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10 *Center for Environmental Health*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 CENTER FOR BIOLOGICAL DIVERSITY
14 and
15 CENTER FOR ENVIRONMENTAL
16 HEALTH

17 Plaintiffs,

18 vs.

19 ANDREW R. WHEELER, in his official
20 capacity as Administrator of the United States
21 Environmental Protection Agency,

22 Defendant.

Civ. No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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

INTRODUCTION

1
2 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401 –
3 7671q, and seeks to compel the Administrator of the United States Environmental Protection
4 Agency (“EPA”) to carry out his outstanding legal obligations to: (1) promulgate a Federal
5 Implementation Plan (“FIP”) addressing the 2006 National Ambient Air Quality Standards
6 (“NAAQS”) for particulate matter 2.5 micrometers or less (“PM_{2.5}”) for the Yolo-Solano Air
7 Quality Management District; (2) take final action either approving or disapproving the
8 contingency measures incorporated in the Portola Fine Particulate Matter (PM_{2.5}) Attainment
9 Plan submitted by the state of California for the Portola region of Plumas County; and (3) take
10 final action on 49 individual plan elements submitted by the state of Arizona to implement the
11 2008 8-hour ozone NAAQS for the Phoenix-Mesa region.

12 2. Soot and smog air pollution have profound effects on human health. Soot (PM_{2.5})
13 contributes to premature mortality, aggravation of respiratory and cardiovascular disease,
14 decreased lung function, and visibility impairment. EPA has found that short and long-term
15 exposure to smog (ozone) can result in “enhanced respiratory symptoms in asthmatic individuals,
16 school absences, and premature mortality.” 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).
17 Individuals particularly sensitive to soot and smog exposure include older adults, people with
18 heart and lung disease, active people, and children. *See* 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013);
19 62 Fed. Reg. 38,653, 38,668 (July 18, 1997); 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

20 3. EPA has also found that plant species are especially sensitive to ozone pollution,
21 which stunts growth, interferes with photosynthesis, and increases susceptibility to disease,
22 weather, and insects. These negative impacts can have a damaging effect on the surrounding
23 ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon
24 cycling. Studies have linked long-term ozone exposure to adverse health effects in birds such
25 inflammation, ruptured blood vessels, lung failure, decreases in egg production and hatching,
26 brood abandonment, and reduced growth.

27 4. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and
28 CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant ANDREW

1 R. WHEELER, in his official capacity as Administrator for the United States Environmental
2 Protection Agency, to compel him to perform his mandatory duties to ensure health and public
3 welfare protections promised under the Clean Air Act.

4 **JURISDICTION**

5 5. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction
6 over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. §
7 7604(a) (Clean Air Act citizen suits).

8 6. An actual controversy exists between the parties. This case does not concern
9 federal taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the
10 Tariff Act of 1930.

11 7. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. §§
12 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
13 injunctive relief.

14 **NOTICE**

15 8. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice
16 of intent to sue regarding the violations alleged in this Complaint. EPA received the notice letter
17 regarding the claims in the original complaint on or about March 11, 2019. More than sixty days
18 have passed since EPA received this notice letter. EPA has not remedied the violations alleged in
19 this Complaint. Therefore, a present and actual controversy exists between the parties.

20 **VENUE**

21 9. Defendant EPA resides in this judicial district. This civil action is brought against
22 an officer of the United States acting his official capacity and a substantial part of the events or
23 omissions giving rise to the claims in this case occurred in the Northern District of California.
24 Each claim in this Complaint concerns EPA’s failure to perform mandatory duties with regard to
25 California and Arizona. EPA Region 9, which is responsible for California and Arizona, is
26 headquartered in San Francisco. Thus, events and omissions at issue in this action occurred at
27 EPA’s Region 9 headquarters in San Francisco. Additionally, Plaintiff CENTER FOR
28 ENVIRONMENTAL HEALTH is headquartered in Oakland. Accordingly, venue is proper in

1 this Court pursuant to 28 U.S.C. § 1391(e).

2 **INTRADISTRICT ASSIGNMENT**

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

6 **PARTIES**

7 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
8 corporation incorporated in California. The Center for Biological Diversity has approximately
9 69,000 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 12. The Center for Biological Diversity and its members include individuals with
17 varying interests in wildlife species and their habitat including scientific, professional,
18 educational, recreational, aesthetic, moral, and spiritual. Further, the Center for Biological
19 Diversity's member enjoy, on an ongoing basis, the biological, scientific, research, education,
20 conservation, recreational, and aesthetic values of the regions inhabited by these species,
21 including the regions at issue in this action. The Center for Biological Diversity's members
22 observe and study native species and their habitat, and derive professional, scientific, education,
23 recreational, aesthetic, inspirational, and other benefits from these activities and have an interest
24 in preserving the possibility of such activities in the future. The Center for Biological Diversity
25 and its members have participated in efforts to protect and preserve natural areas, including the
26 habitat essential to the continued survival of native species, and to address threats to the
27 continued existence of these species, including the threats posed by air pollution and other
28 contaminants.

