

1 Christopher Sproul (State Bar No. 126398)
2 Stuart Wilcox (State Bar No. 327726)
3 ENVIRONMENTAL ADVOCATES
4 5135 Anza Street
5 San Francisco, California 94121
6 Telephone: (415) 533-3376
7 Facsimile: (415) 358-5695
8 Email: csproul@enviroadvocates.com
9 stuart.wilcox5@gmail.com

10 Attorneys for Plaintiff
11 OUR CHILDREN’S EARTH FOUNDATION

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 OUR CHILDREN’S EARTH FOUNDATION, a
16 non-profit corporation,

17 Plaintiff,

18 v.

19 ANDREW WHEELER, in his official capacity
20 as ADMINISTRATOR, UNITED STATES
21 ENVIRONMENTAL PROTECTION
22 AGENCY

23 Defendant.

Civil Case No. 20-cv-396

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 Plaintiff Our Children’s Earth Foundation (“OCE”) alleges as follows:

2 **INTRODUCTION**

3 1. The Clean Air Act is a model of cooperative federalism, whereby the Administrator of
4 the Environmental Protection Agency (“EPA”) sets National Ambient Air Quality Standards
5 (“NAAQS”) and the states develop specific plans to achieve these standards. States submit these State
6 Implementation Plans, and revisions to those State Implementation Plans (collectively “SIPs”), to EPA,
7 which reviews the SIPs to ensure they meet the requirements of the Clean Air Act.

8 2. The Clean Air Act mandates that the Administrator fully or partially approve or
9 disapprove SIPs submitted by states no later than 18 months after EPA receives them.

10 3. The Administrator has violated his mandatory 18-month deadline to take action on
11 certain SIPs submitted by the State of California.

12 4. Plaintiff OCE brings this Clean Air Act citizen suit to compel Defendant, Andrew
13 Wheeler, Administrator of the EPA, to perform his non-discretionary duty to review and take action on
14 the California SIP submissions at issue in this case. The timely review of these SIP submissions is
15 necessary to ensure adequate protection of air quality and public health.

16 **JURISDICTION**

17 5. This is an action against the Administrator where there is alleged a failure of the
18 Administrator to perform any act or duty under the Clean Air Act which is not discretionary with the
19 Administrator. Thus, this Court has jurisdiction pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit
20 provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question).

21 6. The requested declaratory relief is authorized by 28 U.S.C. § 2201(a) and 42 U.S.C. §
22 7604(a). The requested injunctive relief is authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 7604(a).

23 7. This Court has personal jurisdiction over EPA and its officials, including Administrator
24 Wheeler, because EPA is an agency of the federal government operating within the United States.

25 **NOTICE**

26 8. By letter dated November 6, 2019, OCE provided the Administrator with written notice
27 of the claims concerning the California SIP submissions stated in this action. OCE provided this notice
28

1 pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2, 54.3. Although more than 60 days have
2 elapsed since OCE gave notice, Administrator Wheeler remains in violation of the law.

3 9. As Administrator Wheeler has failed to redress the Clean Air Act violations set forth in
4 OCE's notice letter referenced in paragraph 8, there exists now between the parties an actual, justiciable
5 controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

6 **VENUE**

7 10. Venue in the United States District Court for the Northern District of California is proper
8 under 28 U.S.C. § 1391(e) because at least one defendant resides in the judicial district, a substantial
9 part of the events giving rise to this litigation occurred within this judicial district, OCE resides within
10 this judicial district, and there is no real property involved in the action.

11 **INTRADISTRICT ASSIGNMENT**

12 11. Intradistrict assignment of this matter to the San Francisco Division of the Court is
13 appropriate pursuant to Civil Local Rules 3-2(c) and (d) because OCE's principal place of business is
14 located in Napa, California; OCE's principal counsel resides in San Francisco County, California; EPA
15 resides in this judicial district and maintains a major regional office, responsible for the SIP submissions
16 at issue, in San Francisco, California; and a substantial part of the events or omissions giving rise to
17 OCE's claims occur in EPA's San Francisco, California office.

18 **THE PARTIES**

19 12. Plaintiff OUR CHILDREN'S EARTH FOUNDATION is a non-profit corporation based
20 in Napa, California dedicated to protecting the environment. OCE promotes public awareness of
21 domestic and international environmental impacts through information dissemination, education, and
22 private enforcement of environmental protection statutes. OCE enforcement cases aim to achieve public
23 access to government information, ensure proper implementation of environmental statutes and
24 permitting, and enjoin violations of environmental and government transparency laws. OCE has an
25 active membership of people from all over the United States with a significant portion of its members
26 residing in California.

27 13. OCE is a non-profit corporation. Therefore, OCE is a "person" within the meaning of 42
28 U.S.C. § 7602(e). As such, OCE may commence a civil action under 42 U.S.C. § 7604(a).

1 14. OCE brings this action on its own behalf and on behalf of its adversely affected members
2 and staff. OCE's members and staff live, work, bike, recreate, and conduct educational, research,
3 advocacy, and other activities in California in areas where air pollution, which should be regulated under
4 the SIP submissions at issue in this case, harms their participation in and enjoyment of these activities.
5 The air pollution that should be regulated by these SIPs also cause OCE's members and staff to
6 experience chronic and acute harms to their health, which could be lessened or eliminated if the
7 Administrator took the required actions to regulate air pollution through the SIP submissions at issue in
8 this case. OCE's members and staff have concrete plans to continue living in California, visiting these
9 areas, and engaging in these activities. The air pollution that should be regulated by the SIP submissions
10 at issue in this lawsuit adversely affects the interests of OCE and its members and staff. The
11 Administrator's failure to act on the SIP submissions at issue in this case also creates doubt and concern
12 for OCE and its members and staff as to whether they are exposed to illegal levels of air pollution, or
13 whether a Federal Implementation Plan ("FIP") is necessary to ensure compliance with the law. The
14 interests of OCE and its members and staff have been, are being, and will continue to be irreparably
15 harmed by the Administrator's failure to act on the SIP submissions at issue in this case.

16 15. The violations alleged in this Complaint deprive OCE and its members and staff of
17 certain procedural rights associated with the Administrator's required action on the SIP submissions,
18 including notice and opportunity to comment. The violations alleged in this Complaint also deprive
19 OCE and its members and staff of certain information associated with the Administrator's required
20 action on the SIP submissions. These procedural, informational, and other injuries are directly tied to the
21 other harms OCE and its members and staff are experiencing.

22 16. Furthermore, if the Administrator were to partially or fully disapprove of the SIP
23 revisions at issue in this Complaint, the Administrator would be obligated to promulgate a FIP to correct
24 any deficiencies within two years of any disapproval. Ultimately, the Administrator's failure to act in
25 compliance with his mandatory duties deprives OCE and its members and staff of certainty that air
26 quality is being maintained and improved in California and of the health and other benefits of that clean
27 air.
28

1 proposed SIP or SIP revision does not meet the minimum criteria, the State is treated as if it had not
2 made the submission. *Id.* § 7410(k)(1)(C).

3 22. Within 12 months of finding that a proposed SIP or SIP revision is complete (or deemed
4 complete by operation of law), the Administrator must act to approve, disapprove, or approve in part and
5 disapprove in part, the submission. *See* 42 U.S.C. § 7410(k)(2). At most then, the Administrator has a
6 maximum of 18 months to take action on a SIP after it has been submitted.

7 23. Once the Administrator approves a SIP or SIP revision, polluters must comply with all
8 emission standards and limitations contained in the SIP, and all such standards and limitations become
9 federal law and are enforceable by the Administrator and citizens in federal courts. *See* 42 U.S.C. §§
10 7413, 7604(a).

11 24. If the Administrator finds that a State has failed to make a complete SIP submission or
12 disapproves a SIP submission in whole or in part, the Clean Air Act requires the Administrator to
13 promulgate a FIP within two years of that finding. 42 U.S.C. § 7410(c)(1)(A), (B).

14 25. If the Administrator fails to perform a non-discretionary duty, such as acting on a
15 proposed SIP or SIP revision within the Clean Air Act deadlines, the Clean Air Act allows any person to
16 bring suit to compel the Administrator to perform that duty. *See* 42 U.S.C. § 7604(a)(2).

17 **FACTUAL BACKGROUND**

18 26. On or about May 17, 2017, the Administrator received a SIP submission from the State of
19 California entitled Update to the San Joaquin Valley PM₁₀ Maintenance Plan. This SIP submission
20 relates to the nature and causes of exceedances of the NAAQS for particulate matter 10 micrometers of
21 less in diameter (“PM₁₀”) in the San Joaquin Valley in 2013 and 2014.

22 27. On or about November 17, 2017, six months from the date the Administrator received the
23 submission referenced in paragraph 26, the California SIP submission was deemed administratively
24 complete. Therefore, the Administrator was required to fully or partially approve or disapprove the SIP
25 submittal referenced in paragraph 26 by no later than November 17, 2018.

26 28. This SIP submission is still before the Administrator and is awaiting final action in
27 accordance with the Clean Air Act. As of the filing of this Complaint, the Administrator has not granted
28 final full or partial approval or disapproval to the California SIP submission referenced in paragraph 26.

1 35. Therefore, EPA had, and continues to have, a mandatory duty to fully or partially
2 approve or disapprove the California SIP submissions by no later than 18 months after their submission,
3 12 months from their administrative completion date. *See* 42 U.S.C. § 7410(k)(2), (3).

4 36. EPA’s determinations whether to fully or partially approve or disapprove of the
5 California SIP submissions were due between October 12, 2018 and November 17, 2018.

6 37. EPA has not fully or partially approved or disapproved the California SIP submissions.

7 38. Accordingly, EPA has violated and continues to violate its mandatory duty in 42 U.S.C. §
8 7410(k)(2).

9 39. This violation constitutes a “failure of the Administrator to perform any act or duty under
10 this chapter which is not discretionary with the Administrator,” within the meaning of the Clean Air
11 Act’s citizen suit provision. *See* 42 U.S.C. § 7604(a)(2). EPA’s violation is ongoing and will continue
12 unless remedied by this Court.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff seeks the following relief:

15 A. Enter findings and declare that EPA has violated and continues to violate the Clean Air
16 Act by failing to take final action on the California SIP submissions detailed above;

17 B. Enjoin EPA to take final action on the California SIP submissions detailed above by a
18 date certain.

19 C. Retain jurisdiction over this matter until such time as EPA has complied with its non-
20 discretionary duties under the Clean Air Act;

21 D. Grant Plaintiff’s costs of litigation, including reasonable attorney fees, pursuant to the
22 citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(d); and

23 E. Issue any other relief, including injunctive relief, which this Court deems necessary, just,
24 or proper or relief that Plaintiff may subsequently request.

25
26 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 20, 2020

Respectfully submitted,

By:



Stuart Wilcox
Counsel for Our Children's Earth Foundation