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and Center for Environmental Health

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

_____	)	
	)	
CENTER FOR BIOLOGICAL DIVERSITY, and	)	
CENTER FOR ENVIRONMENTAL HEALTH,	)	
	)	Case No.
	)	
	)	<b>COMPLAINT FOR DECLARATORY</b>
	)	<b>AND INJUNCTIVE RELIEF</b>
Plaintiffs,	)	
	)	(Clean Air Act, 42 U.S.C. §§ 7401 <i>et. seq.</i> )
v.	)	
	)	
SCOTT PRUITT,	)	
in his official capacity as Administrator of the	)	
United States Environmental Protection Agency,	)	
	)	
Defendant.	)	
_____	)	

**I. INTRODUCTION**

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

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

6  
 7 **TABLE 1<sup>1</sup>**

8 <b>AREA &amp; ELEMENT(S)</b>	8 <b>SUBMITTAL DEADLINE (No later than)</b>
9 Los Angeles-San Bernardino Counties (Mojave 10 Desert), CA: Contingency measures for Volatile 11 Organic Compounds (VOC) and Nitrogen 12 Oxides (NOx), Contingency Provisions for Reasonable Further Progress (RFP) Milestones Clean Air Act §182(c)(9), Attainment Demonstration, RFP VOC and NOx - Severe 15.	7/20/2016
13 Riverside County (Coachella Valley), CA: 14 Contingency measures for VOC and NOx, 15 Enhanced Monitoring (PAMS).	7/20/2016
16 Sacramento Metro, CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Attainment Demonstration, RFP VOC and NOX - Severe 15	7/20/2016

17  
 18 Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY and THE CENTER  
 19 FOR ENVIRONMENTAL HEALTH bring this action against Defendant SCOTT PRUITT, in  
 20 his official capacity as EPA Administrator, to compel him to perform these mandatory duties.  
 21  
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23 <sup>1</sup> See [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca\\_elembypoll.html#ozone-8hr\\_2008\\_1414](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elembypoll.html#ozone-8hr_2008_1414) last visited 6/5/17.

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**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 March 14, 2017 Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. 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 his 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. The Center for Environmental Health resides in the Northern District of California. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**V. INTRADISTRICT ASSIGNMENT**

1  
2 6. A substantial part of the events and omissions giving rise to the claims in this case  
3 occurred in the County of San Francisco. EPA Region 9, which has authority over California, is  
4 headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the  
5 Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

**VI. PARTIES**

6  
7 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
8 corporation incorporated in California. The Center for Biological Diversity has approximately  
9 58,000 members throughout the United States and the world. The Center for Biological  
10 Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity,  
11 native species, ecosystems, public lands and waters, and public health through science, policy,  
12 and environmental law. Based on the understanding that the health and vigor of human societies  
13 and the integrity and wildness of the natural environment are closely linked, the Center for  
14 Biological Diversity is working to secure a future for animals and plants hovering on the brink of  
15 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

16 8. The Center for Biological Diversity and its members include individuals with varying  
17 interests in wildlife species and their habitat ranging from scientific, professional, and  
18 educational to recreational, aesthetic, moral, and spiritual.

19 9. The Center for Biological Diversity's members enjoy, on an ongoing basis, the  
20 biological, scientific, research, educational, conservation, recreational, and aesthetic values of  
21 the regions inhabited by these species, including the regions at issue in this action. The Center  
22 for Biological Diversity's members observe and study native species and their habitat, and derive  
23 professional, scientific, educational, recreational, aesthetic, inspirational, and other benefits from

1 these activities and have an interest in preserving the possibility of such activities in the future.

2 The Center for Biological Diversity and its members have participated in efforts to protect and  
3 preserve natural areas, including the habitat essential to the continued survival of native species,  
4 and to address threats to the continued existence of these species, including the threats posed by  
5 air pollution and other contaminants.

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

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

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

22 13. The above injuries will continue until the Court grants the relief requested herein.  
23

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

## 6 VII. LEGAL BACKGROUND

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

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

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

21 18. For dirty air areas which EPA has designated as “nonattainment,” states must submit  
22 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,  
23 7513 – 7513b.

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

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

11 21. Once a state does submit a state implementation plan submittal, EPA has a mandatory  
12 duty to take final action on any administratively complete state implementation plan submission  
13 by approving in full, disapproving in full, or approving in part and disapproving in part within 12  
14 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2)  
15 - (4).

## 16 VIII. FACTS

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

21 23. According to EPA, based on exhaustive scientific review, ozone pollution causes  
22 decreased lung function, increased respiratory symptoms, emergency department visits,  
23

1 hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008).

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

8 *Id.*

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

11 26. EPA made attainment and nonattainment designations for the 2008 ozone NAAQS  
12 effective July 20, 2012. *See* 77 Fed. Reg. 30,088 (May 21, 2012), 77 Fed. Reg. 34,221 (June 11,  
13 2012).

14 27. EPA designated all of the areas listed in Tables 1 as nonattainment. *Id.*

15 28. All elements of the nonattainment SIPs for the 2008 ozone NAAQS listed in Table 1  
16 were due by no later than July 20, 2016. *See* 80 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

17 29. Thus, EPA has a mandatory duty to make a completeness finding under 42 U.S.C. §  
18 7410(k)(1)(B) for the SIP elements listed in Table 1 by no later than January 20, 2017.

19 **IX. CLAIM FOR RELIEF**

20 CLAIM ONE

21 (Failure to Make Findings of Failure to Submit.)

22 30. Plaintiffs incorporate by reference paragraphs 1 through 29.  
23



1 31. The deadline for the 2008 ozone National Ambient Air Quality Standard nonattainment  
2 state implementation plan submissions listed in Table 1 is no later than July 20, 2016. *See* 80  
3 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

4 32. More than six months have passed since July 20, 2016.

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

7 34. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of  
8 failure to submit by no later than January 20, 2017 for each area's nonattainment SIP elements  
9 listed in Table 1 of paragraph 1 above.

10 35. EPA has not made findings of failure to submit for each of the areas and nonattainment  
11 SIP elements listed in Table 1 of paragraph 1 above.

12  
13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that the Court:

- 15 A. Declare that the Administrator is in violation of the Clean Air Act with regard to his  
16 failure to perform the mandatory duties listed above;
- 17 B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties  
18 listed above by certain dates;
- 19 C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- 20 D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees;  
21 and;
- 22 E. Grant such further relief as the Court deems just and proper.
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Respectfully submitted,

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