

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB )  
 2101 Webster Street, Suite 1300 )  
 Oakland, CA 94612 )  
 )  
 NATIONAL PARKS )  
 CONSERVATION ASSOCIATION )  
 777 6th Street, NW, Suite 700 )  
 Washington, DC 20001-3723 )  
 )  
 ENVIRONMENTAL INTEGRITY PROJECT )  
 1000 Vermont Ave, NW Suite 1100 )  
 Washington, DC 20005 )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 UNITED STATES ENVIRONMENTAL )  
 PROTECTION AGENCY )  
 1200 Pennsylvania Ave., NW )  
 Washington, DC 20460 )  
 )  
 MICHAEL S. REGAN, )  
 in his official capacity as Administrator )  
 U.S. Environmental Protection Agency )  
 1200 Pennsylvania Ave., NW )  
 Washington, DC 20460 )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Civ. No. 1:23-cv-01744-JDB

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

The United States Environmental Protection Agency and its Administrator (collectively “EPA”) have failed to perform required, nondiscretionary duties under the Clean Air Act (“the Act”). Specifically, EPA has failed to take final action on state implementation plan revisions submitted by Kansas, Massachusetts, New York, Ohio, Texas, Wisconsin, Michigan, Florida, Indiana, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Georgia,

Hawaii, Idaho, Maryland, Montana, North Carolina, North Dakota, New Hampshire, Nevada, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming under the Regional Haze Rule, 40 C.F.R. § 51.308, as required by the Clean Air Act, 42 U.S.C. § 7410(k)(2). This action seeks an order compelling EPA to perform its nondiscretionary duty to take final action on these plan revisions.

### **JURISDICTION AND VENUE**

1. This action arises under the Clean Air Act, 42 U.S.C. §§ 7401-7671q. This Court has jurisdiction pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201, 2202, and 1361.

2. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs served prior notice on the Administrator of his failure to perform nondiscretionary duties as alleged herein and Plaintiffs' intent to initiate the present action. These notices of intent were mailed by certified U.S. Mail addressed to the Administrator on March 28, 2023 (for Kansas, Massachusetts, New York, Ohio, Texas, Wisconsin, and Michigan, *see* Ex. A to June 15, 2023 Complaint, ECF Doc. 1-1); on July 5, 2023 (for Florida and Indiana, *see* Ex. A-1 to Amended Complaint); and on August 23, 2023 (for Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Maryland, Montana, North Carolina, North Dakota, New Hampshire, Nevada, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wyoming, *see* Ex. A-2 to Amended Complaint). The notices were delivered to, and receipts were signed by the office of, the Administrator on April 7, 2023, July 17, 2023, and August 28, 2023, respectively. More than 60 days have passed since the notices were served pursuant to 42 U.S.C. § 7604(b), and the Administrator's failure to perform nondiscretionary duties complained of in the notice is continuing.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because Defendant Michael S. Regan is an officer of the United States sued for acts and omissions in his official capacity, and his official residence is in the District of Columbia.

### **PARTIES**

4. Plaintiff Sierra Club is a not-for-profit corporation organized and existing under the laws of California, with its principal place of business in Oakland, California. Sierra Club is a national membership organization with more than 715,000 members residing throughout the United States, including each of the States as defined in 42 U.S.C. § 7602(d). Sierra Club's mission is to protect and enhance the quality of the natural and human environment, and its activities include public education, advocacy, and litigation to enforce environmental laws. Sierra Club and its members are concerned about the effects of air pollution on human health and the environment and have a long history of involvement in activities related to air quality.

5. Plaintiff National Parks Conservation Association ("NPCA") is a national not-for-profit corporation organized and existing under the laws of the District of Columbia with its principal place of business in Washington, D.C. Its mission is to protect and enhance America's national parks for the use and enjoyment of present and future generations. Since NPCA was established in 1919, it has advocated for protection of the natural environment (including air quality) in and around the national parks, and has worked to uphold laws and support new legislation to protect natural, cultural, and historical sites and the public's enjoyment of them. Headquartered in Washington, D.C., with 27 field offices throughout the country, NPCA has more than 1.6 million members and supporters, including members in each of the fifty states.

