

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

Plaintiffs,

v.

SCOTT PRUITT, in his official capacity as
the Administrator of the United States
Environmental Protection Agency,

Defendant.

Case No. [16-cv-05492-JSW](#)

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 33, 36

Now before the Court for consideration are the motion for summary judgment filed by Plaintiffs, Center for Biological Diversity and Center for Environmental Health (“Plaintiffs”), and the cross-motion for partial summary judgment filed by Defendant, Scott Pruitt, in his official capacity as the Administrator of the United States Environmental Protection Agency (“EPA”) (“Defendant”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it finds the motions suitable for disposition without oral argument. The Court VACATES the hearing scheduled for October 13, 2017, and it GRANTS, IN PART, Plaintiffs’ motion and GRANTS, IN PART, Defendant’s motion.

On September 27, 2016, Plaintiffs filed the original complaint in this action, and on January 3, 2017, they filed their First Amended Complaint (“FAC”). Plaintiffs’ claims arise under the Clean Air Act (“CAA”), 42 U.S.C. sections 7401, *et seq.* Plaintiffs seek declaratory and injunctive relief to compel Defendant to perform certain mandatory duties that arise under the CAA as a result of the promulgation of National Ambient Air Quality Standards for particulate matter less than 2.5 microns in diameter (“PM2.5 NAAQS”). (*See* FAC ¶¶ 1-3.) The facts are not disputed and are clearly set forth in the Complaint and in the parties’ briefs, as are the relevant

1 statutory provisions. Accordingly, the Court shall not repeat them in detail here.

2 The parties agree that Claims One, Four and Five and the portions of Claim Two that are
3 not discussed below, are moot. Accordingly, the Court dismisses Claims One, Four, and Five, and
4 the portions of Claim Two not addressed in this Order.

5 In Claim Two, Plaintiffs allege, and Defendant does not dispute, that Defendant has a
6 mandatory duty to make a finding of failure to submit for 2012 PM2.5 NAAQS Infrastructure
7 state implementation plan (“SIP”) Good Neighbor provisions, *see* 42 U.S.C. §
8 7410(a)(2)(D)(i)(Prongs 1-4), by no later than six months after the deadline for state SIP
9 submittals, which was June 14, 2016. Defendant concedes that it failed to make findings of failure
10 to submit for Illinois (prongs 1-4), Massachusetts (prongs 1-4), Pennsylvania (prongs 1-2), Rhode
11 Island (prongs 1-4), and Washington (prongs 1-2). (FAC ¶ 31; Answer ¶ 31.)

12 Because Defendant does not contest liability on these portions of Claim Two, the
13 remaining issue is the appropriate remedy, *i.e.* how long Defendant should be permitted to
14 complete this mandatory duty. Plaintiffs originally asked the Court to require Defendant to
15 complete this duty within thirty days of the Order granting summary judgment. However, in
16 reply, they have revised their request to comport with Defendant’s request to have ninety days
17 from the date the Court grants summary judgment. In light of Plaintiffs’ revised request, the Court
18 will require the appropriate EPA official to act within ninety (90) days of the date this Order is
19 filed.

20 In Claim Three, Plaintiffs allege, and Defendant does not dispute, that Defendant has a
21 mandatory duty to take final action on an administratively complete SIP submittal within one year
22 of the SIP submittal being deemed complete. *See* 42 U.S.C. § 7410(k)(2)-(4). Plaintiffs allege
23 that New Jersey submitted its 2012 PM2.5 Infrastructure SIP Good Neighbor provision, prongs 1
24 – 2 by no later than October 17, 2014. Defendant deemed this submittal administratively complete
25 no later than October 28, 2014. Defendant had a mandatory duty to take final action on this
26 submittal by no later than October 28, 2015, and Defendant concedes it failed to do so. (FAC ¶¶
27 34-35; Answer ¶¶ 34-35.)

28 With regard to EPA’s mandatory duty to take final action pursuant to 42 U.S.C. section

1 7410(k)(2)–(4) on New Jersey’s 2012 PM2.5 Good Neighbor provision SIP submittal, the parties
2 agree that the appropriate EPA official should be required to take action within twelve (12)
3 months of the date this Order is filed. *See* 42 U.S.C. § 7410(k)(2). Accordingly, the Court shall
4 require the appropriate EPA official to take action within twelve (12) months from the date this
5 Order is filed.

6 Accordingly, it is HEREBY ORDERED that:

7 1. Within ninety (90) days of the date this Order is filed, the appropriate EPA official
8 shall sign a notice finding that:

9 a. Pennsylvania and Washington have failed to submit a SIP addressing the
10 requirements of section 110(a)(2)(D)(i)(I) of the CAA, 42 U.S.C. section
11 7410(a)(2)(D)(i)(I) (prongs 1-2) for the 2012 PM2.5 NAAQS;

12 b. Illinois, Massachusetts, and Rhode Island have failed to submit a SIP
13 addressing the requirements of CAA section 110(a)(2)(D)(i), 42 U.S.C. section
14 7410(a)(2)(D)(i) (prongs 1-4), for the 2012 PM2.5 NAAQS.

15 If any of the above States make a complete SIP submission addressing these requirements,
16 then EPA’s obligation to take the action required by this Order, as set forth above as to that State,
17 is automatically terminated.

18 2. Within twelve (12) months from the date this Order is filed, the appropriate EPA
19 official shall sign a notice of final rulemaking to approve, disapprove, or conditionally approve, in
20 whole or in part, New Jersey’s SIP submission addressing the requirements of Clean Air Act
21 section 110(a)(2)(D)(i)(I), 42 U.S.C. section 7410(a)(2)(D)(i)(I) (prongs 1-2), for the 2012 PM2.5
22 NAAQS.

23 3. Defendant shall expeditiously, but in no event longer than within 15 working days
24 of signature, deliver notices of the final rulemaking described in Paragraphs 1 and 2 to the Office
25 of the Federal Register for publication after signature of such notices.

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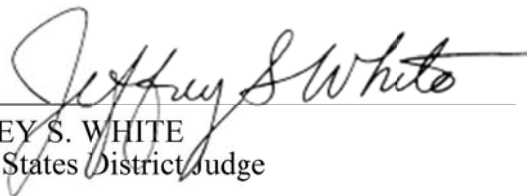
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The Court shall enter a separate judgment, and the Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 18, 2017



JEFFREY S. WHITE
United States District Judge