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

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

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Plaintiffs,

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vs.

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14 ANDREW WHEELER, in his official capacity
as Administrator of the United States
Environmental Protection Agency,

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Defendant.

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Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

1 **I. INTRODUCTION**

2 1. Plaintiffs the Center for Biological Diversity and the Center for Environmental Health
3 bring this Clean Air Act citizen suit to compel the United States Environmental Protection
4 Agency (“EPA”), to undertake overdue mandatory duties. Specifically, Defendant, Andrew
5 Wheeler, in his official capacity as Administrator of the United States Environmental Protection
6 Agency has failed to make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B) for
7 nonattainment state implementation plans (“SIPs”) for the 2008 ozone National Ambient Air
8 Quality Standards for Oil and Natural Gas Industry Control Technology Guidelines (“CTG”)
9 Reasonable Available Control Technology (“RACT”) for the following areas listed in Table 1:

10 **TABLE 1¹**

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12 STATE	Area	OIL AND GAS CTG RACT SUBMITTAL DUE DATE	FINDING OF FAILURE TO SUBMIT DUE DATE
13 Arizona	Phoenix-Mesa [Pinal]	10/27/2018	4/27/2019
14 California	Los Angeles-San Bernardino Counties (West Mojave Desert) [Antelope Valley]	10/27/2018	4/27/2019
15 California	Mariposa County	10/27/2018	4/27/2019
16 California	Sacramento Metro [Placer]	10/27/2018	4/27/2019
17 California	San Diego County	10/27/2018	4/27/2019

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23 ¹ See https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elembypoll.html#ozone-8hr_2008_1414 last visited 1/22/20.

1	Connecticut	Greater Connecticut	10/27/2018	4/27/2019
2	Connecticut	New York-N. New Jersey-Long Island	10/27/2018	4/27/2019
3				
4	Connecticut	Ozone Transport Region (OTR)	10/27/2018	4/27/2019
5	Maine	OTR	10/27/2018	4/27/2019
6	Maryland	Baltimore	10/27/2018	4/27/2019
7				
8	Maryland	OTR	10/27/2018	4/27/2019
9	New York	New York-N. New Jersey-Long Island	10/27/2018	4/27/2019
10	New York	OTR	10/27/2018	4/27/2019
11	Pennsylvania	OTR	10/27/2018	4/27/2019
12	Texas	Dallas-Fort Worth	10/27/2018	4/27/2019
13	Texas	Houston-Galveston-Brazoria	10/27/2018	4/27/2019
14				
15	Wisconsin	Chicago-Naperville	10/27/2018	4/27/2019
16	Wisconsin	Inland Sheboygan County	10/27/2018	4/27/2019
17	Wisconsin	Shoreline Sheboygan County	10/27/2018	4/27/2019
18				

2. Defendant, Andrew Wheeler, in his official capacity as Administrator of the EPA, has also failed to take final action under 42 U.S.C. § 7410(k)(2)-(4) for nonattainment SIPs for the 2008 ozone National Ambient Air Quality Standards for Oil and Natural Gas Industry CTG RACT for the following areas listed in Table 2:

1 **Table 2²**

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3 STATE	Area	COMPLETION DATE	FINAL ACTION DUE DATE
4 California	Imperial County	5/14/2018	5/14/2019 ³
5 California	Kern County (Eastern Kern)	2/09/2018	2/09/2019
6 Massachusetts	OTR	10/19/2018	10/19/2019
7 Virginia	OTR	6/05/2018	6/05/2019

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9 3. Defendant, Andrew Wheeler, in his official capacity as Administrator of the EPA, has

10 also failed to take final action under 42 U.S.C. § 7410(k)(2)-(4) for nonattainment SIPs for the

11 2015 ozone National Ambient Air Quality Standards for Oil and Natural Gas Industry CTG

12 RACT for the following areas listed in Table 3:

13 **Table 3⁴**

14

15 STATE	Area	COMPLETION DATE	FINAL ACTION DUE DATE
16 Massachusetts	OTR	10/19/2018	10/19/2019

17 Accordingly, Plaintiffs the Center for Biological Diversity and the Center for Environmental

18 Health bring this action against Defendant Andrew Wheeler, in his official capacity as EPA

19 Administrator, to compel him to perform these mandatory duties.

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21 ² See https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elebypoll.html#ozone-8hr_2008_1414 last visited 1/5/20.

22 ³ *Proposed Approval*, 84 Fed. Reg. 49,202 (Sept. 19, 2019).

23 ⁴ See https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elebypoll.html#ozone-8hr_2008_1414 last visited 1/5/20.

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II. JURISDICTION

4. 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).

5. 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

6. On October 23, 2019 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

7. 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

8. 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

1 headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the
2 Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

3 **VI. PARTIES**

4 9. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
5 corporation incorporated in California. The Center for Biological Diversity has approximately
6 67,373 members throughout the United States and the world. The Center for Biological
7 Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity,
8 native species, ecosystems, public lands and waters, and public health through science, policy,
9 and environmental law. Based on the understanding that the health and vigor of human societies
10 and the integrity and wildness of the natural environment are closely linked, the Center for
11 Biological Diversity is working to secure a future for animals and plants hovering on the brink of
12 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

13 10. The Center for Biological Diversity's members enjoy, on an ongoing basis, the
14 biological, scientific, research, educational, conservation, recreational, and aesthetic values of
15 the regions at issue in this action.

16 11. The Center for Biological Diversity's members observe and study native species and
17 their habitat, and derive professional, scientific, educational, recreational, aesthetic, inspirational,
18 and other benefits from these activities and have an interest in preserving the possibility of such
19 activities in the future. These regions and species living there are harmed by air pollution. The
20 Center for Biological Diversity and its members have participated in efforts to protect and
21 preserve natural areas, including the habitat essential to the continued survival of native species,
22 and to address threats to the continued existence of these species, including the threats posed by
23 air pollution.

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

6 13. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout
7 the areas at issue in this complaint and will continue to do so on a regular basis. Ozone and
8 volatile organic compounds pollution in the affected areas threatens and damages, and will
9 continue to threaten and damage, the health and welfare of Plaintiffs' members as well as their
10 ability to engage in and enjoy their other activities. Ozone and volatile organic compounds
11 pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational
12 opportunities of the affected areas.

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

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

19 16. Defendant ANDREW WHEELER is the Administrator of the EPA. In that role
20 Administrator Wheeler has been charged by Congress with the duty to administer the Clean Air
21 Act, including the mandatory duties at issue in this case. Administrator Wheeler is also charged
22 with overseeing all EPA regional offices including EPA Region 9, which has authority over
23 California and is headquartered in San Francisco.

COMPLAINT

1 **VII. LEGAL BACKGROUND**

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

8 18. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act
9 requires that EPA designate each area of the country as either a clean air area for that standard,
10 which is known as “attainment” in Clean Air Act jargon, or a dirty air area, which is known as
11 “nonattainment” in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d). In addition, most of the
12 northeast United States is part of the ozone transport region, which is essentially treated as a
13 nonattainment area. 42 U.S.C. § 7511c.

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

18 20. For dirty air areas which EPA has designated as “nonattainment,” states must submit
19 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,
20 7513 – 7513b.

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

1 submit the plan or revision.” *Id.* However, if EPA does not make a determination of whether a
2 state implementation plan submittal is administratively complete, the submittal is deemed
3 administratively complete by operation of law six months after it is submitted. *Id.*

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

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

15 VIII. FACTS

16 24. This case involves EPA’s failure to timely implement the National Ambient Air Quality
17 Standards for ozone. While ozone is critical for the protection of the Earth when it is in the
18 stratosphere, at ground level, ozone, the chief component of smog, is a dangerous air pollutant
19 which causes a variety of adverse impacts. Ozone is not normally directly emitted. Rather it is
20 formed in the ambient air from a reaction between volatile organic compounds and nitrogen
21 oxides in the presences of sunlight.

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

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

2 26. 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 27. 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 28. 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 29. EPA designated all of the areas listed in Tables 1-3 as nonattainment or the areas are part
15 of the ozone transport region. *Id.*

16 30. The required SIP element, RACT CTG for the Oil and Natural Gas Industry (2016), for
17 the 2008 ozone NAAQS were due by no later than Oct. 27, 2018. *See* 81 Fed. Reg. 74,798 (Oct.

18 27, 2016). *See also* [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html)

19 [8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr_2008_ract_voc_ctg_oil_and_natural_gas_industry_2016_enbystate.html). The RACT
20 CTG for the Oil and Natural Gas Industry requires oil and natural gas production facilities like
21 well pads to reduce their emissions of volatile organic compounds in areas which have an ozone
22 pollution problem. As the United States has increased its production of oil and natural gas,
23

1 emissions of volatile organic compounds has also increased resulting in persistent ozone
2 problems.

3 31. Thus, EPA has a mandatory duty to make a completeness finding under 42 U.S.C. §
4 7410(k)(1)(B) for the SIP element Oil and Natural Gas Industry CTG RACT for the areas listed
5 in Table 1 by no later than April. 27, 2019, which is six months after the Oct. 27, 2018 deadline
6 for submittals.

7 32. Table 2 lists the areas that have submitted Oil and Natural Gas Industry RACT CTG SIP
8 submittals for the 2008 ozone NAAQS. It has been more than 12 months since these submittals
9 were found administratively complete by EPA or deemed administratively complete by
10 operation of law. Yet, EPA has not taken final action approving or disapproving, in full or part
11 these submittals. Therefore, EPA is in violation of its mandatory duty to take final action to
12 approve or disapprove, in full or part the submittals listed in Table 2.

13 33. In 2015, EPA strengthened the primary and secondary ozone NAAQS from 0.075 to
14 0.070 parts per million (ppm). 80 Fed. Reg. 65,292 (Oct. 26, 2008).

15 34. Table 3 lists the areas that have submitted Oil and Natural Gas Industry RACT CTG SIP
16 submittals for the 2015 ozone NAAQS. It has been more than 12 months since these submittals were
17 found administratively complete by EPA or deemed administratively complete by operation of law.
18 Yet, EPA has not taken final action approving or disapproving, in full or part, these submittals.
19 Therefore, EPA is in violation of its mandatory duty to take final action to approve or disapprove, in
20 full or part the submittals listed in Table 3.

1 **IX. CLAIMS FOR RELIEF**

2 **CLAIM ONE**

3 **(Failure to Make Findings of Failure to Submit.)**

4 35. Plaintiffs incorporate by reference paragraphs 1 through 34.

5 36. The deadline for the 2008 ozone National Ambient Air Quality Standard nonattainment
6 area Oil and Natural Gas Industry RACT CTG state implementation plan submissions listed in
7 Table 1 is no later than Oct. 27, 2018. *See* 81 Fed. Reg. 26,697 (May 4, 2016); 80 Fed. Reg.
8 12,264, 12,266 (Mar. 6, 2015). *See also*

9 http://www3.epa.gov/airquality/urbanair/sipstatus/reports/ozone-8hr__2008_en.html.

10 37. More than six months have passed since Oct. 27, 2018.

11 38. For each of the areas listed in Table 1 above, the relevant states have failed to submit the
12 nonattainment SIP element for Oil and Natural Gas Industry RACT CTG.

13 39. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of
14 failure to submit by no later than April. 27, 2019 for each area listed in Table 1 above.

15 40. EPA has not made findings of failure to submit for each of the areas listed in Table 1 of
16 paragraph 1 for failing to submit the nonattainment SIP element Oil and Natural Gas Industry
17 RACT CTG.

18 41. Thus, EPA is in violation of its mandatory duty to make a finding of failure to submit for
19 each of the areas listed in Table 1.

20 **CLAIM TWO**

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

22 42. Plaintiffs incorporate by reference paragraphs 1 through 34.

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

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

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

9 46. Each area's nonattainment SIP element submittals listed in Table 2 and Table 3 above
10 was deemed administratively complete, either by EPA or by operation of law, by no later than
11 the date listed in the Tables.

12 47. EPA has a mandatory duty to take final action and publish notice of that action in the
13 Federal Register, by approving in full, disapproving in full, or approving in part and
14 disapproving in part each area's nonattainment SIP element submittals listed in Table 2 and 3 by
15 no later than one year after the nonattainment SIP element submittal was deemed
16 administratively complete. 42 U.S.C. § 7410(k)(2) and (4).

17 48. However, EPA has failed to take final action to approve in full, disapprove in full, or
18 approve in part and disapprove in part each area's nonattainment SIP element submittal listed in
19 Table 2 and 3 by no later than one year after the nonattainment SIP element submittal was
20 deemed administratively complete.

21 49. Thus, EPA is in violation of its mandatory duty to take final action for each of the SIP
22 element submittals listed in Tables 2 and 3.

1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully request that the Court:

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

11 Respectfully submitted,

12
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22 Dated: January 22, 2020