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6
7 **UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

8	_____)	
9)	
10	CENTER FOR BIOLOGICAL DIVERSITY,)	
11)	Case No.
12)	COMPLAINT FOR DECLARATORY
13	Plaintiff,)	AND INJUNCTIVE RELIEF
14)	(Clean Air Act, 42 U.S.C. §§ 7401 <i>et. seq.</i>)
15	v.)	
16)	
17	GINA McCARTHY,)	
	in her official capacity as Administrator of the)	
	United States Environmental Protection Agency,)	
)	
	Defendant.)	
	_____)	

18 **I. INTRODUCTION**

19 1. Plaintiff the Center for Biological Diversity brings this Clean Air Act citizen suit to
20 compel the United States Environmental Protection Agency to undertake overdue mandatory
21 duties. Specifically, Defendant, Gina McCarthy, in her official capacity as Administrator of the
22 United States Environmental Protection Agency (“EPA”), has failed to make findings of failure
23 to submit under 42 U.S.C. § 7410(k)(1)(B), and publish notice of those findings in the Federal

1 Register, for nonattainment state implementation plans (“SIPs”) for the 2006 particulate matter
 2 less than 2.5 microns in diameter (“PM2.5”) for the following areas listed in Table 1:

3 **TABLE 1**

4 AREA	STATE
5 Imperial County	California
6 Liberty-Clairton	Pennsylvania
Pittsburgh-Beaver Valley	Pennsylvania
Milwaukee-Racine	Wisconsin

7 Furthermore, EPA has failed to take final action, pursuant to 42 U.S.C. § 7410(k)(2) –
 8 (4), to approve or disapprove, in whole or part, the 2006 PM2.5 National Ambient Air Quality
 9 Standards (“NAAQS”) nonattainment SIP submissions listed in Table 2 below:

10 **TABLE 2**

11 AREA	ELEMENT	COMPLETION DATE	FINAL ACTION DUE DATE
12 Los Angeles – South Coast, California	Non-Attainment New Source Review	3/27/2012 ¹	3/27/2013
13 Knoxville-Sevierville- La Follette, Tennessee	Non-Attainment New Source Review	1/29/2012 ²	1/29/2103
14 Milwaukee-Racine, Wisconsin	Non-Attainment New Source Review	11/12/2011 ³	11/12/2012
15 Charleston, West Virginia	Non-Attainment New Source Review	1/1/2011 ⁴	1/1/2012

16
 17
 18
 19 ¹ See Status of SIP Requirements for Designated Areas, California: PM-2.5 (2006) / Los Angeles-South Coast Air
 Basin available at http://www.epa.gov/air/urbanair/sipstatus/reports/ca_elebypoll.html#pm-2.5_2006_1203 (last
 visited October 31, 2013).

20 ² See Status of SIP Requirements for Designated Areas, Tennessee: PM-2.5 (2006) / Knoxville-Sevierville-La
 Follette available at http://www.epa.gov/air/urbanair/sipstatus/reports/tn_elebypoll.html#pm-2.5_2006_1227
 (last visited October 31, 2013).

21 ³ See Status of SIP Requirements for Designated Areas, Wisconsin: PM-2.5 (2006) / Milwaukee-Racine available at
 22 http://www.epa.gov/air/urbanair/sipstatus/reports/wi_elebypoll.html#pm-2.5_2006_1232 (last visited October
 31, 2013).

23 ⁴ See Status of SIP Requirements for Designated Areas, West Virginia: PM-2.5 (2006) / Charleston available at
 24 http://www.epa.gov/air/urbanair/sipstatus/reports/wv_elebypoll.html#pm-2.5_2006_1233 (last visited October
 31, 2013).

1 Accordingly, Plaintiff THE CENTER FOR BIOLOGICAL DIVERSITY brings this action
2 against Defendant GINA McCARTHY, in her official capacity as EPA Administrator, to compel
3 her to perform her mandatory duties.

4 **II. JURISDICTION**

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

8 3. An actual controversy exists between the parties. This case does not concern federal
9 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of
10 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §
11 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
12 injunctive relief.

13 **III. NOTICE**

14 4. On August 28, 2013, Plaintiff mailed to EPA by certified mail, return receipt requested,
15 written notice of intent to sue regarding the violations alleged in this Complaint. EPA received
16 this written notice on September 4, 2013. More than sixty days have passed since EPA received
17 this “notice of intent to sue” letter. EPA has not remedied the violations alleged in this
18 Complaint. Therefore, a present and actual controversy exists.