6. Plaintiff Environmental Integrity Project ("EIP") is a national nonprofit corporation headquartered in Washington, D.C., founded to advocate for the effective

enforcement of state and federal environmental laws. EIP's organizational goals include clean air, and specific objectives include accurate accounting of industrial emissions and technology-forcing regulations. EIP staff, directors, and officers live, work, and recreate in areas that the regional haze rule is intended to protect.

7. Defendant Michael S. Regan is the Administrator of EPA and is charged with taking various actions to implement and enforce the Clean Air Act, including the nondiscretionary actions sought herein. Plaintiffs are suing Mr. Regan in his official capacity as Administrator of EPA, and he officially resides in Washington, D.C.

8. Defendant United States Environmental Protection Agency is the federal agency charged with implementation of the Clean Air Act.

### **BACKGROUND**

9. The Clean Air Act's haze program, 42 U.S.C. §§ 7491-7492, seeks to prevent and remedy human-caused impairment of visibility in "Class I" national parks and wilderness areas. EPA's Regional Haze Rule, 40 C.F.R. § 51.308, implements those statutory requirements.

10. The Act requires states containing Class I areas, or containing air pollution sources whose emissions impact Class I areas in other states, to submit state implementation plans (also known as ("Regional Haze Plans")) setting emission limits and compliance schedules to prevent and remedy visibility problems in the affected Class I areas. 42 U.S.C. § 7491(b)(2). These plans must provide for reasonable progress toward eliminating visibility pollution in Class I national parks and wilderness areas by 2064. *Id.*; 40 C.F.R. §§ 51.308(d)(1), (d)(3).

11. Under the Regional Haze Rule, the first state haze plan submissions were due in 2007. Subsequent state haze plans were due by July 31, 2021. 40 C.F.R. § 51.308(f). These state submittals must be comprehensive state implementation plan revisions with enforceable emission

limitations and other measures to fulfill the Act's reasonable progress requirements. *Id.*

12. Within six months of state's submission of a state implementation plan, including any haze plan, EPA must determine whether the submittal meets the minimum completeness criteria established under 42 U.S.C. § 7410(k)(1)(A), and 40 C.F.R. Part 51, Appendix V.

13. If EPA does not make a finding of incompleteness within six months of the haze plan submittal, the plan is deemed complete by operation of law. 42 U.S.C. § 7410(k)(1)(B). EPA then has a nondiscretionary duty to take final action approving, disapproving, or conditionally approving a submittal within twelve months of the submittal either being deemed, or found, administratively complete. *Id.* § 7410(k)(2).

### **CLAIMS FOR RELIEF**

#### **CLAIM 1: EPA FAILURE TO TAKE ACTION ON KANSAS HAZE PLAN**

14. Kansas submitted its Regional Haze Plan revision for the second planning period to EPA on July 28, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of January 28, 2022.

15. As of the date of this Complaint, more than 12 months have passed since the Kansas Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Kansas Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

16. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Kansas Regional Haze Plan.

#### **CLAIM 2: EPA FAILURE TO TAKE ACTION ON MASSACHUSETTS HAZE PLAN**

17. Massachusetts submitted its Regional Haze Plan revision for the second planning period to EPA on July 26, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal

was complete as of January 26, 2022.

18. As of the date of this complaint, more than 12 months have passed since the Massachusetts Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Massachusetts Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

19. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Massachusetts Regional Haze Plan.

**CLAIM 3: EPA FAILURE TO TAKE ACTION ON NEW YORK HAZE PLAN**

20. New York submitted its Regional Haze Plan revision for the second planning period to EPA on May 8, 2020. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of November 8, 2020.

