Leslie M. Hill (D.C. Bar No. 476008)
Leslie.Hill@usdoj.gov
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
4 Constitution Square
150 M Street N.E., Suite 2.900
Washington D.C. 20001
Telephone (202) 514-0375
Facsimile (202) 514-8865
Attorneys for Defendant

ROBERT UKÉILEY, Admitted Pro Hac Vice
CENTER FOR BIOLOGICAL DIVERSITY
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Tel: (720) 496-8568
Email: rukeiley@biologicaldiversity.org
[additional attorneys for Plaintiffs included in signature block]
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY
et al.,

Plaintiffs,

v.

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

Defendant.

[PROPOSED] CONSENT DECREE

Case No. 4:18-cv-03544-YGR

Page 1
WHEREAS, on June 14, 2018, Plaintiffs Center for Biological Diversity, Center for Environmental Health, and Sierra Club (collectively, “Plaintiffs”) filed the above-captioned matter against Andrew R. Wheeler, in his official capacity as the Administrator of the United States Environmental Protection Agency (hereinafter “EPA” or “Defendant”) (Dkt. No. 1);

WHEREAS, on December 17, 2018, Plaintiffs filed a First Amended Complaint (Dkt. No. 25) (the “First Am. Compl.”);

WHEREAS, Plaintiffs allege that EPA has failed to undertake certain non-discretionary duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged failure is actionable under CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2);

WHEREAS, on April 28, 1971, pursuant to CAA section 109(a)(1), 42 U.S.C. § 7409(d)(1), the EPA Administrator signed a notice promulgating a rule establishing the primary National Ambient Air Quality Standards for sulfur dioxide (the “1971 SO2 NAAQS”), Final Rule, 36 Fed. Reg. 8186 (Apr 30, 1971);

WHEREAS, on December 22, 1987, pursuant to CAA section 107(d), 42 U.S.C. § 7407(d), the EPA Administrator signed a notice designating the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment for the 1971 SO2 NAAQS, Final Rule, 52 Fed. Reg. 49,408 (Dec. 31, 1987); see also Final Rule, 53 Fed. Reg. 8182 (Mar. 14, 1988) (correcting clerical error in designation);

WHEREAS, the designation of the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) area nonattainment for the 1971 primary SO2 NAAQS became effective on February 1, 1988, 52 Fed. Reg. at 49,408;

WHEREAS, on June 2, 2010, pursuant to CAA section 109(a)(1), 42 U.S.C. § 7409(d)(1), the EPA Administrator signed a notice promulgating a final rule revising
the primary National Ambient Air Quality Standards for sulfur dioxide, *Final Rule*, 75 Fed. Reg. 35,520 (June 22, 2010) (the “2010 SO\textsubscript{2} NAAQS”);

WHEREAS, on July 25, 2013, pursuant to CAA section 107(d), 42 U.S.C. §§ 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish initial air quality designations for the 2010 SO\textsubscript{2} NAAQS, *Final Rule*, 78 Fed. Reg. 47,191 (Aug. 5, 2013) (the “initial 2010 SO\textsubscript{2} designations”);

WHEREAS, the initial 2010 SO\textsubscript{2} NAAQS designations became effective on October 4, 2013, *id.* at 47,191;

WHEREAS, on June 30, 2016, pursuant to CAA section 107(d), 42 U.S.C. §§ 7407(d), the EPA Administrator signed a notice promulgating a final rule to establish additional air quality designations for the 2010 SO\textsubscript{2} NAAQS, *Final Rule*, 81 Fed. Reg. 45,039 (July 12, 2016) (the “Round 2 2010 SO\textsubscript{2} designations”);

WHEREAS, the Round 2 2010 SO\textsubscript{2} designations became effective on September 12, 2016, *id.* at 45,039;

WHEREAS, pursuant to CAA section 191(b), 42 U.S.C. § 7514(b), New Jersey was required to provide a State implementation plan ("SIP") submission to EPA within 18 months of November 15, 1990, for the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area for the 1971 primary SO\textsubscript{2} NAAQS;

WHEREAS, pursuant to CAA section 191(a), 42 U.S.C. § 7514(a), states that contain areas that are designated nonattainment after November 15, 1990, are required to provide SIP submissions to EPA within 18 months of the effective date of designations, i.e. by April 4, 2015 for the initial 2010 SO\textsubscript{2} designations, and by March 12, 2018 for the Round 2 2010 SO\textsubscript{2} designations;

WHEREAS, pursuant to CAA section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B), EPA must then determine whether a State’s submittal is complete within six months after EPA receives the submission, and if EPA does not determine completeness of the plan or
revision within six months, then the submittal is deemed complete by operation of law after six months, *id.*.

