

1 Jonathan Evans (Cal. Bar #247376)  
CENTER FOR BIOLOGICAL DIVERSITY  
2 1212 Broadway  
Suite 800  
3 Oakland, CA 94612  
Phone: 510-844-7100 x318  
4 Fax: 510-844-7150  
email: [jevans@biologicaldiversity.org](mailto:jevans@biologicaldiversity.org)

5 Counsel for Plaintiffs Center for Biological Diversity  
6 and Center for Environmental Health

7  
8 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

9 \_\_\_\_\_ )  
10 )  
CENTER FOR BIOLOGICAL DIVERSITY, and )  
11 CENTER FOR ENVIRONMENTAL HEALTH, )  
 ) Case No.  
12 )  
 ) **COMPLAINT FOR DECLARATORY**  
13 ) **AND INJUNCTIVE RELIEF**  
Plaintiffs, )  
14 ) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)  
v. )  
15 )  
SCOTT PRUITT, )  
16 in his official capacity as Administrator of the )  
United States Environmental Protection Agency, )  
17 )  
Defendant. )  
18 \_\_\_\_\_ )

19  
20 **I. INTRODUCTION**

21 1. Plaintiffs the Center for Biological Diversity and the Center for Environmental Health  
22 bring this Clean Air Act citizen suit to compel the United States Environmental Protection  
23 Agency to undertake overdue mandatory duties. Specifically, Defendant, Scott Pruitt, in his

1 official capacity as Administrator of the United States Environmental Protection Agency  
 2 (“EPA”), has failed to make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B), and  
 3 publish notice of those findings in the Federal Register, for nonattainment state implementation  
 4 plans (“SIPs”) for the 2008 ozone National Ambient Air Quality Standards for the following  
 5 areas and elements listed in Table 1:

6  
 7 **TABLE 1<sup>1</sup>**

<b>AREA &amp; ELEMENT(S)</b>	<b>SUBMITTAL DEADLINE (No later than)</b>
Los Angeles-San Bernardino Counties (Mojave Desert), CA: Contingency measures for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx), Contingency Provisions for Reasonable Further Progress (RFP) Milestones Clean Air Act §182(c)(9), Attainment Demonstration, RFP VOC and NOx - Severe 15.	7/20/2016
Riverside County (Coachella Valley), CA: Contingency measures for VOC and NOx, Enhanced Monitoring (PAMS).	7/20/2016
Sacramento Metro, CA: Contingency measures for VOC and NOx, Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Attainment Demonstration, RFP VOC and NOX - Severe 15	7/20/2016

17  
 18 Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY and THE CENTER  
 19 FOR ENVIRONMENTAL HEALTH bring this action against Defendant SCOTT PRUITT, in  
 20 his official capacity as EPA Administrator, to compel him to perform these mandatory duties.  
 21  
 22

23 <sup>1</sup> See [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca\\_elebypoll.html#ozone-8hr\\_2008\\_1414](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/ca_elebypoll.html#ozone-8hr_2008_1414) last visited 6/5/17.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
28

**II. JURISDICTION**

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

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

**III. NOTICE**

4. On March 14, 2017 Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. More than sixty days have passed since EPA received this “notice of intent to sue” letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

**IV. VENUE**

5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over California, is headquartered in San Francisco. This civil action is brought against an officer of the United States acting in his official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. The Center for Environmental Health resides in the Northern District of California. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**V. INTRADISTRICT ASSIGNMENT**

1  
2 6. A substantial part of the events and omissions giving rise to the claims in this case  
3 occurred in the County of San Francisco. EPA Region 9, which has authority over California, is  
4 headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the  
5 Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

**VI. PARTIES**

6  
7 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
8 corporation incorporated in California. The Center for Biological Diversity has approximately  
9 58,000 members throughout the United States and the world. The Center for Biological  
10 Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity,  
11 native species, ecosystems, public lands and waters, and public health through science, policy,  
12 and environmental law. Based on the understanding that the health and vigor of human societies  
13 and the integrity and wildness of the natural environment are closely linked, the Center for  
14 Biological Diversity is working to secure a future for animals and plants hovering on the brink of  
15 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

16 8. The Center for Biological Diversity and its members include individuals with varying  
17 interests in wildlife species and their habitat ranging from scientific, professional, and  
18 educational to recreational, aesthetic, moral, and spiritual.

19 9. The Center for Biological Diversity's members enjoy, on an ongoing basis, the  
20 biological, scientific, research, educational, conservation, recreational, and aesthetic values of  
21 the regions inhabited by these species, including the regions at issue in this action. The Center  
22 for Biological Diversity's members observe and study native species and their habitat, and derive  
23 professional, scientific, educational, recreational, aesthetic, inspirational, and other benefits from

1 these activities and have an interest in preserving the possibility of such activities in the future.

2 The Center for Biological Diversity and its members have participated in efforts to protect and  
3 preserve natural areas, including the habitat essential to the continued survival of native species,  
4 and to address threats to the continued existence of these species, including the threats posed by  
5 air pollution and other contaminants.

6 10. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California  
7 based nonprofit organization that helps protect the public from toxic chemicals and promotes  
8 business products and practices that are safe for public health and the environment. The Center  
9 for Environmental Health works in pursuit of a world in which all people live, work, learn, and  
10 play in healthy environments.

