment. CCAEJ uses the lens of environmental health to achieve social change, and works within communities to develop and sustain democratically based, participatory decision-making that promotes the involvement of a diverse segment of the community in ways that empower communities. CCAEJ prioritizes air quality and water quality advocacy to secure environmental justice and improve public health and welfare in the Inland Empire and South Coast Air Basin. Members of CENTER FOR

1 COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE reside in Riverside and San Bernardino
2 counties and in the South Coast Air Basin.

3 13. Plaintiff CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE
4 is a person within the meaning of section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and may
5 commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a).

6 14. Members of CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
7 JUSTICE live, raise their families, work, and recreate in Riverside and San Bernardino counties and the
8 South Coast Air Basin. They are adversely affected by exposure to levels of PM2.5 and ozone air
9 pollution that exceed the health-based National Ambient Air Quality Standards. The adverse effects of
10 such pollution include actual or threatened harm to their health, their families' health, their professional,
11 educational, and economic interests, and their aesthetic and recreational enjoyment of the environment
12 in the Inland Empire and South Coast Air Basin.

13 15. The Clean Air Act violation alleged in this Complaint also deprives CENTER FOR
14 COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE members of certain procedural rights
15 associated with EPA's required action on the ICT regulation, including notice of, and opportunity to
16 comment on, EPA's action and the capacity to enforce the ICT regulation.

17 16. The Clean Air Act violation alleged in this Complaint has injured and continues to injure
18 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE members. Granting the
19 relief requested in this lawsuit would redress these injuries by compelling EPA action that Congress
20 required as an integral part of the regulatory scheme for improving air quality in areas violating the
21 National Ambient Air Quality Standards.

22 17. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the
23 federal agency Congress charged with implementation and enforcement of the Clean Air Act. As
24 described below, the Act assigns to the UNITED STATES ENVIRONMENTAL PROTECTION
25 AGENCY certain nondiscretionary duties.

26 18. Defendant MICHAEL REGAN is sued in his official capacity as Administrator of the
27 United States Environmental Protection Agency. He is charged in that role with taking various actions to
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1 implement and enforce the Clean Air Act, including the actions sought in this Complaint.

2 19. Defendant MARTHA GUZMAN is sued in her official capacity as Regional
3 Administrator for Region 9 of the United States Environmental Protection Agency. She is responsible
4 for implementing and enforcing the Clean Air Act in Region 9, which includes California and the South
5 Coast Air Basin.

6 STATUTORY FRAMEWORK

7 20. The Clean Air Act establishes a partnership between EPA and the states for the
8 attainment and maintenance of the National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C.
9 §§ 7401-7515. Under the Act, EPA has set health-based NAAQS for six pollutants, including ozone and
10 PM2.5. States must adopt a State Implementation Plan (“SIP”) that contains enforceable emissions
11 limitations necessary to attain the NAAQS and meet applicable requirements of the Act. 42 U.S.C. §§
12 7401(a)(1), (a)(2)(A); 7502(c)(6). States must submit all such plans and plan revisions to the EPA. 42
13 U.S.C. § 7410(a)(1).

14 21. Within 60 days of EPA’s receipt of a proposed SIP revision, the Clean Air Act requires
15 EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA
16 for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make this “completeness” finding, the
17 proposed SIP revision becomes complete by operation of law six months after a state submits the
18 revision. If EPA determines that the proposed SIP revision does not meet the minimum criteria, the state
19 is considered to have not made the submission. 42 U.S.C. 7410(k)(1)(C).

20 22. Within twelve months of an EPA finding that a proposed SIP revision is complete (or
21 deemed complete by operation of law), EPA must act to approve, disapprove, or approve in part and
22 disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

23 23. If EPA disapproves the revision, in whole or in part, then the Clean Air Act requires EPA
24 to impose sanctions against the offending state or region, including increased offsets for new and
25 modified major stationary sources or a prohibition on the use of federal highway funds, unless the state
26 submits revisions within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and
27 highway funding sanctions within 24 months unless the state has corrected the deficiency. Moreover, the
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1 Act requires EPA to promulgate a Federal Implementation Plan within 24 months of disapproval unless
2 the state has corrected the deficiency and EPA has approved the revision. 42 U.S.C. § 7410(c).