19 **IV. VENUE**

20 5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over
21 California, is headquartered in San Francisco. This civil action is brought against an officer of
22 the United States acting in her official capacity and a substantial part of the events or omissions
23

1 giving rise to the claims in this case occurred in the Northern District of California. Therefore,
2 venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

3 **V. INTRADISTRICT ASSIGNMENT**

4 6. A substantial part of the events and omissions giving rise to the claims in this case
5 occurred in the County of San Francisco. EPA Region 9, which has authority over California, is
6 headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the
7 Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

8 **VI. PARTIES**

9 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
10 corporation incorporated in California. The Center for Biological Diversity has over 48,000
11 members throughout the United States and the world. The Center for Biological Diversity's
12 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,
13 ecosystems, public lands and waters, and public health through science, policy, and
14 environmental law. Based on the understanding that the health and vigor of human societies and
15 the integrity and wildness of the natural environment are closely linked, the Center for
16 Biological Diversity is working to secure a future for animals and plants hovering on the brink of
17 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

18 8. The Center for Biological Diversity and its members include individuals with varying
19 interests in wildlife species and their habitat ranging from scientific, professional, and
20 educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological
21 Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational,
22 conservation, recreational, and aesthetic values of the regions inhabited by these species,
23 including the regions at issue in this action. The Center for Biological Diversity's members

1 observe and study native species and their habitat, and derive professional, scientific,
2 educational, recreational, aesthetic, inspirational, and other benefits from these activities and
3 have an interest in preserving the possibility of such activities in the future. The Center for
4 Biological Diversity and its members have participated in efforts to protect and preserve natural
5 areas, including the habitat essential to the continued survival of native species, and to address
6 threats to the continued existence of these species, including the threats posed by air pollution
7 and other contaminants.

8 9. Plaintiff's members live, work, recreate, travel and engage in other activities throughout
9 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the
10 affected areas threatens and damages, and will continue to threaten and damage, the health and
11 welfare of Plaintiff's members as well as their ability to engage in and enjoy their other
12 activities. Pollution diminishes Plaintiff's members' ability to enjoy the aesthetic qualities and
13 recreational opportunities of the affected area.

14 10. EPA's failure to timely perform the mandatory duties described herein also adversely
15 affects Plaintiff, as well as their members, by depriving them of procedural protection and
16 opportunities, as well as information that they are entitled to under the Clean Air Act. The
17 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiff's members
18 as to whether they are exposed to excess air pollution.

19 11. The above injuries will continue until the Court grants the relief requested herein.

20 12. Defendant GINA McCARTHY is the Administrator of the EPA. In that role
21 Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air
22 Act, including the mandatory duties at issue in this case. Administrator McCarthy is also
23

1 charged with overseeing all EPA regional offices including EPA Region 9, which has authority
2 over California and is headquartered in San Francisco.

3 **VII. LEGAL BACKGROUND**

4 13. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against
5 air pollution in the United States with a view to assuring that the air we breathe throughout the
6 Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.
7 Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National
8 Ambient Air Quality Standards for certain pollutants. 42 U.S.C. § 7409(a). National Ambient
9 Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

10 14. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act
11 requires that EPA designate each area of the country as either a clean air area for that standard,
12 which is known as “attainment” in Clean Air Act jargon, or a dirty air area, which is known as
13 “nonattainment” in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d).

14 15. Under the Clean Air Act, each state is required to submit state implementation plans to
15 ensure that each National Ambient Air Quality Standard will be achieved, maintained, and
16 enforced. Without such plans, the public is not afforded full protection against the harmful
17 impacts of air pollution.

18 16. For dirty air areas which EPA has designated as “nonattainment” states must submit
19 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,
20 7513 – 7513b.

21 17. The Clean Air Act requires EPA to determine whether any state implementation plan
22 submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this
23

1 determination by “no later than 6 months after the date, if any, by which a State is required to
2 submit the plan or revision.” *Id.*

3 18. If a state fails to submit any required state implementation plan, there is no submittal that
4 may be deemed administratively complete, and EPA must make a determination, and publish
5 notice of that determination in the Federal Register, stating that the state failed to submit an
6 administratively complete state implementation plan submittal within six months of when the
7 submittal was due. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to
8 submit.”

9 19. Once a state does submit a state implementation plan submittal, EPA has a mandatory
10 duty to take final action on any administratively complete state implementation plan submission
11 by approving in full, disapproving in full, or approving in part and disapproving in part within 12
12 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2)
13 and (3).

14 **VIII. FACTS**

15 20. This case involves EPA’s failure to timely implement the National Ambient Air Quality
16 Standards for PM_{2.5}. There is no safe level of exposure to PM_{2.5}, which includes hazardous
17 forms of dirt, soot, smoke, and liquid droplets found in the air.

18 21. PM_{2.5} is “produced chiefly by combustion processes and by atmospheric reactions of
19 various gaseous pollutants,” thus “[s]ources of fine particles include . . . motor vehicles, power
20 generation, combustion sources at industrial facilities, and residential fuel burning.” 71 Fed. Reg.
21 61144, 61146 (Oct. 17, 2006).

