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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY)
and CENTER FOR ENVIRONMENTAL)
HEALTH,)

Plaintiffs,)

v.)

MICHAEL S. REGAN,)
in his official capacity as Administrator,)
United States Environmental Protection)
Agency,)

Defendant.)

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

(Clean Air Act, 42 U.S.C. § 7410)

INTRODUCTION

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2 1. Plaintiffs seek declaratory and injunctive relief through the citizen suit provision of the
3 Clean Air Act (the Act) against Michael S. Regan, Administrator of the United States
4 Environmental Protection Agency (EPA), for the agency’s failure to complete mandatory duties
5 required by the Act’s state implementation plan (SIP) provisions. Specifically, EPA violated 42
6 U.S.C. § 7410(k)(1)(B) by failing to make findings that seven areas EPA designated as in
7 “Serious” nonattainment for the 2008 ozone National Ambient Air Quality Standards (NAAQS)
8 did not submit required SIP elements by deadlines EPA set forth. *See* Determinations of
9 Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of
10 Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality
11 Standards, 84 Fed. Reg. 44,238 (Aug. 23, 2019) (to be codified at 40 C.F.R. pts. 52, 81); *see also*
12 Table 1, *infra*. In addition, in violation of 42 U.S.C. § 7410(k)(2)–(4), EPA failed to take final
13 action to approve, disapprove, or conditionally approve SIP elements for the West Mojave
14 Desert area, which EPA designated as in “Severe-15” nonattainment for the 2008 ozone NAAQs.
15 *See* Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77
16 Fed. Reg. 30,088 (May 21, 2012) (to be codified at 40 C.F.R. pt. 81); *see also* Table 2, *infra*.

17 2. Ground-level ozone—commonly known as “smog”—damages both people’s health and
18 the environment. Human exposure to ozone pollution causes “decreased lung function and
19 increased respiratory symptoms,” leading to increased emergency department visits and hospital
20 admissions. National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27,
21 2008) (to be codified at 40 C.F.R. pts. 50, 58); *see also* EPA, *Health Effects of Ozone Pollution*,
22 <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last visited
23 Dec. 27, 2021). For plants and animals, ozone pollution can alter an ecosystem’s structure and
24 function, thereby putting species’ survival at risk. 73 Fed. Reg. at 16,486–89; *see also* EPA,
25 *Ecosystem Effects of Ozone Pollution*, [https://www.epa.gov/ground-level-ozone-](https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution)
26 [pollution/ecosystem-effects-ozone-pollution](https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution) (last visited Dec. 27, 2021). Ozone pollution also
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1 contributes to the climate crisis by hindering plant growth, thereby reducing plants' ability to
2 sequester carbon. 73 Fed. Reg. at 16,486–89.

3 3. EPA's failures to fulfill its duties required under the Act mean that people living in these
4 nonattainment areas are, and will continue to be, subjected to unhealthy levels of ozone
5 pollution, and further environmental degradation will occur because the areas in nonattainment
6 have not submitted the required plan elements to chart a course towards attainment of ozone
7 standards.

8 4. Plaintiffs ask this Court to find that EPA violated the Act when it failed, within the Act's
9 six-month timeframe pursuant to 42 U.S.C. § 7410(k)(1)(B), to make findings of failure to
10 submit for each of the states listed in Table 1, *infra*. Plaintiffs also ask that this Court order EPA
11 to take final action by issuing findings of failure to submit to each state listed in Table 1, *infra*,
12 for each of the SIP elements by a date certain.

13 5. Plaintiffs further ask this Court to find that EPA violated the Act when it failed, within
14 the Act's twelve-month timeframe pursuant to 42 U.S.C. § 7410(k)(2)–(4), to approve,
15 disapprove, or conditionally approve the West Mojave Desert area's SIP submittals listed in
16 Table 2, *infra*. Plaintiffs ask that this Court order EPA to take final action on the West Mojave
17 Desert's SIP submittals by a date certain.

18 6. Plaintiffs intend to recover all available litigation costs, including reasonable attorneys'
19 fees, under section 304(d) of the Act. 42 U.S.C. § 7604(d).

20 JURISDICTION

21 7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331. This case involves
22 federal questions arising under the Act, 42 U.S.C. § 7410. Jurisdiction is also proper in this Court
23 pursuant to *id.* § 7604(a)(2), as this case is a suit by a person to compel the performance of a
24 nondiscretionary duty under the Act.

25 8. This Court has jurisdiction to order declaratory relief under 28 U.S.C. § 2201. This case
26 does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505, 1146, and does not
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1 involve the Tariff Act of 1930. If this Court orders declaratory relief, 28 U.S.C. § 2202
2 authorizes this Court to issue injunctive relief.

3 NOTICE

4 9. In satisfaction of 42 U.S.C. § 7604(b) and 40 C.F.R. § 54, Plaintiffs mailed to EPA by
5 certified mail, return receipt requested, written notice of intent to sue regarding the violations
6 alleged in this Complaint.

7 10. On September 27, 2021, Plaintiffs sent the first notice letter to EPA via certified mail,
8 alerting the agency that it missed its deadlines, pursuant to 42 U.S.C. § 7410(k)(1)(B), to issue
9 findings of failure to submit for areas designated in “Serious” nonattainment for the 2008 ozone
10 NAAQS. EPA received the notice letter no later than October 4, 2021. The statutory 60-day
11 notice period expired no later than December 3, 2021. EPA has not remedied the violations
12 alleged in the notice letter.

13 11. On October 14, 2021, Plaintiffs sent a second notice letter, via certified mail, alerting
14 EPA that it missed its deadline, pursuant to 42 U.S.C. § 7410(k)(2), on certain SIP submittals for
15 the West Mojave Desert area. EPA received the notice letter no later than October 19, 2021. The
16 statutory 60-day notice period expired no later than December 18, 2021. EPA has not remedied
17 the violations alleged in the notice letter.

18 VENUE

19 12. Venue in this Court is proper under 28 U.S.C. § 1391(e)(1) for several reasons. First,
20 Plaintiff Center for Environmental Health resides in this district, with their headquarters at 2201
21 Broadway, Suite 508, Oakland, California. Second, Defendant EPA resides and performs its
22 official duties in this district, with a regional headquarters office at 75 Hawthorne St., San
23 Francisco, California. Third, two of the claims in this Complaint—concerning San Diego and the
24 West Mojave Desert—concern EPA’s failure to perform mandatory duties within EPA Region 9,
25 meaning a substantial part of the events or omissions giving rise to the claims in this case
26 occurred in the Northern District of California.

INTRADISTRICT ASSIGNMENT

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2 13. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or
3 Oakland Division of this Court because a substantial part of the events and omissions giving rise
4 to the claims in this case occurred in the County of San Francisco, where EPA Region 9 is
5 headquartered.

PARTIES

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7 14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
8 corporation. The Center for Biological Diversity has approximately 89,610 members throughout
9 the United States and the world. Approximately 14,000 of these members live in the areas at
10 issue here that are designated as in “Serious” nonattainment for the 2008 ozone NAAQS. The
11 Center for Biological Diversity’s mission is to ensure the preservation, protection, and
12 restoration of biodiversity, native species, ecosystems, public lands and waters, and public health
13 through science, policy, and environmental law.

14 15. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a 501(c)(3) nonprofit
15 corporation organized and existing under the laws of the State of California. Its headquarters is
16 located in Oakland. The Center for Environmental Health protects the public from toxic
17 chemicals by working with communities, consumers, workers, government, and the private
18 sector to demand and support business practices that are safe for public health and the
19 environment. The Center for Environmental Health works in pursuit of a world in which all
20 people live, work, learn, and play in healthy environments.

21 16. Plaintiffs are “persons” as defined by the Act, 42 U.S.C. § 7602(e).

22 17. As a result of EPA’s failures of its mandatory duties to (1) hold the states in Table 1,
23 *infra*, accountable for missing their deadlines to submit SIP elements; and (2) take final action on
24 complete SIP submittals in Table 2, *infra*, for the West Mojave Desert area, Plaintiffs have
25 suffered and will continue to suffer harm from ozone pollution.

