

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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STATE OF NEW YORK,  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany NY 12224

STATE OF CONNECTICUT  
Office of the Attorney General  
55 Elm Street, P.O. Box 120  
Hartford CT 06141

STATE OF MARYLAND  
Office of the Attorney General  
Department of Environment  
1800 Washington Blvd., S. 6048  
Baltimore MD 21230

COMMONWEALTH OF MASSACHUSETTS  
Office of the Attorney General  
Environmental Protection Division  
1 Ashburton Pl., Rm. 1813  
Boston MA 02108

**COMPLAINT**

**Index No.** \_\_\_\_\_

STATE OF OREGON  
Department of Justice  
Natural Resources Section  
1515 Southwest Fifth Ave., S. 410  
Portland OR 97201

STATE OF RHODE ISLAND  
Department of the Attorney General  
150 S. Main St.  
Providence RI 02903

STATE OF VERMONT  
Office of the Attorney General  
109 State St.  
Montpelier VT 05609-1001, and

PUGET SOUND CLEAN AIR AGENCY  
1904 Third Ave., S. 105  
Seattle WA 98101,

Plaintiffs,

– against –

GINA McCARTHY, as Administrator of the  
Environmental Protection Agency  
Ariel Rios Bldg.,  
1200 Pennsylvania Ave., NW,  
Washington DC 20460, and

ENVIRONMENTAL PROTECTION AGENCY,  
Ariel Rios Bldg.,  
1200 Pennsylvania Ave., NW,  
Washington DC 20460,

Defendants.

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Plaintiffs New York, Connecticut, Maryland, Massachusetts, Oregon, Rhode Island, Vermont and the Puget Sound Clean Air Agency (collectively, the “States”) bring this action to compel Gina McCarthy, as Administrator of the Environmental Protection Agency (“EPA”), and the EPA to comply with the nondiscretionary duty under the Clean Air Act (“Act”) to review and revise as necessary the New Source Performance Standards (“NSPS”) for particulate matter pollution from new residential wood heaters. The States seek an injunction requiring EPA to promptly propose and take final agency action on the NSPS by dates certain.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction of this action pursuant to section 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2), which authorizes any person, after duly giving notice, to commence a citizen suit against EPA where the Administrator has failed to perform a nondiscretionary duty under the Act.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the States’ claim occurred in this judicial district, as the Administrator’s failure to perform her nondiscretionary duty to timely review and revise as

necessary the NSPS for wood-burning devices occurred in this district, and EPA maintains an office in this district.

**PARTIES**

3. Plaintiff State of New York is a sovereign entity that brings this action on behalf of its citizens and residents.

4. Plaintiff State of Connecticut is a sovereign entity that brings this action on behalf of its citizens and residents.

5. Plaintiff State of Maryland is a sovereign entity that brings this action on behalf of its citizens and residents.

6. Plaintiff Commonwealth of Massachusetts is a sovereign entity that brings this action on behalf of its citizens and residents.

7. Plaintiff State of Oregon is a sovereign entity that brings this action on behalf of its citizens and residents.

8. Plaintiff State of Rhode Island is a sovereign entity that brings this action on behalf of its citizens and residents.

9. Plaintiff State of Vermont is a sovereign entity that brings this action on behalf of its citizens and residents.

10. Plaintiff Puget Sound Clean Air Agency is a local air pollution control agency that regulates air pollution in King, Kitsap, Pierce and Snohomish counties in the state of Washington, including the cities of Seattle and Tacoma.

11. Each of the plaintiffs is a “person” as defined in the applicable provision of the Act, 42 U.S.C. § 7602(e).

12. Defendant Gina McCarthy is Administrator of EPA and is sued in her official capacity. The Administrator is charged with implementation and enforcement of the Act, including timely reviewing and as necessary revising the NSPS for wood-burning devices.

13. Defendant EPA is an executive agency of the federal government charged with implementing and enforcing the Act in coordination with the States.

### **STATUTORY AND REGULATORY FRAMEWORK**

14. Section 111 of the Act requires EPA to develop air pollution control performance standards that apply to specific categories of stationary sources. Section 111(b) requires the Administrator to list categories of stationary sources that the Administrator finds “cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A). The Administrator then must establish “standards of performance” for emissions of air pollutants from new and modified sources within each such category. *Id.* § 7411(b)(1)(B). These standards of performance must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” *Id.* § 7411(a)(1).

15. Pursuant to section 111(b)(1)(B) of the Act, EPA must, “at least every eight years, review and, if appropriate, revise such standards” following the procedure required for promulgation of such standards unless it determines that such a review is not appropriate in light of readily available information on the efficacy of the standard. *Id.* § 7411(b)(1)(B). As part of its review, EPA is required to take into account “emission limitations and percent reductions achieved in practice.” *Id.*

## **FACTUAL BACKGROUND**

### **A. Wood Smoke Pollution**

16. Wood smoke contains several pollutants, including fine particulate matter (PM<sub>2.5</sub>), carbon monoxide (CO), and polycyclic aromatic hydrocarbons (PAHs). These pollutants are linked to adverse coronary and pulmonary health impacts, including premature death.

17. In its 2013 document entitled *Strategies for Reducing Residential Wood Smoke*, (“2013 Strategies Document”), EPA described some of the public health concerns with wood smoke: “Residential wood smoke can increase particle pollution to levels that cause significant health concerns (e.g., asthma attacks, heart attacks, premature death). Wood smoke causes many counties throughout the U.S. to either exceed the national health-based standards for fine particles, or places them on the cusp of exceeding the standards.” Several studies have found that residential wood combustion is responsible for potentially dangerous short-term spikes in PM<sub>2.5</sub> concentrations, especially in rural areas. *See, e.g.,* New York State Energy Research & Development Authority, No. 10-02, *Spatial Modeling and Monitoring of Residential Woodsmoke Across a Non-Urban Upstate New York Region* xvii-xix, 4-1 (Feb. 2010) (finding that in a seven-county area of upstate New York, “very high spikes in wood smoke concentrations” of over 100 micrograms per cubic meter were observed and that 26 percent of the monitored population was exposed to elevated residential wood smoke), available at [www.nyserda.ny.gov](http://www.nyserda.ny.gov). High levels of airborne fine particulates can also adversely affect public welfare, including impairing visibility and damaging vegetation.

18. According to EPA, fine particulate matter emitted from wood-burning devices comprised 13 percent of all PM<sub>2.5</sub> pollution in the U.S. in 2008. EPA has also estimated that smoke from these devices can represent a large percentage of this pollution regionally, including

25 percent of wintertime PM<sub>2.5</sub> pollution in parts of New Hampshire and Wisconsin, and more than 50 percent of wintertime PM<sub>2.5</sub> in Tacoma, Washington and Sacramento, California.

**B. EPA's Failure to Timely Review and Revise the NSPS for Residential Wood Heaters**  
**Obsolete Standards for Wood-Burning Devices**

19. In 1988, EPA determined that particulate matter emitted from residential wood heaters causes or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare and therefore established NSPS for new and modified residential wood heaters. See 53 Fed. Reg. 5373 (Feb. 26, 1988); 40 C.F.R. Part 60, Subpart AAA. Depending on the wood heater's components, the 1988 standards limit particulate matter emissions to either 4.1 grams per hour ("g/hr") or 7.5 g/hr. 40 C.F.R. § 60.532(b)(1) & (2). Since EPA's adoption of the 1988 standards, three mandatory eight-year review periods have come and gone (1996, 2004, 2012) yet the agency has failed to complete even one mandatory eight-year review of those NSPS or promulgated a determination that such a review is not appropriate in light of readily available information on the efficacy of the standards.

20. Since 1988, demonstrated and cost-effective design technologies that enable residential wood heaters to achieve substantially increased burning efficiencies and significantly reduced emissions of PM<sub>2.5</sub> and other pollutants have become available. As a result, the current NSPS no longer reflect the application of the best system of emission reduction. EPA's List of EPA Certified Wood Stoves contains dozens of available wood heaters that emit fewer than half of the emissions allowed under EPA's 1988 standard. Several states have regulations requiring wood heaters to achieve standards significantly more stringent than EPA's standard. For example, Washington's standard limiting PM<sub>2.5</sub> emissions from these devices is 40 percent more stringent.

Lack of Standards for Wood Boilers

21. When it established the residential wood heaters NSPS in 1988, EPA exempted indoor and outdoor wood boilers (also known as “hydronic heaters”) from the standards. *See* 40 C.F.R. §§ 60.530(h)(2) & 60.531 (exempting and defining “boilers”). Although EPA subsequently developed a voluntary program pursuant to which manufacturers of wood boilers that achieve relatively lower emission rates may be recognized as “EPA qualified,” the exemption of these boilers from NSPS requirements remains in place.

22. The popularity and use of these unregulated boilers has grown since 1988. Their emissions are of particular concern to the Northeast, Midwest and Northwest. EPA estimates that outdoor wood boilers will produce more than 20 percent of wood burning emissions by 2017.

23. In 2008, the New York Attorney General’s Office issued a report finding that outdoor wood boilers were becoming increasingly common and can emit far more PM<sub>2.5</sub> than other types of residential heaters -- about 12 times as much as EPA certified wood stoves, 1,000 times as much as oil furnaces, and 1,800 times as much as gas furnaces. A 2006 report by the Northeast States for Coordinated Air Use Management further found that one outdoor wood boiler can emit as much fine particulate matter as four heavy duty diesel trucks on a grams per hour basis. NESCAUM, *Assessment of Outdoor Wood-Fired Boilers* (March 2006) at vii.

24. EPA has stated in published documents that wood smoke from wood boilers have the same pollutants as smoke from wood heaters currently regulated under the NSPS, and that wood boilers may emit such pollutants in even greater quantities. *See e.g.*, 2013 Strategies Document at 4-5, 15; EPA, *Emissions from Outdoor Wood-Burning Residential Hot Water Furnaces*, Project Summary (Feb. 1998).

25. Similar to newer wood heaters, wood boilers can be designed to achieve much better emission rates. For example, EPA's website lists 11 outdoor wood boilers that emit less than half of the Agency's Phase 2 voluntary program standard of 0.32 pounds per million British thermal units (lb/mmBTU), and another seven outdoor wood boilers typically emit between 0.04 to 0.08 lbs/mmBTU. *See* EPA, Partners – Program Participation – List of Cleaner Hydronic Heaters, available at: [www.epa.gov/burnwise/owhlist.html](http://www.epa.gov/burnwise/owhlist.html).

**C. Notice of Violations of Nondiscretionary Duties Under the Clean Air Act**

26. On August 1, 2013, the States sent a citizen suit notice letter by certified mail to the EPA Administrator notifying her of the violations of nondiscretionary duties under 42 U.S.C. § 7411(b)(1)(A) and (B), and of the States' intention to commence a lawsuit if EPA did not correct the violations within 60 days.

27. More than 60 days have passed since EPA's receipt of the notice letter and EPA has not completed a rulemaking reviewing, and as appropriate, revising the NSPS for residential wood heaters.

**CLAIM FOR RELIEF**  
**(Failure to Perform Nondiscretionary Duty to Timely Review, and as Necessary, Revise NSPS for Residential Wood Heaters)**

28. Despite the expiration of three mandatory eight-year statutory deadlines for the Administrator to complete the required notice-and-comment rulemaking to review the NSPS for residential wood heaters and make any necessary revisions, the Administrator has failed to perform this nondiscretionary duty.

29. In light of EPA's own findings subsequent to the 1988 standards regarding the adverse health impacts from wood smoke pollution emitted by unregulated wood boilers and the widespread availability of less-polluting boilers, the Administrator was required as part of her

mandatory review of the residential wood heaters NSPS to revise the NSPS to address air pollution from unregulated wood boilers.

30. The Administrator's failures to timely complete review and promulgate any necessary revisions to the NSPS for residential wood heaters violates 42 U.S.C. § 7411(b)(1)(A) and (B), and continue to this day.

31. The violations constitute "failure[s] of the Administrator to perform any act or duty under this chapter which [are] not discretionary with the Administrator" under 42 U.S.C. § 7604(a)(2).

32. The delay caused by the Administrator's failures has harmed and continues to harm the States by delaying the adoption and implementation of more protective NSPS for residential wood heaters that will result in cleaner and healthier air in the States, benefitting the health and welfare of their citizens.

### **REQUESTED RELIEF**

**WHEREFORE**, the States respectfully request that this Court enter judgment against Defendants as follows:

A. Declaring that Defendants are in violation of 42 U.S.C. § 7411(b)(1)(A) and (B) of the Act for failing to timely review, and as necessary, revise the NSPS for residential wood heaters;

B. Enjoining Defendants to promptly complete review, propose, and promulgate necessary revisions to the NSPS for residential wood heaters pursuant to 42 U.S.C. § 7411(b)(1)(A) and (B) by dates certain;

C. Awarding the States the costs of litigation, including reasonable attorneys' fees;

D. Retaining jurisdiction over this matter until such time as Defendants have complied with their nondiscretionary duties under 42 U.S.C. § 7411(b)(1)(A) and (B); and

E. Such other relief as the Court deems just and proper.

Dated: October 9, 2013

Respectfully submitted,

FOR THE STATE OF  
NEW YORK

FOR THE STATE OF  
CONNECTICUT

ERIC T. SCHNEIDERMAN  
Attorney General

GEORGE JEPSEN  
Attorney General

By: /s/ Michael J. Myers

By: /s/ Scott N. Koschwitz

\_\_\_\_\_  
MICHAEL J. MYERS (#444688)  
Assistant Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224  
(518) 402-2594  
[michael.myers@ag.ny.gov](mailto:michael.myers@ag.ny.gov)

