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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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SIERRA CLUB and WILDEARTH GUARDIANS, )  
)  
Plaintiffs, )  
)  
v. )  
)  
GINA MCCARTHY, )  
in her official capacity as Administrator of the )  
United States Environmental Protection Agency, )  
)  
Defendant. )  
\_\_\_\_\_

) Case No.

) **COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

**INTRODUCTION**

1  
2 1. Plaintiffs Sierra Club and WildEarth Guardians bring this Clean Air Act citizen suit to  
3 compel the United States Environmental Protection Agency (“EPA”) to undertake overdue  
4 mandatory duties. Specifically, Plaintiffs challenge the failure of Defendant, Gina McCarthy, in  
5 her official capacity as Administrator of the EPA, to perform certain mandatory duties required  
6 by the Clean Air Act, 42 U.S.C. §§ 7401-7671q. These duties are the failure to make findings of  
7 failure to submit under 42 U.S.C. § 7410(k)(1)(B) for Good Neighbor provisions of State  
8 Implementation Plan (“SIP”), 42 U.S.C. § 7410(a)(2)(D)(i)(I), to redress interstate transport of  
9 ozone pollution for the 2008 ozone National Ambient Air Quality Standard. The states which  
10 have failed to submit their 2008 ozone NAAQS Good Neighbor provisions are: Arkansas,  
11 California, Connecticut, Georgia, Iowa, Illinois, Kansas, Massachusetts, Maine, Michigan,  
12 Minnesota, Missouri, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode Island,  
13 South Carolina, Virginia, Washington, and West Virginia (collectively “States”).

14  
15 **JURISDICTION**

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

19  
20 **NOTICE**

21 3. Plaintiffs Sierra Club and WildEarth Guardians mailed via certified mail, return receipt  
22 requested, to Defendant Gina McCarthy a letter stating that they intend to sue Defendant for the  
23 violations alleged in this Complaint. This letter was mailed no later than August 28, 2014.

1 Defendant received the notice of intent to sue letter no later than September 10, 2014. More than  
2 sixty days have passed since Plaintiffs' mailed their notice of intent to sue letter and since  
3 Defendant received the letter. To date, Defendant has not remedied the violations alleged in this  
4 Complaint. Therefore, an actual controversy exists.

5  
6 **VENUE**

7 4. Defendant EPA resides in this judicial district. This civil action is brought against an  
8 officer of the United States acting in her official capacity and a substantial part of the events or  
9 omissions giving rise to the claims in this case occurred in the Northern District of California.  
10 One of the claims in this Complaint concerns EPA's failure to perform mandatory duties with  
11 regard to California. EPA Region 9, whose jurisdiction includes California, is headquartered in  
12 San Francisco. Thus several of the events and omissions at issue in this action occurred at  
13 EPA's Region 9 headquarters in San Francisco. In addition, Plaintiff Sierra Club is  
14 headquartered in San Francisco and one of Sierra Club's counsel is located in San Francisco.  
15 Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

16 **INTRADISTRICT ASSIGNMENT**

17 5. A substantial part of the events and omissions giving rise to the claims in this case  
18 occurred in the County of San Francisco. Accordingly, assignment to the San Francisco  
19 Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

20  
21 **PARTIES**  
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1 6. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization  
2 formed in 1892. Sierra Club's purpose includes practicing and promoting the responsible use of  
3 Earth's ecosystems and resources, and protecting and restoring the quality of the natural and  
4 human environment. Sierra Club has over 600,000 members nationally.

5 7. Plaintiff, WILDEARTH GUARDIANS ("Guardians") is a conservation and  
6 environmental protection organization with approximately 5,000 members. It is organized as a  
7 non-profit corporation. Guardians and its members are dedicated to protecting and restoring  
8 wildlife, wild rivers, and wild places in the American West, and to safeguarding the Earth's  
9 climate and air quality. Guardians and its members work to reduce harmful air pollution in order  
10 to safeguard public health and welfare, and the environment.

11 8. Members and staffs of Sierra Club and Guardians live, work, recreate, and travel  
12 throughout the States and will continue to do so on a regular basis. Ozone in the affected States,  
13 including downwind states, threatens and damages, and will continue to threaten and damage,  
14 the health and welfare of Plaintiffs' staffs and members. Ozone diminishes Guardians' and  
15 Sierra Club's staffs' and members' ability to enjoy the aesthetic qualities and recreational  
16 opportunities of the respective areas.

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

22 10. The above injuries will continue until the Court grants the relief requested herein.  
23

1 11. Defendant GINA MCCARTHY is the Administrator of the United States Environmental  
2 Protection Agency. In that role Administrator McCarthy has been charged by Congress with the  
3 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.  
4

### 5 **LEGAL BACKGROUND**

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

12 13. Adverse impacts arise from ground-level ozone (“ozone”) pollution, commonly referred  
13 to as smog. Ozone represents a serious air quality issue in many parts of the United States.  
14 Exposure to ozone pollution causes numerous impacts to a person’s respiratory system,  
15 including asthma, pneumonia, and bronchitis, can result in the permanent scarring of lung tissue  
16 and even death. Moreover, the detrimental effects extend beyond public health. Ozone pollution  
17 also interferes with vegetation’s ability to function properly. This interference results in injuries  
18 such as decreased crop yields and damage to native ecosystems.

19 14. The Clean Air Act requires each state to submit a state implementation plan for every  
20 promulgation or revision of a National Ambient Air Quality Standard, within three years of that  
21 standard’s promulgation or revision, that provides for the “implementation, maintenance, and  
22 enforcement” of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as  
23 “Infrastructure” state implementation plans. An Infrastructure state implementation plan

1 submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). *See* 42 U.S.C. §§  
2 7410(a)(2)(A)-(M).

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

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

11 17. A finding of failure to submit commences a 24 month “clock” during which EPA must  
12 promulgate a federal implementation plan to address the missing state implementation plan  
13 submittal. 42 U.S.C. § 7410(c)(1).

#### 14 15 **STATEMENT OF THE CASE**

16 18. This case involves the 2008 ozone NAAQS. EPA promulgated the 2008 ozone NAAQS  
17 on March 12, 2008. *See* 73 Fed. Reg. 16,436-16,514 (March 27, 2008). The Clean Air Act  
18 requires that states submit “Infrastructure” state implementation plans (SIP) to the EPA within  
19 three years of EPA’s promulgation of a NAAQS. 42 U.S.C. § 7410(a)(1). So for the 2008 ozone  
20 NAAQS, Infrastructure SIPs were due by March 12, 2011. *See WildEarth Guardians v.*  
21 *McCarthy*, 4:11-cv-5651-YGR *consolidated with* 4:11-cv-5694-YGR, Order Granting In Part  
22 Plaintiffs’ Motion for Summary Judgment; Granting Defendant’s Cross-Motion for Summary  
23 Judgment; Vacating Case Management and Other Hearing Dates [Dk.#64] (MSJ Order) at ¶2.

1 19. One of the elements of an Infrastructure SIP is referred to as the Good Neighbor  
2 provision. It is found in 42 U.S.C. § 7410(a)(2)(D)(i)(I). The Good Neighbor provision requires  
3 that SIPs contain adequate provisions to ensure that pollution from an “upwind” state will not  
4 significantly contribute to nonattainment in, or interference with maintenance of a NAAQS in  
5 any “downwind” state. *Id.*

6 20. The Good Neighbor provision is one of the most important provisions of the Clean Air  
7 Act. It is the legal authority for several of the EPA’s most significant emission reductions  
8 programs such as the “NOx SIP Call,” the Clean Air Interstate Rule (CAIR), and most recently  
9 the “Transport Rule.” *See, e.g., EPA v. EME Homer City Generation, L.P., 574 U.S. \_\_\_, 134 S.*  
10 *Ct. 1584, 1593 (2014) (“Homer City”).*

11 21. However, EPA only designed the Transport Rule to address the 1997 ozone NAAQS.  
12 EPA has yet to create, or even propose, a rule to deal with interstate transport of ozone in the  
13 context of the 2008 ozone NAAQS.

14 22. Thus, EPA had a mandatory duty to make a finding of failure to submit by September 12,  
15 2011 for any state that has failed to submit its Good Neighbor provision for the 2008 ozone  
16 NAAQS. *Id.*

17 23. As of today, the following states have failed to submit Good Neighbor provisions for the  
18 2008 ozone NAAQS:

19 Arkansas, California, Connecticut, Georgia, Iowa, Illinois, Kansas,  
20 Massachusetts, Maine, Michigan, Minnesota, Missouri, New Hampshire, New  
21 Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Virginia,  
22 Washington, and West Virginia

22 24. EPA’s refusal to take a relatively simple step mandated by Congress, referred to as a  
23 finding of failure to submit, that is critical to protecting the public health and welfare of millions

1 of people against ozone pollution, commonly referred to as smog. EPA's refusal to make these  
2 findings of failure to submit not only endangers people's health and very lives, damages native  
3 ecosystems, exacerbates climate change and decreases crop yields, but it also disadvantages  
4 certain states which have undertaken significant efforts to reduce their intrastate ozone precursor  
5 emissions yet still have high levels of ozone pollution because of emissions from upwind states  
6 which are transported into the downwind states. *See, e.g., EPA v. EME Homer City Generation,*  
7 *L.P.*, 574 U.S. \_\_\_, 134 S. Ct. 1584, 1593 (2014) ("Left unregulated, the emitting or upwind  
8 State reaps the benefits of the economic activity causing the pollution without bearing all the  
9 costs. . . . Conversely, downwind States to which the pollution travels are unable to achieve  
10 clean air because of the influx of out-of-state pollution they lack authority to control.").

11 25. For example, George Aburn is the Director of the Air and Radiation Management  
12 Administration within the Maryland Department of the Environment ("MDE"). *See* Declaration of  
13 George S. Aburn in Opposition to EPA's Motion to Extend ("Aburn Dec.") in *Maryland v. EPA*,  
14 13-1070 (D.C. Cir. 5/30/13). Mr. Aburn has plainly stated that "unless ozone [interstate]  
15 transport is effectively reduced, Maryland cannot, by itself, comply with the Clean Air Act.  
16 More importantly, over 4 million Marylanders continue to breathe unhealthy air. Without an  
17 effective solution to the ozone transport issue, public health in Maryland remains at risk." Aburn  
18 Dec. at ¶3.

19 26. MDE's research establishes that the influx of ozone transported from upwind states into  
20 Maryland can be higher than 80 ppb at times. *Id.* at ¶7. Recall that the 2008 ozone NAAQS is 75  
21 ppb. Thus, at certain times, even if Maryland's in-state emissions contribution to its ozone  
22 pollution was zero, Maryland would still be violating the 2008 ozone NAAQS because of ozone  
23 transported from other states. In order to attain the 75 ppb 2008 ozone NAAQS by the

1 December 31, 2015 due date for the parts of Maryland that are in the Metro-D.C. and Metro-  
2 Philadelphia nonattainment areas, “Maryland must have upwind reductions of [ozone precursors]  
3 emissions as soon as possible.” *Id.* at ¶10. This is because attainment by the December 31, 2015  
4 is based on a three year average of data from 2013, 2014 and 2015. In other words, states like  
5 Maryland need upwind reductions which EPA is required to provide if upwind states fail to do so  
6 and the clock is already running for these reductions.

7 27. The scale of the problem is significant. For example, there are over 1 million people  
8 living in the Baltimore ozone nonattainment area who are particularly at risk from exposure to  
9 ozone because they have asthma, COPD, or cardiovascular disease.

#### 10 11 **PROCEDURAL HISTORY**

12 28. This is not the first time this matter is before this Court. On November 22, 2011,  
13 WildEarth Guardians filed a complaint alleging, among other claims, EPA had failed to make a  
14 finding of failure to submit for 48 states for the 2008 ozone Infrastructure SIPs. *See* Case 4:11-  
15 cv-5651-YGR, Dk.#1. On November 28, 2011, Midwest Environmental Defense Center filed a  
16 complaint alleging EPA had failed to make a finding of failure to submit for numerous states for  
17 the 2008 ozone NAAQS Infrastructure SIPs. *See* Case 3:11-cv-5694, Dk.#1. On December 13,  
18 2011, Midwest Environmental Defense Center filed an amended complaint which added Sierra  
19 Club as a plaintiff as well as additional claims not relevant to the current case. *See* Case 3:11-  
20 cv-5694-JSC, Dk.#6. On March 16, 2012, the Court consolidated these two cases. *See* Case  
21 4:11-cv-5651-YGR, Dk.#28.

22 29. On April 13, 2012, Plaintiffs filed a motion for summary judgment on all of their then  
23 pending claims, including the claim that EPA had failed to make findings of failure to submit for

1 2008 ozone NAAQS Infrastructure SIPs. *See* Case 4:11-cv-5651-YGR, Dk.#36. Plaintiffs  
2 supported their motion for summary judgment with extensive affidavits, including the affidavit  
3 of David Howekamp, who had for 18 years been in charge of EPA’s Air Division in EPA’s  
4 Region 9. *See* Case 4:11-cv-5651-YGR, Dk.#37-4 at ¶2. Mr. Howekamp explained that in his  
5 opinion, EPA could make a finding of failure to submit within 30 days of a court order because it  
6 is not a highly technical or complicated regulatory action. *Id.* at ¶¶5-6.

7 30. EPA filed its “opposition” on May 29, 2012, essentially admitting liability except as to  
8 states that had recently submitted SIPs and asking for a due date of January 4, 2013. *See* Case  
9 4:11-cv-5651-YGR, Dk.#44. On October 8, 2012, Plaintiffs filed a reply agreeing to the January  
10 4, 2013 due date in the interest of compromise but also asking that EPA be required to forward  
11 the signed rule to the Office of Federal Register within three days of signature. *See* Case 4:11-  
12 cv-5651-YGR, Dk.#63. The delay in Plaintiffs filing their reply was due to long settlement  
13 negotiations which never actually came to fruition.

14 31. On October 17, 2012, the Court granted Plaintiffs’ summary judgment requiring EPA to  
15 make a finding of failure to submit for all states which had not yet at that point submitted their  
16 2008 ozone NAAQS Good Neighbor provisions by January 4, 2013 and requiring EPA to  
17 forward the rule to the Office of Federal Register within 3 days of signature. *See* Case 4:11-cv-  
18 5651-YGR, Dk.#64.

19 32. On January 4, 2013, pursuant to the Court’s order, EPA issued a finding that numerous  
20 states had failed to submit 2008 ozone Infrastructure SIPs except as to the Good Neighbor  
21 provisions. 78 Fed. Reg. 2,882 (Jan. 15, 2013). As to the Good Neighbor provisions, despite the  
22 Court’s order and the fact that numerous states had actually failed to submit, EPA refused to  
23 make a finding of failure to submit. 78 Fed. Reg. at 2,884. EPA chose to interpret the D.C.

1 Circuit's decision in *EME Homer City Generation v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012) as  
2 concluding that "a SIP cannot be deemed to lack a required submission or deemed deficient for  
3 failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation." 78  
4 Fed. Reg. at 2,884. Rather than quantifying states' obligations under the Good Neighbor  
5 provisions, EPA simply said because it failed to make this quantification, it could not make  
6 findings of failure to submit pursuant to the D.C. Circuit's *Homer City* decision. Ignoring the  
7 plain language of the Clean Air Act, EPA found that states did not have an obligation to submit  
8 Good Neighbor provisions and therefore EPA did not have an obligation to make findings of  
9 failure to submit. Plaintiffs refer to the January 4, 2013 notice as EPA's "non-finding."

10 33. Sierra Club, Environmental Defense Fund, along with the states of Maryland,  
11 Connecticut, Delaware and the District of Columbia appealed EPA's January 4, 2013 "non-  
12 finding" to the D.C. Circuit. *See Maryland v. EPA*, 13-1070 (consolidated with No. 13-1072).

13 34. While that appeal was pending, the Supreme Court reversed the D.C. Circuit's *Homer*  
14 *City* decision. *See EPA v. EME Homer City Generation, L.P.*, 574 U.S. \_\_\_, 134 S. Ct. 1584  
15 (2014). The Supreme Court held the plain language of the Clean Air Act mandated that states  
16 submit Good Neighbor provisions within three years of EPA promulgating a NAAQS, and that  
17 EPA need not undertake any action to trigger this obligation. *Homer City*, 134 S.Ct. at 1600.

18 35. In light of the Supreme Court's decision, EPA agreed to Sierra Club, EDF, Maryland,  
19 Connecticut, Delaware and the District of Columbia's request that EPA seek a voluntary vacatur  
20 and remand of EPA's January 4, 2013 non-finding. Thus, on August 1, 2014 the D.C. Circuit  
21 vacated and remanded EPA's January 4, 2013 non-finding. *See Maryland v. EPA*, 13-1070 (D.C.  
22 Cir. Aug 1, 2014) Order [Document#1505606] at 1.

23

1 36. As it is wont to do, subsequent to the D.C. Circuit's vacating the January 4, 2013 non-  
2 finding, EPA has done nothing despite repeated requests for prompt action by Sierra Club, EDF,  
3 Maryland, Connecticut, Delaware and the District of Columbia.

4 37. When EPA undertakes a mandatory duty under the Clean Air Act but that undertaking is  
5 later vacated by a court, EPA once again has a mandatory duty. For example, in *Environmental*  
6 *Defense v. Leavitt*, 329 F. Supp. 2nd 55 (D.D.C. 2004), EPA had promulgated a regulation  
7 implementing the Clean Air Act's Best Available Retrofit Technology (BART) standards. *Id.*,  
8 329 F. Supp. 2nd at 60. The D.C. Circuit subsequently vacated and remanded EPA's BART  
9 rule. *Id.*, 329 F. Supp. 2nd at 61. Environmental Defense then sued EPA for violating its  
10 mandatory duty by failing to promulgate a BART rule. The D.C. District Court found that it had  
11 jurisdiction to enforce such a mandatory duty. The D.C. District Court explained:

12 When a court vacates an agency's rules, the vacatur restores the status quo before  
13 the invalid rule took effect and the agency must "initiate another rulemaking  
14 proceeding if it would seek to confront the problem anew." *Indep. U.S. Tanker*  
*Owners Comm. v. Dole*, 258 U.S. App. D.C. 6, 809 F.2d 847, 854 (D.C. Cir.  
15 1987); *Sugar Cane Growers Co-op. of Florida v. Veneman*, 351 U.S. App. D.C.  
214, 289 F.3d 89, 97 (D.C. Cir. 2002) (same).

16 *Id.*, 329 F. Supp. 2nd at 64.

17 38. Thus, on September 9, 2014, Sierra Club and WildEarth Guardians filed a Rule 60(b)  
18 Motion to Modify Judgment in Case 4:11-cv-5651-YGR requesting that the Court modify its  
19 previous summary judgment order to set a new date by which EPA must make findings of failure  
20 to submit 2008 ozone NAAQS Good Neighbor provisions for those states which had still failed  
21 to submit those provisions. *See* Case 4:11-cv-5651-YGR, Dk#90.

22 39. The Court denied Plaintiffs Rule 60(b) motion. *See* Case 4:11-cv-5651-YGR, Dk#95.  
23 However, in denying Plaintiffs Rule 60(b) motion, the Court stated: "It is clear enough that EPA

1 should now take action and make findings as to which states are not in compliance with the  
2 Good Neighbor provisions.” *Id.* at 4.

3 40. The Court also stated: “As the parties acknowledge, plaintiffs can bring a new action to  
4 enforce EPA’s mandatory duty concerning the Good Neighbor provision relative to the 2008  
5 ozone NAAQS[.]” *Id.* Thus, Plaintiffs are filing this current action.

6  
7 **CLAIM FOR RELIEF**

8 **CLAIM ONE**

9 (EPA’s Failure to find that States have not Submitted 2008 ozone National Ambient Air Quality  
10 Standard Good Neighbor Provisions)

11 41. Plaintiffs incorporate by reference paragraphs 1 through 40.

12 42. Pursuant to the Clean Air Act, each state must submit an “Infrastructure” state  
13 implementation plan that provides for the “implementation, maintenance, and enforcement” of a  
14 National Ambient Air Quality Standard, including the Good Neighbor provisions found in 42  
15 U.S.C. § 7410(a)(2)(D)(i)(I), within three years of a standard’s promulgation or revision. 42  
16 U.S.C. § 7410(a)(1).

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

19 44. If a state fails to submit any required state implementation plan, there is no submittal that  
20 may be deemed administratively complete and EPA must make a determination stating that the  
21 state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B).  
22 This is referred to as a “finding of failure to submit.”  
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1 45. Thus, if a state does not submit a state implementation plan, EPA must make a finding of  
2 failure to submit no later than six months after the date by which the state implementation plan  
3 submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).

4 46. On March 12, 2008, the EPA promulgated National Ambient Air Quality Standards for  
5 ozone. *See* 73 Fed. Reg. 16436-16514 (March 27, 2008). EPA set a standard of 0.075 parts per  
6 million. *See* 40 C.F.R. § 50.15.

7 47. In accordance with Section 110(a)(1) of the Clean Air Act, States are required to submit  
8 SIPs to attain and maintain the National Ambient Air Quality Standards within three years of the  
9 promulgation or revision of a National Ambient Air Quality Standard. *See* 42 U.S.C. §  
10 7410(a)(1). In assuring that SIPs attain and maintain the National Ambient Air Quality  
11 Standards in accordance with Section 110(a)(1), States must ensure their SIPs include  
12 requirements set forth under Section 110(a)(2). *See* 74 U.S.C. § 7410(a)(2). These requirements  
13 include, but are not limited to:

- 14 • Limits on interstate transport (42 U.S.C. § 7410(a)(2)(D));

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

17 *See also*

18 [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html#x110\\_a\\_2\\_ozone\\_2008](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a_2_ozone_2008)  
19 8

20 49. As of today, the following states have failed to submit Good Neighbor provisions for the  
21 2008 ozone NAAQS:

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1 Arkansas, California, Connecticut, Georgia, Iowa, Illinois, Kansas, Massachusetts, Maine,  
2 Michigan, Minnesota, Missouri, New Hampshire, New Mexico, Oklahoma, Pennsylvania, Rhode  
3 Island, South Carolina, Virginia, Washington, and West Virginia

4 50. The Administrator is required to make a finding as to whether a State has submitted the  
5 required SIP no later than six months after the date by which the State was required to submit  
6 such a SIP. *See* 42 U.S.C. § 7410(k)(1)(B). Thus, EPA must make findings of failure to submit  
7 SIPs for the 2008 ozone National Ambient Air Quality Standards by no later than September 12,  
8 2011.

9 51. EPA has not made findings that any of the States listed in paragraph 49 have failed to  
10 submit Good Neighbor provisions for the 2008 ozone National Ambient Air Quality Standard.

11 52. Thus, EPA is in violation of its mandatory duty with regard to the States listed in  
12 paragraph 49.

13  
14 **REQUEST FOR RELIEF**

15 WHEREFORE, WildEarth Guardians and Sierra Club respectfully request that the Court:

- 16 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her  
17 failure to perform each mandatory duty listed above;
- 18 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory  
19 duties by certain dates;
- 20 C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's  
21 order;
- 22 D. Grant WildEarth Guardians and Sierra Club their reasonable costs of litigation, including  
23 attorneys' and experts' fees; and

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E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/Kristin A. Henry

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Counsel for Sierra Club and WildEarth Guardians

Dated: November 18, 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 (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

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 sub-categories with 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.