3 24. Once EPA approves a SIP or SIP revision, the state and any regulated person must
4 comply with emissions standards and limitations contained in the SIP, and all such standards and
5 limitations become enforceable as a matter of federal law by the EPA and citizens. 42 U.S.C. § 7413;
6 7604(a), (f).

7 25. If EPA fails to perform a non-discretionary duty, including acting on a proposed SIP or
8 SIP revision by the Clean Air Act deadline, then the Act allows any person to bring suit to compel EPA
9 to perform its duty. 42 U.S.C. § 7604(a)(2).

10 **FACTUAL BACKGROUND**

11 26. PM_{2.5} is a directly emitted pollutant and forms secondarily in the atmosphere by the
12 precursor pollutants nitrogen oxides (“NO_x”), ammonia, sulfur oxides, and volatile organic compounds
13 (“VOC”). Ground-level ozone is formed by a reaction between NO_x and volatile organic compounds in
14 the presence of heat and sunlight. Unlike ozone in the upper atmosphere which is formed naturally and
15 protects the Earth from ultraviolet radiation, ozone at ground level is primarily formed from
16 anthropogenic pollution.

17 27. Short-term exposure to PM_{2.5} pollution causes premature death, causes decreased lung
18 function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions.
19 Long-term exposure causes development of asthma in children, causes decreased lung function growth
20 in children, exacerbates respiratory disease such as asthma, increases the risk of death from
21 cardiovascular disease, and increases the risk of death from heart attacks. Individuals particularly
22 sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.

23 28. Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates
24 respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases
25 susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased
26 likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also
27 increases the risk of premature death, especially among older adults. Long-term exposure to ozone
28

1 causes asthma in children, decreases lung function, damages the airways, leads to development of
2 COPD, and increases allergic responses.

3 29. On July 18, 1997, the EPA established a 24-hour PM_{2.5} standard of 65 µg/m³ and an
4 annual PM_{2.5} standard of 15 µg/m³ after considering evidence from “numerous health studies
5 demonstrating that serious health effects” occur from exposures to PM_{2.5}. *See* 81 Fed. Reg. 6936
6 (February 9, 2016); *see also* 62 Fed. Reg. 38652 (July 18, 1997); 40 C.F.R. § 50.7.

7 30. On October 17, 2006, EPA strengthened the short-term 24-hour PM_{2.5} standard by
8 lowering it to 35 µg/m³. 70 Fed. Reg. 61144 (Oct. 17, 2006); 40 C.F.R. § 50.13.

9 31. Effective March 18, 2013, the EPA strengthened the primary annual PM_{2.5} standard by
10 lowering the level from 15 to 12 µg/m³ while retaining the secondary annual PM_{2.5} NAAQS at the level
11 of 15.0 µg/m³. 78 Fed. Reg. 3086 (January 15, 2013); 40 C.F.R. § 50.18.

12 32. EPA classified the South Coast Air Basin as a moderate nonattainment area for the 1997
13 PM_{2.5} standards, a serious nonattainment area for the 2006 PM_{2.5} standard, and a serious
14 nonattainment area for the 2012 PM_{2.5} standard.

15 33. On July 18, 1997, EPA promulgated the 8-hour ozone standard to replace the less
16 stringent 1-hour ozone standard. 62 Fed. Reg. 38856 (July 18, 1997); 40 C.F.R. § 50.9(b) (2003).

17 34. In 2008, EPA completed a review of the 8-hour ozone standard and found it necessary to
18 lower the ambient concentration of ozone to 0.075 parts per million as the 2008 Standard. 73 Fed. Reg.
19 16436 (March. 27, 2008); 40 C.F.R. § 50.15. The EPA based this decision on its findings that “(1) the
20 strong body of clinical evidence in healthy people at exposure levels of 0.080 and above of lung function
21 decrements, respiratory symptoms, pulmonary inflammation, and other medically significant airway
22 responses, as well as some indication of lung function decrements and respiratory symptoms at lower
23 levels; (2) the substantial body of clinical and epidemiological evidence indicating that people with
24 asthma are likely to experience larger and more serious effects than healthy people; and (3) the body of
25 epidemiological evidence indicating associations are observed for a wide range of serious health effects,
26 including respiratory emergency department visits, hospital admissions, and premature mortality, at and
27 below 0.080 ppm.” 73 Fed. Reg. at 16476.