WHEREAS, pursuant to CAA section 110(k)(2)-(4), 42 U.S.C. § 7410(k)(2)-(4), EPA is required to approve in whole or in part, disapprove, or conditionally approve in whole or in part, each plan or revision, within 12 months of a determination of completeness by EPA or a submittal deemed by operation of law to be complete;

WHEREAS, in Claim 1, Plaintiff alleges that EPA has failed to perform a duty mandated by CAA sections 110(k)(2)-(4), 42 U.S.C. §§ 7410(k)(2)-(4), to take final action to approve or disapprove, in whole or in part, certain 2010 primary SO2 NAAQS nonattainment SIP submissions addressing the following element or elements under 42 U.S.C. §§ 7502 or 7514a, from the areas and states listed below, *see* First Am. Compl. ¶ 6, 30-33 & tbl. 1 (Dkt. No. 25) (“Claim 1”):

<table>
<thead>
<tr>
<th>State</th>
<th>Nonattainment Area</th>
<th>Element(s) Addressed in State Implementation Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>Indianapolis, IN (Marion County (part)) nonattainment area</td>
<td>(1) Attainment demonstration pursuant to 42 U.S.C. § 7502(c) (“Attainment Demonstration”); (2) Contingency measure requirements pursuant to 42 U.S.C. § 7502(c)(9) (“Contingency Measures”); (3) Base year emissions inventory requirements pursuant to 42 U.S.C. § 7502(c)(3) (“Emissions Inventory”); (4) Nonattainment new source review plan requirements pursuant to 42 U.S.C. § 7502(c)(5) (“NNSR”); (5) Reasonably available control technology and reasonably available control measures pursuant to 42 U.S.C. § 7502(c)(1) (“RACT/RACM”); and (6) Reasonable further progress requirements pursuant to 42 U.S.C. § 7502(c)(2) (“RFP”).</td>
</tr>
<tr>
<td>Indiana</td>
<td>Morgan County, IN (Morgan County (part)) nonattainment</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures;</td>
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</tbody>
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<thead>
<tr>
<th>State</th>
<th>Nonattainment Area</th>
<th>Element(s) Addressed in State Implementation Plan</th>
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</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>Southwest Indiana, IN (Daviess County (part) and Pike County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>Indiana</td>
<td>Terre Haute, IN (Vigo County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>Iowa</td>
<td>Muscatine, IA (Muscatine County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>Michigan</td>
<td>Detroit, MI (Wayne County (part))</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>Missouri</td>
<td>Jackson County, MO (Jackson County (part)) nonattainment area</td>
<td>(1) Emissions Inventory.</td>
</tr>
<tr>
<td>Ohio</td>
<td>Lake County, OH nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>Ohio</td>
<td>Muskingum River, OH</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>State</td>
<td>Nonattainment Area</td>
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<td>(Morgan County (part) and Washington County (part)), nonattainment area</td>
<td>(2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>Ohio</td>
<td>Ohio portion of the Steubenville OH–WV (Jefferson County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>West Virginia portion of the Steubenville, OH–WV (Brooke County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<td>Wisconsin</td>
<td>Rhinelander, WI (Oneida County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; and (5) RFP.</td>
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<td>Arizona</td>
<td>Hayden, AZ (Gila County (part) and Pinal County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.</td>
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<tr>
<td>Arizona</td>
<td>Miami, AZ (Gila County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Jefferson County, KY (Jefferson County (part)), nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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<tr>
<td>State</td>
<td>Nonattainment Area</td>
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<tr>
<td>Pennsylvania</td>
<td>Allegheny, PA (Allegheny County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Beaver, PA (Beaver County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Indiana, PA Indiana County (Armstrong County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Marshall, WV (Marshall County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
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</table>

WHEREAS, on July 20, 2015, the Regional Administrator for EPA Region III signed a notice approving an element of a West Virginia nonattainment SIP submission addressing the Emissions Inventory element for the Marshall, WV (Marshall County (part)) nonattainment area for the 2010 primary SO₂ NAAQS. *Direct Final Rule*, 80 Fed. Reg. 45,613 (July 31, 2015). Claim 1 is therefore moot as to the Marshall, WV (Marshall County (part)) nonattainment area for the Emissions Inventory element;

WHEREAS, on December 28, 2018, the Regional Administrator for EPA Region 7 signed a notice approving elements of a Missouri nonattainment SIP submission addressing the Emissions Inventory element for the Jackson County, MO (Jackson
County (part)) nonattainment area for the 2010 primary SO\textsubscript{2} NAAQS. \textit{Final Rule}, 84 Fed. Reg. 3703 (Feb. 13, 2019). Claim 1 is therefore moot as to the Jackson County, MO (Jackson County (part)) nonattainment area for the Emissions Inventory element;

WHEREAS, on January 29, 2019, the Regional Administrator for EPA Region 5 signed a notice approving elements of an Ohio nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements for the Lake County, OH nonattainment area for the 2010 primary SO\textsubscript{2} NAAQS. \textit{Final Rule}, 84 Fed. Reg. 3986 (Feb. 14, 2019). Claim 1 is therefore moot as to the Lake County, OH nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on February 21, 2019, the Acting Regional Administrator for EPA Region IX signed a notice approving elements of an Arizona nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, RACT/RACM, and RFP elements for the Miami (Gila County (Part)), AZ nonattainment area for the 2010 primary SO\textsubscript{2} NAAQS. \textit{Final Rule}, 84 Fed. Reg. 8,813 (Mar. 12, 2019). Claim 1 is therefore moot as to the Miami (Gila County (Part)), AZ nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, RACT/RACM, and RFP elements;

WHEREAS, on March 11, 2019, the Acting Regional Administrator for EPA Region 5 signed a notice approving elements of Indiana nonattainment SIP submissions addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements for the Indianapolis (Marion County (Part)), Terre Haute (Vigo County (Part)), IN nonattainment areas for the 2010 primary SO\textsubscript{2} NAAQS. \textit{Final Rule}, 84 Fed. Reg. 10,692 (Mar. 22, 2019). Claim 1 is therefore moot as to the Indianapolis (Marion County (Part)) and Terre Haute (Vigo County (Part)), IN nonattainment areas for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;
WHEREAS, on May 28, 2019, the Regional Administrator for EPA Region 4 signed a notice approving elements of a Kentucky nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements for the Jefferson County (Jefferson County (Part)), KY nonattainment area. Final Rule, 84 Fed. Reg. 30,920 (June 28, 2019). Claim 1 is therefore moot as to the Jefferson County (Jefferson County (Part)), KY nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on September 4, 2019, the Acting Regional Administrator for EPA Region 5 signed a notice approving elements of an Indiana nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements for the Morgan County (Morgan County (Part)), IN nonattainment area for the 2010 primary SO₂ NAAQS. Final Rule, 84 Fed. Reg. 49,659 (Sept. 23, 2019). Claim 1 is therefore moot as to the Morgan County (Morgan County (Part)), IN nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on September 13, 2019, the Acting Regional Administrator for EPA Region III signed a notice approving elements of a Pennsylvania nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements for the Beaver (Beaver County (Part)), PA nonattainment area for the 2010 primary SO₂ NAAQS. Final Rule, 84 Fed. Reg. 51,988 (Oct. 1, 2019). Claim 1 is therefore moot as to the Beaver (Beaver County (Part)), PA nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on September 23, 2019, the Regional Administrators for EPA Regions III and V signed a notice approving elements of an Ohio nonattainment SIP submission and a West Virginia nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;
RFP elements for the Ohio and West Virginia portions of the Steubenville OH-WV (Jefferson County (Part) and Brooke County (Part)) nonattainment area for the 2010 primary SO₂ NAAQS. *Final Rule*, 84 Fed. Reg. 56,385 (Oct. 22, 2019.) Claim 1 is therefore moot as to the Steubenville OH-WV (Jefferson County (Part) and Brooke County (Part)) nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, in Claim 2, Plaintiffs allege that EPA has failed to perform a duty mandated by CAA section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B), to make a finding of failure to submit a nonattainment SIP for various states and nonattainment areas for the 1971 or 2010 primary SO₂ NAAQS addressing the following element or elements under 42 U.S.C. §§ 7502 or 7514a, from the areas and states listed below, see First Am. Compl. ¶¶ 7, 35-40 & tbl. 2 (“Claim 2”):

