

1 Christopher Sproul (State Bar No. 126398)
2 ENVIRONMENTAL ADVOCATES
3 5135 Anza Street
4 San Francisco, California 94121
5 Telephone: (415) 533-3376
6 Facsimile: (415) 358-5695
7 Email: csproul@enviroadvocates.com

8 Attorney for Plaintiff
9 Our Children’s Earth Foundation

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 OUR CHILDREN’S EARTH FOUNDATION, a
13 non-profit corporation,

14 Plaintiff,

15 v.

16 ANDREW WHEELER, in his official capacity
17 as Administrator of the United States
18 Environmental Protection Agency,

19 Defendant.

Civil Case No. 19-cv-7125

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

OUR CHILDREN’S EARTH FOUNDATION (“OCE”) alleges as follows:

INTRODUCTION

1. This is a suit to compel the Administrator of the U.S. Environmental Protection Agency (“EPA”) to take actions mandated by the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* (“CAA” or “the Act”) to protect public health and the environment from certain sources of harmful and/or toxic air pollutants. The Act requires the Administrator to review and revise certain emissions standards for new sources of air pollution, referred to as New Source Performance Standards (“NSPSs”), every eight years. 42 U.S.C. § 7411(b)(1)(B). The Act also requires the Administrator to review and revise the national emission standards for hazardous air pollutants (“NESHAPs”) for listed sources every eight years. 42 U.S.C. § 7412(d)(6). As alleged herein, the Administrator has missed the statutory deadlines to complete one or more of the required regulatory duties for seven (7) categories of sources of harmful and/or toxic air pollution. This creates a real risk of harm to OCE, its staff, members, and constituents and the public.

2. The Administrator has not taken the actions required by CAA section 111(b)(1)(b) for the categories of sources identified in **Table A**, below:

TABLE A: SOURCE CATEGORIES REQUIRING NSPS REVISIONS			
Source Category	C.F.R. citation for NSPS	NSPS Promulgation Federal Register Citation	Deadline for Action Pursuant to Section 111(b)(1)(B)
Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	40 C.F.R. Part 60, Subpart TTT	53 Fed. Reg. 2676 (Jan. 29, 1988)	January 29, 1996
Automobile and Light Duty Truck Surface Coating Operations	40 C.F.R. Part 60, Subpart MM	59 Fed. Reg. 25,066 (Oct. 11, 1994)	October 11, 2002
Lead-Acid Battery Manufacturing Plants	40 C.F.R. Part 60, Subpart KK	47 Fed. Reg. 16,564 (April 16, 1982)	April 16, 1990
Secondary Lead Smelters	40 C.F.R. Part 60, Subpart L	40 Fed. Reg. 46,250 (October 6, 1975)	October 6, 1983

3. The Administrator has not taken the actions required by CAA section 112(d)(6) for the categories of sources of hazardous air pollutants identified in **Table B**, below:

TABLE B: SOURCE CATEGORIES REQUIRING NESHAP REVIEW AND REVISIONS

Source Category	C.F.R. citation for NESHAP	NESHAP Promulgation Federal Register Citation	Deadline for Action Pursuant to Section 112(d)(6)
Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources	40 C.F.R. Part 63, Subpart HHHHHH	73 Fed. Reg. 1738 (Jan. 9, 2008)	January 9, 2016
Lead Acid Battery Manufacturing Area Sources	40 C.F.R. Part 63, Subpart PPPPP	73 Fed. Reg. 15,923 (March 26, 2008)	March 26, 2016
Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards	40 C.F.R. Part 63, Subpart M	71 Fed. Reg. 42,724 (July 27, 2006)	July 27, 2014

4. Due to the Administrator's failures to act, OCE seeks both a determination that the Administrator's failures to perform each action required by CAA sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), violate the CAA and an order to compel the Administrator to take each required action in accordance with an expeditious, date-certain deadline set by this Court.

JURISDICTION AND VENUE

5. This action arises under CAA sections 111(b)(1)(B) and 112(d)(6). 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6). This Court has jurisdiction over this action pursuant to CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2); 28 U.S.C. § 1331; and 28 U.S.C. § 1361. This Court may order the Administrator to perform the requisite acts to comply with his duties, may issue a declaratory judgment, and may grant further relief pursuant to CAA section 304(a), 42 U.S.C. § 7604(a); the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02; and 28 U.S.C. § 1361. OCE has a right to bring this action pursuant to CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2) and 28 U.S.C. § 1361.

6. By certified letter to the Administrator, sent August 20, 2019 and received by the Administrator on August 27, 2019, OCE gave notice of this action as required by CAA section 304(b)(2), 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54, §§ 54.1-.3.