21. As of the date of this Complaint, it has been more than 12 months since New York's Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the New York Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

22. Therefore, EPA is therefore in violation of its nondiscretionary duty under the Clean Air Act to take final action on the New York Regional Haze Plan.

**CLAIM 4: EPA FAILURE TO TAKE ACTION ON OHIO HAZE PLAN**

23. Ohio submitted its Regional Haze Plan revision for the second planning period to EPA on July 30, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of January 30, 2022.

24. As of the date of this Complaint, it has been more than 12 months since the Ohio Regional Haze Plan was deemed administratively complete. EPA has not taken final action to

approve, disapprove, or conditionally approve the Ohio Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

25. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Ohio Regional Haze Plan.

**CLAIM 5: EPA FAILURE TO TAKE ACTION ON TEXAS HAZE PLAN**

26. Texas submitted its Regional Haze Plan revision for the second planning period to EPA on July 20, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of January 20, 2022.

27. As of the date of this Complaint, it has been more than 12 months since the Texas Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Texas Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

28. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Texas Regional Haze Plan.

**CLAIM 6: EPA FAILURE TO TAKE ACTION ON WISCONSIN HAZE PLAN**

29. Wisconsin submitted a Regional Haze Plan revision for the second planning period to EPA on July 30, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of January 30, 2022.

30. As of the date of this Complaint, it has been more than 12 months since the Wisconsin Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Wisconsin Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

31. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air

Act to take final action on the Wisconsin Regional Haze Plan.

**CLAIM 7: EPA FAILURE TO TAKE ACTION ON MICHIGAN HAZE PLAN**

32. Michigan submitted a Regional Haze Plan revision for the second planning period to EPA on August 24, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of February 24, 2022.

33. As of the date of this Complaint, it has been more than 12 months since the Michigan Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Michigan Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

34. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Michigan Regional Haze Plan.

**CLAIM 8: EPA FAILURE TO TAKE ACTION ON FLORIDA HAZE PLAN**

35. Florida submitted a Regional Haze Plan revision for the second planning period to EPA on October 8, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of April 8, 2022.

36. As of the date of this Complaint, it has been more than 12 months since the Florida Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Florida Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

37. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Florida Regional Haze Plan.

**CLAIM 9: EPA FAILURE TO TAKE ACTION ON INDIANA HAZE PLAN**



38. Indiana submitted a Regional Haze Plan revision for the second planning period to EPA on December 30, 2021. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of June 30, 2022.

39. As of the date of this Complaint, it has been more than 12 months since the Indiana Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Indiana Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

40. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Indiana Regional Haze Plan.

**CLAIM 10: EPA FAILURE TO TAKE ACTION ON ALASKA HAZE PLAN**

41. Alaska submitted a Regional Haze Plan revision for the second planning period to EPA on July 25, 2022. EPA deemed that submittal administratively complete as of August 3, 2022.

42. As of the date of this Complaint, it has been more than 12 months since the Alaska Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Alaska Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

43. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Alaska Regional Haze Plan.

**CLAIM 11: EPA FAILURE TO TAKE ACTION ON ARKANSAS HAZE PLAN**

44. Arkansas submitted a Regional Haze Plan revision for the second planning period to EPA on August 8, 2022. EPA deemed that submittal administratively complete as of August 18, 2022.

45. As of the date of this Complaint, it has been more than 12 months since the Arkansas Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Arkansas Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

46. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Arkansas Regional Haze Plan.

**CLAIM 12: EPA FAILURE TO TAKE ACTION ON ARIZONA HAZE PLAN**

47. Arizona submitted a Regional Haze Plan revision for the second planning period to EPA on August 15, 2022. EPA deemed that submittal administratively complete as of August 16, 2022.

48. As of the date of this Complaint, it has been more than 12 months since the Arizona Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Arizona Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

49. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Arizona Regional Haze Plan.

**CLAIM 13: EPA FAILURE TO TAKE ACTION ON CALIFORNIA HAZE PLAN**

50. California submitted a Regional Haze Plan revision for the second planning period to EPA on August 9, 2022. EPA deemed that submittal administratively complete as of August 16, 2022.