35. On October 26, 2015, EPA revised “the level of the standard to 0.070 ppm to provide increased public health protection against health effects associated with long- and short-term exposures. 80 Fed. Reg. 65292, 65294 (Oct. 26, 2015); 40 C.F.R. § 50.19.

36. EPA classified the South Coast Air Basin as an extreme nonattainment area for the 2008 8-hour ozone standard and an extreme nonattainment area for the 2015 8-hour ozone standard.

FIRST CLAIM FOR RELIEF

Failure to Perform a Non-Discretionary Duty to Act on the Innovative Clean Transit Regulation (42 U.S.C. § 7410(k)(2))

37. CCAEJ re-alleges and incorporates by reference the allegations set forth in paragraphs 1-36.

38. On December 18, 2018, the California Air Resources Board adopted the ICT Regulation.

39. According to the Board, the ICT regulation would result in thirty avoided deaths in the South Coast Air Basin and would reduce PM_{2.5} and oxides of nitrogen emissions from buses to zero by 2045.

40. On February 12, 2020, the Board submitted the ICT regulation to EPA for inclusion in the State Implementation Plan.

41. The ICT regulation became complete by operation of law on August 13, 2020.

42. EPA has a mandatory duty to act on the 2018 PM_{2.5} Plan no later than August 13, 2021. 42 U.S.C. § 7410(k)(2).

43. By failing to act on the ICT regulation, EPA has violated and continues to violate its nondiscretionary duty to act on the ICT regulation pursuant to Clean Air Act section 110(k)(2), 42 U.S.C. § 7410(k)(2).

44. This Clean Air Act violation constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator” within the meaning of the Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation of the Act is ongoing and will continue unless remedied by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant the following relief:

- A. DECLARE that the Defendants violated the Clean Air Act by failing to act on the ICT regulation;
- B. ISSUE preliminary and permanent injunctions directing the Defendants to finalize action on the ICT regulation;
- C. RETAIN jurisdiction over this matter until such time as the Defendants have complied with their nondiscretionary duty under the Clean Air Act;
- D. AWARD to Plaintiff its costs of litigation, including reasonable attorney and expert witness fees; and
- E. GRANT such additional relief as the Court may deem just and proper.

Dated: July 19, 2022

Respectfully Submitted,

LAW OFFICES OF BRENT J. NEWELL

By: /s/ Brent J. Newell

Brent J. Newell
Attorney for Plaintiff
CENTER FOR COMMUNITY ACTION AND
ENVIRONMENTAL JUSTICE

LAW OFFICES OF BRENT J. NEWELL

May 16, 2022

By Certified Mail, Return Receipt Requested

Michael Regan, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, D.C. 20460

Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code ORA-1
San Francisco, CA 94105

**Re: Clean Air Act Notice of Intent to Sue for Failure to Take Action on the
Innovative Clean Transit Regulation.**

Dear Administrator Regan and Regional Administrator Guzman:

The Center for Community Action and Environmental Justice (CCA EJ) gives notice to the Environmental Protection Agency, Michael Regan, and Martha Guzman (collectively “EPA”) of CCA EJ’s intent to sue EPA for its failure to fulfill its mandatory duty to take final action to approve, disapprove, or partially approve/disapprove the Innovative Clean Transit regulation (“ICT regulation”). CCA EJ sends this notice pursuant to section 304(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3. At the conclusion of the 60-day notice period, CCA EJ intends to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA’s failure to perform a non-discretionary duty.

CCA EJ is a progressive, base-building, non-profit organization bringing communities together to find opportunities for cooperation, agreement and problem solving in improving their social and natural environment. Using the lens of environmental health to achieve social change, CCA EJ works within communities to develop and sustain democratically based, participatory decision-making that promotes involvement of a diverse segment of the community in ways that

empower the community. CCAEJ advocates for air quality in the South Coast Air Basin, and believes in a zero-emission future and in regenerative and sustainable communities.

Ozone and fine particulate matter (“PM2.5”) pollution remains a public health crisis in the South Coast Air Basin, which ranks among the most ozone and PM2.5-polluted air basins in the United States. With respect to ozone, the South Coast is classified as an extreme nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (“NAAQS” or “standard”), an extreme nonattainment area for the 2015 8-hour ozone standard, and has failed to attain either of the revoked ozone standards (the 1-hour and 1997 8-hour ozone standards). With respect to PM2.5, the South Coast is classified as a moderate nonattainment area for the 1997 PM2.5 standards, a serious nonattainment area for the 2006 PM2.5 standard, and a serious nonattainment area for the 2012 PM2.5 standard.

Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also increases the risk of premature death, especially among older adults. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.¹

Short-term exposure to PM2.5 pollution causes premature death, decreases lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term exposure causes development of asthma in children, decreased lung function growth in children, increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.²

According to the American Lung Association, counties in the South Coast air basin rank among the worst in the United States for ozone and PM2.5. San Bernardino, Riverside, and Los Angeles counties are the first, second, and third most ozone-polluted counties in the United States.³ With respect to long-term exposure to PM2.5, San Bernardino, Riverside, and Los Angeles counties rank as the ninth, eleventh, and sixteenth most polluted counties in the United States.⁴

¹ AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2022 at 24-25, available on the internet at <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf>.

² *Id.* at 21-23.

³ *Id.* at 19.

⁴ *Id.*

As part of the state's effort to reduce levels of ozone and PM_{2.5} in the ambient air, the California Air Resources Board adopted the ICT regulation on December 18, 2018.⁵ CARB describes the ICT regulation as follows:

The Innovative Clean Transit (ICT) regulation was adopted by CARB in 2019 and targets reductions in transit fleets by requiring transit agencies to gradually transition their buses to zero-emission technologies. ICT has helped to advance heavy-duty ZEV deployment, with buses acting as a beachhead in the heavy-duty sector. Based on the size of the transit agencies, they are categorized as small and large agencies. Starting calendar year 2023, large agencies follow the phase-in schedule to have a certain percentage of their new purchases as ZEB. For the small agencies, the start calendar year will be 2025. By 2030, all the agencies need to have 100 percent of their new purchases as ZEB. More details on the emissions benefit calculations can be found in Appendix L of the ICT's Staff Report.⁶

The ICT Regulation would result in eight avoided deaths in the Bay Area, five in the San Joaquin Valley, and thirty in the South Coast.⁷ The ICT Regulation would achieve greenhouse gas, NO_x, and PM_{2.5} reductions statewide and emissions are projected to reach zero for NO_x and PM_{2.5} by 2045.⁸

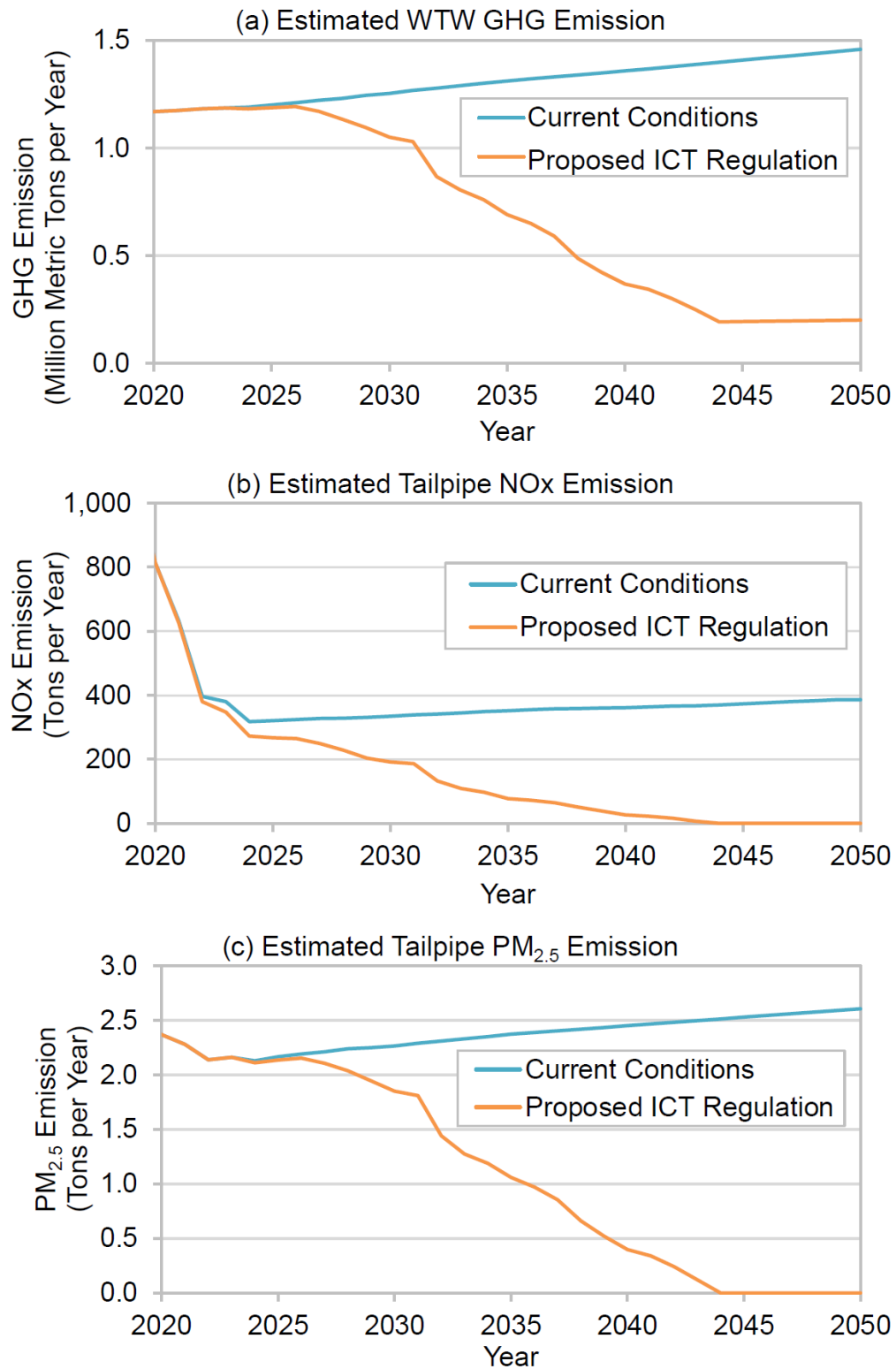
⁵ CARB Resolution 18-60.

