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August 4, 2015

VIA CERTIFIED MAIL CMRRR 7009 3410 0001 1180 9152

REGINA MCCARTHY, ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WILLIAM JEFFERSON CLINTON BUILDING
1200 PENNSYLVANIA AVENUE, NW
MAIL CODE: 1101A
WASHINGTON, DC 20460

RECEIVED
AUG 17 AM 7:54

Re: *State of Nevada and Nevada Department of Conservation and Natural Resources, Division of Environmental Protection v. Regina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency*
USDC, District of Nevada, Case No. 3:15-cv-00396-HDM-WGC

Ms. McCarthy:

Pursuant to Federal Rules of Civil Procedure Rule 4(i), enclosed for service is the Complaint for Declaratory and Injunctive Relief and the Summons in a Civil Action in the above referenced case.

I am available at the number listed below if you have any questions or need further information.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: *Belinda A. Suwe*
BELINDA A. SUWE
Deputy Attorney General
775-684-1163

BAS:jmr
Enclosures (2)

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

STATE OF NEVADA; and
NEVADA DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES, DIVISION OF
ENVIRONMENTAL PROTECTION,

Plaintiff(s)

v.

REGINA MCCARTHY, in her official capacity as
Administrator of the United States Environmental
Protection Agency,

Defendant(s)

Civil Action No. 3:15-cv-00396-HDM-WGC

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Regina McCarthy, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

ADAM PAUL LAXALT, Attorney General
Belinda A. Suwe, Deputy Attorney General
Nevada State Bar No. 12499
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1163

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

Lance S. Wilson

August 4, 2015

Clerk

Date

Handwritten signature of Lance S. Wilson



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6 *Attorneys for Plaintiffs,*
7 *State of Nevada; Department of*
8 *Conservation and Natural Resources,*
9 *Division of Environmental Protection*

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 STATE OF NEVADA; and
12 NEVADA DEPARTMENT OF
13 CONSERVATION AND NATURAL
RESOURCES, DIVISION OF
ENVIRONMENTAL PROTECTION,

14 Plaintiffs,

15 v.

16 REGINA MCCARTHY, in her official
17 capacity as Administrator of the United
States Environmental Protection Agency,

18 Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

21 Plaintiffs, State of Nevada and Nevada Department of Conservation and Natural
22 Resources, Division of Environmental Protection (hereinafter "State of Nevada" or "NDEP"),
23 by and through counsel, ADAM PAUL LAXALT, Attorney General for State of Nevada, and
24 BELINDA SUWE, Deputy Attorney General, hereby file this complaint and allege as follows:

25 **INTRODUCTION**

26 1. The State of Nevada files this suit to compel the Administrator of the U.S.
27 Environmental Protection Agency ("Administrator" or "EPA"), to take action mandated by the
28 federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. (the "CAA") to take final action on the portion

1 national primary ambient air quality standard (or any revision thereof),” and these SIP
2 submittals are to provide for the “implementation, maintenance, and enforcement” of such
3 NAAQS. Each SIP submittal must address a list of a specific elements as outlined in 42
4 U.S.C. § 7410(a)(2). One specific element is that SIP submittals must “contain adequate
5 provisions prohibiting . . . any source or other type of emissions activity within the State from
6 emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or
7 interfere with maintenance by, any other State with respect to any national primary or
8 secondary ambient air quality standards.” 42 U.S.C. § 7410(a)(2)(D)(i)(I). This provision is
9 referred to generally as the interstate transfer provision or the “good neighbor” provision of a
10 state SIP submittal.

11 9. The CAA requires the Administrator to determine whether a state's SIP submittal
12 is complete within six months of submission. 42 U.S.C. § 7410(k)(1)(B). If the Administrator
13 does not determine that the SIP submittal has failed to meet the minimum criteria by the date
14 six months after receipt of submission, then on that date, the SIP submittal shall be deemed
15 by operation of law to meet such minimum criteria. *Id.* Within 12 months of a determination
16 by the Administrator (or a determination deemed by operation of law) that a state has
17 submitted a plan or plan revision that meets the minimum criteria, the Administrator shall fully
18 or partially approve or disapprove the submittal. 42 U.S.C. § 7410(k)(2)–(3).

19 10. Upon EPA's failure to perform a non-discretionary duty, such as the duty to fully
20 or partially approve or disapprove a state's SIP submittal within 12 months from the date said
21 submittal is deemed complete, the CAA authorizes any person, which includes a state (42
22 U.S.C. § 7602(e)), to bring suit to compel EPA to perform its nondiscretionary duty. 42 U.S.C.
23 § 7604(a)(2).

24 STATEMENT OF FACTS

25 11. On April 10, 2013, the NDEP submitted the State of Nevada's SIP addressing
26 the 2008 ozone NAAQS.

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1 12. Nevada's SIP submittal became complete by operation of law on
2 October 10, 2013, because the EPA failed to determine whether Nevada's SIP submittal was
3 complete by that date. 42 U.S.C. § 7410(k)(1)(B).

4 13. Under the CAA, EPA's deadline for fully or partially approving or disapproving
5 the State of Nevada's SIP submittal expired October 10, 2014. 42 U.S.C. § 7410(k)(2)–(3).
6 The EPA failed to meet this deadline.

7 14. On May 20, 2015, the EPA proposed to partially approve and partially
8 disapprove Nevada's SIP submittal as meeting the requirements of the CAA for the
9 implementation, maintenance, and enforcement of the 2008 ozone, 2010 nitrogen dioxide,
10 and 2010 sulfur dioxide NAAQS. See 80 Fed. Reg. 28893 (May 20, 2015). However, with
11 regards to the interstate transport provision of Nevada's SIP submittal, the EPA took "no
12 action on Interstate Transport - significant contribution to nonattainment for NDEP, Clark
13 County and Washoe County on the Ozone . . . NAAQS." *Id.* at 28898.

14 15. In short, contrary to the express requirements of the CAA, the Administrator
15 failed by October 10, 2014 - and through the date of this filing - to take action on the interstate
16 transport portion of the State of Nevada's 2008 ozone SIP submittal pursuant to 42 U.S.C. §
17 7410(k)(2)–(3). EPA's partial approval of Nevada's 2008 ozone SIP submittal does not cure
18 its failure to meet its nondiscretionary duty to take final action on Nevada's entire 2008 ozone
19 SIP submittal, and particularly the interstate transport portion.

20 **CLAIM FOR RELIEF**

21 **Failure to Perform Nondiscretionary Duty to Take Final Action on the Interstate**
22 **Transport Portion of the State of Nevada's 2008 Ozone SIP Submittal**

23 16. All allegations in paragraphs 1 to 15 of this Complaint are incorporated into this
24 Claim for Relief as if they were set forth fully herein.

25 17. The CAA required Defendant to take final action on the Interstate Transport
26 portion of the State of Nevada's 2008 Ozone SIP Submittal by no later than October 10, 2014.

27 18. Defendant failed to perform that duty by said deadline and Defendant continues
28 to fail to perform that duty.

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1 19. The CAA permits any person, which includes a state, to bring an action for
2 injunctive relief to compel Defendant to perform the aforesaid nondiscretionary duty. 42
3 U.S.C. § 7604.

4 20. Plaintiffs have satisfied the prerequisites to suit set forth in the CAA as set forth
5 above.

6 21. For all of the foregoing reasons, Defendant is in violation of the nondiscretionary
7 duty imposed by 42 U.S.C. § 7410(k)(2) and (k)(3) and Plaintiffs are entitled to a declaration of
8 such violation under 28 U.S.C. § 2201 and injunctive relief compelling Defendant to perform
9 her duty under 42 U.S.C. § 7604.

10 **REQUEST FOR RELIEF**

11 WHEREFORE, the State of Nevada respectfully requests that the Court:

- 12 1. Declare that the Administrator is in violation of the CAA with regard to her failure
13 to perform the mandatory duties as established above;
- 14 2. Issue a mandatory injunction requiring the Administrator to perform her
15 mandatory duties by a certain date set by the Court;
- 16 3. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- 17 4. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and
18 expert witness fees; and
- 19 5. Grant such further relief as the Court deems proper.

20 Dated this 31st day of July, 2015.

21 ADAM PAUL LAXALT
22 Nevada Attorney General

23 By: Belinda Suwe
24 Belinda A. Suwe
25 Deputy Attorney General
26 *Attorneys for Plaintiffs, State of Nevada*
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1 of Nevada's state implementation plan ("SIP") submittal pertaining to significant contribution to
2 nonattainment or interference with maintenance of the national ambient air quality standards
3 ("NAAQS") for interstate transport, an element that the State is required to address pursuant
4 to 42 U.S.C. § 7410(a)(2)(D)(i)(I). In particular, EPA is deferring action on the interstate
5 transport provisions for the 2008 ozone 8-hour standard. On April 10, 2013, the NDEP
6 submitted Nevada's SIP to the EPA addressing the 2008 ozone NAAQS. The CAA requires
7 the EPA to determine whether a state's SIP submittal is complete within six months of
8 submission. 42 U.S.C § 7410(k)(1)(B). The EPA failed to do so and, as a result, Nevada's
9 SIP submittal became complete by operation of law on October 10, 2013. *Id.* The CAA then
10 establishes a nondiscretionary duty for the EPA to take final action approving, partially
11 approving, or disapproving Nevada's SIP submittal no later than twelve (12) months from the
12 date the plan was deemed complete by operation of law. 42 U.S.C. § 7410(k)(2). In this
13 case, the deadline for EPA to approve, partially approve, or disapprove Nevada's ozone SIP
14 submittal expired October 10, 2014. The EPA failed to meet this deadline. On May 20, 2015,
15 the EPA proposed to partially approve and partially disapprove Nevada's SIP submittal as
16 meeting the requirements of the CAA for the implementation, maintenance, and enforcement
17 of the 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. See 80 Fed. Reg.
18 28893 (May 20, 2015). However, with regards to interstate transport, the EPA took "no action
19 on Interstate Transport - significant contribution to nonattainment for NDEP, Clark County and
20 Washoe County on the Ozone . . . NAAQS." *Id.* at 28898. The Administrator has significantly
21 failed to meet the 12-month statutory deadline for taking final action on the interstate transport
22 portion of the Nevada's ozone SIP, thereby violating her nondiscretionary duties under the
23 CAA and harming the State of Nevada, which must implement the 2008 ozone NAAQS and its
24 SIP.

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1 **JURISDICTION AND VENUE**

2 2. This is an action to compel the Administrator to perform actions or duties under
3 the CAA that are nondiscretionary. This Court has jurisdiction pursuant to 42 U.S.C. §
4 7604(a). This Court also has jurisdiction because the claim arises under the laws of the
5 United States, namely the CAA, and because the United States is a defendant. 28 U.S.C. §§
6 1331, 1346.

7 3. On February 18, 2015, pursuant to 42 U.S.C. § 7604(b)(2), the State of Nevada
8 and NDEP provided the Administrator with written notice of Nevada's intent to sue EPA for
9 failure to act on Nevada's 2008 Ozone NAAQS SIP submittal as required by 42 U.S.C. §
10 7410(k)(2). More than 60 days have elapsed since the State of Nevada and NDEP gave such
11 notice and the Administrator has continued her failure to perform such nondiscretionary
12 duties.

13 4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because:
14 a) Plaintiffs, State of Nevada and NDEP, reside in the district; b) the district is one in which
15 Defendant performs its official duties; and c) a substantial part of the events and omissions
16 giving rise to the claim has occurred and is occurring in this district.

17 **PARTIES**

18 5. Plaintiff, State of Nevada, is a sovereign state. Plaintiffs are also a "person" as
19 that term is used in 42 U.S.C. § 7604(a). *Id.* § 7602(d)–(e).

20 6. Defendant Regina McCarthy is the Administrator of the United States
21 Environmental Protection Agency. In that role, Administrator McCarthy has been charged by
22 Congress with the duty to administer the CAA, including the mandatory duties at issue in this
23 case.

24 **STATUTORY BACKGROUND**

25 7. The CAA requires the EPA to promulgate NAAQS for certain pollutants in the
26 ambient air which are known as criteria pollutants, such as ozone. 42 U.S.C. § 7408(a)(1).

27 8. Pursuant to 42 U.S.C. § 7410(a)(1), states must make SIP submittals "within 3
28 years (or such shorter period as the Administrator may prescribe) after the promulgation of a