7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the OCE resides in this district and no real property is involved in the action.

1 **PARTIES**

2 8. Plaintiff OCE is a nonprofit organization existing under the laws of the State of
3 California with its principal place of business in Napa, California. OCE brings this action on behalf of
4 itself and its staff, members, and constituents. OCE advocates for control of toxic air pollution in the
5 State of California and nationally. OCE engages in public education, advocacy, and community
6 organizing in order to bring awareness about the effects of toxic chemicals on human health and the
7 environment, to reduce individuals' and communities' exposure to pollution, and to protect people from
8 harm.

9 9. Defendant Andrew Wheeler is the Administrator of the EPA. In that role he is charged
10 with the duty to uphold the CAA and to take required regulatory actions according to the schedules
11 established therein.

12 **LEGAL FRAMEWORK**

13 10. The CAA's purpose is "to protect and enhance the quality of the Nation's air resources so
14 as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. §
15 7401(b)(1).

16 11. A "primary goal" of the Act is "pollution prevention." 42 U.S.C. § 7401(c). Congress
17 found the Act to be necessary in part because "the growth in the amount and complexity of air pollution
18 brought about by urbanization, industrial development, and the increasing use of motor vehicles, has
19 resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and
20 livestock, damage to and the deterioration of property, and hazards to air and ground transportation." 42
21 U.S.C. § 7401(a)(2).

22 12. One way the CAA seeks to accomplish its objectives is that it prescribes a regulatory
23 framework within which the Administrator is required to set standards for air pollution control from new
24 stationary sources of air pollution. 42 U.S.C. § 7411(a)(1).

25 13. A "new source" is defined as "any stationary source, the construction or modification of
26 which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing
27 a standard of performance under this section which will be applicable to such source." 42 U.S.C. §
28 7411(a)(2). A "stationary source" is defined as "any building, structure, facility, or installation which

1 emits or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). A “modification” is defined as “any
2 physical change in, or change in the method of operation of, a stationary source which increases the
3 amount of any air pollutant emitted by such source or which results in the emission of any air pollutant
4 not previously emitted.” 42 U.S.C. § 7411(a)(4).

5 14. The NSPS standards must reflect “the degree of emission limitation achievable through
6 the application of the best system of emission reduction which (taking into account the cost of achieving
7 such reduction and any nonair quality health and environmental impact and energy requirements) the
8 Administrator determines has been adequately demonstrated.” 42 U.S.C. § 7411(a)(1).

9 15. The CAA Amendments of 1970 required the Administrator to publish a list of stationary
10 sources that “cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated
11 to endanger public health or welfare” within 90 days of the Amendments and to periodically update that
12 list. 42 U.S.C. § 7411(b)(1)(A). The Administrator also had to promulgate standards of pollution control
13 for these new sources – NSPSs. 42 U.S.C. § 7411(b)(1)(B). Faced with the Administrator’s failure to
14 timely promulgate NSPSs for all sources on the list, Congress, in the CAA Amendments of 1990, set a
15 schedule for the Administrator to promulgate all backlogged NSPSs then existing within 6 years. 42
16 U.S.C. § 7411(f). The Administrator now has a continuing obligation to *review and revise these NSPS at*
17 *least every eight years.* 42 U.S.C. § 7411(b)(1)(B).

18 16. The Act also prescribes a regulatory framework within which the Administrator is
19 required to set technology and risk-based standards for existing sources of air pollution by specific
20 deadlines to reduce emissions of hazardous air pollutants and harm to health and the environment. 42
21 U.S.C. § 7412.

22 17. In the 1990 CAA Amendments, Congress established new requirements for EPA to
23 control toxic air pollution. *Id.* By statute, Congress listed 189 hazardous air pollutants for regulation, and
24 required EPA to list every other compound “known to cause or [that] may reasonably be anticipated to
25 cause adverse effects to human health or adverse environmental effects.” 42 U.S.C. § 7412(b)(1),
26 (b)(3)(B); *see also* 42 U.S.C. § 7412(c)(6). The term “hazardous air pollutant” is defined as “any air
27 pollutant listed pursuant to [section 112(b)].” 42 U.S.C. § 7412(a)(6) (citing 42 U.S.C. § 7412(b)).
28

1 18. Currently, 187 hazardous air pollutants are listed for regulation. Pursuant to the
2 Technology Transfer Act's requirement that EPA "identify not less than 30 hazardous air pollutants
3 which ... present the greatest threat to public health in the largest number of urban areas," 42 U.S.C. §
4 7412(k)(3), EPA published an "Integrated Urban Air Toxics Strategy" that listed 33 pollutants,
5 including arsenic compounds, cadmium compounds, chromium compounds, lead compounds, methylene
6 chloride, and nickel compounds. National Air Toxics Program: The Integrated Urban Strategy, 64 Fed.
7 Reg. 38,706, 38,715 tbl.1 (July 19, 1999).