⁶ Progress Report and Technical Submittal for the 2012 PM_{2.5} Standard San Joaquin Valley (citing Appendix L, Emissions Inventory Methods and Results for the Proposed Innovative Clean Transit Regulation) (October 19, 2021); *see also* Innovative Clean Transit (ICT) Regulation Fact Sheet, available at <https://ww2.arb.ca.gov/resources/fact-sheets/innovative-clean-transit-ict-regulation-fact-sheet>.

⁷ Staff Report and ISOR for the ICT regulation at Table V-1 (August 7, 2018).

⁸ *Id.* at IV-2 and Figure IV-1 (excerpted on page 4 of this letter).

Figure IV-1: Emission projections of WTW GHG, and tailpipe NO_x and PM_{2.5} under Current Conditions and Proposed ICT regulation



On February 12, 2020, the California Air Resources Board submitted the ICT regulation to EPA for review and inclusion in the State Implementation Plan.⁹

EPA shall act on the ICT regulation, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that EPA shall make a completeness finding within 60 days of the date that EPA receives a plan or plan revision. A plan or plan revision shall be deemed complete by operation of law if EPA fails to make a completeness finding within 6 months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

To date, EPA has failed to make a completeness finding and has not taken action on the ICT regulation. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the ICT regulation no later than August 13, 2021. EPA's failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), violates the Act.

Identity of Noticing Parties and their Attorneys

Center for Community Action and
Environmental Justice

Attorney for CCAEJ

Ana Gonzalez, Interim Executive Director
CCAIEJ
P.O. Box 33124
Riverside, CA 92519
Telephone: (909)275-9812
Email: ana.g@ccaej.org

Brent Newell
Law Offices of Brent J. Newell
245 Kentucky Street, Suite A4
Petaluma, CA 94952
Telephone: (661) 586-3724
Email: brentjnewell@outlook.com

Conclusion

Following the 60-day period, CCAIEJ will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to CCAIEJ's attorney.

Sincerely,



Brent Newell

⁹ Letter from Richard Corey to John Busterud (February 12, 2020).

cc: Governor Gavin Newsom (By Certified Mail, Return Receipt Requested)
1021 O Street, Suite 9000
Sacramento, CA 95814

Liane Randolph, Chair (By Certified Mail, Return Receipt Requested)
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Richard Corey, Executive Officer (By Certified Mail, Return Receipt Requested)
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812