1 to air pollution which may reasonably be anticipated to endanger public health or welfare.” *Id.* §
2 7408(a)(1)(A).

3 20. There are primary and secondary NAAQS. *Id.* § 7409(a)(1)(A). Primary NAAQS
4 provide for “an adequate margin of safety...to protect the public health,” while secondary
5 NAAQS “protect the public welfare from any known or anticipated adverse effects associated
6 with the presence of such air pollutants in the ambient air.” *Id.* § 7409(b)(1)-(2).

7 21. After the promulgation of new or revised NAAQS, the Administrator determines
8 whether geographic areas are designated nonattainment (areas that do not meet the primary or
9 secondary NAAQS), attainment (areas that meet the primary or secondary NAAQS), or
10 unclassifiable (areas that cannot be classified based on available information). *Id.* §
11 7407(d)(1)(A).

12 22. States are responsible for submitting State Implementation Plans (“SIPs”) and
13 plan revisions that “provide for the implementation, maintenance, and enforcement” of any
14 NAAQS. *Id.* § 7410(a)(1).

15 23. Within six months of a state submitting a SIP, the Administrator must make a
16 completeness finding. If a determination is not made within six months of submittal, the plan
17 submission is deemed administratively complete by operation of law. *Id.* § 7410(k)(1)(B).

18 24. The Administrator is required to take final action to approve, disapprove, or
19 provide a conditional approval or disapproval within twelve months of a completeness finding.
20 *Id.* § 7410(k)(2)-(4).

21 25. Within two years of the Administrator finding that a state failed to submit a
22 required SIP or SIP revision by the required deadline for submittal, the Administrator must
23 promulgate a Federal Implementation Plan. *Id.* § 7410(c).

24 **FACTUAL BACKGROUND**

25 **A. Yolo-Solano Air Quality Management District - 2006 Annual PM_{2.5} Standard**

26 26. On May 16, 2008, EPA issued a final rule establishing the requirements for the
27 2006 PM_{2.5} NAAQS New Source Review permitting rules. 73 Fed. Reg. 28,321 (May 16, 2008).

28 27. The rule requires states to submit SIP revisions that integrate the new source

1 review requirements for nonattainment areas by December 31, 2014. *See* 81 Fed. Reg. 36,803
2 (Jun. 8, 2016); 79 Fed. Reg. 31,566 (Jun. 2, 2014).

3 28. On June 8, 2016, EPA made a finding that California failed to submit new source
4 review SIP revisions for the Yolo-Solano Air Quality Management District. *See* 81 Fed. Reg.
5 36,803 (Jun. 8, 2016)

6 29. EPA's finding became effective on July 8, 2016. This initiated a two-year
7 deadline for EPA to promulgate a new source review Federal Implementation Plan ("FIP") for
8 the Yolo-Solano Air Quality Management District. *Id.*

9 30. Pursuant to 42 U.S.C. § 7410(c), EPA was required to promulgate a FIP no later
10 than July 9, 2018.

11 31. To date, EPA has failed to promulgate a new source review FIP for the Yolo-
12 Solano Air Quality Management District.

13 **B. Plumas County, California - 2012 Annual PM_{2.5} Standard**

14 32. On January 15, 2013, EPA published a final rule establishing the 2012 PM_{2.5}
15 NAAQS. 78 Fed. Reg. 3,086 (Jan. 15, 2013).

16 33. Under the 2012 PM_{2.5} NAAQS, the Portola area of Plumas County, California is
17 designated "moderate" nonattainment. The designation required the Northern Sierra Air Quality
18 Management District to submit a SIP, demonstrating how the Portola area will attain the 2012
19 PM_{2.5} NAAQS. 83 Fed. Reg. 64,774, 64,775 (Dec. 18, 2018).

20 34. On February 28, 2017, California submitted the Portola Fine Particulate Matter
21 PM_{2.5} Attainment Plan ("Portola Plan"), on behalf of the Northern Sierra Air Quality
22 Management District.

23 35. The Portola Plan "became complete by operation of law on August 28, 2017." 83
24 Fed. Reg. 64,774, 64,776 (Dec. 18, 2018).

25 36. In its proposed rule for the Portola Plan, EPA declined to take "any action at this
26 time on the contingency measures in the Portola Plan." 83 Fed. Reg. 64,774 (Dec. 18, 2018)

27 37. On March 25, 2019, EPA issued a final rule on the Portola Plan to approve all but
28 the Portola Plan's contingency measures. 84 Fed. Reg. 11,208 (Mar. 29, 2019).

1 38. EPA has a mandatory duty to take final action on SIP submittals within twelve
 2 months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).
 3 EPA was required to take final action either approving or disapproving the contingency measures
 4 of the Portola Plan by August 28, 2018.

5 39. To date, EPA has failed to take final action on the contingency measures for the
 6 Portola Plan.

7 **C. Phoenix-Mesa, Arizona - 2008 8-Hour Ozone NAAQS**

8 40. EPA finalized the 2008 ozone NAAQS on March 27, 2008. 73 Fed. Reg. 16,436
 9 (Mar. 27, 2008). EPA subsequently published the SIP requirements for implementing the 2008
 10 NAAQs on March 6, 2015. 80 Fed. Reg. 12, 264 (Mar. 6, 2015).

11 41. Under the revised standards, the Phoenix-Mesa region of Arizona was designated
 12 as “moderate” nonattainment. *See* 77 Fed. Reg. 30,160 (May 21, 2012); *see also* 77 Fed. Reg.
 13 30,0088, 30,0096-7 (May 21, 2012). The classification required the state to submit a
 14 nonattainment SIP to attain the new 2008 ozone NAAQS. 80 Fed. Reg. 12, 264 (Mar. 6, 2015).

15 42. EPA has a mandatory duty to take final action on SIP submittals within twelve
 16 months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

17 43. EPA is in violation of this mandatory duty for the Phoenix-Mesa, Arizona
 18 nonattainment areas for the SIP elements listed in Table 1 below.

19 **TABLE 1**

Element	SIP Requirement	Submittal Date	Completion Date (no later than)	Final Action Due Date
1	Contingency Measures Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NOx”)	12/19/2016	06/19/2017	6/19/2018
2	Reasonable Further Progress (“RFP”) VOC and NOx - Moderate	12/19/2016	6/19/2017	6/19/2018
3	Ozone Attainment Demonstration	12/19/2016	6/19/2017	6/19/2018

1		Reasonable			
2		Available Control			
3	4	Technology	6/22/2017	12/22/2017	12/22/2018
4		("RACT") Non-			
5		Control Technology			
6	5	Guidelines ("CTG")	6/22/2017	12/22/2017	12/22/2018
7		VOC for Major			
8	6	Sources	6/22/2017	12/22/2017	12/22/2018
9		RACT NOx for			
10	7	Major Sources	6/22/2017	12/22/2017	12/22/2018
11		RACT VOC CTG			
12	8	Aerospace	6/22/2017	12/22/2017	12/22/2018
13		RACT VOC CTG			
14	9	Auto and Light-Duty	6/22/2017	12/22/2017	12/22/2018
15		Truck Assembly			
16	10	Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
17		RACT VOC CTG			
18	8	Bulk Gasoline Plants	6/22/2017	12/22/2017	12/22/2018
19		RACT VOC CTG			
20	9	Equipment Leaks	6/22/2017	12/22/2017	12/22/2018
21		from Natural			
22	10	Gas/Gasoline	6/22/2017	12/22/2017	12/22/2018
23		Processing Plants			
24	11	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
25		Factory Surface			
26	12	Coating of Flat	6/22/2017	12/22/2017	12/22/2018
27		Wood Paneling			
28	11	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Fiberglass Boat			
	12	Manufacturing	6/22/2017	12/22/2017	12/22/2018
		Materials (2008)			
	13	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Flat Wood Paneling			
	14	Coatings (2006)	6/22/2017	12/22/2017	12/22/2018
		RACT VOC CTG			
	13	Flexible Packaging	6/22/2017	12/22/2017	12/22/2018
		Printing Materials			
		(2006)			
	14	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Fugitive Emissions			
		from Synthetic			
		Organic Chemical			
		Polymer and Resin			
		Manufacturing			
		Equipment			

1					
2	15	RACT VOC CTG Graphic Arts - Rotogravure and Flexography	6/22/2017	12/22/2017	12/22/2018
3					
4	16	RACT VOC CTG Industrial Cleaning Solvents (2006)	6/22/2017	12/22/2017	12/22/2018
5					
6	17	RACT VOC CTG Large Appliance Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
7					
8	18	RACT VOC CTG Large Petroleum Dry Cleaners	6/22/2017	12/22/2017	12/22/2018
9					
10	19	RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	6/22/2017	12/22/2017	12/22/2018
11					
12					
13	20	RACT VOC CTG Leaks from Petroleum Refinery Equipment	6/22/2017	12/22/2017	12/22/2018
14					
15	21	RACT VOC CTG Lithographic Printing Materials and Letterpress Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
16					
17					
18					
19	22	RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	6/22/2017	12/22/2017	12/22/2018
20					
21					
22	23	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	6/22/2017	12/22/2017	12/22/2018
23					
24					
25	24	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	6/22/2017	12/22/2017	12/22/2018
26					
27					
28					

1	25	RACT VOC CTG Metal Furniture Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
2					
3	26	RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	6/22/2017	12/22/2017	12/22/2018
4					
5					
6	27	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
7					
8					
9	28	RACT VOC CTG Paper, Film, and Foil Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
10					
11	29	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	6/22/2017	12/22/2017	12/22/2018
12					
13	30	RACT VOC CTG Plastic Parts Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
14					
15					
16	31	RACT VOC CTG Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds	6/22/2017	12/22/2017	12/22/2018
17					
18					
19	32	RACT VOC CTG SOCMI Air Oxidation Processes	6/22/2017	12/22/2017	12/22/2018
20					
21	33	RACT VOC CTG SOCMI Distillation and Reactor Processes	6/22/2017	12/22/2017	12/22/2018
22					
23	34	RACT VOC CTG Shipbuilding/repair	6/22/2017	12/22/2017	12/22/2018
24					
25	35	RACT VOC CTG Solvent Metal Cleaning	6/22/2017	12/22/2017	12/22/2018
26					
27	36	RACT VOC CTG Stage I Vapor Control Systems - Gasoline Service Stations	6/22/2017	12/22/2017	12/22/2018
28					

1					
2	37	RACT VOC CTG Storage of Petroleum Liquids in Fixed Roof Tanks	6/22/2017	12/22/2017	12/22/2018
3					
4	38	RACT VOC CTG Surface Coating for Insulation of Magnet Wire	6/22/2017	12/22/2017	12/22/2018
5					
6	39	RACT VOC CTG Surface Coating of Automobiles and Light-Duty Trucks	6/22/2017	12/22/2017	12/22/2018
7					
8	40	RACT VOC CTG Surface Coating of Cans	6/22/2017	12/22/2017	12/22/2018
9					
10	41	RACT VOC CTG Surface Coating of Coils	6/22/2017	12/22/2017	12/22/2018
11					
12	42	RACT VOC CTG Surface Coating of Fabrics	6/22/2017	12/22/2017	12/22/2018
13					
14	43	RACT VOC CTG Surface Coating of Large Appliances	6/22/2017	12/22/2017	12/22/2018
15					
16	44	RACT VOC CTG Surface Coating of Metal Furniture	6/22/2017	12/22/2017	12/22/2018
17					
18	45	RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	6/22/2017	12/22/2017	12/22/2018
19					
20	46	RACT VOC CTG Surface Coating of Paper	6/22/2017	12/22/2017	12/22/2018
21					
22	47	RACT VOC CTG Tank Truck Gasoline Loading Terminals	6/22/2017	12/22/2017	12/22/2018
23					
24	48	RACT VOC CTG Use of Cutback Asphalt	6/22/2017	12/22/2017	12/22/2018
25					
26	49	RACT VOC CTG Wood Furniture	6/22/2017	12/22/2017	12/22/2018
27					
28					

1 44. To date, EPA has not taken final action on the SIP elements listed in Table 1.

2 **CLAIMS FOR RELIEF**

3 **FIRST CLAIM**

4 **(Failure to take promulgate a new source review FIP for Yolo-Solano Air Quality**
5 **Management District)**

6 45. Plaintiffs incorporate by reference all paragraphs listed above.

7 46. It has been more than two years since EPA made a finding of California's failure
8 to submit a SIP on behalf of the Yolo-Solano Air Quality Management District to implement the
9 nonattainment new source review element for the 2006 PM_{2.5} NAAQs.

10 47. EPA has not promulgated a FIP to address this nonattainment new source review
11 element.

12 48. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. §
13 7410(c)(1) with regard to this element.

14 **SECOND CLAIM**

15 **(Failure to take final action on the contingency measures for the Portola Plan)**

16 49. Plaintiffs incorporate by reference all paragraphs listed above.

17 50. EPA has a mandatory duty to take final action, pursuant to 42 U.S.C. §
18 7410(k)(2)-(4), on the contingency measure provisions in the Portola Plan for Plumas County,
19 California.

20 51. It has been more than 12 months since the Portola Plan contingency measures for
21 the 2012 PM_{2.5} NAAQS were deemed administratively complete.

22 52. EPA has not taken final action on the Portola Plan contingency measures for the
23 2012 PM_{2.5} NAAQS

24 53. Thus, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2)-(4).

25 **THIRD CLAIM**

26 **(Failure to take final action on the 2008 8-hour ozone SIP submittals**
27 **for Phoenix-Mesa, Arizona)**

28 54. Plaintiffs incorporate by reference all paragraphs listed above.

1 Dated: May 22, 2019

2
3 Respectfully submitted,

4 /s/ Jonathan Evans

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