8 19. The Act requires EPA to list categories of major sources of hazardous air pollutants. 42
9 U.S.C. § 7412(c)(1). A "major source" is defined as "any stationary source or group of stationary
10 sources located within a contiguous area and under common control that emits or has the potential to
11 emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25
12 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1).

13 20. EPA must then promulgate emission standards for each listed category or subcategory of
14 major sources of hazardous air pollutants. 42 U.S.C. § 7412(d). These standards are often referred to as
15 "maximum achievable control technology" or "MACT" standards.

16 21. EPA must also promulgate standards for each listed category or subcategory of area
17 sources of hazardous pollutants. An "area source" is defined as "any stationary source of hazardous air
18 pollutants that is not a major source." 42 U.S.C. § 7412(a)(2). The CAA allows the EPA discretion to
19 decide whether to require MACT standards or to promulgate "generally available control technology" or
20 "GACT" standards for area sources instead. 42 U.S.C. § 7412(d)(5).

21 22. After the Administrator has promulgated emission standards pursuant to CAA section
22 112(d) for a source category, "[t]he Administrator shall review, and revise as necessary (taking into
23 account developments in practices, processes, and control technologies), emission standards
24 promulgated under this section *no less often than every 8 years*." 42 U.S.C. § 7412(d)(6) (emphasis
25 added). This provision requires the Administrator either to promulgate revised section 112(d) standards
26 or to issue a final determination not to revise the existing standards based upon a published finding that
27 revision is not "necessary" to ensure the emission standards satisfy CAA section 112(d). *Id.*

1 30. The Administrator has not taken final action to fulfill his CAA section 111(b)(1)(B), 42
2 U.S.C. § 7411(b)(1)(B), duties to revise the NSPSs for any of the Source Categories listed in the first
3 column of Table A, above.

4 31. The Administrator's NSPS revisions for all of the Source Categories in Table A, above,
5 are now overdue.

6 **A. Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.**

7 32. EPA promulgated the NSPS for Industrial Surface Coating: Surface Coating of Plastic
8 Parts for Business Machines, set forth at 40 C.F.R. Part 60, Subpart TTT, in January 1988. 53 Fed. Reg.
9 2676 (Jan. 29, 1988).

10 33. More than eight years have passed since the Administrator promulgated, reviewed, or
11 revised the NSPS for Industrial Surface Coating: Surface Coating of Plastic Parts for Business
12 Machines.

13 34. The Administrator has not completed the reviews required by CAA section 111(b)(1)(B),
14 42 U.S.C. § 7411(b)(1)(B), for Industrial Surface Coating: Surface Coating of Plastic Parts for Business
15 Machines.

16 35. The Administrator has not promulgated a revised final rule or determination pursuant to
17 CAA section 111(b)(1)(B) reflecting a timely review of the now-existing NSPS for Industrial Surface
18 Coating: Surface Coating of Plastic Parts for Business Machines.

19 36. The Administrator's NSPS revision for Industrial Surface Coating: Surface Coating of
20 Plastic Parts for Business Machines is therefore overdue.

21 **B. Automobile and Light Duty Truck Surface Coating Operations.**

22 37. EPA promulgated the NSPS for Automobile and Light Duty Truck Surface Coating
23 Operations, set forth in 40 C.F.R. Part 60, Subpart MM, in October 1994. 59 Fed. Reg. 25,066 (Oct. 11,
24 1994).

25 38. More than eight years have passed since the Administrator promulgated, reviewed, or
26 revised the NSPS for Automobile and Light Duty Truck Surface Coating Operations.

27 39. The Administrator has not completed the reviews required by CAA section 111(b)(1)(B),
28 42 U.S.C. § 7411(b)(1)(B), for Automobile and Light Duty Truck Surface Coating Operations.

1 40. The Administrator has not promulgated a revised final rule or determination pursuant to
2 CAA section 111(b)(1)(B) reflecting a timely review of the now-existing NSPS for Automobile and
3 Light Duty Truck Surface Coating Operations.

4 41. The Administrator's NSPS revision for Automobile and Light Duty Truck Surface
5 Coating Operations is therefore overdue.

6 **C. Lead-Acid Battery Manufacturing Plants.**

7 42. EPA promulgated the NSPS for Lead-Acid Battery Manufacturing Plants, set forth in 40
8 C.F.R. Part 60, Subpart KK, in April 1982. 47 Fed. Reg. 16,564 (April 16, 1982).

9 43. More than eight years have passed since the Administrator promulgated, reviewed, or
10 revised the NSPS for Lead-Acid Battery Manufacturing Plants.

11 44. The Administrator has not completed the reviews required by CAA section 111(b)(1)(B),
12 42 U.S.C. § 7411(b)(1)(B), for Lead-Acid Battery Manufacturing Plants.

13 45. The Administrator has not promulgated a revised final rule or determination pursuant to
14 CAA section 111(b)(1)(B) reflecting a timely review of the now-existing NSPS for Lead-Acid Battery
15 Manufacturing Plants.

16 46. The Administrator's NSPS revision for Lead-Acid Battery Manufacturing Plants is
17 therefore overdue.

18 **D. Secondary Lead Smelters.**

19 47. EPA promulgated the NSPS for Secondary Lead Smelters, set forth in 40 C.F.R. Part 60,
20 Subpart L, in October 1975. 40 Fed. Reg. 46,250 (October 6, 1975).

21 48. More than eight years have passed since the Administrator promulgated, reviewed, or
22 revised the NSPS for Secondary Lead Smelters.

23 49. The Administrator has not completed the reviews required by CAA section 111(b)(1)(B),
24 42 U.S.C. § 7411(b)(1)(B), for Secondary Lead Smelters.

25 50. The Administrator has not promulgated a revised final rule or determination pursuant to
26 CAA section 111(b)(1)(B) reflecting a timely review of the now-existing NSPS for Secondary Lead
27 Smelters.

28 51. The Administrator's NSPS revision for Secondary Lead Smelters is therefore overdue.

1 **II. Failure to Review NESHAPs.**

2 52. EPA promulgated NESHAPs for each of the Source Categories as per the Federal
3 Register citations in the third column of Table B, above, entitled “NESHAP Promulgation Federal
4 Register Citation.”

5 53. The Administrator was required to take final action to fulfill his CAA section 112(d)(6),
6 42 U.S.C. § 7412(d)(6), duties to revise each NESHAP for the Source Categories by the dates specified
7 in the fourth column of Table B, above, entitled “Deadline for Action Pursuant to Section 112(d)(6)”,
8 *i.e.*, “within 8 years after promulgation” and “no less often than every 8 years.”

9 54. The Administrator has not taken final action to fulfill his CAA section 112(d)(6), 42
10 U.S.C. § 7412(d)(6), duties to revise the NESHAPs for any of the Source Categories listed in the first
11 column of Table B, above.

12 55. The Administrator’s NESHAP revisions for all of the Source Categories in Table B,
13 above, are now overdue.

14 **A. Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.**

15 56. EPA promulgated the NESHAP for Paint Stripping and Miscellaneous Surface Coating
16 Operations at Area Sources, set forth at 40 C.F.R. Part 63, Subpart HHHHHH, in January 2008. 73 Fed.
17 Reg. 1738 (Jan. 9, 2008).

18 57. More than eight years have passed since the emission standards under CAA section 112,
19 42 U.S.C. § 7412, for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
20 were promulgated.

21 58. The Administrator has not completed the reviews required by section CAA section
22 112(d)(6), 42 U.S.C. § 7412(d)(6), for Paint Stripping and Miscellaneous Surface Coating Operations at
23 Area Sources.

24 59. The Administrator has not promulgated a revised final rule or determination pursuant to
25 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), reflecting a timely review of the now-existing
26 NESHAP for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.

27 60. The Administrator’s NESHAP revision for Paint Stripping and Miscellaneous Surface
28 Coating Operations at Area Sources is therefore overdue.

1 **B. Lead Acid Battery Manufacturing Area Sources.**

2 61. EPA promulgated the NESHAP for Lead Acid Battery Manufacturing Area Sources, set
3 forth at 40 C.F.R. Part 63, Subpart PPPPPP, in March 2008. 73 Fed. Reg. 15,923 (March 26, 2008).

4 62. More than eight years have passed since the emission standards under CAA section 112,
5 42 U.S.C. § 7412, for Lead Acid Battery Manufacturing Area Sources were promulgated.

6 63. The Administrator has not completed the reviews required by section CAA section
7 112(d)(6), 42 U.S.C. § 7412(d)(6), for Lead Acid Battery Manufacturing Area Sources.

8 64. The Administrator has not promulgated a revised final rule or determination pursuant to
9 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), reflecting a timely review of the now-existing
10 NESHAP for Lead Acid Battery Manufacturing Area Sources.

11 65. The Administrator's NESHAP revision for Lead Acid Battery Manufacturing Area
12 Sources is therefore overdue.

13 **C. Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards.**

14 66. EPA promulgated the NESHAP for Dry Cleaning Facilities: National Perchloroethylene
15 Air Emission Standards, set forth at 40 C.F.R. Part 63; Subpart M, in July 2006. 71 Fed. Reg. 42,724
16 (July 27, 2006).

17 67. More than eight years have passed since the emission standards under CAA section 112,
18 42 U.S.C. § 7412, for Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards were
19 promulgated.

20 68. The Administrator has not completed the reviews required by section CAA section
21 112(d)(6), 42 U.S.C. § 7412(d)(6), for Dry Cleaning Facilities: National Perchloroethylene Air Emission
22 Standards.

23 69. The Administrator has not promulgated a revised final rule or determination pursuant to
24 CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6) reflecting a timely review of the now-existing NESHAP
25 for Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards.

26 70. The Administrator's NESHAP revision for Dry Cleaning Facilities: National
27 Perchloroethylene Air Emission Standards is therefore overdue.

INJURY TO OUR CHILDREN'S EARTH FOUNDATION

1
2 71. OCE and its staff, members, and constituents have been, are being, and will continue to
3 be harmed by the Administrator's failures to take the actions required by CAA sections 111(b)(1)(B)
4 and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), for the Source Categories enumerated in Table
5 A and Table B, above, as further explained herein.

6 72. EPA has determined that each of the Source Categories enumerated in Table A, above,
7 causes or contributes significantly to air pollution that may be anticipated to endanger public health or
8 welfare. *See* 42 U.S.C. 7411(b)(1)(A); 53 Fed. Reg. 2676 (Jan. 29, 1988) (Industrial Surface Coating:
9 Surface Coating of Plastic Parts for Business Machines); 59 Fed. Reg. 25,066 (Oct. 11, 1994)
10 (Automobile and Light Duty Truck Surface Coating Operations); 47 Fed. Reg. 16,564 (April 16, 1982)
11 (Lead-Acid Battery Manufacturing Plants); 40 Fed. Reg. 46,250 (October 6, 1975) (Secondary Lead
12 Smelters).

13 73. EPA has listed each of the Source Categories enumerated in Table B, above, as major
14 sources and/or area sources of hazardous air pollutants. Initial List of Categories of Sources Under
15 Section 112(c)(1) of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 31,576 (July 16, 1992);
16 National Emission Standards for Hazardous Air Pollutants: Revision of Initial List of Categories of
17 Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of
18 1990, 61 Fed. Reg. 28,197 (June 4, 1996); National Emission Standards for Hazardous Air Pollutants:
19 Revision of Source Category List and Schedule for Standards Under Section 112 of the Clean Air Act,
20 64 Fed. Reg. 63,025 (Nov. 18, 1999).

21 74. Sources in the Source Categories in Table B emit hazardous air pollutants regulated
22 under CAA section 112, 42 U.S.C. § 7412. EPA has recognized that the pollutants emitted by these
23 sources include, but are not limited to, metals, such as lead, cadmium, arsenic, chromium, and nickel
24 and organic compounds, such as perchloroethylene and methylene chloride. *See, e.g.*, 73 Fed. Reg. 1738
25 (Jan. 9, 2008) (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources); 73 Fed.
26 Reg. 15,923 (March 26, 2008) (Lead Acid Battery Manufacturing Area Sources); 71 Fed. Reg. 42,724
27 (July 27, 2006) (Dry Cleaning Facilities: National Perchloroethylene Air Emission Standards). Congress
28

1 determined these pollutants are hazardous when it listed them and required EPA to regulate sources that
2 emit them. 42 U.S.C. § 7412(b)(1), (c), (d).

3 75. EPA has recognized that the hazardous air pollutants emitted by sources in the Source
4 Categories at issue in this lawsuit can cause serious acute and chronic human health effects. Breathing
5 some of these pollutants can cause cancer. EPA has recognized that carcinogens have no safe level of
6 human exposure. S. Rep. No. 101-228 at 175 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3560
7 (“Federal Government health policy since the mid-1950s has been premised on the principle that there is
8 no safe level of exposure to a carcinogen.”). Exposure to hazardous air pollutants emitted by sources in
9 the Source Categories has adverse health effects that include respiratory, neurological, developmental,
10 and reproductive harm; damage to bodily organs and the central nervous system; and cancer, as well as
11 other adverse health effects. Some of the hazardous air pollutants emitted from the sources in the Source
12 Categories persist in the environment and/or bioaccumulate. For example, one pollutant emitted from
13 the sources in the Source Categories is lead. 72 Fed. Reg. 16,636, 16,650 (April 4, 2007) (Lead Acid
14 Battery Manufacturing). Pollutants, such as lead, that persist in the environment and/or bioaccumulate
15 can harm human health when people are exposed through routes other than breathing the pollution, such
16 as after pollutants fall on the soil and children are exposed through playing in the soil, or when people
17 eat fish, shellfish, breast-milk, or other food in which such pollutants have accumulated. *See, e.g.*, EPA,
18 Learn About Lead, <https://www.epa.gov/lead/learn-about-lead> (last accessed October 21, 2019). In
19 addition, EPA has found that some of these pollutants can harm other animals, fish, and plants. *See, e.g.*,
20 EPA, Cadmium Compounds: Hazard Summary, [https://www.epa.gov/sites/production/files/2016-
21 09/documents/cadmium-compounds.pdf](https://www.epa.gov/sites/production/files/2016-09/documents/cadmium-compounds.pdf) (last accessed October 21, 2019); EPA, Arsenic Compounds:
22 Hazard Summary, [https://www.epa.gov/sites/production/files/2016-09/documents/arsenic-
24 compounds.pdf](https://www.epa.gov/sites/production/files/2016-09/documents/arsenic-
23 compounds.pdf) (last accessed October 21, 2019).

24 76. OCE’s staff, members, and constituents live, work, travel, recreate, and engage in a wide
25 variety of activities near existing sources in the Source Categories and in areas near where new air
26 pollution sources in the Source Categories are likely to be built in the future. OCE’s staff, members, and
27 constituents suffer exposure and other harm to their health, recreational, aesthetic, educational,
28 professional, and other interests due to breathing the hazardous air pollutants emitted by sources in the

1 Source Categories, by consuming food contaminated with pollutants from sources in the Source
2 Categories, and by other pathways of exposure.

3 77. OCE's staff, members, and constituents are concerned that hazardous air pollutants are
4 present in the locations where they live, work, travel, recreate, and engage in other activities, and will be
5 present in those areas in the future. OCE's staff, members, and constituents' reasonable concerns about
6 the increased exposure to pollutants they will experience during their activities and other resulting harms
7 from their exposure to pollutants diminish their enjoyment of activities they have previously enjoyed
8 and would like to continue to engage in and areas they previously enjoyed and would like to continue to
9 use. These hazardous air pollutants, and the resultant concerns that they cause to OCE's staff, members,
10 and constituents, thereby harm their health, recreational, aesthetic, educational, professional, and other
11 interests.

12 78. The pollutants emitted by the sources in the Source Categories at issue in this lawsuit can
13 also damage surrounding wildlife, plants, waters, land, communities, and ecosystems, and thus also
14 harm OCE's staff, members, and constituents' recreational, aesthetic, educational, professional, and
15 other interests in those wildlife, plants, waters, land, communities, and ecosystems. Pollutants emitted
16 by sources in the Source Categories include volatile organic compounds, which contribute to ambient
17 ozone. EPA, Ground-Level Ozone Basics, [https://www.epa.gov/ground-level-ozone-pollution/ground-](https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics#formation)
18 [level-ozone-basics#formation](https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics#formation) (last accessed October 21, 2019). EPA has found that ambient ozone can
19 cause reduction of lung function, respiratory symptoms (e.g., cough, chest pain, throat and nose
20 irritation), increased lung inflammation, increased lung permeability, and airway hyperresponsiveness,
21 which can harm OCE's staff, members, and constituents' health. EPA, Integrated Science Assessment
22 for Ozone and Related Photochemical Oxidants at 6-1 to 6-3 (Feb. 2013), available at
23 http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=511347 (last accessed October 21,
24 2019). Additionally, EPA has found that ozone can also damage vegetation, including forests,
25 commercial trees, and agricultural crops, and result in damage to ecosystems. *See, e.g., id.* at 9-3. These
26 changes can lead to wildlife avoidance of certain areas, as well as a reduction in biodiversity or other
27 changes to a local community's ecosystem. Ecosystem changes like these in areas that OCE's staff,
28 members, and constituents have visited, do visit, and have concrete plans to visit in the future make it

1 more difficult for OCE's staff, members, and constituents to observe, photograph, fish, harvest, study,
2 research, search for, and write about fish, wildlife, plants, and ecosystems.

3 79. OCE and OCE's staff, members, and constituents suffer additional harm because they do
4 not have information, published findings, or determinations from the Administrator regarding the best
5 available current pollution control methods, practices, and technologies to achieve emission reductions,
6 the health and environmental risks that remain after application of the existing standards, or other
7 information relevant to assessing the need for stronger emission standards for the sources in the Source
8 Categories. If the Administrator carried out the required actions pursuant to CAA sections 111(b)(1)(B)
9 and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), those actions would provide OCE; OCE's staff,
10 members, and constituents; and all other interested members of the public with this information. *See,*
11 *e.g.*, 42 U.S.C. § 7607(d)(3)-(6) (describing notice and informational disclosures required as part of
12 rulemakings under CAA section 112, 42 U.S.C. § 7412). If OCE and OCE's staff, members, and
13 constituents had this information, they would use it to advocate for stronger health and environmental
14 protections; to educate members, constituents, and the public; to protect themselves and their families
15 from hazardous air pollutants and affected land, water, and food; and for other beneficial purposes. The
16 Administrator's failure to gather, create, analyze, and publish this information, as required by the CAA,
17 hampers OCE's and OCE's staff, members, and constituents' ability to take actions to protect their
18 health and communities; diminishes OCE's staff, members, and constituents' enjoyment of activities in
19 their daily life; and impairs OCE's ability to perform the public education and advocacy activities vital
20 to fulfilling its organizational mission. The Administrator's failure to update NSPSs for the Source
21 Categories in Table A also means that new sources in these NSPS Source Categories are only being held
22 to outdated pollution control standards, meaning that they may be polluting in excess of what the current
23 standards should be.

24 80. OCE and OCE's staff, members, and constituents also suffer harm because they are being
25 denied the opportunity to present comments and arguments to the Administrator and have the
26 Administrator consider that input as part of the overdue NSPSs and NESHAPs revisions under CAA
27 sections 111(b)(1)(B) and 112(d)(6). 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6). For these NSPS and
28 NESHAP revisions, EPA is required to provide a period for public comment during which "any person"

1 is allowed “to submit written comments, data, or documentary information.” 42 U.S.C. § 7607(d)(3),
2 (5). In addition, EPA is required to give “interested persons an opportunity for the oral presentation of
3 data, views, or arguments.” 42 U.S.C. § 7607(d)(5). The Administrator’s failure to conduct the overdue
4 revisions to the above NSPSs and NESHAPs deprives OCE and OCE’s staff, members, and constituents
5 of the opportunity to submit comments advocating for greater health protections and emissions
6 reductions and to have the Administrator consider those comments in taking the final actions required by
7 CAA sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6). Deprivation of the
8 ability to present comments and arguments and have them considered by EPA impairs OCE’s ability to
9 fulfill its organizational mission and OCE’s staff, members, and constituents’ ability to protect their
10 interests.

11 81. The Administrator’s failure to timely issue a final rule or determination under CAA
12 sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), as discussed above, harms
13 OCE and OCE’s staff, members, and constituents. Any determination made by the Administrator under
14 these statutory provisions would be subject to judicial review. *See* 42 U.S.C. § 7607(b); *see also* 42
15 U.S.C. § 7607(d). By failing to make any determinations at all, the Administrator deprives OCE and
16 OCE’s staff, members, and constituents of their ability to use judicial review to press the Administrator
17 on the substance of his decisions in order to ensure that the Administrator promulgates standards
18 sufficient to protect their interests and fulfill their organizational missions.

19 82. The Administrator’s failures to take actions required by CAA sections 111(b)(1)(B) and
20 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), deprive OCE’s staff, members, and constituents of
21 the cleaner air that would result from those actions. Consequently, the Administrator prolongs and
22 increases OCE’s staff, members, and constituents’ exposure to hazardous air pollutants and the related
23 and resulting health, recreational, aesthetic, and other injuries, as described above. The Administrator
24 also prolongs and increases the hazardous air pollutant exposure of wildlife, plants, water, land, local
25 communities, and ecosystems, resulting in harm to OCE’s staff, members, and constituents’ interests, as
26 described above. Emission reductions required by the Administrator’s actions taken to comply with
27 CAA sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), would reduce these
28

1 exposures, and would reduce the related health, recreational, aesthetic, and other harms suffered by
2 OCE's staff, members, and constituents.

3 83. By not taking the actions required by CAA sections 111(b)(1)(B) and 112(d)(6), 42
4 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), the Administrator deprives OCE and OCE's staff, members, and
5 constituents of information, published findings, and determinations, as described above. *See, e.g.*, 42
6 U.S.C. § 7607(d)(3)-(6). In addition, the Administrator's failures to take the actions required by CAA
7 sections 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), deprive OCE and OCE's
8 staff, members, and constituents of the opportunity to receive judicial review of the lawfulness of the
9 final EPA actions. *See* 42 U.S.C. § 7607(b). These failures make it more difficult for OCE and OCE's
10 staff, members, and constituents to advocate for health and environmental protection from hazardous air
11 pollutants; shield themselves, their families, and other community members from exposure to those
12 pollutants; protect their health, recreational, aesthetic, and other interests; and be able to enjoy activities
13 in their daily life without concerns about exposure to hazardous air pollutants and hazardous pollutants
14 that are deposited from polluted air. These failures also impair OCE's ability to perform the public
15 education and advocacy activities vital to fulfilling its mission.

16 84. For the foregoing reasons, the Administrator's failures to comply with CAA sections
17 111(b)(1)(B) and 112(d)(6), 42 U.S.C. §§ 7411(b)(1)(B), 7412(d)(6), described herein cause OCE and
18 OCE's staff, members, and constituents to suffer injury and irreparable harm for which they have no
19 adequate remedy at law. Granting the relief OCE requests in this lawsuit would redress these injuries.

20 **FIRST CLAIM FOR RELIEF**

21 **Violations of Clean Air Act Section 111(b)(1)(B)**

22 85. OCE repeats and incorporates by reference the allegations in the above paragraphs and all
23 paragraphs of this Complaint.

24 86. The Administrator has failed to comply with the requirements of CAA section
25 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), for the NSPSs for Industrial Surface Coating: Surface Coating
26 of Plastic Parts for Business Machines, Automobile and Light Duty Truck Surface Coating Operations,
27 Lead-Acid Battery Manufacturing Plants, and Secondary Lead Smelters, as enumerated in Table A,
28 above.

1 a. Declare that each of the Administrator’s failures to review and either revise standards
2 promulgated under CAA section 111 or issue a final determination that such revision is not necessary for
3 each of the Source Categories enumerated in Table A (Industrial Surface Coating: Surface Coating of
4 Plastic Parts for Business Machines, Automobile and Light Duty Truck Surface Coating Operations,
5 Lead-Acid Battery Manufacturing Plants, and Secondary Lead Smelters) pursuant to CAA section
6 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), within eight years constitutes a separate “failure of the
7 Administrator to perform any act or duty under this chapter which is not discretionary with the
8 Administrator” within the meaning of CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2);

9 b. Order the Administrator to review and either revise the emission standards or issue a final
10 determination that such revision is not necessary for each of the Source Categories enumerated in Table
11 A (Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, Automobile and
12 Light Duty Truck Surface Coating Operations, Lead-Acid Battery Manufacturing Plants, and Secondary
13 Lead Smelters) pursuant to CAA section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), in accordance with
14 an expeditious, date-certain deadline specified by this Court;

15 c. Declare that each of the Administrator’s failures to review and either revise standards
16 promulgated under CAA section 112(d) or issue a final determination that such revision is not necessary
17 for each of the Source Categories enumerated in Table B (Paint Stripping and Miscellaneous Surface
18 Coating Operations at Area Sources, Lead Acid Battery Manufacturing Area Sources, and Dry Cleaning
19 Facilities: National Perchloroethylene Air Emission Standards) pursuant to CAA section 112(d)(6), 42
20 U.S.C. § 7412(d)(6), within eight years constitutes a separate “failure of the Administrator to perform
21 any act or duty under this chapter which is not discretionary with the Administrator” within the meaning
22 of CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2);

23 d. Order the Administrator to review and either revise the emission standards or issue a final
24 determination that such revision is not necessary for each of the Source Categories enumerated in Table
25 B (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, Lead Acid Battery
26 Manufacturing Area Sources, and Dry Cleaning Facilities: National Perchloroethylene Air Emission
27 Standards) pursuant to CAA section 112(d)(6), 42 U.S.C. § 7412(d)(6), in accordance with an
28 expeditious, date-certain deadline specified by this Court;

- 1 e. Retain jurisdiction to ensure compliance with this Court's decree;
- 2 f. Award OCE the costs of this action, including attorneys' fees; and
- 3 g. Grant such other relief as the Court deems just and proper.

4
5 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

6 Based on Plaintiff's knowledge to date, pursuant to Civil Local Rule 3-15, the undersigned
7 certifies that, as of this date, other than the named parties, there is no such interest to report.

8
9 DATED: October 29, 2019

Respectfully Submitted,

10
11 

12 _____
13 Christopher Sproul
14 *Attorney for Our Children's Earth*
15 *Foundation*