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12 OUR CHILDREN’S EARTH FOUNDATION

13 UNITED STATES DISTRICT COURT  
14  
15 NORTHERN DISTRICT OF CALIFORNIA

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

18 Plaintiff,

19 v.

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

24 Defendant.

Civil Case No. 20-cv-1380

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

1 Plaintiff Our Children’s Earth Foundation 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 Our Children’s Earth brings this Clean Air Act citizen suit to compel Defendant,  
13 Andrew Wheeler, Administrator of the EPA, to perform his non-discretionary duty to review and take  
14 action on the California SIP submissions at issue in this case. The timely review of these SIP  
15 submissions is 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 December 5, 2019, Our Children’s Earth provided the Administrator with  
27 written notice of the claims concerning the California SIP submissions stated in this action. Our  
28

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

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

7 **VENUE**

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

12 **INTRADISTRICT ASSIGNMENT**

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

20 **THE PARTIES**

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

3 13. Our Children’s Earth is a non-profit corporation. Therefore, Our Children’s Earth is a  
4 “person” within the meaning of 42 U.S.C. § 7602(e). As such, Our Children’s Earth may commence a  
5 civil action under 42 U.S.C. § 7604(a).

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

22 15. The violations alleged in this Complaint deprive Our Children’s Earth and its members  
23 and staff of certain procedural rights associated with the Administrator’s required action on the SIP  
24 submissions, including notice and opportunity to comment. The violations alleged in this Complaint also  
25 deprive Our Children’s Earth and its members and staff of certain information associated with the  
26 Administrator’s required action on the SIP submissions. These procedural, informational, and other  
27  
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1 injuries are directly tied to the other harms Our Children’s Earth and its members and staff are  
2 experiencing.

3 16. Furthermore, if the Administrator were to partially or fully disapprove of the SIP  
4 revisions at issue in this Complaint, the Administrator would be obligated to promulgate a FIP to correct  
5 any deficiencies within two years of any disapproval. Ultimately, the Administrator’s failure to act in  
6 compliance with his mandatory duties deprives Our Children’s Earth and its members and staff of  
7 certainty that air quality is being maintained and improved in California and of the health and other  
8 benefits of that clean air.

9 17. The violations alleged in this Complaint have injured and continue to injure the interests  
10 of Our Children’s Earth and its members and staff. These injuries are traceable to the Administrator’s  
11 failure to act. Granting the requested relief would redress these injuries by compelling the Administrator  
12 to act in compliance with what Congress has determined is an integral part of the regulatory scheme for  
13 attaining and maintaining NAAQS.

14 18. Defendant ANDREW WHEELER is Administrator of the United States Environmental  
15 Protection Agency. Mr. Wheeler is sued in his official capacity. The Administrator is charged with  
16 implementation and enforcement of the Clean Air Act. As described below, the Clean Air Act assigns  
17 the Administrator certain non-discretionary duties, and Administrator Wheeler has failed to comply with  
18 these duties.

### 19 LEGAL BACKGROUND

20 19. The Clean Air Act establishes a partnership between EPA and the states for the  
21 attainment and maintenance of NAAQS. *See* 42 U.S.C. §§ 7401-7515. This system is intended to “speed  
22 up, expand, and intensify the war against air pollution in the United States with a view to assuring that  
23 the air we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970),  
24 *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356. Towards this end, EPA has set NAAQS for seven  
25 pollutants. *See* 40 C.F.R. §§ 50.4-50.17.

26 20. States, or regions within a state, must adopt a pollution control plan that contains  
27 enforceable emissions limitations necessary to attain NAAQS and meet applicable requirements of the  
28

1 Clean Air Act, including ensuring attainment, maintenance, and enforcement of NAAQS. *See, e.g.*, 42  
2 U.S.C. § 7410(a)(1), (a)(2)(A). All such plans must be submitted to and approved by the Administrator.  
3 42 U.S.C. § 7410(a)(1), (k).

4 21. Within 60 days of the Administrator's receipt of a proposed SIP or SIP revision, the  
5 Clean Air Act requires the Administrator to determine whether the submission is sufficient to meet the  
6 minimum criteria established by the Administrator for such proposals. 42 U.S.C. § 7410(k)(1)(B). If the  
7 Administrator fails to make this "completeness" finding, the proposed SIP or SIP revision is deemed  
8 complete by operation of law six months after submission. *Id.* If the Administrator determines that the  
9 proposed SIP or SIP revision does not meet the minimum criteria, the State is considered not to have  
10 made the submission. *Id.* § 7410(k)(1)(C).

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

15 23. Once the Administrator approves a SIP or SIP revision, polluters must comply with all  
16 emission standards and limitations contained in the SIP, and all such standards and limitations become  
17 federal law and are enforceable by the Administrator and citizens in federal courts. *See* 42 U.S.C. §§  
18 7413, 7604(a).

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

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

### 25 **FACTUAL BACKGROUND**

26 26. This lawsuit concerns ninety-two (92) SIP submissions that the State of California  
27 submitted to EPA between November 18, 1993 and May 23, 2018. A list of these SIP submissions is  
28

1 included as Table 1, below. EPA has not taken final action on any of these SIP submissions, and they are  
2 now all overdue.

3 **Table 1.** Information relating to the ninety-two overdue California SIP submittals at issue in this  
4 lawsuit.

5 <b>SPeCS Review Page</b>	6 <b>Area</b>	7 <b>SPeCS Review Page Name</b>	8 <b>State Submittal Date</b>	9 <b>Administrative Completion</b>	10 <b>Final Action Deadline</b>
11 20540	12 San Joaquin Valley Unified APCD	13 San Joaquin, Permit; Experimental Research Operations	14 11/18/1993	15 5/18/1994	16 5/18/1995
17 20484, 20486	18 Northern Sierra AQMD	19 Northern Sierra, Permits; Applications and Exemptions to Rule 501	20 10/28/1996	21 4/28/1997	22 4/28/1998
23 20460	24 Mojave Desert AQMD	25 Mojave Desert AQMD Permits - Emission Reduction Credit Registry	26 8/1/1997	27 2/1/1998	28 2/1/1999
20366	Antelope Valley AQMD	Antelope Valley; Posting of Permit to Operate	3/10/1998	9/10/1998	9/10/1999
20554	Santa Barbara County APCD	Santa Barbara; Standards for Granting Applications	3/10/1998	9/10/1998	9/10/1999
20578	South Coast AQMD	South Coast; Standards for Approving Permits	9/29/1998	3/29/1999	3/29/2000
20416	Kern County APCD	E. Kern, Permits; New Source Review	7/26/2000	1/26/2001	1/26/2002
20352, 20346, 20350, 20356, 20364, 20358, 20348, 20362	Antelope Valley AQMD	Antelope Valley, Permits; Definitions, Electric Energy Generating Facilities, Emission Reduction Credits, Emissions Calculations, General, Requirements, and Permits to Operate (rescinded)	10/30/2001	4/30/2002	4/30/2003
20470, 20462, 20466, 20468	Mojave Desert AQMD	Mojave Desert AQMD Permits - Definitions, Electric Energy Generating Facilities, Emissions Calculations, and Requirements	12/14/2001	6/14/2002	6/14/2003
20396	El Dorado County APCD	El Dorado, Permits; New Source Review	12/18/2001	6/18/2002	6/18/2003

1	20572, 20570, 20574	South Coast AQMD	South Coast; NSR Emission Calculations, NSR ERCs, NSR Requirements	10/20/2005	4/20/2006	4/20/2007
2						
3	20576, 20584, 20580, 20582	South Coast AQMD	South Coast; Permit Conditions in Federally Issued PTC, Permit to Construct, Permit to Operate, Temporary Permit to Operate	6/16/2006	12/16/2006	12/16/2007
4						
5						
6						
7	20354, 20360	Antelope Valley AQMD	Antelope Valley, Permits; Emissions Offsets and Procedure	12/29/2006	6/29/2007	6/29/2008
8						
9	20464	Mojave Desert AQMD	Mojave Desert AQMD Permits - Emissions Offsets	12/29/2006	6/29/2007	6/29/2008
10						
11	13837	Riverside County (Coachella Valley) Area	Coachella 1997 Ozone - CM only	11/28/2007	5/28/2008	5/28/2009
12						
13	20518	Placer County APCD	Placer; General Permit Requirements	12/7/2010	6/7/2011	6/7/2012
14	20032	California Air Resources Board	CA Ocean Going Vessel Fuel Rule	5/11/2011	11/11/2011	11/11/2012
15						
16	19900	Antelope Valley AQMD	CA/Antelope Valley Federal CAA Section 185 Penalty Rule	12/14/2011	6/14/2012	6/14/2013
17						
18	20170	Mojave Desert AQMD	Mojave Desert AQMD - CAA Section 185 Penalty Rule	12/14/2011	6/14/2012	6/14/2013
19						
20	20286	South Coast AQMD	CA/South Coast Rule 222, Filing Requirements for Specific Emission Sources Not Requiring a Written Permit Pursuant To Regulation II	5/13/2014	11/13/2014	11/13/2015
21						
22						
23	199349	Los Angeles- San Bernardino Counties (West Mojave Desert)	Western Mojave Desert 2008 Ozone - 2014 EI	7/7/2014	1/7/2015	1/7/2016
24						
25						
26	20118, 20120	Kern County APCD	CA Eastern Kern Agricultural Operations AgBMP Rule 402.2 and CA/East Kern County	6/26/2015	12/26/2015	12/26/2016
27						
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1			Rule 402, Fugitive Dust			
2	20410	Imperial County APCD	Imperial, Permits; Emission Reduction Credits	11/13/2015	5/13/2016	5/13/2017
3	20586	Tehama County APCD	Tehama County, Permits; NA NSR	11/13/2015	5/13/2016	5/13/2017
4	16135	Statewide	CA/Imperial County rescission of Rule 111, Equipment Breakdown	3/28/2016	9/28/2016	9/28/2017
5	20542	San Luis Obispo County APCD	San Luis Obispo; Federal Requirements for New & Modified Major Sources in Nonattainment Areas	6/20/2016	12/20/2016	12/20/2017
6	20454	Mojave Desert AQMD	Mojave Desert AQMD Permits - Equipment Not Requiring a Permit	8/22/2016	2/22/2017	2/22/2018
7	20244	San Diego County APCD	CA/San Diego County Miscellaneous Surface Coating Operations and Other Processes Emitting VOC Rule 66.1	8/22/2016	2/22/2017	2/22/2018
8	20552, 20550, 194721, 20548, 20546	Santa Barbara County APCD	Santa Barbara APCD Rule 102 Definitions, Santa Barbara APCD Rule 105 Applicability, Santa Barbara APCD Rule 202 Exemptions to Rule 201, Santa Barbara APCD Rule 204 Applications, and Santa Barbara APCD Rule 809 Federal Minor Source New Source Review	10/18/2016	4/18/2017	4/18/2018
9	87180	California Air Resources Board	CARB Consumer Products Regulations - 2016 Submittal	12/1/2016	6/1/2017	6/1/2018
10	16133	Statewide	CA/East Kern County withdraw Rule 111, Equipment Breakdown	12/6/2016	6/6/2017	6/6/2018
11	20064, 20066	Feather River AQMD	CA/Feather River County Motor Vehicle and Mobile Equipment Coating Operations Rule 3.19 and CA/Feather River Surface Preparation and Clean-Up Rule 3.14	1/24/2017	7/24/2017	7/24/2018
12	20452,	Mojave	Mojave Desert AQMD	1/24/2017	7/24/2017	7/24/2018

1	20446, 20450	Desert AQMD	Permits - General, Prevention of Significant Deterioration, and Procedures			
2						
3	20340	Antelope Valley AQMD	Antelope Valley, Rule 219 Equipment not requiring permit	2/24/2017	8/24/2017	8/24/2018
4						
5	89381, 13911	Los Angeles- South Coast Air Basin	South Coast 2006 PM2.5 - Serious CM and South Coast 2012 PM2.5 Portion of 2016 AQMP - MODERATE	4/27/2017	10/27/2017	10/27/2018
6						
7						
8	13839	Riverside County (Coachella Valley)	Coachella 2008 Ozone Plan	4/27/2017	10/27/2017	10/27/2018
9						
10	13985	Sacramento Metro	Sacramento 2008 Ozone RACT	5/5/2017	11/5/2017	11/5/2018
11						
12	20276, 20560	South Coast AQMD	CA/South Coast Rule 1110.2, Gaseous and Liquid Fueled Engines and South Coast, Permits; Definitions	5/8/2017	11/8/2017	11/8/2018
13						
14						
15	14050	Los Angeles- San Bernardino Counties (West Mojave Desert)	Western Mojave Desert 2008 Ozone Plan	6/2/2017	12/2/2017	12/2/2018
16						
17						
18	20058, 20056	El Dorado County APCD	El Dorado 101 General Provisions and Definitions and El Dorado 215 Architectural Coatings	8/9/2017	2/9/2018	2/9/2019
19						
20	20238, 20234, 20236	San Diego County APCD	San Diego 61.3.1 Transfer of Gasoline, San Diego 69.3.1 Stationary Gas Turbine Engines, and San Diego County APCD Rule 67.21 Adhesive Material Application Operations	8/9/2017	2/9/2018	2/9/2019
21						
22						
23						
24	20322	Yolo-Solano AQMD	Yolo Solano 2.31 Solvent Cleaning and Degreasing	8/9/2017	2/9/2018	2/9/2019
25						
26	20158	Mojave Desert AQMD	Mojave Desert AQMD Rule 1162 - Polyester Resin Operations w/supporting doc'n	10/3/2017	4/3/2018	4/3/2019
27						
28	18139	San Joaquin	San Joaquin Valley 1997	10/23/2017	4/23/2018	4/23/2019

1		Valley	PM2.5 - CM Serious			
2	20174	Mojave Desert AQMD	Mojave Desert AQMD Rule 1158 - Electric Power Generating Facilities	11/13/2017	5/13/2018	5/13/2019
3						
4	31159	Sacramento Metro	Yolo-Solano 2008 Ozone RACT	11/13/2017	5/13/2018	5/13/2019
5	20250	San Diego County APCD	San Diego, Definitions	11/13/2017	5/13/2018	5/13/2019
6						
7	18147	Sacramento Metro	Sacramento 2008 Ozone Plan - Except EI	12/18/2017	6/18/2018	6/18/2019
8	20306	South Coast AQMD	South Coast Rule 1118 Control of Emission from Refinery Flares	2/16/2018	8/16/2018	8/16/2019
9						
10	17509	California Air Resources Board	South Coast On-Road Heavy-Duty Vehicle Incentive	5/2/2018	11/2/2018	11/2/2019
11						
12	13693	California Department of Pesticide Regulation	CA Department of Pesticide Regulation, No. 15-002, Field Fumigant Use Requirements	5/2/2018	11/2/2018	11/2/2019
13						
14	18285	Butte County AQMD	Butte County AQMD Rule 101 Definitions and rescinding Rule 102 Definitions	5/23/2018	11/23/2018	11/23/2019
15						
16	18293	Kern County APCD	Eastern Kern APCD Rule 425 Stationary Gas Turbines (Oxides of Nitrogen)	5/23/2018	11/23/2018	11/23/2019
17						
18	199610, 18320, 18322, 18328, 18330, 18332	Mojave Desert AQMD	Mojave Desert AQMD Rule 461 Gasoline Transfer and Dispensing, Mojave Desert AQMD Rule 462 Organic Liquid Loading, Mojave Desert AQMD Rule 463 Storage of Organic Liquids, Mojave Desert AQMD Rule 1157 Boilers and Process Heaters, Mojave Desert AQMD Rule 1160 Internal Combustion Engines, and Mojave Desert AQMD Rule 1161 Portland Cement Kilns	5/23/2018	11/23/2018	11/23/2019
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28	18334	Sacramento	Sacramento Metro AQMD	5/23/2018	11/23/2018	11/23/2019

	Metropolitan AQMD	Rule 468 Surface Coating of Plastic Parts and Products			
18337	San Joaquin Valley Unified APCD	San Joaquin Valley Unified APCD Rule 9510 Indirect Source Review	5/23/2018	11/23/2018	11/23/2019
18339	South Coast AQMD	South Coast AQMD Rule 1168 Adhesive and Sealant Applications	5/23/2018	11/23/2018	11/23/2019

27. The first column in Table 1 contains the State Planning Electronic Collaboration Systems (“SPeCS”) Review page identification numbers for the SIP submissions at issue in this Complaint, grouped by submittal where the submittal contained more than one revision per submittal. SPeCS is the system through which EPA allows states to submit SIP revisions online and where EPA organizes, reviews, and tracks active SIP submissions.

28. The second column in Table 1 delineates the area(s) covered by the SIP submission(s) at issue. These include various Air Pollution Control Districts (“APCDs”), Air Quality Management Districts (“AQMDs”), counties, and metropolitan areas throughout California and submissions that would apply statewide.

29. The third column in Table 1 provides the SPeCS Review Page Name for the SIP submission(s), which is a brief descriptive name used internally by EPA explaining the focus of the revision(s) in the submission(s).

30. The fourth through sixth columns of Table 1 provide the date that California submitted the SIP(s) to EPA, the date by which the SIP submission(s) were deemed administratively complete by operation of law (six months from the date California submitted the SIP submission(s) to EPA), and EPA’s deadline to take final action on the SIP submission(s) (twelve months from the administrative completion date).

31. As Table 1 shows, all of the SIPs at issue in this lawsuit were submitted to EPA between November 18, 1993 (for the San Joaquin, Permit; Experimental Research Operations) and May 23, 2018 (for the twelve SIP submissions affecting the Butte County, Mojave Desert, Sacramento Metropolitan, and South Coast AQMDs and the Kern County and San Joaquin Unified APCDs).

1 32. All of the SIP submissions at issue in this lawsuit were deemed administratively complete  
2 no later than six months after submission. EPA was then required to take final agency action on all of  
3 the SIP submissions at issue in this lawsuit, approving, disapproving, or partially approving and partially  
4 disapproving of the submissions, within twelve months of their administrative completion date.

5 33. As Table 1 shows, all of the SIPs at issue in this lawsuit were deemed administratively  
6 complete between May 18, 1994 (for the San Joaquin, Permit; Experimental Research Operations  
7 submitted November 18, 1993) and November 23, 2018 (for the twelve SIP submissions affecting the  
8 Butte County, Mojave Desert, Sacramento Metropolitan, and South Coast AQMDs and the Kern County  
9 and San Joaquin Unified APCDs submitted on May 23, 2018), six months after they were submitted to  
10 EPA.

11 34. As Table 1 shows, the dates by which EPA was required to take final action on all of the  
12 SIPs at issue in this lawsuit were between May 18, 1995 (for the San Joaquin, Permit; Experimental  
13 Research Operations submitted November 18, 1993) and November 23, 2019 (for the twelve SIP  
14 submissions affecting the Butte County, Mojave Desert, Sacramento Metropolitan, and South Coast  
15 AQMDs and the Kern County and San Joaquin Unified APCDs submitted on May 23, 2018), twelve  
16 months from their administrative completion dates.

17 35. Each one of the SIP submissions at issue in this lawsuit, listed in Table 1, is still before  
18 the Administrator and is awaiting final action in accordance with the Clean Air Act. As of the filing of  
19 this Complaint, the Administrator has not granted and published final full or partial approval or  
20 disapproval to the California SIP submissions referenced in Table 1.

21 **FIRST CLAIM FOR RELIEF**  
22 **Failure to Perform a Non-Discretionary Duty**  
23 **to Act on California's SIP Submittals**

24 36. Our Children's Earth repeats and incorporates by reference the allegations in the above  
25 paragraphs and all paragraphs of this Complaint.

26 37. EPA received at least 92 SIP submissions from the State of California between  
27 November 18, 1993 and May 23, 2018.  
28

1 38. EPA determined by no later than six months after California’s submission of these SIPs,  
2 either in fact or by operation of law, that the California SIP submissions meet the minimum criteria for  
3 SIP submittals and are administratively complete. *See* 42 U.S.C. § 7410(k)(1)(A).

4 39. Therefore, EPA had, and continues to have, a mandatory duty to fully or partially  
5 approve or disapprove the California SIP submissions by no later than 18 months after their submission,  
6 12 months from their administrative completion date. *See* 42 U.S.C. § 7410(k)(2), (3).

7 40. EPA’s determinations whether to fully or partially approve or disapprove of the  
8 California SIP submissions were due between May 18, 1995 and November 23, 2019.

9 41. EPA has not fully or partially approved or disapproved the California SIP submissions.

10 42. Accordingly, EPA has violated and continues to violate its mandatory duty in 42 U.S.C. §  
11 7410(k)(2).

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff seeks the following relief:

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

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

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

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

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

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

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

Dated: February 24, 2020

Respectfully submitted,

By:



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Stuart Wilcox  
*Counsel for Our Children's Earth Foundation*

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