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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, CENTER FOR ENVIRONMENTAL HEALTH, and CLEAN AIR COUNCIL, Plaintiffs, v. GINA McCARTHY, in her official capacity as Administrator of the United States Environmental Protection Agency, Defendant.	Case No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

I. INTRODUCTION

1. Plaintiffs the Center for Biological Diversity, the Center for Environmental Health, and the Clean Air Council bring this Clean Air Act citizen suit to compel the United States Environmental Protection Agency to undertake overdue mandatory duties. Specifically,

Defendant, Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), has failed to make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B), and publish notice of those findings in the Federal Register, for nonattainment state implementation plans ("SIPs") for the 2008 ozone National Ambient Air Quality Standards for the following areas and elements listed in Table 1:

TABLE 1

AREA & ELEMENT(S)	**SUBMITTAL DEADLINE (No later than)**
Los Angeles-South Coast Air Basin, CA: Clean Fuels for Boilers, Contingency measures for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx), Contingency Provisions for Reasonable Further Progress (RFP) Milestones 182(c)(9), Enhanced Monitoring Photochemical Assessment Monitoring Stations (PAMS), Extreme Nonattainment New Source Review (NNSR), Vehicle Miles Traveled-Transportation Control Measures (VMT-TCMs) to Offset Growth	7/20/2015
San Joaquin Valley, CA: Clean Fuels for Boilers, Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Extreme NNSR, NOx Reasonably Available Control Technology (RACT) for Major Sources, VMT-TCMs to Offset Growth	7/20/2015
Los Angeles-San Bernardino Counties (Antelope Valley), CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to Offset Growth	7/20/2015
Los Angeles-San Bernardino Counties (Mojave Desert), CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to	7/20/2015

Offset Growth	
Riverside County (Coachella Valley), CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to Offset Growth	7/20/2015
Sacramento Metro, CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), VMT-TCMs to Offset Growth, Enhanced Monitoring (PAMS), Severe 15 NNSR for Yolo-Solano, Non-Control Techniques Guidelines VOC RACT for Major Sources for El Dorado, Sacramento, and Yolo-Solano, NOx RACT for Major Sources for El Dorado, Sacramento, and Yolo-Solano, Auto and Light-Duty Truck Assembly Coatings CTG RACT for El Dorado and Yolo-Solano, Fiberglass Boat Manufacturing Materials CTG RACT for El Dorado and Yolo-Solano, 2006 Flat Wood Paneling Coatings CTG RACT for El Dorado and Yolo-Solano, Flexible Packaging Printing Material CTG RACT for El Dorado and Yolo-Solano, Industrial Cleaning Solvents (2006) CTG RACT for El Dorado and Yolo-Solano, Large Appliance Coatings (2007) CTG RACT for El Dorado and Yolo-Solano, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT for El Dorado and Yolo-Solano, Metal Furniture Coatings (2007) CTG RACT for El Dorado and Yolo-Solano, Miscellaneous Industrial Adhesives (2006) CTG RACT for El Dorado, Sacramento and Yolo-Solano, Miscellaneous Metal Products Coatings (2008) CTG RACT for El Dorado and Yolo-Solano, Paper, Film, and Foil Coatings (2007) CTG RACT for El Dorado and Yolo-Solano, Plastic Parts Coatings (2008) CTG RACT for El Dorado, Placer and Yolo-Solano	7/20/2015
Ventura County, CA: Contingency measures for VOC and NOx, Serious NNSR	7/20/2015
Baltimore, MD: Inspection and Maintenance (I/M) Basic	7/20/2015
Connecticut: Ozone Transport Region (OTR)	7/20/2015

New Source Review (NSR)	
Delaware: OTR NSR,	7/20/2015
District of Columbia: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT	7/20/2015
Maine: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Industrial Cleaning Solvents (2006) CTG RACT	7/20/2015
Maryland: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Fiberglass Boat Manufacturing Materials CTG RACT	7/20/2015
Massachusetts: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, Flexible Packaging Printing Material CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Large Appliance Coatings (2007) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	7/20/2015
New Hampshire: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources	7/20/2015
New Jersey: Fiberglass Boat Manufacturing Materials CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	7/20/2015
Pennsylvania: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Industrial	7/20/2015

Cleaning Solvents (2006) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	
Rhode Island: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Large Appliance Coatings (2007) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	7/20/2015
Vermont: I/M Enhanced, OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	7/20/2015
Virginia: OTR NSR, Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Large Appliance Coatings (2007) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Metal	7/20/2015

Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	
Calaveras County, CA: Marginal NNSR	7/20/2015
Kern County (Eastern Kern), CA: Marginal NNSR	7/20/2015
Mariposa County, CA: Marginal NNSR	7/20/2015
Nevada County (Western part), CA: Marginal NNSR	7/20/2015
Washington, VA: Marginal NNSR	7/20/2015
Chicago-Naperville, IL, : Marginal NNSR	7/20/2015
Cincinnati, IN: Marginal NNSR	7/20/2015
Cincinnati, KY: Marginal NNSR	7/20/2015
Washington, MD: Marginal NNSR	7/20/2015

Furthermore, EPA has failed to take final action, pursuant to 42 U.S.C. § 7410(k)(2) – (4), to approve or disapprove, in whole or part, the 2009 ozone National Ambient Air Quality Standards ("NAAQS") nonattainment SIP submissions listed in Table 2 below:

TABLE 2[1]

AREA & STATE	ELEMENT(S)	COMPLETION DATE	FINAL ACTION DUE DATE
Philadelphia, Wilmington, Atlantic City, DE	Marginal NNSR	4/17/2014	4/17/2015
Seaford, DE	Marginal NNSR	4/17/2014	4/17/2015
Los Angeles-South Coast Air Basin, CA	Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings Control Technique Guidelines (CTG) Reasonably Available Control Technology, Equipment leaks from Natural	1/18/2015	1/18/2016

[1] Note: Submittals prior to May 21, 2012 must have been submitted for purposes of compliance with the 1997 ozone NAAQS.

	Gas/Gasoline Processing Plants CTG RACT, Factory Surface Coating of Flat Wood Paneling CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Large Appliance Coatings (2007) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT,		
Sacramento Metro [Placer County], CA	Non-CTG VOC RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline Plants CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, Flexible Packaging Printing Material CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Appliance Coatings (2007) CTG RACT,	10/30/2014	10/30/2015

	Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes CTG RACT, SOCMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT,		

	Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
San Joaquin Valley, CA	Non-CTG VOC RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT,	1/18/2015	1/18/2016
Connecticut	Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT,	1/18/2015	1/18/2016
Sacramento-Yolo-Solano, CA	Aerospace CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Factory Surface Coating of Flat Wood Paneling CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from	7/31/2007	7/31/2008

	Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, SOCMI Air Oxidation Processes CTG RACT, SOCMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading		

	Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
Pennsylvania	Aerospace CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, SOCMI Air Oxidation Processes CTG RACT, SOCMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation	3/28/2007	3/28/2008

	of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
Sacramento, CA	Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, SOCMI Air Oxidation Processes CTG RACT, SOCMI Distillation and Reactor Processes CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface	1/11/2008	1/11/2009

	Coating of Coils CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT,		
Sacramento, CA	Factory Surface Coating of Flat Wood Paneling CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Appliance Coatings (2007) CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, Shipbuilding/repair CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT,	7/21/2009	7/21/2010
E. and W. Massachusetts	2006 Flat Wood Paneling Coatings CTG RACT	7/31/2008	7/31/2009
Los Angeles and San Bernardino Counties (Western Mojave Desert) [Antelope Valley], CA	Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Solvent Metal Cleaning CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface	7/31/2007	7/31/2008

	Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Use of Cutback Asphalt CTG RACT,		
Los Angeles and San Bernardino Counties (Western Mojave Desert) [Mojave Desert], CA	Graphic Arts – Rotogravure and Flexography CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,	1/11/2008	1/11/2009
New York	Industrial Cleaning Solvents (2006) CTG RACT,	8/21/2013	8/21/2014

Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY, THE CENTER FOR ENVIRONMENTAL HEALTH, and THE CLEAN AIR COUNCIL bring this action against

Defendant GINA McCARTHY, in her official capacity as EPA Administrator, to compel her to perform these mandatory duties.

II. JURISDICTION

2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

3. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

III. NOTICE

4. On May 12, 2016, Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. EPA received this notice of intent to sue letter no later than May 16, 2016. More than sixty days have passed since EPA received this "notice of intent to sue" letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

IV. VENUE

5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over California, is headquartered in San Francisco. This civil action is brought against an officer of the United States acting in her official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

V. INTRADISTRICT ASSIGNMENT

6. A substantial part of the events and omissions giving rise to the claims in this case occurred in the County of San Francisco. EPA Region 9, which has authority over California, is headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

VI. PARTIES

7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has approximately 50,000 members throughout the United States and the world. The Center for Biological Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

8. The Center for Biological Diversity and its members include individuals with varying interests in wildlife species and their habitat ranging from scientific, professional, and educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational, conservation, recreational, and aesthetic values of the regions inhabited by these species, including the regions at issue in this action. The Center for Biological Diversity's members observe and study native species and their habitat, and derive professional, scientific, educational, recreational, aesthetic, inspirational, and other benefits from these activities and

have an interest in preserving the possibility of such activities in the future. The Center for Biological Diversity and its members have participated in efforts to protect and preserve natural areas, including the habitat essential to the continued survival of native species, and to address threats to the continued existence of these species, including the threats posed by air pollution and other contaminants.

9. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California based nonprofit organization that helps protect the public from toxic chemicals and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn, and play in healthy environments.

10. Plaintiff CLEAN AIR COUNCIL ("Council") is a Philadelphia based nonprofit organization. It is a member-supported environmental organization serving the Mid-Atlantic Region. The Council is dedicated to protecting and defending everyone's right to breathe clean air. The Council works through a broad array of related sustainability and public health initiatives, using public education, community action, government oversight, and enforcement of environmental laws.

11. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other activities. Pollution diminishes Plaintiff's members' ability to enjoy the aesthetic qualities and recreational opportunities of the affected area.

12. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection and opportunities, as well as information that they are entitled to under the Clean Air Act. The failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.

13. The above injuries will continue until the Court grants the relief requested herein.

14. Defendant GINA McCARTHY is the Administrator of the EPA. In that role Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case. Administrator McCarthy is also charged with overseeing all EPA regional offices including EPA Region 9, which has authority over California and is headquartered in San Francisco.

VII. LEGAL BACKGROUND

15. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants. 42 U.S.C. § 7409(a). National Ambient Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

16. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act requires that EPA designate each area of the country as either a clean air area for that standard, which is known as "attainment" in Clean Air Act jargon, or a dirty air area, which is known as "nonattainment" in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d).

17. Under the Clean Air Act, each state is required to submit state implementation plans to ensure that each National Ambient Air Quality Standard will be achieved, maintained, and enforced. Without such plans, the public is not afforded full protection against the harmful impacts of air pollution.

18. For dirty air areas which EPA has designated as "nonattainment," states must submit nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7513 – 7513b.

19. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this determination by "no later than 6 months after the date, if any, by which a State is required to submit the plan or revision." *Id.*

20. If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete, and EPA must make a determination, and publish notice of that determination in the Federal Register, stating that the state failed to submit an administratively complete state implementation plan submittal within six months of when the submittal was due. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a "finding of failure to submit."

21. Once a state does submit a state implementation plan submittal, EPA has a mandatory duty to take final action on any administratively complete state implementation plan submission by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2) - (4).

VIII. FACTS

22. This case involves EPA's failure to timely implement the National Ambient Air Quality Standards for ozone. While ozone is critical for the protection of the Earth when it is in the stratosphere, at ground level, ozone, the chief component of smog, is a dangerous air pollutant which causes a variety of adverse impacts.

23. According to EPA, based on exhaustive scientific review, ozone pollution causes decreased lung function, increased respiratory symptoms, emergency department visits, hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008).

24. Those most at risk from ozone pollution are children; active people, *e.g.*, runners and people who do manual labor outside; people with pre-existing lung and heart diseases such as asthma; and older people. *Id.* at 16,440. Ozone also damages vegetation, both native and commercial crops. *Id.* at 16,485-16,486. Damage to native vegetation results in ecosystem damage, including diminished ecosystem services, that is, the life sustaining services that ecosystems provide to people for free, such as clean air, clean water and carbon sequestration. *Id.*

25. In 2008, EPA strengthened the primary and secondary ozone NAAQS from 0.08 to 0.075 parts per million (ppm). 73 Fed.Reg. 16,436 (Mar. 27, 2008).

26. EPA made attainment and nonattainment designations for the 2008 ozone NAAQS effective July 20, 2012. *See* 77 Fed. Reg. 30,088 (May 21, 2012), 77 Fed. Reg. 34,221 (June 11, 2012).

27. EPA designated all of the areas listed in Tables 1 and 2 nonattainment or as part of the ozone transport region (OTR) for the 2008 ozone NAAQS. *Id.*

28. All elements of the nonattainment SIPs for the 2008 ozone NAAQS listed in Table 1 were due by no later than July 20, 2015. *See* 80 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

29. Thus, EPA has a mandatory duty to make a completeness finding under 42 U.S.C. § 7410(k)(1)(B) for the SIP elements listed in Table 1 by no later than January 20, 2016.

IX. CLAIM FOR RELIEF

CLAIM ONE

(Failure to Make Findings of Failure to Submit.)

30. Plaintiffs incorporate by reference paragraphs 1 through 29.

31. The deadline for the 2008 ozone National Ambient Air Quality Standard nonattainment state implementation plan submissions listed in Table 1 is no later than July 20, 2015. *See* 80 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

32. More than six months have passed since July 20, 2015.

33. For each of the areas and nonattainment SIP elements listed in Table 1 of paragraph 1 above, the relevant state has failed to submit the listed nonattainment SIP element.

34. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of failure to submit by no later than January 20, 2016 for each area's nonattainment SIP elements listed in Table 1 of paragraph 1 above.

35. EPA has failed to make such findings.

CLAIM TWO

(Failure to Take Final Action on State Implementation Plan Submissions.)

36. Plaintiffs incorporate by reference paragraphs 1 through 35.

37. The Clean Air Act requires EPA to determine whether any state implementation plan submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).

38. If, six months after a state submits a state implementation plan, EPA has not made the completeness finding and has not found the submission to be incomplete, the submission is deemed administratively complete by operation of law. *Id*.

39. EPA must take final action on an administratively complete submission by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) - (4).

40. Each area's nonattainment SIP elements listed in Table 2 of paragraph 1 above was deemed administratively complete, either by EPA or by operation of law, by the date listed in Table 2 of paragraph 1.

41. EPA has a mandatory duty to take final action, and publish notice of that action in the Federal Register, by approving in full, disapproving in full, or approving in part and disapproving in part each area's nonattainment SIP elements listed in Table 2 of paragraph 1 above by no later than one year after the nonattainment SIP element was deemed administratively complete. 42 U.S.C. § 7410(k)(2) and (4).

42. However, EPA has failed to approve in full, disapprove in full, or approve in part and disapprove in part each area's nonattainment SIP elements listed in Table 2 of paragraph 1 above by no later than one year after the nonattainment SIP element was deemed administratively complete.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform the mandatory duties listed above;

B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties listed above by certain dates;

C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;

D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees; and;

E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

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