22 22. The effects of PM_{2.5} on humans are profound. For example, exposure has been
23 associated “with an array of health effects, notably premature mortality, increased respiratory

1 symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” 62
2 Fed. Reg. 38652, 38668 (July 18, 1997).

3 23. PM_{2.5} also adversely impacts wildlife. EPA has explained “a number of animal
4 toxicologic . . . studies had reported health effects associations with high concentrations of
5 numerous fine particle components[.]” 71 Fed. Reg. 2620, 2643 – 2644 (Jan. 17, 2006). PM_{2.5}
6 also causes direct foliar injury to vegetation. *Id.* at 2682.

7 24. As to broader ecosystem impacts, EPA has explained that the nitrogen and sulfur
8 “containing components of PM have been associated with a broad spectrum of terrestrial and
9 aquatic ecosystem impacts that result from either the nutrient or acidifying characteristics of the
10 deposited compounds.” *Id.* These impacts include nitrogen saturation which “causes 1)
11 Decreased productivity, increased mortality, and/or shifts in terrestrial plant community
12 composition, often leading to decreased biodiversity in many natural habitats wherever
13 atmospheric [reactive nitrogen] deposition increases significantly and critical thresholds are
14 exceeded; (2) leaching of excess nitrate and associated base cations from terrestrial soils into
15 streams, lakes and rivers and mobilization of soil aluminum; and (3) alteration of ecosystem
16 processes such as nutrient and energy cycles through changes in the functioning and species
17 composition of beneficial soil organisms (Galloway and Cowling 2002).” *Id.* EPA has described
18 this impacts on terrestrial ecosystems as “profound and adverse[.]” *Id.* EPA has also determined
19 that PM_{2.5} adversely impacts aquatic ecosystems via excess nutrient inputs and acid and
20 acidifying deposition. 71 Fed. Reg. at 2682 – 2683. “Data from existing deposition networks in
21 the U.S. demonstrate that N and S compounds are being deposited in amounts known to be
22 sufficient to affect sensitive terrestrial and aquatic ecosystems over time.” 71 Fed. Reg. at 2683.

23

28

1 25. Moreover, PM2.5 adversely affects the visibility and aesthetics of our natural
2 surroundings. For example, regional haze is caused in part by particulates in the air scattering
3 sunlight. 71 Fed. Reg. at 2675 – 2678. It is vital that EPA take the required action in order to
4 strengthen protection of public health and welfare against PM2.5.

5 26. In 2006, EPA strengthened the primary and secondary 24-hour PM2.5 NAAQS from 65
6 micrograms per cubic meter (ug/m³) to 35 ug/m³. The revised 24-hour PM2.5
7 standards were published on October 17, 2006 (71 Fed. Reg. 61,144) and became effective on
8 December 18, 2006. EPA made attainment and nonattainment designations for the 2006 PM2.5
9 NAAQS which became effective on December 14, 2009. *See* 74 Fed. Reg. 58,688 (Nov. 13,
10 2009).

11 27. Nonattainment state implementation plans were due **no later than** three years from the
12 effective date of designations, that is by **no later than** December 14, 2012. *See generally* 74
13 Fed. Reg. at 58,689 overturned in *Nat. Resources Defense Council v. EPA*, 706 F.3d 428 (D.C.
14 Cir. 2013) (“*NRDC*”).

15 IX. CLAIMS FOR RELIEF

16 CLAIM ONE

17 (Failure to make a finding of failure to submit.)

18 28. Plaintiff incorporates by reference paragraphs 1 through 27.

19 29. The deadline for the 2006 PM2.5 National Ambient Air Quality Standard nonattainment
20 state implementation plan submissions is no later than December 14, 2012.

21 30. More than six months have passed since December 14, 2012.

22 31. California has not submitted a 2006 PM2.5 NAAQS nonattainment state implementation
23 plan for the Imperial County nonattainment area.

1 32. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of
2 failure to submit for California by no later than June 14, 2013.

3 33. EPA has failed to make such a finding.

4 34. Pennsylvania has not submitted a 2006 PM2.5 NAAQS nonattainment state
5 implementation plan for the Liberty-Clairton nonattainment area.

6 35. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of
7 failure to submit for Pennsylvania by no later than June 14, 2013 regarding the Liberty-Clairton
8 area.

9 36. EPA has failed to make such a finding.

10 37. Pennsylvania has not submitted a 2006 PM2.5 NAAQS nonattainment state
11 implementation plan for the Pittsburgh-Beaver Valley nonattainment area.

12 38. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of
13 failure to submit for Pennsylvania by no later than June 14, 2013 regarding the Pittsburgh-
14 Beaver Valley area.

15 39. EPA has failed to make such a finding.

16 40. Wisconsin has not submitted a 2006 PM2.5 NAAQS nonattainment state implementation
17 plan for the Milwaukee-Racine nonattainment area.