<table>
<thead>
<tr>
<th>State/Area</th>
<th>Nonattainment Area</th>
<th>Element(s)</th>
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<tr>
<td>Illinois</td>
<td>Alton Township, IL (Madison County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Williamson County, IL nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP.</td>
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<tr>
<td>Maryland</td>
<td>Anne Arundel County and Baltimore County, MD (Anne Arundel County (part) and Baltimore County (part)),</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR;</td>
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</table>
WHEREAS, on February 19, 1993, New Jersey submitted to EPA NNSR rule revisions, which apply to the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area and to the 1971 SO₂ NAAQS, for which on May 31, 1996, the Acting Regional Administrator for EPA Region 2 signed a notice approving such revisions into New Jersey’s SIP. Final Rule, 61 Fed. Reg. 38,591 (July 25, 1996); see also Letter from Francis C. Steitz, Director, Division of Air Quality, New Jersey Department of Environmental Protection, to Rick A. Ruvo, Chief, Air Programs Branch, USEPA Region 2 (July 23, 2019);

WHEREAS, on June 11, 2015, New Jersey submitted to EPA another SIP revision which included New Jersey’s Emissions Inventory for 2011, including for SO₂, for which on September 6, 2017, the Acting Regional Administrator for EPA Region 2 signed a notice approving such revision into New Jersey’s SIP. Final Rule, 82 Fed. Reg. 44,099 (Sept. 21, 2017); see also Letter from Francis C. Steitz, Director, Division of Air Quality, New Jersey Department of Environmental Protection, to Rick A. Ruvo, Chief, Air Programs Branch, USEPA Region 2 (July 23, 2019);

WHEREAS, on August 8, 2019, the Regional Administrator for EPA Region 2 signed a notice issuing a final Clean Data Determination that the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region has attained the 1971 SO₂ primary and secondary NAAQS. 84 Fed. Reg. 43,504 (Aug. 21, 2019). Claim 2 is therefore moot as to the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

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<tr>
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<tr>
<td>Michigan</td>
<td>St. Clair, MI (St. Clair County (part)) nonattainment area</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM, and (6) RFP;</td>
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Delaware Valley Interstate Air Quality Control Region (part) nonattainment area for 1971 SO2 primary and secondary NAAQS;

WHEREAS, on June 5, 2019, the EPA Region 5 Director of the Air and Radiation Division signed and sent a letter to the Director of the Illinois Environmental Protection Agency explaining that the State’s December 3, 2018, submittal of “Attainment Demonstration State Implementation Plan Revision for the Alton Township SO2 Nonattainment Area” was found complete by operation of law on June 3, 2019, and that the Region performed a completeness review of the submittal and determined that it satisfies the completeness criteria set forth at 40 C.F.R. Part 51, Appendix V. Letter from Edward Nam, Director, Air and Radiation Division, to Mr. John Kim, Director, Illinois Environmental Protection Agency (June 5, 2019). Claim 2 is therefore moot as to the Alton Township, IL (Madison County (part)) nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on September 5, 2019, the EPA Administrator signed a notice that reconsidered and changed to attainment/unclassifiable the designation under the 2010 primary SO2 NAAQS for the Williamson County, IL SO2 nonattainment area. Final Rule, 84 Fed. Reg. 48,286 (Sept. 13, 2019). Claim 2 is therefore moot as to the former Williamson County, IL nonattainment area for the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;

WHEREAS, on September 9, 2019, the EPA Acting Assistant Administrator signed a notice issuing findings of failure to submit SIPs required for attainment of the 2010 primary SO2 NAAQS to Maryland and Michigan, respectively, for the Anne Arundel and Baltimore County SO2 nonattainment area and for the St. Clair SO2 nonattainment area. Final Rule, 84 Fed. Reg. 49,462 (Sept. 20, 2019). Claim 2 is therefore moot as to the Anne Arundel County and Baltimore County, MD (Anne Arundel County (part) and Baltimore County (part)), nonattainment area and the St.
Clair, MI (St. Clair County (part)) nonattainment area for the Attainment Demonstration,
Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements;
WHEREAS, the relief requested in the First Amended Complaint includes, among
other things, an order from this Court to establish a date certain by which EPA must
fulfill its obligations;
WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without
admission of any issue of fact or law, except as expressly provided herein;
WHEREAS, Plaintiffs and EPA, by entering into this Consent Decree (the
“Consent Decree”), do not waive or limit any claim, remedy, or defense, on any grounds,
related to any final EPA action;
WHEREAS, Plaintiffs and EPA consider this Consent Decree to be an adequate
and equitable resolution of Claim 1 in this matter and therefore wish to effectuate a
settlement;
WHEREAS, it is in the interest of the public, Plaintiffs, EPA, and judicial
economy to resolve this matter without protracted litigation;
WHEREAS, Plaintiffs and EPA agree that this Court has jurisdiction over the
matters resolved in this Consent Decree pursuant to the citizen suit provision in CAA
section 304(a)(2), 42 U.S.C. § 7604(a)(2), and that venue is proper in the Northern
District of California pursuant to 28 U.S.C. § 1391(e) and Civil L.R. 3-2(c)-(d); and
WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
Decree is fair, reasonable, in the public interest, and consistent with the CAA;
NOW THEREFORE, before the taking of testimony, without trial or
determination of any issues of fact or law, and upon the consent of Plaintiffs and
Defendant EPA, it is hereby ordered, adjudged and decreed that:
1. The appropriate EPA official shall:
sign a notice of final rulemaking to approve, disapprove, conditionally
approve, or approve in part and conditionally approve or disapprove in part, certain
nonattainment SIP submissions plans pursuant to sections 110(k)(2)-(4) of the CAA, 42
U.S.C. §§ 7410(k)(2)-(4), no later than the date indicated below for the following states and elements of sections 172(c) and 192, 42 U.S.C. §§ 7502(c) or 7514a, for the 2010 SO\textsubscript{2} NAAQS:

<table>
<thead>
<tr>
<th>State</th>
<th>Nonattainment Area</th>
<th>Element(s) Addressed in State Implementation Plan</th>
<th>Deadline</th>
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<tbody>
<tr>
<td>i.</td>
<td>Indiana Southwest Indiana IN (Daviess County (part) and Pike County (part)) nonattainment area, 78 Fed. Reg. at 47,199</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>ii.</td>
<td>Iowa Muscatine, IA (Muscatine County (part)) nonattainment area, 78 Fed. Reg. at 47,199</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>iii.</td>
<td>Michigan Detroit, MI (Wayne County (part)), 78 Fed. Reg. at 47,201</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>iv.</td>
<td>Ohio Muskingum River, OH (Morgan County (part) and Washington County (part)) nonattainment area, 78 Fed. Reg. at 47,203</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>v.</td>
<td>Wisconsin Rhinelander, WI (Oneida County (part)) nonattainment area, 78 Fed. Reg. at 47,205</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; and (5) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>State</td>
<td>Nonattainment Area</td>
<td>Element(s) Addressed in State Implementation Plan</td>
<td>Deadline</td>
</tr>
<tr>
<td>------------</td>
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</tr>
<tr>
<td>vi. Arizona</td>
<td>Hayden, AZ (Gila County (part) and Pinal County (part)) nonattainment area, 78 Fed. Reg. at 47,197-98</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) RACT/RACM; and (5) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>vii. Pennsylvania</td>
<td>Allegheny, PA (Allegheny County (part)) nonattainment area, 78 Fed. Reg. at 47,203</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>April 30, 2020</td>
</tr>
<tr>
<td>viii. Pennsylvania</td>
<td>Indiana, PA (Armstrong County (part)) nonattainment area, 78 Fed. Reg. at 47,203</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) Emissions Inventory; (4) NNSR; (5) RACT/RACM; and (6) RFP.</td>
<td>October 30, 2020</td>
</tr>
<tr>
<td>ix. West Virginia</td>
<td>Marshall, WV (Marshall County (part)) nonattainment area, 78 Fed. Reg. at 47,204</td>
<td>(1) Attainment Demonstration; (2) Contingency Measures; (3) NNSR; (4) RACT/RACM; and (5) RFP.</td>
<td>October 30, 2020</td>
</tr>
</tbody>
</table>

2. If EPA issues a clean data determination for any nonattainment area listed above in Paragraph 1, then EPA’s obligation to take action on a nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, RACT/RACM, and RFP elements, is automatically terminated. If EPA issues a redesignation to attainment for any nonattainment area listed above in Paragraph 1, then EPA’s obligation to take action on a nonattainment SIP submission addressing the Attainment Demonstration, Contingency Measures, Emissions Inventory, NNSR, RACT/RACM, and RFP elements, is automatically terminated.
3. If any State withdraws a SIP submission addressing any or all of the elements listed above in Paragraph 1, then EPA’s obligation to take the action required by Paragraph 1 with respect to those elements is automatically terminated unless Plaintiffs move the Court to address EPA’s obligation in light of the withdrawn submittal. If Plaintiffs file such a motion, EPA’s obligation to act on the withdrawn portion of the submittal is stayed pending resolution of said motion. EPA shall notify Plaintiffs within fifteen business days of receiving a written request from a state to withdraw a SIP submission addressing any or all of the elements listed in Paragraph 1 for that state.

Nothing in this Consent Decree shall be construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or defense, on any grounds, related to EPA’s obligation in the event that any State withdraws a SIP submission addressing any or all of the elements listed above in Paragraph 1 and Plaintiffs file a motion pursuant to this Paragraph. If EPA signs a finding of failure to submit for the withdrawn submittal while such a motion is pending, Plaintiffs shall withdraw its motion.

4. EPA shall, within 15 business days of signature, send the rulemaking package for each action taken pursuant to Paragraph 1 of this Consent Decree to the Office of the Federal Register for review and publication in the Federal Register.

5. After EPA has completed the actions set forth in Paragraph 1 of this Consent Decree, after notice of each final action required by Paragraph 4 have been published in the Federal Register, and the issue of costs of litigation (including reasonable attorney fees) has been resolved, EPA may move to have this Decree terminated. Plaintiffs shall have fourteen (14) days in which to respond to such motion, unless the parties stipulate to a longer time for Plaintiffs to respond.

6. The deadlines established by this Consent Decree may be extended (a) by written stipulation of Plaintiffs and EPA with notice to the Court, or (b) by the Court upon motion of EPA for good cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of any response by Plaintiffs and any reply by EPA. Any other provision of this Consent Decree also may be modified by the Court following
motion of an undersigned party for good cause shown pursuant to the Federal Rules of
Civil Procedure and upon consideration of any response by a non-moving party and any
reply.

7. If a lapse in EPA appropriations occurs within ninety (90) days prior to a
deadline in Paragraphs 1 or 4 in this Decree, that deadline shall be extended
automatically one day for each day of the lapse in appropriations. Nothing in this
Paragraph shall preclude EPA from seeking an additional extension of time through
modification of this Consent Decree pursuant to Paragraph 6.

8. Plaintiffs and EPA agree that this Consent Decree constitutes a complete
settlement of Claim 1 as described in Paragraph 1.

9. In the event of a dispute between Plaintiffs and EPA concerning the
interpretation or implementation of any aspect of this Consent Decree, the disputing party
shall provide the other party with a written notice, via electronic mail or other means,
outlining the nature of the dispute and requesting informal negotiations. These parties
shall meet and confer in order to attempt to resolve the dispute. If these parties are
unable to resolve the dispute within ten (10) business days after receipt of the notice,
either party may petition the Court to resolve the dispute.

10. No motion or other proceeding seeking to enforce this Consent Decree or for
contempt of Court shall be properly filed unless the procedure set forth in Paragraph 9
has been followed, and the moving party has provided the other party with written notice
received at least ten (10) business days before the filing of such motion or proceeding.

11. The deadline for filing a motion for costs of litigation (including attorney
fees) for activities performed prior to entry of the Consent Decree is hereby extended
until ninety (90) days after this Consent Decree is entered by the Court. During this
period, the Parties shall seek to resolve any claim for costs of litigation (including
attorney fees), and if they cannot, Plaintiffs will file a motion for costs of litigation
(including attorney fees) or a stipulation or motion to extend the deadline to file such a
motion. EPA reserves the right to oppose any such request. The Court shall retain jurisdiction to resolve any requests for costs of litigation, including attorney fees.

12. This Court shall retain jurisdiction over this matter to enforce the terms of this Consent Decree and to consider any requests for costs of litigation (including attorney fees).

13. Nothing in the terms of this Consent Decree shall be construed (a) to confer upon this Court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1), including final action take pursuant to section 110(k) of the CAA, 42 U.S.C. § 7410(k), approving, disapproving, or approving in part and disapproving in part a SIP submittal, or (b) to waive any claims, remedies, or defenses that the parties may have under CAA section 307(b)(1), 42 U.S.C. § 7607(b)(1).

14. Nothing in this Consent Decree shall be construed to limit or modify any discretion accorded EPA by the Clean Air Act or by general principles of administrative law in taking the actions which are the subject of this Consent Decree, including the discretion to alter, amend, or revise any final actions promulgated pursuant to this Consent Decree. EPA’s obligation to perform each action specified in this Consent Decree does not constitute a limitation or modification of EPA’s discretion within the meaning of this paragraph.

15. Except as expressly provided herein, nothing in this Consent Decree shall be construed as an admission of any issue of fact or law nor to waive or limit any claim, remedy, or defense, on any grounds, related to any final action EPA takes with respect to the actions addressed in this Consent Decree.

16. Plaintiff reserves the right to seek additional costs of litigation (including reasonable attorney fees) incurred subsequent to entry of this Consent Decree. EPA reserves the right to oppose any such request for additional costs of litigation (including attorney fees).
17. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

18. The parties agree and acknowledge that before this Consent Decree can be finalized and entered by the Court, EPA must provide notice of this Consent Decree in the Federal Register and an opportunity for public comment pursuant to CAA section 113(g), 42 U.S.C. § 7413(g). After this Consent Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any written comments in determining whether to withdraw or withhold their consent to the Consent Decree, in accordance with CAA section 113(g). If the Administrator and/or the Attorney General do not elect to withdraw or withhold consent, EPA shall promptly file a motion that requests that the Court enter this Consent Decree.

19. Any notices required or provided for by this Consent Decree shall be in writing, via electronic mail or other means, and sent to the following (or to any new address of counsel as filed and listed in the docket of the above-captioned matter, at a future date):

For Plaintiffs Center for Biological Diversity and Center for Environmental Health:

Robert Ukeiley
Center for Biological Diversity
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Tel: (720) 496-8568
Email: rukeiley@biologicaldiversity.org

For Plaintiff Sierra Club:

Zachary Fabish
Staff Attorney
Sierra Club Environmental Law Program
50 F St. NW, 8th Floor
20. EPA and Plaintiffs recognize and acknowledge that the obligations imposed upon EPA under this Consent Decree can only be undertaken using appropriated funds legally available for such purpose. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

21. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the proposed Consent Decree may not be used as evidence in any litigation between the parties.

22. The undersigned representatives of Plaintiffs and Defendant EPA certify that they are fully authorized by the party they represent to consent to the Court’s entry of the terms and conditions of this Decree.

IT IS SO ORDERED on this 26th day of November, 2019.

YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE
COUNSEL FOR PLAINTIFF:

/s/ Robert Ukeiley (email auth. 11/20/19)
ROBERT UKEILEY, Admitted Pro Hac Vice
CENTER FOR BIOLOGICAL DIVERSITY
1536 Wynkoop St., Ste. 421
Denver, CO 80202
Tel: (720) 496-8568
Email: rukeiley@biologicaldiversity.org

Jonathan Evans (Cal. Bar #247376)
CENTER FOR BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
Phone: 510-844-7100
Fax: 510-844-7150
Email: jevans@biologicaldiversity.org

MICHAEL N. LAZORCHAK (Admitted Pro Hac Vice)
CSE LAW
107 STATE STREET
Montpelier, VT 05601-1385
(802)225-6495
Email: mnl@caroline-law.com

Attorneys for Plaintiffs
COUNSEL FOR DEFENDANT:

/s/ Leslie M. Hill
LESLIE M. HILL (D.C. Bar No. 476008)
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
4 Constitution Square
150 M Street N.E., Suite 2.900
Washington D.C. 20001
Tel. (202) 514-0375
Email: Leslie.Hill@usdoj.gov

Attorneys for Defendant EPA

Of counsel:

Mike Thrift
Office of General Counsel
U.S. Environmental Protection Agency
610 W. Ash Street, Suite 905
San Diego, CA 92101