51. As of the date of this Complaint, it has been more than 12 months since the California Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the California Regional Haze Plan, as

required under 42 U.S.C. § 7410(k)(2)-(4).

52. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the California Regional Haze Plan.

**CLAIM 14: EPA FAILURE TO TAKE ACTION ON COLORADO HAZE PLAN**

53. Colorado submitted a Regional Haze Plan revision for the second planning period to EPA on May 20, 2022. EPA deemed that submittal administratively complete as of August 23, 2022.

54. As of the date of this Complaint, it has been more than 12 months since the Colorado Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Colorado Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

55. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Colorado Regional Haze Plan.

**CLAIM 15: EPA FAILURE TO TAKE ACTION ON CONNECTICUT HAZE PLAN**

56. Connecticut submitted a Regional Haze Plan revision for the second planning period to EPA on January 6, 2022. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of July 6, 2022.

57. As of the date of this Complaint, it has been more than 12 months since the Connecticut Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Connecticut Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

58. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Connecticut Regional Haze Plan.

**CLAIM 16: EPA FAILURE TO TAKE ACTION ON DELAWARE HAZE PLAN**

59. Delaware submitted a Regional Haze Plan revision for the second planning period to EPA on August 8, 2022. EPA deemed that submittal administratively complete as of August 18, 2022.

60. As of the date of this Complaint, it has been more than 12 months since the Delaware Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Delaware Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

61. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Delaware Regional Haze Plan.

**CLAIM 17: EPA FAILURE TO TAKE ACTION ON GEORGIA HAZE PLAN**

62. Georgia submitted a Regional Haze Plan revision for the second planning period to EPA on August 11, 2022. EPA deemed that submittal administratively complete as of August 15, 2022.

63. As of the date of this Complaint, it has been more than 12 months since the Georgia Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Georgia Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

64. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Georgia Regional Haze Plan.

**CLAIM 18: EPA FAILURE TO TAKE ACTION ON HAWAII HAZE PLAN**

65. Hawaii submitted a Regional Haze Plan revision for the second planning period to EPA on August 12, 2022. EPA deemed that submittal administratively complete as of August 16,

2022.

66. As of the date of this Complaint, it has been more than 12 months since the Hawaii Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Hawaii Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

67. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Hawaii Regional Haze Plan.

**CLAIM 19: EPA FAILURE TO TAKE ACTION ON IDAHO HAZE PLAN**

68. Idaho submitted a Regional Haze Plan revision for the second planning period to EPA on August 4, 2022. EPA deemed that submittal administratively complete as of August 11, 2022.

69. As of the date of this Complaint, it has been more than 12 months since the Idaho Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Idaho Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

70. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Idaho Regional Haze Plan.

**CLAIM 20: EPA FAILURE TO TAKE ACTION ON MARYLAND HAZE PLAN**

71. Maryland submitted a Regional Haze Plan revision for the second planning period to EPA on February 10, 2022. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of August 10, 2022.

72. As of the date of this Complaint, it has been more than 12 months since the Maryland Regional Haze Plan was deemed administratively complete. EPA has not taken final

action to approve, disapprove, or conditionally approve the Maryland Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

73. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Maryland Regional Haze Plan.

**CLAIM 21: EPA FAILURE TO TAKE ACTION ON MONTANA HAZE PLAN**

74. Montana submitted a Regional Haze Plan revision for the second planning period to EPA on August 10, 2022. EPA deemed that submittal administratively complete as of August 23, 2022.

75. As of the date of this Complaint, it has been more than 12 months since the Montana Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Montana Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

76. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Montana Regional Haze Plan.

**CLAIM 22: EPA FAILURE TO TAKE ACTION ON NORTH CAROLINA HAZE PLAN**

77. North Carolina submitted a Regional Haze Plan revision for the second planning period to EPA on April 4, 2022. EPA deemed that submittal administratively complete as of August 15, 2022.

78. As of the date of this Complaint, it has been more than 12 months since the North Carolina Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the North Carolina Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

79. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air

Act to take final action on the North Carolina Regional Haze Plan.

**CLAIM 23: EPA FAILURE TO TAKE ACTION ON NORTH DAKOTA HAZE PLAN**

80. North Dakota submitted a Regional Haze Plan revision for the second planning period to EPA on August 11, 2022. EPA deemed that submittal administratively complete as of August 23, 2022.

81. As of the date of this Complaint, it has been more than 12 months since the North Dakota Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the North Dakota Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

82. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the North Dakota Regional Haze Plan.

**CLAIM 24: EPA FAILURE TO TAKE ACTION ON NEW HAMPSHIRE HAZE PLAN**

83. New Hampshire submitted a Regional Haze Plan revision for the second planning period to EPA on May 5, 2022. EPA deemed that submittal administratively complete as of August 15, 2022.

84. As of the date of this Complaint, it has been more than 12 months since the New Hampshire Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the New Hampshire Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

85. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the New Hampshire Regional Haze Plan.

**CLAIM 25: EPA FAILURE TO TAKE ACTION ON NEVADA HAZE PLAN**

86. Nevada submitted a Regional Haze Plan revision for the second planning period to EPA on August 12, 2022. EPA deemed that submittal administratively complete as of August 16, 2022.

87. As of the date of this Complaint, it has been more than 12 months since the Nevada Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Nevada Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

88. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Nevada Regional Haze Plan.

**CLAIM 26: EPA FAILURE TO TAKE ACTION ON OKLAHOMA HAZE PLAN**

89. Oklahoma submitted a Regional Haze Plan revision for the second planning period to EPA on August 9, 2022. EPA deemed that submittal administratively complete as of August 18, 2022.

90. As of the date of this Complaint, it has been more than 12 months since the Oklahoma Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Oklahoma Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

91. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Oklahoma Regional Haze Plan.

**CLAIM 27: EPA FAILURE TO TAKE ACTION ON OREGON HAZE PLAN**

92. Oregon submitted a Regional Haze Plan revision for the second planning period to EPA on April 29, 2022. EPA deemed that submittal administratively complete as of July 22, 2022.



93. As of the date of this Complaint, it has been more than 12 months since the Oregon Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Oregon Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

94. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Oregon Regional Haze Plan.

**CLAIM 28: EPA FAILURE TO TAKE ACTION ON SOUTH CAROLINA HAZE PLAN**

95. South Carolina submitted a Regional Haze Plan revision for the second planning period to EPA on March 4, 2022. EPA deemed that submittal administratively complete as of August 15, 2022.

96. As of the date of this Complaint, it has been more than 12 months since the South Carolina Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the South Carolina Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

97. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the South Carolina Regional Haze Plan.

**CLAIM 29: EPA FAILURE TO TAKE ACTION ON SOUTH DAKOTA HAZE PLAN**

98. South Dakota submitted a Regional Haze Plan revision for the second planning period to EPA on July 29, 2022. EPA deemed that submittal administratively complete as of August 23, 2022.

99. As of the date of this Complaint, it has been more than 12 months since the South Dakota Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the South Dakota Regional Haze Plan, as

required under 42 U.S.C. § 7410(k)(2)-(4).

100. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the South Dakota Regional Haze Plan.

**CLAIM 30: EPA FAILURE TO TAKE ACTION ON TENNESSEE HAZE PLAN**

101. Tennessee submitted a Regional Haze Plan revision for the second planning period to EPA on February 23, 2022. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of August 23, 2022.

102. As of the date of this Complaint, it has been more than 12 months since the Tennessee Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Tennessee Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

103. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Tennessee Regional Haze Plan.

**CLAIM 31: EPA FAILURE TO TAKE ACTION ON UTAH HAZE PLAN**

104. Utah submitted a Regional Haze Plan revision for the second planning period to EPA on August 2, 2022. EPA deemed that submittal administratively complete as of August 23, 2022.

105. As of the date of this Complaint, it has been more than 12 months since the Utah Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Utah Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

106. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Utah Regional Haze Plan.

**CLAIM 32: EPA FAILURE TO TAKE ACTION ON WASHINGTON HAZE PLAN**

107. Washington submitted a Regional Haze Plan revision for the second planning period to EPA on January 28, 2022. By operation of law, 42 U.S.C. § 7410(k)(1)(B), that submittal was deemed complete as of July 28, 2022.

108. As of the date of this Complaint, it has been more than 12 months since the Washington Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Washington Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

109. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Washington Regional Haze Plan.

**CLAIM 33: EPA FAILURE TO TAKE ACTION ON WEST VIRGINIA HAZE PLAN**

110. West Virginia submitted a Regional Haze Plan revision for the second planning period to EPA on August 12, 2022. EPA deemed that submittal administratively complete as of August 18, 2022.

111. As of the date of this Complaint, it has been more than 12 months since the West Virginia Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the West Virginia Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

112. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the West Virginia Regional Haze Plan.

**CLAIM 34: EPA FAILURE TO TAKE ACTION ON WYOMING HAZE PLAN**

113. Wyoming submitted a Regional Haze Plan revision for the second planning period to EPA on August 10, 2022. EPA deemed that submittal administratively complete as of

August 23, 2022.

114. As of the date of this Complaint, it has been more than 12 months since the Wyoming Regional Haze Plan was deemed administratively complete. EPA has not taken final action to approve, disapprove, or conditionally approve the Wyoming Regional Haze Plan, as required under 42 U.S.C. § 7410(k)(2)-(4).

115. Therefore, EPA is in violation of its nondiscretionary duty under the Clean Air Act to take final action on the Wyoming Regional Haze Plan.

### **ALLEGATIONS OF INJURY**

116. Once a state submits a revised regional haze plan, EPA must determine, within statutorily mandated deadlines, whether the submittal meets the requirements of the Clean Air Act and take final action either approving or disapproving the plan, and ultimately implementing a federal plan or approving a corrected state plan. *See generally* 42 U.S.C. §§ 7410(k)(1)-(4), 7410(c)(1). A haze plan, and the emission reductions required under any such plan, are not final and enforceable without final EPA action approving the state plan or implementing a federal plan.

117. As reflected in the attached declarations, Plaintiffs' members regularly use and enjoy for recreation and aesthetic enjoyment many Class I areas that suffer from visibility impairment caused or exacerbated by pollution from each of the states at issue in the Complaint.

118. National Parks Conservation Association and Sierra Club member David Platt has made it a life goal to visit all of our country's national parks. Declaration of David Sanford Platt (Ex. B to June 15, 2023 Complaint, ECF Doc. 1-2) ¶ 9. To date, he has visited 43 different national parks and wilderness areas. *Id.* ¶ 8. He regularly visits these parks with his wife and daughters, and enjoys taking photos of the vast and scenic landscapes that many of our national

parks offer. *Id.* ¶¶ 8, 11. Due to regional haze pollution, however, Mr. Platt's enjoyment of scenic vistas in places like Shenandoah, Acadia, Mammoth Cave, Great Smoky Mountains, Isle Royale, Voyageurs, Rocky Mountain, Grand Canyon, Yosemite, Everglades, Glacier, Theodore Roosevelt, Carlsbad Caverns, Crater Lake, Big Bend, and Guadalupe Mountains National Parks has been negatively impacted, sometimes making it difficult or impossible to take quality photos because the colors have been dulled. *Id.* ¶¶ 12-13. Visibility in those and other Class I areas Mr. Platt visits and enjoys has been negatively impacted by pollution from states at issue in this Complaint.

119. National Parks Conservation Association and Sierra Club member Will Harlan has also been adversely affected by poor air quality in Class I areas that is caused, in part, by pollution from states at issue here. Mr. Harlan is a competitive trail-runner, who has spent countless hours running, hiking, cycling, and enjoying the scenic vistas in the Great Smoky Mountains National Park, among several other national parks and wilderness areas. Declaration of Will Harlan (Ex. C to June 15, 2023 Complaint, ECF Doc. 1-3) ¶¶ 7-8. He is also a biologist and focuses his scientific research and policy work on protecting endangered and sensitive salamander species in the Blue Ridge Mountains, including the Great Smoky Mountains. *Id.* ¶¶ 4, 16. Mr. Harlan has also spent time running in, and intends to return to, many of the nation's most iconic and treasured Class I national parks and wilderness areas, including the Grand Canyon National Park, Desolation Wilderness Area, Kings Canyon National Park, St. Marks Wilderness, Okefenokee Wilderness Area, Wolf Island Wilderness Area, Hercules-Glades Wilderness Area, Mingo Wilderness Area, and Linville Gorge Wilderness Area, among others. *Id.* ¶ 8. Haze pollution in the Great Smokies, which is caused or exacerbated by pollution from the states at issue in this Complaint, has caused Mr. Harlan asthma attacks, negatively impacted

his enjoyment of the scenic vistas, and impaired Mr. Harlan's ability to do his work. *Id.* ¶¶ 11–16.

120. Sierra Club member Glen Hooks is similarly affected by visibility impairment in Class I areas that experience pollution from states at issue here. Mr. Hooks regularly visits the Upper Buffalo Wilderness Area in Arkansas, hiking and canoeing on his own, with his sons, and with his church. Declaration of Glen Hooks (Ex. D to June 15, 2023 Complaint, ECF Doc. 1-4) ¶ 9. Mr. Hooks describes how haze pollution negatively impacts “the panoramic views from Whitaker Point” within the Upper Buffalo, which reduces his enjoyment of the area and makes him feel “as though [his] children are missing out on an important part of growing up and exploring the Ozarks.” *Id.* ¶ 12.

121. National Parks Conservation Association member and volunteer Robert Allison's permanent residence is Colorado, but he spends several months a year traveling to Class I areas. Haze pollution from several of the states at issue in this Complaint impacts the Class I areas that he visits on a regular basis, including Denali, Hawaii Volcanos, Zion, Arches, Wind Cave, Yellowstone, Grand Teton, and Rocky Mountain National Parks, as well as Mt. Hood, Three Sisters, and Bridger Wilderness Areas, among others, diminishing his enjoyment of these areas because clear skies are often integral to the experience. Declaration of Robert Allison (Ex. F to June 15, 2023 Complaint, ECF Doc. 1-5) ¶¶ 7–12, 16, 20. As noted in Mr. Allison's declaration, when the air quality is particularly bad in Rocky Mountain National Park due to haze, Mr. Allison will avoid making trips to the park because his trips are greatly enhanced when he is able to experience clear skies from the higher peaks within the park. *Id.*

122. These members and many other members of the Plaintiff organizations are adversely affected by visibility impairment that the Clean Air Act and Regional Haze Rule

require the states, including the states at issue in this Complaint, to remedy and protect against.

123. As noted, under the regional haze program, the states at issue in this Complaint were required to develop and submit for EPA approval Clean Air Act plans, including enforceable pollution limitations, that reduce and ultimately eliminate pollution that causes or contributes to air quality impairment in any affected Class I national parks and wilderness area, including areas that Plaintiffs' members regularly visit and enjoy. Those haze plans are not fully effective and enforceable under the Clean Air Act unless and until EPA approves the plans, or implements its own federal plans.

124. Each of the states at issue in this Complaint have submitted regional haze plans for EPA review, but the agency has not taken final action approving or disapproving those plans, as required under the Clean Air Act.

125. EPA's failure to take final action on these state haze plans, in violation of the Clean Air Act, 42 U.S.C. § 7410(k)(2), injures Plaintiffs' members because EPA's failure to act has delayed haze pollution reductions required under the Clean Air Act, thereby prolonging Plaintiffs' members' exposure to harmful haze pollution, which impairs Plaintiffs' members use and enjoyment of the affected Class I areas—pollution that the Act requires the states and EPA to remedy and eliminate.

126. These delays cause injury to Plaintiffs' members by prolonging existing, and allowing future, visibility impairment that impairs Plaintiffs' members' use and enjoyment of Class I areas, and by delaying measures mandated by the Act to remedy and prevent such visibility impairment. The recreational, aesthetic, and environmental interests of Plaintiffs' members have been and continue to be adversely affected by the acts and omissions of EPA alleged in this Complaint. EPA action on the Regional Haze Plans would remedy or lessen these

harms.

127. Pollution from the states whose Regional Haze Plans are addressed in this Complaint also endangers the health and welfare of Plaintiffs' members who live, work, and recreate in Class I areas or communities that are affected by pollution that also causes visibility impairment. Among other things, those emissions include sulfur dioxide, nitrogen oxide, and particulate matter pollution, which are linked to premature death, heart attacks, aggravated asthma, decreased lung function, and other respiratory problems. Such emissions would be subject to limitation and reduction under the Regional Haze Plans on which EPA has failed to act. EPA's failure take action on the Regional Haze Plans for the states addressed in this Complaint, in violation of the Clean Air Act, 42 U.S.C. § 7410(k)(2), therefore prolongs the exposure of Plaintiffs' members to air pollution that endangers their health and welfare. EPA action on the Regional Haze Plans would remedy or lessen these harms.

128. The acts and omissions of EPA alleged herein further deprive Plaintiffs and their members of procedural rights and protections to which they would otherwise be entitled, including, but not limited to, the right to a public hearing on the EPA's proposed action on the Regional Haze Plans, to present oral and written comments, data, documentary information, views, and arguments to EPA and to have them considered and responded to by the agency as part of the rulemaking process. Such acts and omissions also deprive Plaintiffs and their members of the opportunity to judicially challenge EPA action on the Regional Haze Plans. EPA action on the Regional Haze Plans at issue in this Complaint would remedy or lessen these harms.

129. The deprivation of the foregoing opportunities impairs Plaintiffs' and their members' ability to serve and protect their interests and Plaintiffs' ability to fulfill their



organizational missions. If Plaintiffs and their members had access to the procedural rights and information required of any haze plan under the Clean Air Act or the Regional Haze Rule, they would use those opportunities and information to educate their members and the public about air pollution throughout the nation and to advocate for adoption of measures to remedy and protect against regional haze in Class I areas. EPA's failure to produce such information deprives Plaintiffs and their members of these benefits and thus causes them injury. EPA action on the Regional Haze Plans at issue in this Complaint would remedy or lessen these harms.

130. For all the foregoing reasons, the Administrator's failure to discharge the nondiscretionary duties alleged in this Complaint cause Plaintiffs and their members injuries. Granting the requested relief would redress these injuries.

#### **RELIEF REQUESTED**

Plaintiffs request that this Court:

1. Declare that EPA's failures to act constitute failures to perform nondiscretionary duties required by 42 U.S.C. § 7410(c)(1) and (k)(2) within the meaning of Clean Air Act, 42 U.S.C. § 7604(a)(2);
2. Preliminarily and permanently enjoin the Administrator from continuing to violate the above-described nondiscretionary duties;
3. Order the Administrator to complete all actions required by 42 U.S.C. §§ 7410(c)(1) and (k)(2), specifically, to take final action on the haze plans for Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Maryland, Massachusetts, Michigan, Montana, New York, North Carolina, North Dakota, New Hampshire, Nevada, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming as expeditiously

as possible;

4. Award Plaintiffs their reasonable costs of litigation, including attorneys' fees, pursuant to 42 U.S.C. § 7604(d);
  5. Retain jurisdiction over this action to ensure compliance with the Court's orders;
- and
6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

**11/10/2023**

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Date

**s/ Charles McPhedran**

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