26 18. At least 14,000 of Plaintiffs’ members live, work, recreate, travel, and engage in other
27 activities throughout the areas at issue in this complaint and will continue to do so on a regular
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1 basis. Pollution in the affected areas threatens and damages, and will continue to threaten and
2 damage, the health and welfare of Plaintiffs' members, as well as their ability to engage in and
3 enjoy activities, particularly outdoor activities such as walking, biking, hiking, and playing with
4 their children.

5 19. EPA's failures alleged herein also harm Plaintiffs' members' welfare interest in using and
6 enjoying the natural environment. Elevated levels of ground-level ozone damage plant life and
7 natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic interests in the
8 nonattainment areas at issue in this complaint.

9 20. In addition, EPA's failure to timely perform its mandatory duties described herein
10 adversely impacts Plaintiffs' members by depriving them of procedural protection and
11 opportunities, as well as information they are entitled to under the Act. For example, the
12 Emissions Inventory SIP element that many areas listed in Table 1, *infra*, have not provided
13 information—such as the pollution discharged into the atmosphere broken down by specified
14 source categories—that the Act explicitly says the public is entitled to. Plaintiffs may use the
15 information provided in the Emissions Inventory to identify priorities for advocacy, or to better
16 understand the health impacts of particular sources in the nonattainment areas. For Plaintiffs to
17 try and create an Emissions Inventory-type document on their own would require large amounts
18 of organizational resources and expenses, meaning that this information provided as part of SIP
19 submittal saves Plaintiffs time and money.

20 21. The above injuries will continue until the Court grants the relief requested herein. A court
21 order requiring EPA to undertake its mandatory duties would redress Plaintiffs' and Plaintiffs'
22 members' injuries.

23 22. Defendant MICHAEL S. REGAN is the Administrator of the EPA. Administrator Regan
24 is charged with the duty to uphold the Clean Air Act and to take required regulatory actions
25 according to the schedules established by the Act, including the mandatory duties at issue in this
26 case. Administrator Regan is sued in his official capacity.

STATUTORY AND REGULATORY BACKGROUND

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2 23. The Clean Air Act seeks “to protect and enhance the quality of the Nation’s air resources
3 so as to promote the public health and welfare and the productive capacity of its population.” 42
4 U.S.C. § 7401(b)(1).

5 24. Central to the Act is the requirement that EPA establish NAAQS for certain widespread
6 air pollutants that endanger public health and welfare, referred to as “criteria pollutants.” 42
7 U.S.C. §§ 7408–7409. One criteria pollutant is ozone. *See* 40 C.F.R. §§ 50.9, 50.10, 50.15, 50.19.

8 25. The NAAQS establish allowable concentrations of criteria pollutants in ambient air.
9 Primary standards must be stringent enough to protect public health. 42 U.S.C. § 7409(b)(1).
10 Secondary standards must be stringent enough to protect public welfare, including, but not
11 limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze),
12 climate, damage to property, economic impacts, and effects on personal comfort and well-being.
13 *Id.* §§ 7409(b)(2), 7602(h).

14 26. After EPA sets or revises a NAAQS, the Act requires EPA to take steps to ensure that the
15 standard is met. One of the first steps EPA must take is to identify, or “designate,” areas of the
16 country that either meet or do not meet the standard. 42 U.S.C. § 7407(d)(1)(A)–(B). Areas that
17 meet the standard are in “attainment,” whereas those that do not meet the standard are designated
18 as in “nonattainment.” *Id.* § 7407(d)(1)(A). Areas designated as in nonattainment are also
19 classified according to the severity; classification categories for ozone nonattainment areas are
20 Marginal, Moderate, Serious, Severe, and Extreme. *Id.* § 7511. Nonattainment areas are then
21 subject to specific mandatory measures depending on their level of classification. *Id.* § 7511a.
22 These plans, which must be submitted to EPA, are called a state implementation plan (SIP). *Id.* §
23 7410(a)(2)(I).

24 27. EPA is required to determine whether a SIP submittal is administratively complete. 42
25 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has not complied by
26 providing the required documentation, there is no submittal that can be deemed administratively
27 complete, and EPA has a non-discretionary duty to make a determination stating that the state
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1 failed to submit the required SIP. *Id.* This determination is commonly referred to as a “finding of
2 failure to submit.”

3 28. A finding of failure to submit is critical because it triggers a two-year clock for EPA to
4 step into the void left by the state’s failure to submit a SIP by promulgating a federal
5 implementation plan (FIP) to reduce a criteria pollutant’s levels to below the NAAQS. 42 U.S.C.
6 § 7410(c).

7 29. Under the Act, EPA also has a nondiscretionary duty to take final action to approve,
8 disapprove, or conditionally approve a SIP submittal within twelve months of the submittal
9 either being deemed, or found, administratively complete. 42 U.S.C. § 7410(k)(2)–(4).

10 **FACTUAL BACKGROUND**

11 30. Ground-level ozone forms when other pollutants, known as ozone precursors, react in the
12 presence of sunlight. *See* EPA, *Ozone and Ozone Standards: The Basics*,
13 <https://www.epa.gov/sites/default/files/2016-04/documents/20151001basicsfs.pdf> (last visited
14 Dec. 28, 2021). Ozone is found both in the Earth’s stratosphere and at ground level, though the
15 impacts of ozone in each region are distinct. Stratospheric ozone protects the Earth from harmful
16 radiation from the sun’s rays, whereas ground-level ozone—a key component of smog—is
17 harmful to human health and the environment. *Id.*

18 31. Serious negative health effects occur in individuals exposed to ozone pollution. These
19 health impacts include throat irritation, lung tissue damage, and exacerbation of asthma,
20 bronchitis, heart disease, and emphysema. National Ambient Air Quality Standards for Ozone,
21 80 Fed. Reg. 65,292, 65,302–11 (Oct. 26, 2015) (to be codified at 40 C.F.R. pts. 50–53, 58).
22 Exposure to elevated levels of ground-level ozone is also linked increased emergency department
23 visits, hospitalizations, and even death. *Id.* at 65,302; *see also* Ana M. Vicedo-Cabrera, et al.,
24 *Short term association between ozone and mortality: global two stage time series study in 406*
25 *locations in 20 countries*, *BMJ* 368 (2020), <https://www.bmj.com/content/368/bmj.m108>.
26 Certain populations are especially susceptible to harm from ozone pollution, such as children, the
27 elderly, those with existing lung disease, and individuals who work primarily outside. 80 Fed.

1 Reg. at 65,310–11. People of color and those living below the federal poverty line are likely to
2 face greater risks of harms from ozone exposure. Review of the Ozone National Ambient Air
3 Quality Standards, 85 Fed. Reg. 49,830, 49,849–50 (Aug. 14, 2020) (to be codified at 40 C.F.R.
4 pt. 50).

5 32. Ozone pollution is also harmful to the environment. Ground-level ozone can be
6 especially harmful to sensitive vegetation—including trees such as the black cherry, quaking
7 aspen, white pine, and ponderosa pine. EPA, *Ecosystem Effects of Ozone Pollution*,
8 <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (last
9 visited Dec. 27, 2021). Ozone pollution harms soils, water, and wildlife, and their associated
10 ecosystems, leading to diminished clean air and water. 73 Fed. Reg. 16,436, 16,485–86. Excess
11 ground-level ozone also contributes to the climate crisis, as ozone pollution hinders plant growth,
12 thereby reducing the natural carbon sequestration potential of plants. *Id.* at 16,486; *see generally*
13 *Biological Carbon Sequestration*, Univ. of Cal. Davis,
14 <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/> (last visited Dec. 28,
15 2021).

16 33. On March 27, 2008, EPA published revised NAAQS for ozone. 73 Fed. Reg. 16,436.

17 34. On August 23, 2019, EPA classified the areas listed in Table 1, *infra*, as “Serious”
18 nonattainment for the 2008 ozone NAAQS. 84 Fed. Reg. 44,238. More than 42 million people
19 live in these areas. *See* EPA, *Nonattainment and Maintenance Area Population Tool: 2008*
20 *Ozone*,
21 [https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b](https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b9455e)
22 [9455e](https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b9455e) (last visited Dec. 28, 2021).

23 35. The “Serious” nonattainment designation triggered a duty for the state air agencies to
24 submit SIP revisions and implement controls to satisfy the Act’s statutory and regulatory
25 requirements according to deadlines EPA set forth in the 2019 final rule. EPA gave the “Serious”
26 nonattainment states until August 3, 2020 to submit their required SIP elements, with the
27 exception for the element addressing Reasonably Available Control Technology (RACT)
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1 measures not tied to attainment, which was 18 months after the effective date of the final rule
 2 redesignating these areas to the serious classification, that is March 23, 2021. 84 Fed. Reg. at
 3 44,245, 44,246.

4 36. The states did not submit all of their required SIP elements by these deadlines.

5 37. EPA had a statutory duty to, six months after the states' deadlines—or here, February 3,
 6 2021 and September 23, 2021 based on the SIP element—to issue findings that the states missed
 7 their deadlines. 42 U.S.C. § 7410(k)(1)(B). EPA has not yet issued these findings for the
 8 elements and states listed in Table 1. EPA is therefore in violation of its mandatory duty to issue
 9 findings of failure to submit for the areas and elements listed in Table 1.

10 **TABLE 1**

Area	Overdue Elements	EPA Deadline to Make a Finding of Failure to Submit
Chicago-Naperville (IL portion)	<ul style="list-style-type: none"> • Enhanced Monitoring • Attainment Demonstration- Serious • Clean-Fuel Vehicle Programs • Contingency Measures for Attainment • Contingency Measures for Reasonable Further Progress (“RFP”) Milestones • Emissions Inventory • Inspection and Maintenance (“I/M”) Enhanced • Non-attainment New Source Review (“NSR”) for Serious • RFP Serious • RACT Measures Tied to Attainment 	Feb. 3, 2021
	<ul style="list-style-type: none"> • RACT Measures Not Tied to Attainment 	Sept. 23, 2021
Dallas-Fort Worth, TX	<ul style="list-style-type: none"> • Clean-Fuel Vehicle Programs • Contingency Measures for Attainment • Contingency Provisions for RFP Milestones • Emissions Inventory 	Feb. 3, 2021
Greater Connecticut, CT	<ul style="list-style-type: none"> • Enhanced Monitoring • Emissions Inventory 	Feb. 3, 2021
	<ul style="list-style-type: none"> • RACT Measures Not Tied to Attainment 	Sept. 23, 2021

Area	Overdue Elements	EPA Deadline to Make a Finding of Failure to Submit
New York-North New Jersey-Long Island, New York-New Jersey-Connecticut (CT portion)	<ul style="list-style-type: none"> • Enhanced Monitoring • Attainment Demonstration- Serious • Clean-Fuel Vehicle Programs • Contingency Measures for Attainment • Contingency Measures for RFP Milestones • Emissions Inventory • I/M Enhanced • Non-attainment NSR for Serious • RACT Measures Tied to Attainment • RFP Serious 	Feb. 3, 2021
	<ul style="list-style-type: none"> • RACT Measures Not Tied to Attainment 	Sept. 23, 2021
New York-North New Jersey-Long Island, New York-New Jersey-Connecticut (NJ portion)	<ul style="list-style-type: none"> • Enhanced Monitoring • Clean-Fuel Vehicle Programs • Contingency Measures for Attainment • Contingency Measures for RFP Milestones • I/M Enhanced • RFP Serious 	Feb. 3, 2021
New York-North New Jersey-Long Island, New York-New Jersey-Connecticut (NY portion)	<ul style="list-style-type: none"> • Non-attainment NSR for Serious • RFP Serious 	Feb. 3, 2021
San Diego County, CA	<ul style="list-style-type: none"> • Enhanced Monitoring • Attainment Demonstration- Serious • Clean-Fuel Vehicle Programs • Contingency Measures for Attainment • Contingency Measures for RFP Milestones • I/M Enhanced • RFP Serious • RACT Measures Tied to Attainment 	Feb. 3, 2021
	<ul style="list-style-type: none"> • RACT Measures Not Tied to Attainment 	Sept. 23, 2021

38. Under the Act, EPA also has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within twelve months of the submittal either being deemed, or found, administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

39. On May 21, 2012, EPA classified the West Mojave Desert area, covering parts of Los Angeles and San Bernardino Counties in California, as “Severe-15” nonattainment for the 2008 ozone NAAQS. 77 Fed. Reg. 30,088. More than 926,000 people live in this area. *See* EPA, *Nonattainment and Maintenance Area Population Tool: 2008 Ozone*, <https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b9455e> (last visited Dec. 28, 2021).

40. EPA indicates that certain SIP elements for the West Mojave Desert area—the Reasonable Further Progress (RFP) contingency and attainment contingency measures—were administratively complete by no later than June 11, 2019. *See* EPA, *Required State Implementation Plan Elements Dashboard*, https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html (search for “West Mojave Desert” and “2008 ozone standard”, and entry for “Contingency Provisions for RFP Milestones 182(c)(9)”) (last visited Jan. 3, 2022); *see also* Clean Air Plans, 2008 8-Hour Ozone Nonattainment Area Requirements, West Mojave Desert, California, 86 Fed. Reg. 24,809, 24,811 (May 10, 2021) (to be codified at 40 C.F.R. pt. 52).

41. EPA’s mandatory twelve-month deadline for the West Mojave Desert contingency measures SIP elements passed on June 11, 2020. EPA has not taken final action on this submittal in violation of the Clean Air Act. 42 U.S.C. § 7410(k)(2)–(4).

TABLE 2

Area	Elements	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
West Mojave Desert, CA	<ul style="list-style-type: none"> • Contingency Measures VOC and NO_x for attainment • Contingency Provisions for RFP Milestones 	June 11, 2019	June 11, 2020

1 **CLAIM ONE**

2 **Failure to Perform a Nondiscretionary Duty Pursuant to 42 U.S.C. § 7410(k)(1)(B)**

3 42. Plaintiffs incorporate by reference all paragraphs listed above.

4 43. EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to, after six months
5 following SIP submittal deadlines, issue findings of failure to submit to states that do not timely
6 submit SIP elements.

7 44. It has been more than six months since the states listed in Table 1, *supra*, were required
8 to submit the nonattainment SIP elements listed in that table.

9 45. The states listed in Table 1 have not submitted the nonattainment SIP elements listed in
10 that table.

11 46. EPA has not issued findings of failure to submit for the nonattainment SIP elements in
12 the nonattainment areas listed in Table 1.

13 47. EPA is therefore in violation of its mandatory duty under the Act to issue findings of
14 failure to submit within six months after the due date of SIP elements, pursuant to 42 U.S.C. §
15 7410(k)(1)(B).

16 **CLAIM TWO**

17 **Failure to Perform a Nondiscretionary Duty Pursuant to 42 U.S.C. § 7410(k)(2)–(4)**

18 48. Plaintiffs incorporate by reference all paragraphs listed above.

19 49. EPA has a mandatory duty under 42 U.S.C. § 7410(k)(2)–(4) to, within twelve months of
20 a SIP submittal being deemed or found to be administratively complete, take final action
21 approving, disapproving, or conditionally approving the complete SIP submittal.

22 50. It has been more than twelve months since the state listed in Table 2, *supra*, submitted
23 SIP elements that EPA determined to be complete.

24 51. EPA has not taken final action to approve, disapprove, or conditionally approve the SIP
25 submittals listed in Table 2 by the deadlines listed in that table.

26 52. EPA is therefore in violation of its mandatory duty to take final action on complete SIP
27 submittals within twelve months, pursuant to 42 U.S.C. § 7410(k)(2)–(4).

RELIEF REQUESTED

Plaintiffs respectfully request that the Court:

- (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform each of the mandatory duties listed above;
- (B) Issue an injunction requiring the Administrator to perform his mandatory duties by certain dates;
- (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court’s order;
- (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys’ and expert fees; and
- (E) Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

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