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

17 12. EPA's failure to timely perform the mandatory duties described herein also adversely  
18 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
19 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' members  
21 as to whether they are exposed to excess air pollution.

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

1 14. Defendant SCOTT PRUITT is the Administrator of the EPA. In that role Administrator  
2 Pruitt has been charged by Congress with the duty to administer the Clean Air Act, including the  
3 mandatory duties at issue in this case. Administrator Pruitt is also charged with overseeing all  
4 EPA regional offices including EPA Region 9, which has authority over California and is  
5 headquartered in San Francisco.

## 6 **VII. LEGAL BACKGROUND**

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

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

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

21 18. For dirty air areas which EPA has designated as “nonattainment,” states must submit  
22 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,  
23 7513 – 7513b.

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

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

11 21. Once a state does submit a state implementation plan submittal, EPA has a mandatory  
12 duty to take final action on any administratively complete state implementation plan submission  
13 by approving in full, disapproving in full, or approving in part and disapproving in part within 12  
14 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2)  
15 - (4).

## 16 VIII. FACTS

17 22. This case involves EPA’s failure to timely implement the National Ambient Air Quality  
18 Standards for ozone. While ozone is critical for the protection of the Earth when it is in the  
19 stratosphere, at ground level, ozone, the chief component of smog, is a dangerous air pollutant  
20 which causes a variety of adverse impacts.

21 23. According to EPA, based on exhaustive scientific review, ozone pollution causes  
22 decreased lung function, increased respiratory symptoms, emergency department visits,  
23

1 hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008).

2 24. Those most at risk from ozone pollution are children; active people, *e.g.*, runners and  
3 people who do manual labor outside; people with pre-existing lung and heart diseases such as  
4 asthma; and older people. *Id.* at 16,440. Ozone also damages vegetation, both native and  
5 commercial crops. *Id.* at 16,485-16,486. Damage to native vegetation results in ecosystem  
6 damage, including diminished ecosystem services, that is, the life sustaining services that  
7 ecosystems provide to people for free, such as clean air, clean water and carbon sequestration.

8 *Id.*

9 25. In 2008, EPA strengthened the primary and secondary ozone NAAQS from 0.08 to 0.075  
10 parts per million (ppm). 73 Fed.Reg. 16,436 (Mar. 27, 2008).

11 26. EPA made attainment and nonattainment designations for the 2008 ozone NAAQS  
12 effective July 20, 2012. *See* 77 Fed. Reg. 30,088 (May 21, 2012), 77 Fed. Reg. 34,221 (June 11,  
13 2012).

14 27. EPA designated all of the areas listed in Tables 1 as nonattainment. *Id.*

15 28. All elements of the nonattainment SIPs for the 2008 ozone NAAQS listed in Table 1  
16 were due by no later than July 20, 2016. *See* 80 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

17 29. Thus, EPA has a mandatory duty to make a completeness finding under 42 U.S.C. §  
18 7410(k)(1)(B) for the SIP elements listed in Table 1 by no later than January 20, 2017.

19 **IX. CLAIM FOR RELIEF**

20 CLAIM ONE

21 (Failure to Make Findings of Failure to Submit.)

22 30. Plaintiffs incorporate by reference paragraphs 1 through 29.  
23

1 31. The deadline for the 2008 ozone National Ambient Air Quality Standard nonattainment  
2 state implementation plan submissions listed in Table 1 is no later than July 20, 2016. *See* 80  
3 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

4 32. More than six months have passed since July 20, 2016.

5 33. For each of the areas and nonattainment SIP elements listed in Table 1 of paragraph 1  
6 above, the relevant state has failed to submit the listed nonattainment SIP element.

7 34. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of  
8 failure to submit by no later than January 20, 2017 for each area's nonattainment SIP elements  
9 listed in Table 1 of paragraph 1 above.

10 35. EPA has not made findings of failure to submit for each of the areas and nonattainment  
11 SIP elements listed in Table 1 of paragraph 1 above.

12  
13 **REQUEST FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that the Court:

- 15 A. Declare that the Administrator is in violation of the Clean Air Act with regard to his  
16 failure to perform the mandatory duties listed above;
- 17 B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties  
18 listed above by certain dates;
- 19 C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- 20 D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees;  
21 and;
- 22 E. Grant such further relief as the Court deems just and proper.  
23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
28

Respectfully submitted,

/s/Jonathan Evans  
Jonathan Evans (Cal. Bar #247376)  
CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway  
Suite 800  
Oakland, CA 94612  
Phone: 510-844-7100 x318  
Fax: 510-844-7150  
email: [jevans@biologicaldiversity.org](mailto:jevans@biologicaldiversity.org)

Counsel for Plaintiffs

Dated: June 6, 2017

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CENTER FOR BIOLOGICAL DIVERSITY, and CENTER FOR ENVIRONMENTAL HEALTH

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Center for Biological Diversity Phone: (510) 844-7118 1212 Broadway, Suite 800 Oakland, CA. 94619

DEFENDANTS

SCOTT PRUITT, in his official capacity as Administrator of the U.S. Environmental Protection Agency

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)
X 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 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-Transfer 8 Multidistrict Litigation-Direct File

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. §§ 7401 et seq. (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, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

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

DATE 6/6/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan Evans

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.