\_\_\_\_\_  
SCOTT N. KOSCHWITZ  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 120, 55 Elm Street  
Hartford, CT 06141  
(860) 808-5250  
[scott.koschwitz@ct.gov](mailto:scott.koschwitz@ct.gov)

FOR THE STATE OF  
MARYLAND

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

DOUGLAS F. GANSLER  
Attorney General

MARTHA COAKLEY  
Attorney General

By: /s/ Mary E. Raivel

By: /s/ Frederick D. Augenstern

\_\_\_\_\_  
MARY E. RAIVEL  
Assistant Attorney General  
Office of the Attorney General  
Department of Environment  
1800 Washington Blvd., S. 6048  
Baltimore, MD 21230  
(410) 537-3035  
[mary.raivel@maryland.gov](mailto:mary.raivel@maryland.gov)

\_\_\_\_\_  
FREDERICK D. AUGENSTERN  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
1 Ashburton Pl., Rm. 1813  
Boston, MA 02108  
(617) 963-2427  
[fred.augenstern@state.ma.us](mailto:fred.augenstern@state.ma.us)

ELLEN F. ROSENBLUM  
Attorney General

PETER F. KILMARTIN  
Attorney General

By: /s/ Paul Garrahan

By: /s/ Gregory S. Schultz

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PAUL GARRAHAN  
Assistant Attorney-in-Charge  
Natural Resources Section  
Department of Justice  
1515 SW Fifth Ave., S. 410  
Portland, OR 97201  
(971) 673-1943  
[paul.garrahan@doj.state.or.us](mailto:paul.garrahan@doj.state.or.us)

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GREGORY S. SCHULTZ  
Special Assistant Attorney General  
Department of Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400, ext. 2400  
[gschultz@riag.ri.gov](mailto:gschultz@riag.ri.gov)

WILLIAM H. SORRELL  
Attorney General of Vermont

PUGET SOUND CLEAN AIR  
AGENCY

By: /s/ Thea Schwartz

By: /s/ Laurie Halvorson

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THEA SCHWARTZ  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-2359  
[tschwartz@atg.state.vt.us](mailto:tschwartz@atg.state.vt.us)

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LAURIE HALVORSON\*  
Director – Compliance and Legal  
Puget Sound Clean Air Agency  
1904 Third Ave., S. 105  
Seattle, WA 98101  
(206) 689-4030  
[laurieh@pscleanair.org](mailto:laurieh@pscleanair.org)

\*admission for pro hac vice to be filed

**CIVIL COVER SHEET**

JS-44 (Rev. 3/13 DC)

<p><b>I. (a) PLAINTIFFS</b></p> <p>New York, Connecticut, Maryland, Massachusetts, Rhode Island, Vermont, and Puget Sound Clean Air Agency</p> <p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</p> <p>For NY: Michael J. Myers, Assistant Attorney General, Environmental Protection Bureau, NYS Attorney General, The Capitol, Albany NY 12224, (518) 402-2594</p>	<p><b>DEFENDANTS</b></p> <p>Gina McCarthy, as Administrator of the Environmental Protection Agency, and the Environmental Protection Agency</p> <p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p> <p>ATTORNEYS (IF KNOWN)</p> <p>United States Attorney General U.S. Department of Justice 950 Pennsylvania Ave., NW Washington, DC 20530</p>
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<p><b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff      <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant      <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b></p> <table style="width:100%; border: none;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<p><input type="radio"/> <b>A. Antitrust</b></p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> <b>B. Personal Injury/Malpractice</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input checked="" type="radio"/> <b>C. Administrative Agency Review</b></p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security</u></p> <p><input type="checkbox"/> 861 IIIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input checked="" type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b></p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input checked="" type="radio"/> <b>E. General Civil (Other)</b>      OR      <input type="radio"/> <b>F. Pro Se General Civil</b></p>			
<p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 27 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Conditions</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>	<p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks &amp; Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced &amp; Corrupt Organization</p>	<p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**

1 Original Proceeding  
  2 Remand from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**

Lawsuit under 42 U.S.C. 7604(a)(2) against Administrator of EPA and EPA for violation of nondiscretionary duty under 42 U.S.C. 7604(a)(2)

**VII. REQUESTED IN COMPLAINT**      CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23       **DEMAND \$**      **JURY DEMAND:**      Check YES only if demanded in complaint  
 YES       NO

**VIII. RELATED CASE(S) IF ANY**      (See instruction)      YES       NO       If yes, please complete related case form

DATE: 10/9/2013      SIGNATURE OF ATTORNEY OF RECORD:

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET 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 services 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: