

INTRODUCTION

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2 1. Plaintiff Sierra Club brings this Clean Air Act citizen suit to compel the United States
3 Environmental Protection Agency (“EPA”) to undertake overdue mandatory duties.
4 Specifically, Sierra Club challenges the failure of Defendant, Gina McCarthy, in her official
5 capacity as Administrator of the EPA, to perform certain mandatory duties required by the Clean
6 Air Act, 42 U.S.C. §§ 7401-7671q. These duties include failure to approve or disapprove under
7 42 U.S.C. § 7410(k)(2) - (4) state implementation plan elements submittals from Alabama,
8 Alaska, Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Maryland,
9 Mississippi, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina,
10 Texas, Virginia and West Virginia and failure to make a finding of failure to submit a state
11 implementation plan element for Tennessee, all for the 2008 ozone National Ambient Air
12 Quality Standard.

JURISDICTION

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

NOTICE

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18 3. Plaintiff Sierra Club mailed four letters via certified mail, return receipt requested, to
19 EPA Administrators stating that Sierra Club intends to sue the EPA Administrators for the
20 violations alleged in this Complaint. More than sixty days have passed since Sierra Club mailed
21 these notice of intent to sue letters. To date, Defendant has not remedied the violations alleged
22 in this Complaint. Therefore, an actual controversy exists.
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VENUE

4. Defendant EPA resides in this judicial district. This civil action is brought against an officer of the United States acting in her 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. In addition, Plaintiff Sierra Club is headquartered in San Francisco and Sierra Club’s counsel is located in San Francisco. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

INTRADISTRICT ASSIGNMENT

5. A substantial part of the events and omissions giving rise to the claims in this case occurred in the County of 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).

PARTIES

6. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization formed in 1892.

7. Sierra Club’s purpose includes practicing and promoting the responsible use of earth’s ecosystems and resources, and protecting and restoring the quality of the natural and human environment. Sierra Club has over 600,000 members nationally.

8. Members and staffs of Sierra Club live, work, recreate, and travel throughout the States at issue in this case and will continue to do so on a regular basis. Ozone in the affected States threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiff’s staffs and members. Ozone diminishes Sierra Club staff’s and members’, as well as the public’s ability to enjoy the aesthetic qualities and recreational opportunities of the respective areas.

1 9. EPA's failure to timely perform the mandatory duties described herein also adversely
2 affect Sierra Club, as well as its staff and members, by depriving them of procedural protection
3 and opportunities, as well as information that they are entitled to under the Clean Air Act. The
4 failure of EPA to perform the mandatory duties also creates uncertainty for Sierra Club's staff
5 and members as to whether they are exposed to excess air pollution.

6 10. The above injuries will continue until the Court grants the relief requested herein.

7 11. Defendant Gina McCarthy is the Administrator of the United States Environmental
8 Protection Agency. In that role Administrator McCarthy has been charged by Congress with the
9 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

10 **LEGAL BACKGROUND**

11 12. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against
12 air pollution in the United States with a view to assuring that the air we breathe throughout the
13 Nation is wholesome once again." H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code
14 Cong. & Admin. News 5356, 5356. To promote this, the Clean Air Act requires EPA to set
15 National Ambient Air Quality Standards establishing maximum allowable concentrations for
16 certain pollutants, including ozone.

17 13. Adverse impacts arise from ground-level ozone ("ozone") pollution, commonly referred
18 to as smog. Exposure to ozone pollution causes numerous impacts to a person's respiratory
19 system, including asthma, pneumonia, and bronchitis, and can result in the permanent scarring of
20 lung tissue. Moreover, the detrimental effects extend beyond public health. Ozone pollution
21 also interferes with vegetation's ability to function properly. This interference results in injuries
22 such as decreased crop yields and damage to native ecosystems.

1 14. The Clean Air Act requires each state to submit a state implementation plan for every
2 promulgation or revision of a National Ambient Air Quality Standard, within three years of that
3 standard's promulgation or revision, that provides for the "implementation, maintenance, and
4 enforcement" of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as
5 "Infrastructure" state implementation plans. An Infrastructure state implementation plan
6 submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). See 42 U.S.C. §§
7 7410(a)(2)(A)-(M).

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

12 16. EPA has a mandatory duty to take final action on any administratively complete state
13 implementation plan submittal by approving in full, disapproving in full, or approving in part
14 and disapproving in part, or conditionally approving, within 12 months of the date the submittal
15 is deemed administratively complete. 42 U.S.C. § 7410(k)(2), (3) and (4).

16 17. If a state fails to submit any required state implementation plan, there is no submittal that
17 may be deemed administratively complete, and EPA must make a determination stating that the
18 state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is
19 referred to as a "finding of failure to submit."

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CLAIMS FOR RELIEF

CLAIM ONE

(EPA’s Failure to find that Tennessee has not Submitted an 110(a)(2)(D)(i)(I) element of a 2008 ozone National Ambient Air Quality Standards Infrastructure State Implementation Plan)

18. Plaintiff incorporates by reference paragraphs 1 through 17.

19. Pursuant to the Clean Air Act, each state must submit an “Infrastructure” state implementation plan that provides for the “implementation, maintenance, and enforcement” of a National Ambient Air Quality Standard within three years of a standard’s promulgation or revision. 42 U.S.C. § 7410(a)(1).

20. The Clean Air Act requires EPA to determine whether a state implementation plan submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

21. If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to submit.”

22. Thus, if a state does not submit a state implementation plan, EPA must make a finding of failure to submit no later than six months after the date by which the state implementation plan submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).

23. On March 12, 2008, the EPA promulgated National Ambient Air Quality Standards for ozone. *See* 73 Fed. Reg. 16436-16514 (March 27, 2008). EPA set a new standard limiting ozone concentrations to no more than 0.075 parts per million over an 8-hour period. *See* 40 C.F.R. § 50.15.

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1 24. In accordance with Section 110(a)(1) of the Clean Air Act, States are required to submit
2 SIPs to attain and maintain the National Ambient Air Quality Standards within three years of the
3 promulgation or revision of a National Ambient Air Quality Standard. *See* 42 U.S.C. §
4 7410(a)(1). In assuring that SIPs attain and maintain the National Ambient Air Quality
5 Standards in accordance with Section 110(a)(1), States must ensure their SIPs include
6 requirements set forth under Section 110(a)(2). *See* 74 U.S.C. § 7410(a)(2).

7 25. States must submit Infrastructure SIPs for the 2008 ozone National Ambient Air Quality
8 Standards by no later than March 12, 2011. *See* 73 Fed. Reg. 16436, 16503 (March 27, 2008).

9 *See also*

10 http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a_2_ozone_2008
11 [8](#)

12 26. The state of Tennessee originally submitted a 2008 ozone infrastructure SIP to cover
13 Clean Air Act 110(a)(2)(D)(i)(I). However, via a July 3, 2012 letter, Tennessee withdrew this
14 submittal. Therefore, it is currently after September 27, 2011, Tennessee does not have a 2008
15 ozone infrastructure SIP 110(a)(2)(D)(i)(I) submittal and EPA has not made a finding of failure
16 to submit this element.

17 27. The Administrator is required to make a finding as to whether a State has submitted the
18 required SIP no later than six months after the date by which the State was required to submit
19 such a SIP. *See* 42 U.S.C. § 7410(k)(1)(B). Thus, EPA must make findings of failure to submit
20 SIPs for the 2008 ozone National Ambient Air Quality Standards by no later than September 12,
21 2011.

22 28. EPA has not made findings that Tennessee failed to submit the 110(a)(2)(D)(i)(I) element
23 of an Infrastructure SIP for the 2008 ozone National Ambient Air Quality Standard.

1 29. Thus, EPA is in violation of its mandatory duty with regard to Tennessee for the
2 110(a)(2)(D)(i)(I) element.

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4 **CLAIM TWO**

5 (EPA Failure to Take Final Action on States' Infrastructure State Implementation Plan
6 Submittals.)

7 30. Plaintiff incorporates by reference paragraphs 1 through 29.

8 31. The Clean Air Act requires EPA to determine whether any state implementation plan
9 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

10 32. If, six months after a state submits a state implementation plan, EPA has not made the
11 completeness finding and has not found the submittal to be incomplete, the submittal is deemed
12 administratively complete by operation of law. *Id.*

13 33. EPA must take final action on an administratively complete submittal by approving in
14 full, disapproving in full, approving in part and disapproving in part or conditionally approving
15 within 12 months of the date of the submittal's completeness finding. 42 U.S.C. § 7410(k)(2) -
16 (4).

17 34. EPA has failed to take final action on Alabama's infrastructure state implementation plan
18 submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A) – (H), (J) – (M) elements. By no later
19 than December 14, 2012, either EPA or operation of law deemed Alabama's state
20 implementation plan submittal that included the infrastructure requirements under 42 U.S.C. §
21 7410(a)(2)(A) – (H), (J) – (M) administratively complete. *See* EPA, Status of State SIP
22 Infrastructure Requirements—Alabama (available at
23 http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a__2__ozone__2008_
24 8_ (last viewed July 14, 2014).

25 35. Under the Clean Air Act, EPA is required to take final action on Alabama's submittal
26 that addresses these infrastructure requirements by approving in full, disapproving in full, or
27 approving in part and disapproving in part by no later than December 14, 2013. *See* 42 U.S.C. §
28 7410(k)(2) - (4).

1 36. EPA has failed to do so.

2 37. EPA has failed to take final action on Alaska's infrastructure state implementation plan
3 submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(D)(i) elements. On October 4, 2011,
4 either EPA or operation of law deemed Alaska's state implementation plan submittal that
5 included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(D)(i) administratively
6 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Alaska (available at
7 http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html#x110_a_2_ozone_2008
8 (last viewed July 14, 2014).

8 38. Under the Clean Air Act, EPA is required to take final action on Alaska's submittal that
9 addresses these infrastructure requirements by approving in full, disapproving in full, or
10 approving in part and disapproving in part by October 4, 2012. *See* 42 U.S.C. § 7410(k)(2) - (4).

10 39. EPA has failed to do so.

11 40. EPA has failed to take final action on Alaska's infrastructure state implementation plan
12 submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A)-(C),(D)(ii), (E)-(H), (J)-(M)
13 elements. On September 8, 2012, either EPA or operation of law deemed Alaska's state
14 implementation plan submittal that included the infrastructure requirements under 110(a)(2)(A)-
15 (C),(D)(ii), (E)-(H), (J)-(M) administratively complete. *See* EPA, Status of State SIP
16 Infrastructure Requirements—Alaska (available at
17 http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html#x110_a_2_ozone_2008
18 (last viewed Dec. 18, 2013).

18 41. Under the Clean Air Act, EPA is required to take final action on Alaska's submittal that
19 addresses these infrastructure requirements by approving in full, disapproving in full, or
20 approving in part and disapproving in part by September 8, 2013. *See* 42 U.S.C. § 7410(k)(2) -
21 (4).

21 42. EPA has failed to do so.

22 43. EPA has failed to take final action on Arizona's infrastructure state implementation plan
23 submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A) – (H), (J) – (M) elements. By no later
than January 3, 2013, either EPA or operation of law deemed Arizona's state implementation

1 plan submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) –
2 (H), (J) – (M) administratively complete. *See* EPA, Status of State SIP Infrastructure
3 Requirements—Arizona (available
4 at http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a__2__ozone__2008_
5 (last viewed July 14, 2014).

6 44. Under the Clean Air Act, EPA is required to take final action on Arizona’s submittal that
7 addresses these infrastructure requirements by approving in full, disapproving in full, or
8 approving in part and disapproving in part by no later than January 3, 2014. *See* 42 U.S.C. §
9 7410(k)(2) - (4).

10 45. EPA has failed to do so.

11 46. EPA has failed to take final action on Colorado’s infrastructure state implementation plan
12 submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A) – (H), (J) – (M) elements. By no
13 later than January 2, 2013, either EPA or operation of law deemed Colorado’s state
14 implementation plan submittal that included the infrastructure requirements under 42 U.S.C. §
15 7410(a)(2)(A) – (H), (J) – (M) administratively complete. *See* EPA, Status of State SIP
16 Infrastructure Requirements—Colorado (available at
17 http://www.epa.gov/air/urbanair/sipstatus/reports/co_infrabypoll.html#x110_a__2__ozone__2008_
18 (last viewed July 14, 2014).

19 47. Under the Clean Air Act, EPA is required to take final action on Colorado’s submittal
20 that addresses these infrastructure requirements by approving in full, disapproving in full, or
21 approving in part and disapproving in part by no later than January 2, 2014. *See* 42 U.S.C. §
22 7410(k)(2) - (4).

23 48. EPA has failed to do so.

24 49. EPA has failed to take final action on Connecticut’s infrastructure state implementation
25 plan submittal for the 2008 ozone 8-hour NAAQS 110(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E) –
26 (H), (J) - (M) elements. By no later than January 3, 2013, either EPA or operation of law
27 deemed Colorado’s state implementation plan submittal that included the infrastructure

1 requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E) – (H), (J) - (M)
2 administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
3 Connecticut (available at
4 http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html#x110_a__2__ozone__2008_
5 (last viewed July 14, 2014).

6 50. Under the Clean Air Act, EPA is required to take final action on Connecticut’s submittal
7 that addresses these infrastructure requirements by approving in full, disapproving in full, or
8 approving in part and disapproving in part by no later than January 3, 2014. *See* 42 U.S.C. §
9 7410(k)(2) - (4).

10 51. EPA has failed to do so.

11 52. EPA has failed to take final action on Florida’s infrastructure state implementation plan
12 submittal for the 2008 ozone 8-hour NAAQS. By no later than April 30, 2012, either EPA or
13 operation of law deemed Florida’s state implementation plan submittal that included the
14 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I) and (II)(Prong 4 visibility
15 only). *See* EPA, Status of State SIP Infrastructure Requirements—Florida (available at
16 http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html#x110_a__2__ozone__2008_
17 (last viewed Dec. 18, 2013).

18 53. Under the Clean Air Act, EPA is required to take final action on Florida’s submittal by
19 approving in full, disapproving in full, or approving in part and disapproving in part by no later
20 than April 30, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

21 54. EPA has failed to do so.

22 55. EPA has failed to take final action on Georgia’s infrastructure state implementation plan
23 submittal for the 2008 ozone 8-hour NAAQS. By no later than September 6, 2012, either EPA
24 or operation of law deemed Georgia’s state implementation plan submittal that included the
25 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II) - (H), (J)-(M)
26 administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—Georgia
27 (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/ga_infrabypoll.html#x110_a__2__ozone__2008_
2 (last viewed Dec. 18, 2013).

3 56. Under the Clean Air Act, EPA is required to take final action on Georgia's submittal by
4 approving in full, disapproving in full, or approving in part and disapproving in part by no later
5 than September 6, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

6 57. EPA has failed to do so.

7 58. EPA has failed to take final action on an Idaho submittal of the infrastructure state
8 implementation plan for the 2008 ozone NAAQS. By no later than September 15, 2008, June
9 25, 2010, and October 25, 2010, Idaho submitted to EPA a SIP submittal intended to meet the
10 infrastructure requirements for the 2008 ozone NAAQS including Section 110(a)(2)(D)(i)(I).
11 *See WildEarth Guardians v. EPA*, 11-cv-5651-YGR (N.D.Cal.), "Defendant's Statement of
12 Material Facts in Support of Cross-Motion for Summary Judgment," Dk. No. 44-3, Fact 2.

13 Either EPA or operation of law deemed these submittals administratively complete by no later
14 than April 25, 2011.

15 59. The Clean Air Act requires EPA to take final action by approving in full, disapproving in
16 full, or approving in part and disapproving in part Idaho's submittals by no later than April 25,
17 2012. 42 U.S.C. § 7410(k)(2) - (4).

18 60. EPA has failed to do so for Section 110(a)(2)(D)(i)(I).

19 61. EPA has failed to take final action on Illinois' infrastructure state implementation plan
20 submittal for the 2008 ozone 8-hour NAAQS. By no later than January 2, 2013, either EPA or
21 operation of law deemed Illinois' state implementation plan submittal that included the
22 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively
23 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Illinois (available at
24 http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a__2__ozone__2008_
25 _ (last viewed April 21, 2014).

26 62. Under the Clean Air Act, EPA is required to take final action on this Illinois submittal by
27 approving in full, disapproving in full, or approving in part and disapproving in part by no later
28 than January 2, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

1 63. EPA has failed to do so.

2 64. EPA has failed to take final action on Indiana's infrastructure state implementation plan
3 submittal for the 2008 ozone 8-hour NAAQS. By no later than June 12, 2012, either EPA or
4 operation of law deemed Indiana's state implementation plan submittal that included the
5 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively
6 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Indiana (available at
7 http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html#x110_a_2__ozone__2008__
8 (last viewed Dec. 18, 2013).

8 65. Under the Clean Air Act, EPA is required to take final action on this Indiana submittal by
9 approving in full, disapproving in full, or approving in part and disapproving in part by no later
10 than June 12, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

10 66. EPA has failed to do so.

11 67. EPA has failed to take final action on Maryland's infrastructure state implementation
12 plan submittal for the 2008 ozone 8-hour NAAQS. By no later than January 2, 2013, either EPA
13 or operation of law deemed Maryland's state implementation plan submittal that included the
14 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively
15 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Maryland (available at
16 http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a_2__ozone__2008__
17 (last viewed July 14, 2014).

17 68. Under the Clean Air Act, EPA is required to take final action on this Maryland submittal
18 by approving in full, disapproving in full, or approving in part and disapproving in part by no
19 later than January 2, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

19 69. EPA has failed to do so.

20 70. EPA has failed to take final action on Mississippi's infrastructure state implementation
21 plan submittal for the 2008 ozone 8-hour NAAQS. By no later than December 18, 2012, either
22 EPA or operation of law deemed Mississippi's state implementation plan submittal that included
23 the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively
complete. *See* EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a__2__ozone__20](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a__2__ozone__2008_)
2 [08_](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed July 14, 2014).

3 71. Under the Clean Air Act, EPA is required to take final action on this Mississippi
4 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
5 by no later than December 18, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

6 72. EPA has failed to do so.

7 73. EPA has failed to take final action on North Carolina's infrastructure state
8 implementation plan submittal for the 2008 ozone 8-hour NAAQS. By not later than November
9 15, 2012, either EPA or operation of law deemed North Carolina's state implementation plan
10 submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H),
11 (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
12 North Carolina (available at

13 [http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a__2__ozone__200](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a__2__ozone__2008_)
14 [8_](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed July 14, 2014).

15 74. Under the Clean Air Act, EPA is required to take final action on this North Carolina
16 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
17 by no later than November 15, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

18 75. EPA has failed to do so.

19 76. EPA has failed to take final action on New Hampshire's infrastructure state
20 implementation plan submittal for the 2008 ozone 8-hour NAAQS. By not later than January 3,
21 2013, either EPA or operation of law deemed New Hampshire's state implementation plan
22 submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H),
23 (J)-(M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
24 New Hampshire (available at

25 [http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a__2__ozone__200](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a__2__ozone__2008_)
26 [8_](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed July 14, 2014).

1 77. Under the Clean Air Act, EPA is required to take final action on this New Hampshire
2 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
3 by no later than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

4 78. EPA has failed to do so.

5 79. EPA has failed to take final action on Ohio's infrastructure state implementation plan
6 submittal for the 2008 ozone 8-hour NAAQS. By not later than January 3, 2013, either EPA or
7 operation of law deemed Ohio's state implementation plan submittal that included the
8 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J)-(M) administratively
9 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Ohio (available at
10 http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a__2__ozone__2008_
11 8_ (last viewed July 14, 2014).

12 80. Under the Clean Air Act, EPA is required to take final action on this Ohio submittal by
13 approving in full, disapproving in full, or approving in part and disapproving in part by no later
14 than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

15 81. EPA has failed to do so.

16 82. EPA has failed to take final action on an Oregon submittal of certain requirements of the
17 infrastructure state implementation plan for the 2008 ozone NAAQS. By no later than June 23,
18 2010, Oregon submitted to EPA a SIP submittal intended to meet the 110(a)(2)(D)(i)(I) element
19 of the infrastructure requirements for the 2008 ozone NAAQS. *See WildEarth Guardians v.*
20 *EPA*, 11-cv-5651-YGR (N.D.Cal.), “Defendant’s Statement of Material Facts in Support of
21 Cross-Motion for Summary Judgment,” Dk. No. 44-3, Fact 4. Either EPA or operation of law
22 deemed this Oregon submittal administratively complete by no later than December 23, 2010.

23 83. The Clean Air Act requires EPA to take final action by approving in full, disapproving in
24 full, or approving in part and disapproving in part Oregon’s 110(a)(2)(D)(i)(I) submittal by no
25 later than December 23, 2011. 42 U.S.C. § 7410(k)(2) - (4).

26 84. EPA has failed to do so.

27 85. EPA has failed to take final action on Rhode Island’s infrastructure state implementation
28 plan submittal for the 2008 ozone 8-hour NAAQS. By no later than January 3, 2013, either EPA

1 or operation of law deemed Rhode Island's state implementation plan submittal that included the
2 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (C), (D)(i)(II), (D)(ii), (E) – (H),
3 (J) – (M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
4 Rhode Island (available at
5 http://www.epa.gov/air/urbanair/sipstatus/reports/ri_infrabypoll.html#x110_a__2__ozone__2008
6 _ (last viewed July 14, 2014).

6 86. Under the Clean Air Act, EPA is required to take final action on this submittal by
7 approving in full, disapproving in full, or approving in part and disapproving in part by no later
8 than January 3, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

8 87. EPA has failed to do so.

