

1 Wendy Park (Cal. Bar No. 237331)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1212 Broadway, Suite 800
4 Oakland, CA 94612
5 Phone: 510-844-7100 (Ext. 338)
6 Email: wpark@biologicaldiversity.org

7
8 *Counsel for Plaintiffs Center for Biological
9 Diversity and Center for Environmental Health*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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. §§ 7401 *et. seq.*)

1 **INTRODUCTION**

2 1. Fine particulate matter is a type of air pollutant consisting of solid and liquid particles
3 less than or equal to 2.5 micrometers in diameter that are suspended in air. Exposure to fine
4 particulate matter can cause cardiovascular problems, including heart attacks, congestive heart
5 failure, and stroke, and respiratory problems, like asthma development and respiratory infections,
6 which result in increased emergency department visits and hospital admissions. Fine particulate
7 matter pollution can also cause premature death, and may cause lung cancer. Those most at risk
8 from fine particulate matter pollution are children, older adults, individuals with pre-existing
9 heart and lung disease, and persons with lower socioeconomic status. There is emerging
10 evidence that people with diabetes, pregnant women, and developing fetuses also face higher risk
11 from this pollution.
12

13
14 2. Fine particulate matter is a leading cause of haze, which impairs visibility all over the
15 country, including in national parks and wilderness areas. This pollution harms vegetation,
16 including commercial crops, and impairs the ability of ecosystems to sequester carbon dioxide,
17 regulate flooding, and protect water quality. In addition, fine particulate matter soils and corrodes
18 historic monuments and buildings.
19

20 3. To better protect the public from the damage caused by fine particulate matter pollution,
21 which is also referred to as “PM_{2.5},” the Administrator of the United States Environmental
22 Protection Agency (EPA) finalized a revised PM_{2.5} National Ambient Air Quality Standard
23 (NAAQS) in 2012. Compliance with the 2012 PM_{2.5} NAAQS is assessed based on the annual
24 mean concentration of fine particulate matter, averaged over three consecutive years.
25

26 4. EPA then designated areas with ambient air monitors showing fine particulate matter
27 pollution above the NAAQS as “nonattainment” and assigned these nonattainment areas a date
28

1 by which the areas must attain the 2012 annual PM_{2.5} NAAQS.

2 5. The promulgation of the revised 2012 annual PM_{2.5} NAAQS and designation of
3 nonattainment areas created various mandatory duties that EPA and states must perform in order
4 to fully and effectively implement the 2012 annual PM_{2.5} NAAQS.
5

6 6. States with nonattainment areas for the 2012 annual PM_{2.5} NAAQS must create State
7 Implementation Plans (SIPs) containing several Clean Air Act-mandated elements that are meant
8 to bring the areas into attainment by their attainment date. States must submit these SIP elements
9 to EPA, and EPA must approve, disapprove, or partially approve or disapprove those SIP
10 elements within one year of the submission being deemed complete.
11

12 7. For nonattainment areas that fail to attain the 2012 annual PM_{2.5} NAAQS by their
13 attainment date, EPA has a mandatory duty to find that the areas failed to attain the 2012 annual
14 PM_{2.5} NAAQS by their attainment date, thus “bumping up” the nonattainment to the next level of
15 nonattainment.
16

17 8. EPA is in violation of its mandatory duty to take final action on the serious nonattainment
18 SIP elements submitted by the State of California for the Los Angeles-South Coast Air Basin,
19 California (“South Coast”) 2012 annual PM_{2.5} NAAQS serious nonattainment area within one
20 year of the SIP elements being deemed administratively complete.
21

22 9. EPA is also in violation of its mandatory duty to make a final determination as to whether
23 the Allegheny County, Pennsylvania moderate nonattainment area attained the 2012 annual
24 PM_{2.5} NAAQS by its attainment date of December 31, 2021, within six months of that attainment
25 date. Furthermore, EPA is in violation of its duty to publish notice of the final determination in
26 the Federal Register within six months of the attainment date.
27

28 10. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR

1 ENVIRONMENTAL HEALTH bring this action against Defendant MICHAEL S. REGAN, in
2 his official capacity as EPA Administrator, to compel him to perform his mandatory duties with
3 respect to the 2012 annual PM_{2.5} NAAQS.

4 **JURISDICTION**

5
6 11. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this
7 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)
8 (Clean Air Act citizen suits).

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

14 **NOTICE**

15 13. On July 12, 2022, Plaintiffs Center for Biological Diversity and Center for Environmental
16 Health mailed to EPA by certified mail, electronic return receipt requested, written notice of
17 intent to sue regarding the violations alleged herein. EPA received it no later than July 18, 2022.
18 More than 60 days have passed since Plaintiffs mailed this notice letter. EPA has not remedied
19 the violations alleged in this Complaint.
20

21 **VENUE**

22 14. Venue is proper in this Court under 28 U.S.C. § 1391(e) for multiple reasons. First,
23 Plaintiff Center for Environmental Health resides in the district with its headquarters in Oakland.
24 Second, Defendant EPA has an office and performs its official duties in this district. EPA's
25 Region 9 headquarters are located at 75 Hawthorne Street, San Francisco, California. A
26
27
28

1 substantial part of the events and omissions at issue in this action occurred at EPA's Region 9
2 headquarters.

3 **DIVISIONAL ASSIGNMENT**

4 15. Pursuant to Civil L.R. 3-2(c) and (d), this case is properly assigned to the San Francisco
5 or Oakland Division of this Court because a substantial part of the events and omissions giving
6 rise to the claims in this case occurred in the County of San Francisco, where EPA Region 9 is
7 headquartered.
8

9 **PARTIES**

10 16. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
11 corporation incorporated and existing under the laws of the State of California, with its main
12 California office in Oakland. The Center for Biological Diversity has over 89,000 members
13 throughout the United States and the world. The Center for Biological Diversity's mission is to
14 ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems,
15 public lands and waters, and public health through science, policy, and environmental law.
16 Based on the understanding that the health and vigor of human societies and the integrity and
17 wildness of the natural environment are closely linked, the Center for Biological Diversity is
18 working to secure a future for animals and plants hovering on the brink of extinction, for the
19 ecosystems they need to survive, and for a healthy, livable future for all of us.
20

21
22 17. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit corporation
23 organized and existing under the laws of the State of California, with its headquarters located in
24 Oakland. The Center for Environmental Health protects the public from toxic chemicals by
25 working with communities, consumers, workers, government, and the private sector to demand
26 and support business practices that are safe for public health and the environment. The Center
27
28

1 for Environmental Health works in pursuit of a world in which all people live, work, learn, and
2 play in healthy environments.

3 18. Plaintiffs' members live, work, recreate, travel, and engage in other activities throughout
4 the South Coast and Allegheny County nonattainment areas at issue in this Complaint, and will
5 continue to do so on a regular basis. Fine particulate matter pollution in the affected areas
6 threatens and damages, and will continue to threaten and damage, the health and welfare of
7 Plaintiffs' members, as well as their ability to engage in and enjoy the activities that are
8 important to them. This pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic
9 qualities and recreational opportunities of the affected areas.
10

11 19. Plaintiff Center for Biological Diversity has a member who lives in Los Angeles County,
12 California, within the South Coast nonattainment area. This member enjoys spending time
13 outdoors hiking, going for nature walks, botanizing, and birding. This member engages in these
14 activities near her home in Los Angeles County. She plans to continue to do so. This member is
15 concerned about her health and curtails her outdoor activities on bad air quality days.
16

17 20. Plaintiff Center for Biological Diversity has another member who resides in Los Angeles
18 and was born and raised in Los Angeles County. This member had asthma as a child and still
19 must be very careful in managing her exposure to air pollution, in part because she is now more
20 prone to pneumonia. She relies on biking as a primary means of transportation, and enjoys doing
21 so, but must use alternative means of transportation on days when air quality is poor. She also
22 frequently hikes in the nonattainment area, including in the Santa Monica Mountains National
23 Recreation Area, and intends to continue doing so. Fine particulate pollution impairs her health
24 and her recreational and aesthetic interests by preventing her from hiking on poor air quality
25 days and obscuring her views via haze when she does hike.
26
27
28

1 21. Another Center for Biological Diversity member lives in Pittsburgh in the Allegheny
2 County nonattainment area. This member regularly walks his dog, walks to work, and plays
3 soccer outdoors. He is concerned about the effect air pollution has on his health. He is also
4 concerned about fine particulate matter pollution because his wife has asthma that is aggravated
5 by air pollution. When air quality is poor, she is negatively affected if she spends time outdoors,
6 so on bad air quality days he takes on activities like walking the dog and running errands to
7 enable her to stay indoors. They must spend money on medication to manage her asthma and
8 purchased a heavy-duty air filter for this purpose.

10 22. The acts and omissions of EPA alleged herein harm Plaintiffs' members by prolonging
11 poor air quality conditions that adversely affect or threaten their health, and by nullifying or
12 delaying measures and procedures mandated by the Act to protect their health from fine
13 particulate matter pollution in places where they live, work, travel, and recreate.

15 23. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare
16 interest in using and enjoying the natural environment. Elevated levels of fine particulate matter
17 damage plant life, aquatic life, and natural ecosystems, thus harming Plaintiffs' members'
18 recreational and aesthetic interests.

20 24. EPA's failure to timely perform the mandatory duties described herein also adversely
21 affects Plaintiffs, as well as their members, by depriving them of procedural protections and
22 opportunities, as well as information that they are entitled to under the Clean Air Act.

23 25. The above injuries will continue until the Court grants the relief requested herein. A court
24 order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs' and
25 Plaintiffs' members' injuries.
26
27
28

1 26. Defendant MICHAEL S. REGAN is the Administrator of the EPA. Administrator Regan
2 is charged with the duty to implement the Clean Air Act and to take required regulatory actions
3 according to the schedules established by the Act, including the mandatory duties at issue in this
4 case. Administrator Regan is sued in his official capacity.
5

6 **LEGAL BACKGROUND AND FACTS**

7 27. 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, including fine particulate matter. National
12 Ambient Air Quality Standards establish the maximum allowable concentrations in the air of
13 these pollutants.
14

15 28. Each National Ambient Air Quality Standard is supposed to be stringent enough to
16 protect public health and welfare. Effects on welfare include, but are not limited to, effects on
17 soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to
18 property, economic impacts, and effects on personal comfort and well-being.
19

20 29. In 2013, EPA strengthened the primary PM_{2.5} NAAQS by lowering the level from 15
21 micrograms per cubic meter to 12 micrograms per cubic meter. 78 Fed. Reg. 3,086 (Jan. 15,
22 2013).
23

24 30. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act
25 requires that EPA designate each area of the country as either a clean air area for that standard,
26 which is known as an “attainment area” in Clean Air Act jargon, or a dirty air area, which is
27 known as a “nonattainment area” in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d).
28

1 31. At the time of designation, nonattainment areas for fine particulate matter are classified
2 by operation of law as “moderate” nonattainment areas. 42 U.S.C. § 7513(a). This classification
3 can change over time as the area’s air quality worsens or remains the same. *See* 42 U.S.C. §
4 7513(b). Moderate nonattainment areas that do not or cannot attain the 2012 annual PM_{2.5}
5 NAAQS by their attainment date are reclassified as “serious” nonattainment areas, triggering
6 stricter pollution control requirements. *Id.*

8 32. For each area designated nonattainment, and for each area reclassified to a higher level of
9 nonattainment, states must develop a plan to attain the NAAQS by their attainment date. These
10 plans, which contain several elements and must be submitted to EPA for approval, are called
11 State Implementation Plans, or SIPs. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501–7509a, 7513–7513b.

13 33. EPA is required to determine whether a state’s SIP submittal is administratively complete
14 within six months of the date the submission is due. 42 U.S.C. § 7410(k)(1)(B). If a state submits
15 a SIP to EPA, and EPA fails to determine whether the submittal is or is not administratively
16 complete within six months, the SIP submittal is deemed complete by operation of law. 42
17 U.S.C. § 7410(k)(1)(B). EPA has one year from the date the SIP submittal was deemed
18 administratively complete to approve or disapprove the SIP submittal in full or in part. 42 U.S.C.
19 § 7410(k)(2)–(4).

21 34. EPA must also determine whether the air quality in nonattainment areas is improving.
22 Moderate nonattainment areas for the 2012 annual PM_{2.5} NAAQS had an attainment date of
23 December 31, 2021. *See* 87 Fed. Reg. 63,751, 63,752 (Oct. 20, 2022); *see also* 42 U.S.C. §
24 7513(c)(1) (“[T]he attainment date shall be no later than the end of the sixth calendar year after
25 the area’s designation as nonattainment”); 80 Fed. Reg. 2,205 (Jan. 15, 2015) (designating
26 nonattainment areas for the 2012 annual PM_{2.5} NAAQS in 2015).
27
28

1 35. EPA must determine by no later than six months after the attainment date whether a
2 nonattainment area has attained the NAAQS by its attainment date. 42 U.S.C. §§ 7509(c)(1),
3 7513(b)(2).

4 36. For each area that failed to attain by its attainment date, it will be reclassified by
5 operation of law to the next higher classification, the serious classification. 42 U.S.C. §
6 7513(b)(2)(A).

7 37. No later than six months following the attainment date, EPA is required to publish notice
8 in the Federal Register of its determinations regarding whether a nonattainment area has attained
9 the NAAQS by its attainment date and, if not, identify its reclassification. 42 U.S.C. §§
10 7509(c)(2), 7513(b)(2)(B).

11 38. EPA can make a “clean data determination” for a nonattainment area under its Clean
12 Data Policy, which is a determination that the area is attaining the fine particulate matter
13 NAAQS. *See* 40 C.F.R. § 51.1015(a). A clean data determination suspends the SIP and Federal
14 Implementation Plan (FIP) requirements that are outstanding in the nonattainment area. *Id.*; *see*,
15 *e.g.*, 87 Fed. Reg. 14,799 (Mar. 16, 2022). A clean data determination, however, does not
16 constitute a determination that the nonattainment area attained by its attainment date. *See* 87 Fed.
17 Reg. at 14,801 (stating that SIP and FIP requirements are suspended until, *inter alia*, EPA issues
18 a determination of attainment, which would permanently discharge these requirements); *see also*
19 EPA, Redesignation and Clean Data Policy (CDP) (accessed Jan. 3, 2023), [https://www.epa.gov/
20 ground-level-ozone-pollution/redesignation-and-clean-data-policy-cdp](https://www.epa.gov/ground-level-ozone-pollution/redesignation-and-clean-data-policy-cdp) (“A determination of
21 attainment for purposes of the Clean Data Policy/regulations is also not linked to any particular
22 attainment deadline, and is not necessarily equivalent to a determination that an area has attained
23 the standard by its applicable attainment deadline, e.g., under section 181(b).”).
24
25
26
27
28

1 **FACTUAL BACKGROUND: FAILURE TO APPROVE OR DISAPPROVE SIP**

2 39. California submitted a SIP to EPA for the South Coast serious nonattainment area on
3 April 27, 2017. *See* EPA, Required State Implementation Plan Elements Dashboard (accessed
4 Dec. 15, 2022) (filter for “CA,” “Attainment Plan/Maintenance Plan,” “PM-2.5 (2012
5 Standard),” and “Los Angeles-South Coast Air Basin”), [https://edap.epa.gov/public/extensions/
6 S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html](https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html) [hereinafter "SPeCS for SIPs"]. The
7 SIP included the following elements to fulfill the requirements of the area’s serious
8 nonattainment classification—Attainment Demonstration; Contingency Measures; Emission
9 Inventory; Best Available Control Measures (“BACM”) / Best Available Control Technology
10 (“BACT”); Reasonable Further Progress; and Quantitative Milestones. *Id.*; *see also* 42 U.S.C. §§
11 7501–7509a; 7513a–7513b (requirements for a serious PM_{2.5} nonattainment area).
12

13
14 40. On October 27, 2017, the submittal was deemed administratively complete by operation
15 of law. *See* SPeCS for SIPs (same filter criteria as above); *see also* 42 U.S.C. § 7410(k)(1)(B).
16 As a result, the Clean Air Act required EPA to approve or disapprove, either in full or in part, the
17 submittal within 12 months, by October 27, 2018. 42 U.S.C. § 7410(k)(2)–(4).
18

19 41. This date has passed, but EPA has not taken any final action on these serious SIP
20 elements. *See* SPeCS for SIPs (same filter criteria as above). EPA has therefore failed to perform
21 its nondiscretionary duty.

22 **FACTUAL BACKGROUND: FAILURE TO MAKE ATTAINMENT DETERMINATION**

23 42. The Allegheny County, Pennsylvania nonattainment area was designated as a moderate
24 nonattainment area for the 2012 annual PM_{2.5} NAAQS in 2015. 80 Fed. Reg. at 2,264. Therefore,
25 this area was required to attain the 2012 annual PM_{2.5} NAAQS by December 31, 2021, at the
26 latest. *See* 87 Fed. Reg. at 63,752; *see also* 42 U.S.C. § 7513(c)(1). If this area failed to attain by
27
28

1 this date, it will be reclassified by operation of law to a “serious” nonattainment status, which
2 will result in requirements that are more protective of public health.

3 43. EPA must determine whether nonattainment areas attained the NAAQS by their
4 attainment date no later than six months after that attainment date. 42 U.S.C. §§ 7509(c)(1),
5 7513(b)(2). EPA must also publish notice in the Federal Register of its determinations no later
6 than six months after the attainment date. 42 U.S.C. §§ 7509(c)(2), 7513(b)(2)(B).

7
8 44. Given the December 31, 2021 attainment date for the Allegheny County nonattainment
9 area, EPA was required to make and publish a final determination regarding its attainment status
10 by June 30, 2022. EPA has published a final clean data determination for the Allegheny County
11 moderate nonattainment area in the Federal Register. 87 Fed. Reg. at 14,799. But EPA has not
12 issued an attainment determination for the area. Thus, EPA has failed to perform these
13 mandatory duties.
14

15 CLAIM ONE

16 (Failure to approve or disapprove SIP)

17 45. Plaintiffs incorporate by reference all paragraphs listed above.

18 46. California submitted a SIP to EPA for the South Coast serious nonattainment area on
19 April 27, 2017, with the following elements: Attainment Demonstration; Contingency Measures;
20 Emission Inventory; BACT / BACM; Reasonable Further Progress; and Quantitative Milestones.
21 See SPeCS for SIPs (filter for “CA,” “Attainment Plan/Maintenance Plan,” “PM-2.5 (2012
22 Standard),” and “Los Angeles-South Coast Air Basin”).
23

24 47. Because EPA did not determine by October 27, 2017, whether the SIP submittal met the
25 minimum statutory criteria, California’s SIP submittal was deemed administratively complete by
26 operation of law on that date. *Id.*; 42 U.S.C. § 7410(k)(1)(B).
27
28

1 48. EPA had a mandatory duty to approve or disapprove, in full or in part, California's SIP
2 submittal for the South Coast serious nonattainment area within one year. 42 U.S.C. §
3 7410(k)(2)–(4).

4 49. It has been more than one year since California's SIP submittal was deemed complete by
5 operation of law.

6 50. EPA has not approved or disapproved, in full or in part, California's SIP submittal for the
7 South Coast serious nonattainment area.

8 51. EPA is therefore in violation of its mandatory duty to approve or disapprove, in full or in
9 part, the SIP submittal pursuant to 42 U.S.C. § 7410(k)(2)–(4).

10 CLAIM TWO

11 (Failure to make attainment determination)

12 52. Plaintiffs incorporate by reference all paragraphs listed above.

13 53. EPA had a nondiscretionary duty to make a final determination no later than six months
14 after the attainment date, that is, by June 30, 2022, as to whether the Allegheny County,
15 Pennsylvania moderate nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its
16 December 31, 2021 attainment date. 42 U.S.C. §§ 7509(c)(1), 7513(b)(2).

17 54. EPA has made a final clean data determination for the Allegheny County moderate
18 nonattainment area but has not issued an attainment determination for the area. *See* 87 Fed. Reg.
19 at 14,799.

20 55. Furthermore, EPA had a nondiscretionary duty to publish a final notice in the Federal
21 Register no later than June 30, 2022, identifying whether the Allegheny County moderate
22 nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its attainment date. 42 U.S.C. §§
23 7509(c)(2), 7513(b)(2)(B).
24
25
26
27
28

1 56. EPA has failed to publish a final attainment determination for Allegheny County in the
2 Federal Register. *See* 87 Fed. Reg. at 63,751; 87 Fed. Reg. at 65,719.

3 57. Accordingly, EPA is in violation of its mandatory duties under 42 U.S.C. §§ 7509(c)(1)
4 and 7513(b)(2), as well as 42 U.S.C. §§ 7509(c)(2) and 7513(b)(2)(B), to determine whether the
5 Allegheny County moderate nonattainment area attained the 2012 annual PM_{2.5} NAAQS by its
6 attainment date and to publish notice of this determination.
7

8 **RELIEF REQUESTED**

9 Plaintiffs respectfully request that the Court:

- 10 (A) Declare that the Administrator is in violation of the Clean Air Act with respect to his
11 failure to perform each mandatory duty listed above;
12
13 (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties
14 by certain dates;
15
16 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's
17 order;
18
19 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;
20 and
21
22 (E) Grant such further relief as the Court deems just and proper.

23 Respectfully Submitted,

24 /s/ Wendy Park

25 Wendy Park (Cal. Bar No. 237331)
26 CENTER FOR BIOLOGICAL DIVERSITY
27 1212 Broadway, Suite 800
28 Oakland, CA 94612
Phone: 510-844-7100 (Ext. 338)
Email: wpark@biologicaldiversity.org

Counsel for Plaintiffs Center for Biological

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: January 12, 2023