18 41. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of
19 failure to submit for Wisconsin by no later than June 14, 2013.

20 42. EPA has failed to make such a finding.

21 CLAIM TWO

22 (Failure to Take Final Action on State Implementation Plan Submissions.)

23 43. Plaintiff incorporates by reference paragraphs 1 through 42.

1 44. The Clean Air Act requires EPA to determine whether any state implementation plan
2 submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).

3 45. If, six months after a state submits a state implementation plan, EPA has not made the
4 completeness finding and has not found the submission to be incomplete, the submission is
5 deemed administratively complete by operation of law. *Id.*

6 46. EPA must take final action on an administratively complete submission by approving in
7 full, disapproving in full, or approving in part and disapproving in part within 12 months of the
8 date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) and (3).

9 47. By no later than March 27, 2012, either EPA or operation of law deemed California's
10 submission addressing the nonattainment new source review element of the 2006 PM2.5
11 nonattainment SIP for the Los Angeles – South Coast nonattainment area administratively
12 complete.

13 48. EPA has a mandatory duty to take final action, and publish notice of that action in the
14 Federal Register, by approving in full, disapproving in full, or approving in part and
15 disapproving in part California's submission by no later than March 27, 2013. 42 U.S.C. §
16 7410(k)(2) and (3).

17 49. EPA has failed to perform this mandatory duty.

18 50. By no later than January 29, 2012 either EPA or operation of law deemed Tennessee's
19 submission addressing the nonattainment new source review element of the 2006 PM2.5
20 nonattainment SIP for the Knoxville-Sevierville-La Follette nonattainment area administratively
21 complete.

22 51. EPA has a mandatory duty to take final action, and publish notice of that action in the
23 Federal Register, by approving in full, disapproving in full, or approving in part and

1 disapproving in part Tennessee’s submission by no later than January 29, 2013. 42 U.S.C. §
2 7410(k)(2) and (3).

3 52. EPA has failed to perform this mandatory duty.

4 53. By no later than November 12, 2011, either EPA or operation of law deemed
5 Wisconsin’s submission addressing the nonattainment new source review element of the 2006
6 PM2.5 nonattainment SIP for the Milwaukee-Racine nonattainment area administratively
7 complete.

8 54. EPA has a mandatory duty to take final action, and publish notice of that action in the
9 Federal Register, by approving in full, disapproving in full, or approving in part and
10 disapproving in part Wisconsin’s submission by no later than November 12, 2012. 42 U.S.C. §
11 7410(k)(2) and (3).

12 55. EPA has failed to perform this mandatory duty.

13 56. By no later than January 1, 2011, either EPA or operation of law deemed West Virginia’s
14 submission addressing the nonattainment new source review element of the 2006 PM2.5
15 nonattainment SIP for the Charleston nonattainment area administratively complete.

16 57. EPA has a mandatory duty to take final action, and publish notice of that action in the
17 Federal Register, by approving in full, disapproving in full, or approving in part and
18 disapproving in part West Virginia’s submission by no later than January 1, 2012. 42 U.S.C. §
19 7410(k)(2) and (3).

20 58. EPA has failed to perform this mandatory duty.

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23 ///

REQUEST FOR RELIEF

WHEREFORE, the Center for Biological Diversity respectfully requests that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform the mandatory duties listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties listed above by certain dates;
- C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- D. Grant the Center for Biological Diversity their reasonable costs of litigation, including attorneys' and experts' fees; and;
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jonathan Evans
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San Francisco, CA 94104
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Counsel for Plaintiff Center for Biological Diversity

Dated: November 5, 2013

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

CENTER FOR BIOLOGICAL DIVERSITY

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Center for Biological Diversity
351 California St., Suite 600
San Francisco, CA. 94619
(415) 436-9682 x318

DEFENDANTS

U.S Environmental Protection Agency, GINA MCCARTHY, Administrator

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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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 (specify)
- 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):
42 U.S.C. §§7604(a)(2) (Clean Air Act).
Brief description of cause:
Failure to perform mandatory duties pursuant to the Clean Air Act.

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 _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

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

DATE SIGNATURE OF ATTORNEY OF RECORD

11/5/13 /s/ Jonathan Evans

Case3:13-cv-05142 Document1-1 Filed11/05/13 Page2 of 2
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.

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

UNITED STATES DISTRICT COURT

for the

Northern District of California

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation,

Plaintiff(s)

v.

GINA McCARTHY, in her official capacity as Administrator of the United States Environmental Protection Agency,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Eric H. Holder Jr., U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, D.C. 20530-0001

And all named Defendants

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:

Jonathan Evans
CENTER FOR BIOLOGICAL DIVERSITY
351 California St, Suite 600
San Francisco, CA. 94619

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.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

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: