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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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CENTER FOR BIOLOGICAL DIVERSITY,)
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and) Case No.
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CENTER FOR ENVIRONMENTAL)
HEALTH,) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF**
)
Plaintiffs,)
) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)
v.)
)
LISA P. JACKSON,)
)
in her official capacity as Administrator of the)
United States Environmental Protection Agency,)
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Defendant.)

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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, Lisa P. Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), has failed to: (1) make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B), and publish notice of those findings in the Federal Register, for infrastructure state implementation plans (“SIPs”) for the 2008 lead National Ambient Air Quality Standard for the following states: Colorado, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, and Washington; (2) take final action under 42 U.S.C. § 7410(k)(2) and (3), and publish notice of that action in the Federal Register, on a submission by Tennessee addressing the infrastructure SIP requirements for the 2008 lead National Ambient Air Quality Standard; and (3) determine, under 42 U.S.C. § 7509(c)(1) and (2), for the Herculaneum, Jefferson Co., Missouri 1978 lead National Ambient Air Quality Standard nonattainment area, “not later than 6 months after [the applicable attainment date]...whether the area attained the standard by that date,” and publish notice of this determination in the Federal Register. Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY and THE CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant LISA P. JACKSON, in her official capacity as EPA Administrator, to compel her to perform her mandatory duties.

II. JURISDICTION

1 2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this
2 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2)
3 (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

4 3. An actual controversy exists between the parties. This case does not concern federal
5 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of
6 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §
7 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
8 injunctive relief.

10 **III. NOTICE**

11 4. On June 27, 2012, Plaintiffs mailed to EPA by certified mail, return receipt requested,
12 written notice of intent to sue regarding the violations alleged in this Complaint. EPA received
13 this written notice on July 2, 2012. More than sixty days have passed since EPA received this
14 “notice of intent to sue” letter. EPA has not remedied the violations alleged in this Complaint.
15 Therefore, a present and actual controversy exists.

17 **IV. VENUE**

18 5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over
19 Hawaii, among other states, is headquartered in San Francisco. This civil action is brought
20 against an officer of the United States acting in her official capacity and a substantial part of the
21 events or omissions giving rise to the claims in this case occurred in the Northern District of
22 California. Both Plaintiffs reside in this judicial district. Therefore, venue is proper in this Court
23 pursuant to 28 U.S.C. § 1391(e).

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V. INTRADISTRICT ASSIGNMENT

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

VI. PARTIES

7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has over 37,000 members throughout the United States and the world. The Center for Biological Diversity’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

8. The Center for Biological Diversity and its members include individuals with varying interests in wildlife species and their habitat ranging from scientific, professional, and educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological Diversity’s members enjoy, on an ongoing basis, the biological, scientific, research, educational, conservation, recreational, and aesthetic values of the regions inhabited by these species, including the regions at issue in this action. The Center for Biological Diversity’s members

1 observe and study native species and their habitat, and derive professional, scientific,
2 educational, recreational, aesthetic, inspirational, and other benefits from these activities and
3 have an interest in preserving the possibility of such activities in the future. The Center for
4 Biological Diversity and its members have participated in efforts to protect and preserve natural
5 areas, including the habitat essential to the continued survival of native species, and to address
6 threats to the continued existence of these species, including the threats posed by air pollution
7 and other contaminants.

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

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

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

1 12. The above injuries will continue until the Court grants the relief requested herein.

2 13. Defendant LISA P. JACKSON is the Administrator of the United States Environmental
3 Protection Agency. In that role Administrator Jackson has been charged by Congress with the
4 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

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6 **VII. LEGAL BACKGROUND**

7 14. 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 15. Under the Clean Air Act, each state is required to submit state implementation plans to
14 ensure that each National Ambient Air Quality Standard will be achieved, maintained, and
15 enforced; and that emissions arising in one state will not significantly contribute to air quality
16 problems in another state. Without such plans, the public is not afforded full protection against
17 the harmful impacts of air pollution.

18 16. A state, through state implementation plans made pursuant to the Clean Air Act, 42
19 U.S.C. § 7410(a)(2), “must specify emission limitations and other measures necessary to attain
20 and maintain the [National Ambient Air Quality Standards] for each pollutant.” *Sierra Club v.*
21 *EPA*, 129 F.3d 137, 138 (D.C. Cir. 1997).

22 17. The Clean Air Act requires EPA to determine whether any state implementation plan
23 submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this

1 determination by “no later than 6 months after the date, if any, by which a State is required to
2 submit the plan or revision.” *Id.*

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

8 19. EPA has a mandatory duty to take final action on any administratively complete state
9 implementation plan submission by approving in full, disapproving in full or approving in part
10 and disapproving in part within 12 months of the date the submission is deemed administratively
11 complete. 42 U.S.C. § 7410(k)(2) and (3).

12 20. When an area is designated nonattainment under 42 U.S.C. § 7407(d)(1)(A), EPA must
13 set an attainment date “no later than 5 years from the date such area was designated
14 nonattainment,” except that the Administrator “may extend the attainment date to the extent the
15 Administrator determines appropriate, for a period no greater than 10 years from the date of
16 designation as nonattainment[.]” 42 U.S.C. § 7502(a)(2).

17 21. The Administrator has a mandatory duty to determine “not later than 6 months after [the
18 applicable attainment date]...whether the area has attained the standard by that date.” 42 U.S.C.
19 § 7509(c)(1).

20 22. The Administrator is also required to publish notice of this determination in the Federal
21 Register and identify in that notice each area that the Administrator has determined to have failed
22 to attain. *Id.* at § 7509(c)(2).

1 **VIII. FACTS**

2 23. This case involves EPA’s failure to timely implement the National Ambient Air Quality
3 Standards for lead. There is no safe level of exposure to lead. When EPA originally set the lead
4 National Ambient Air Quality Standard in 1978, it relied on what was then deemed “the
5 maximum safe blood lead level...for a population of young children.” 73 Fed. Reg. 66,964,
6 66,983 (Nov. 12, 2008) (quoting 43 Fed. Reg. 46,247, 46,253 (Oct. 5, 1978)). Thirty years later,
7 in 2008, EPA noted the increased evidence of risks posed by significantly lower levels of lead
8 exposure: “Based on the current evidence, the Staff Paper first concluded that young children
9 remain the sensitive population of primary focus in this review and that ‘there is now no
10 recognized safe level of [lead] in children’s blood ...’”*Id.* at 66,984, *quoting* Review of the
11 National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and
12 Technical Information, Office of Air Quality Planning and Standards Staff Paper (Nov. 2007).
13 EPA concluded that the risk of population Intelligence Quotient (“IQ”) loss in children and other
14 sensitive populations from airborne lead exposure was unacceptably high, and that the 1978 lead
15 National Ambient Air Quality Standard was inadequate to protect public health with an adequate
16 margin of safety. *Id.* at 66,987. EPA thus reduced the primary lead National Ambient Air
17 Quality Standard by 90 percent, from 1.5 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) averaged over a
18 calendar quarter to 0.15 $\mu\text{g}/\text{m}^3$ averaged over a rolling 3-month period, in order to satisfy the
19 Clean Air Act requirement that primary National Ambient Air Quality Standards protect public
20 health with an adequate margin of safety. *Id.* at 66,991-67,007.

21 24. The effects of lead are not limited to public health. As EPA noted when promulgating
22 the 2008 lead National Ambient Air Quality Standard, “[l]ead is persistent in the environment
23 and accumulates in soils, aquatic systems (including sediments), and some biological tissues of

1 plants, animals and other organisms, thereby providing long-term, multi-pathway exposures to
2 organisms and ecosystems.” 73 Fed. Reg. 66,964, 67,008 (Nov. 12, 2008). Ecosystems near
3 sources of lead emissions experience “decreases in species diversity, loss of vegetation, changes
4 to community composition, decreased growth of vegetation, and increased number of invasive
5 species.” *Id.*

6 25. EPA promulgated a revised National Ambient Air Quality Standard for lead in 2008. 73
7 Fed. Reg. 66,964 (Nov. 12, 2008). States are required to submit infrastructure state
8 implementation plans within three years of the promulgation of any new or revised National
9 Ambient Air Quality Standard. 42 U.S.C. § 7410(a)(1); 73 Fed. Reg. at 67,034. Three years
10 after November 12, 2008 is November 12, 2011.

11 26. The following states have not submitted an infrastructure state implementation plan
12 addressing the 2008 lead National Ambient Air Quality Standard: Colorado, Hawaii, Illinois,
13 Maryland, Massachusetts, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota,
14 Vermont, and Washington.

15 27. EPA must make a finding of failure to submit a state implementation plan for the 2008
16 lead National Ambient Air Quality Standard by no later than May 12, 2012. 42 U.S.C. §
17 7410(k)(1)(B).

18 28. EPA has not made this finding for the states listed above.

19 29. On April 19, 2010, either EPA or operation of law deemed administratively complete a
20 Tennessee submission of the infrastructure state implementation plan requirements for the 2008
21 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
22 Requirements—Tennessee: 110(a)(2) Lead (2008) Infrastructure Requirements (*available at*
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1 http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_lead_2008

2)(last viewed August 7, 2012).

3 30. EPA had a mandatory duty to take final action, and publish notice of that action in the
4 Federal Register, on this Tennessee submission by April 19, 2011. 42 U.S.C. § 7410(k)(2) and
5 (3).

6 31. EPA has not taken final action on this submission.

7 32. EPA established the original National Ambient Air Quality Standard for lead in 1978.
8 *See* 71 Fed. Reg. 19,432, 19,433 (Apr. 14, 2008), citing 43 Fed. Reg. 46,246 (Oct. 5, 1978). The
9 standard was set at 1.5 µg/m³ of air, averaged over a calendar quarter. *Id.*

10 33. EPA designated the Herculaneum, Jefferson County, Missouri area nonattainment for the
11 1978 lead National Ambient Air Quality Standard effective January 6, 1992. 56 Fed. Reg.
12 56,694 (Nov. 6, 1991).

13 34. EPA issued a SIP call under 42 U.S.C. § 7410(k)(5) for the Missouri SIP for the 1978
14 lead National Ambient Air Quality Standard. 71 Fed. Reg. 19,432 (Apr. 14, 2006).

15 35. In the Missouri SIP call, EPA revised the 1978 lead National Ambient Air Quality
16 Standard attainment date for the Herculaneum nonattainment area to no later than April 7, 2008.
17 71 Fed. Reg. at 19,434; 42 U.S.C. § 7502(d).

18 36. The Administrator had a mandatory duty to determine whether the Herculaneum
19 nonattainment area had attained the standard by its attainment date, and publish notice of this
20 determination in the Federal Register identifying each area that the Administrator has determined
21 to have failed to attain, by no later than October 7, 2008. 42 U.S.C. § 7509(c)(1) and (2).

22 37. The Administrator has not made a determination whether the Herculaneum
23 nonattainment area attained the standard by its attainment date.

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IX. CLAIM FOR RELIEF

CLAIM ONE

(Failure to make a finding of failure to submit.)

38. Plaintiffs incorporate by reference paragraphs 1 through 37.

39. The deadline for the 2008 lead National Ambient Air Quality Standard infrastructure state implementation plan submissions is November 12, 2011. 73 Fed. Reg. 66,964, 67,034 (Nov. 12, 2008).

40. Colorado has not submitted an infrastructure state implementation plan addressing the 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure Requirements—Colorado: 110(a)(2) Lead (2008) Infrastructure Requirements (available at http://www.epa.gov/air/urbanair/sipstatus/reports/co_infrabypoll.html#x110_a_2_lead_2008 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

41. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for Colorado by no later than June 12, 2012.

42. EPA has failed to perform this mandatory duty.

43. Hawaii has not submitted an infrastructure state implementation plan addressing the 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure Requirements—Hawaii: 110(a)(2) Lead (2008) Infrastructure Requirements (available at http://www.epa.gov/air/urbanair/sipstatus/reports/hi_infrabypoll.html#x110_a_2_lead_2008 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

44. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for Hawaii by no later than June 12, 2012.

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1 45. EPA has failed to perform this mandatory duty.

2 46. Illinois has not submitted an infrastructure state implementation plan addressing the 2008
3 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
4 Requirements—Illinois: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
5 http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a_2_lead_2008
6 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

7 47. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
8 Illinois by no later than June 12, 2012.

9 48. EPA has failed to perform this mandatory duty.

10 49. Maryland has not submitted an infrastructure state implementation plan addressing the
11 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
12 Requirements—Maryland: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
13 http://www.epa.gov/air/urbanair/sipstatus/reports/md_infrabypoll.html#x110_a_2_lead_2008
14 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

15 50. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
16 Maryland by no later than June 12, 2012.

17 51. EPA has failed to perform this mandatory duty.

18 52. Massachusetts has not submitted an infrastructure state implementation plan addressing
19 the 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP
20 Infrastructure Requirements—Massachusetts: 110(a)(2) Lead (2008) Infrastructure
21 Requirements (available at
22 http://www.epa.gov/air/urbanair/sipstatus/reports/ma_infrabypoll.html#x110_a_2_lead_2008
23 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

1 53. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
2 Massachusetts by no later than June 12, 2012.

3 54. EPA has failed to perform this mandatory duty.

4 55. New Jersey has not submitted an infrastructure state implementation plan addressing the
5 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
6 Requirements— New Jersey: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
7 http://www.epa.gov/air/urbanair/sipstatus/reports/nj_infrabypoll.html#x110_a_2_lead_2008
8 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

9 56. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
10 New Jersey by no later than June 12, 2012.

11 57. EPA has failed to perform this mandatory duty.

12 58. Oklahoma has not submitted an infrastructure state implementation plan addressing the
13 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
14 Requirements— Oklahoma: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
15 http://www.epa.gov/air/urbanair/sipstatus/reports/ok_infrabypoll.html#x110_a_2_lead_2008
16 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

17 59. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
18 Oklahoma by no later than June 12, 2012.

19 60. EPA has failed to perform this mandatory duty.

20 61. Oregon has not submitted an infrastructure state implementation plan addressing the
21 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
22 Requirements— Oregon: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
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1 http://www.epa.gov/air/urbanair/sipstatus/reports/or_infrabypoll.html#x110_a_2_lead_2008

2 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

3 62. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
4 Oregon by no later than June 12, 2012.

5 63. EPA has failed to perform this mandatory duty.

6 64. Pennsylvania has not submitted an infrastructure state implementation plan addressing

7 the 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP

8 Infrastructure Requirements— Pennsylvania: 110(a)(2) Lead (2008) Infrastructure Requirements

9 (available at

10 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html#x110_a_2_lead_2008

11 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

12 65. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
13 Pennsylvania by no later than June 12, 2012.

14 66. EPA has failed to perform this mandatory duty.

15 67. South Dakota has not submitted an infrastructure state implementation plan addressing

16 the 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP

17 Infrastructure Requirements— South Dakota: 110(a)(2) Lead (2008) Infrastructure Requirements

18 (available at

19 http://www.epa.gov/air/urbanair/sipstatus/reports/sd_infrabypoll.html#x110_a_2_lead_2008

20 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

21 68. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
22 South Dakota by no later than June 12, 2012.

23 69. EPA has failed to perform this mandatory duty.

1 70. Vermont has not submitted an infrastructure state implementation plan addressing the
2 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
3 Requirements— Vermont: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
4 http://www.epa.gov/air/urbanair/sipstatus/reports/vt_infrabypoll.html#x110_a_2_lead_2008
5 (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

6 71. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
7 Vermont by no later than June 12, 2012.

8 72. EPA has failed to perform this mandatory duty.

9 73. Washington has not submitted an infrastructure state implementation plan addressing the
10 2008 lead National Ambient Air Quality Standard. *See* EPA, Status of State SIP Infrastructure
11 Requirements— Washington: 110(a)(2) Lead (2008) Infrastructure Requirements (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/wa_infrabypoll.html#x110_a_2_lead_2008
13 _ (last viewed Aug. 7, 2012) (“latest action” is blank for all infrastructure SIP requirements).

14 74. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA must make a finding of failure to submit for
15 Washington by no later than June 12, 2012.

16 75. EPA has failed to perform this mandatory duty.

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18 CLAIM TWO

19 (Failure to Take Final Action on Tennessee State Implementation Plan Submission.)

20 76. Plaintiffs incorporate by reference paragraphs 1 through 75.

21 77. The Clean Air Act requires EPA to determine whether any state implementation plan
22 submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).
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1 78. If, six months after a state submits a state implementation plan, EPA has not made the
2 completeness finding and has not found the submission to be incomplete, the submission is
3 deemed administratively complete by operation of law. *Id.*

4 79. EPA must take final action on an administratively complete submission by approving in
5 full, disapproving in full, or approving in part and disapproving in part within 12 months of the
6 date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) and (3).

7 80. On April 19, 2010, either EPA or operation of law deemed Tennessee's submission
8 addressing the requirements of section 110(a)(2)(A)-(H) and (J)-(M) administratively complete.
9 *See* EPA, Status of State SIP Infrastructure Requirements—Tennessee: 110(a)(2) Lead (2008)
10 Infrastructure Requirements (*available at*
11 http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_lead_2008
12)(last viewed Aug. 7, 2012).

13 81. EPA had a mandatory duty to take final action, and publish notice of that action in the
14 Federal Register, on Tennessee's submission by no later than April 19, 2011. 42 U.S.C. §
15 7410(k)(2) and (3).

16 82. EPA has failed to perform this mandatory duty.

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18 CLAIM THREE

19 (Failure to determine whether the Herculaneum nonattainment area has attained by its attainment
20 date.)

21 83. Plaintiffs incorporate by reference paragraphs 1 through 82.
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1 84. EPA designated the Herculaneum, Jefferson County, MO area nonattainment for the
2 1978 lead National Ambient Air Quality Standard effective January 6, 1992. 56 Fed. Reg.
3 56,694 (Nov. 6, 1991).

4 85. When EPA issued a SIP call for the Missouri SIP for the 1978 lead National Ambient Air
5 Quality Standard, it revised the attainment date for the Herculaneum nonattainment area to no
6 later than April 7, 2008. 71 Fed. Reg. 19,432, 19,434; 42 U.S.C. § 7502(d).

7 86. EPA has a mandatory duty to determine whether the Herculaneum nonattainment area
8 had attained the standard by its attainment date, and publish notice of this determination in the
9 Federal Register identifying each area that the Administrator has determined to have failed to
10 attain, by no later than October 7, 2008. 42 U.S.C. § 7509(c)(1) and (2).

11 87. EPA has failed to perform this mandatory duty.

12 13 **REQUEST FOR RELIEF**

14 WHEREFORE, the Center for Biological Diversity and the Center for Environmental
15 Health respectfully request that the Court:

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

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Respectfully submitted,

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Counsel for Plaintiffs Center for Biological Diversity
and Center for Environmental Health

Dated: September 24, 2012