9 88. EPA has failed to take final action on South Carolina's infrastructure state
10 implementation plan submittal for the 2008 ozone 8-hour NAAQS. By no later than April 24,
11 2012, either EPA or operation of law deemed South Carolina's state implementation plan
12 submittal that included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H),
13 (J) - (M) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
14 South Carolina (available at
15 http://www.epa.gov/air/urbanair/sipstatus/reports/sc_infrabypoll.html#x110_a__2__ozone__2008
16 _ (last viewed Dec. 18, 2013).

16 89. Under the Clean Air Act, EPA is required to take final action on this South Carolina
17 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
18 by no later than April 24, 2013. *See* 42 U.S.C. § 7410(k)(2) and (3).

18 90. EPA has failed to do so.

19 91. EPA has failed to take final action on Texas' infrastructure state implementation plan
20 submittal for the 2008 ozone 8-hour NAAQS. By no later than December 20, 2012, either EPA
21 or operation of law deemed Texas' state implementation plan submittal that included the
22 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(A) – (H), (J) - (M) administratively
23 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Texas (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/tx_infrabypoll.html#x110_a__2__ozone__2008_
2 [8_](http://www.epa.gov/air/urbanair/sipstatus/reports/tx_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed July 14, 2014).

3 92. Under the Clean Air Act, EPA is required to take final action on this Texas submittal by
4 approving in full, disapproving in full, or approving in part and disapproving in part by no later
5 than December 20, 2014. *See* 42 U.S.C. § 7410(k)(2) - (4).

6 93. EPA has failed to do so.

7 94. EPA has failed to take final action on Virginia's infrastructure state implementation plan
8 submittal for the 2008 ozone 8-hour NAAQS. By no later than December 20, 2012, either EPA
9 or operation of law deemed Virginia's state implementation plan submittal that included the
10 infrastructure requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II)(PSD prong) administratively
11 complete. *See* EPA, Status of State SIP Infrastructure Requirements—Virginia (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/va_infrabypoll.html#x110_a__2__ozone__2008_
13 [8_](http://www.epa.gov/air/urbanair/sipstatus/reports/va_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed July 14, 2014).

14 95. Under the Clean Air Act, EPA is required to take final action on this Virginia submittal
15 by approving in full, disapproving in full, or approving in part and disapproving in part by no
16 later than December 20, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

17 96. EPA has failed to do so.

18 97. EPA has failed to take final action on West Virginia's infrastructure state implementation
19 plan submittal for the 2008 ozone 8-hour NAAQS. By no later than August 22, 2012, either
20 EPA or operation of law deemed West Virginia's state implementation plan submittal that
21 included the infrastructure requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II)(prong 4) and
22 (E)(ii) administratively complete. *See* EPA, Status of State SIP Infrastructure Requirements—
23 West Virginia (available at
24 http://www.epa.gov/air/urbanair/sipstatus/reports/wv_infrabypoll.html#x110_a__2__ozone__2008_
25 [08_](http://www.epa.gov/air/urbanair/sipstatus/reports/wv_infrabypoll.html#x110_a__2__ozone__2008_) (last viewed Dec. 18, 2013); *See also* DRAFT West Virginia State Implementation Plan
26 Revision for Clean Air Act Section 110(a)(2)(A)-(M) Requirements for the 2008 8-Hour Ozone
27 National Ambient Air Quality Standards at 7.

1 98. Under the Clean Air Act, EPA is required to take final action on this West Virginia
2 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
3 by no later than August 22, 2013. *See* 42 U.S.C. § 7410(k)(2) - (4).

4 99. EPA has failed to do so.

5 **REQUEST FOR RELIEF**

6 WHEREFORE, Sierra Club respectfully requests that the Court:

- 7 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her
8 failure to perform each mandatory duty listed above;
- 9 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory
10 duties by certain dates;
- 11 C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's
12 order;
- 13 D. Grant Sierra Club its reasonable costs of litigation, including attorneys' and experts' fees;
14 and
- 15 E. Grant such further relief as the Court deems just and proper.

16 Respectfully submitted,

17
18 /s/Kristin A. Henry

19 Kristin A. Henry (Cal. Bar No. 220908)
20 Sierra Club
21 85 Second Street, 2nd Floor
22 San Francisco, CA 94105
23 Telephone: (415) 977-5716
24 Facsimile: (415) 977-5793
25 Kristin.Henry@sierraclub.org

26 Counsel for Sierra Club

27 Dated: July 15, 2014

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

120FKKHQPCN'CUH PO GPV'EklkIN05/4+

(Place an "X" in One Box Only) () SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.