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Diversity, Center for Environmental Health, and  
Sierra Club

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY, )  
CENTER FOR ENVIRONMENTAL )  
HEALTH, and SIERRA CLUB, )

Plaintiffs, )

v. )

ANDREW R. WHEELER, )  
in his official capacity as Administrator, )  
United States Environmental Protection )  
Agency, )

Defendant. )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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

**INTRODUCTION**

1  
2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.

3 This is a Clean Air Act “deadline” suit against Andrew R. Wheeler, Administrator of the United  
4 States Environmental Protection Agency (EPA), for his failure to protect people, ecosystems,  
5 and wildlife from dangerous exposure to sulfur oxides (SO<sub>x</sub>) air pollution.  
6

7 2. SO<sub>x</sub>, which is formed primarily from the combustion of fuel with sulfur, such as coal and  
8 diesel, harms human health and the environment. Even short-term exposure to SO<sub>x</sub> has  
9 significant health impacts, including decrements in lung function, aggravation of asthma, and  
10 respiratory and cardiovascular morbidity. SO<sub>x</sub> also contributes to the formation of acid rain,  
11 which damages trees, crops, historic buildings, and monuments, and alters the acidity of both  
12 soils and water bodies.  
13

14 3. The Clean Air Act requires EPA to establish health- and welfare-protective National  
15 Ambient Air Quality Standards (NAAQS) to limit the amount of SO<sub>x</sub> in the outdoor air. Areas  
16 with SO<sub>x</sub> pollution levels that exceed the standards must clean up their air.  
17

18 4. To better protect the public from SO<sub>x</sub>, the EPA promulgated a sulfur dioxide (SO<sub>2</sub>)  
19 NAAQS in 2010. In response to the 2010 NAAQS, EPA designated the following areas as  
20 nonattainment, meaning that the air quality in these areas has SO<sub>2</sub> pollution that violates the  
21 standard: Piti-Cabras, Guam; Huntington, Indiana; Evangeline Parish (partial), Louisiana; and  
22 Guayama-Salinas and San Juan, Puerto Rico. More than half a million people live and work in  
23 these areas with air pollution that exceeds the SO<sub>2</sub> NAAQS. The congressionally mandated  
24 deadline has passed for all of these states and territories to submit to EPA plans, called State  
25 Implementation Plans (SIPs), to clean up the SO<sub>x</sub> pollution in their nonattainment areas.  
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1 5. EPA has a mandatory duty to make a finding that a state has failed to submit a SIP to  
2 reduce air pollution within six months after a SIP submittal is due. 42 U.S.C. § 7410(k)(1)(B).  
3 This deadline has passed as well. Yet EPA has not published the required findings. EPA’s  
4 failure to meet the deadline that Congress prescribed violates the Clean Air Act.  
5

6 **JURISDICTION AND NOTICE**

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

10 7. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or  
11 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to  
12 order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C.  
13 § 2202 authorizes this Court to issue injunctive relief.

14 8. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of  
15 intent to sue regarding the violations alleged in this Complaint. The notice letter was postmarked  
16 May 28, 2020. EPA received it no later than June 5, 2020. More than 60 days have passed since  
17 Plaintiffs mailed the notice letter. EPA has not remedied the violations alleged in this  
18 Complaint. Therefore, a present and actual controversy exists between the parties.  
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21 **VENUE**

22 9. Venue is proper in this Court under 28 U.S.C. § 1391(e) for several reasons. First,  
23 Plaintiffs Center for Environmental Health and Sierra Club reside in the district with their  
24 headquarters in Oakland. Second, Defendant EPA resides and performs its official duties in this  
25 district. Third, a substantial part of the events or omissions giving rise to the claims in this case  
26 occurred in the Northern District of California. One of the claims in this Complaint concerns  
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1 EPA's failure to perform mandatory duties related to Guam. EPA Region 9, which is  
2 responsible for Guam, is headquartered in San Francisco. Thus, a substantial part of the events  
3 and omissions at issue in this action occurred at EPA's Region 9 headquarters in San Francisco.

4  
5 10. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or  
6 Oakland Division of this Court because a substantial part of the events and omissions giving rise  
7 to the claims in this case occurred in the County of San Francisco.

8 **PARTIES**

9 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
10 corporation incorporated and existing under the laws of the State of California, with its main  
11 California office in Oakland. The Center for Biological Diversity has approximately 74,000  
12 members throughout the United States and the world. The Center for Biological Diversity's  
13 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,  
14 ecosystems, public lands and waters, and public health through science, policy, and  
15 environmental law. Based on the understanding that the health and vigor of human societies and  
16 the integrity and wildness of the natural environment are closely linked, the Center for Biological  
17 Diversity is working to secure a future for animals and plants hovering on the brink of extinction,  
18 for the ecosystems they need to survive, and for a healthy, livable future for all of us.

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21 12. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit corporation  
22 organized and existing under the laws of the State of California, with its headquarters located in  
23 Oakland. The Center for Environmental Health protects the public from toxic chemicals by  
24 working with communities, consumers, workers, government, and the private sector to demand  
25 and support business practices that are safe for public health and the environment. The Center  
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1 for Environmental Health works in pursuit of a world in which all people live, work, learn, and  
2 play in healthy environments.

3 13. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws  
4 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and  
5 largest grassroots environmental organization in the United States, with more than 795,000  
6 members nationally. Sierra Club's mission is to explore, enjoy, and protect the wild places of  
7 the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems;  
8 to educate and enlist humanity to protect and restore the quality of the natural and human  
9 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this  
10 mission through advocacy, litigation, and educational outreach to its members and state chapters.  
11 Sierra Club and its members are greatly concerned about the effects of air pollution on human  
12 health and the environment and have a long history of involvement in activities related to air  
13 quality.  
14

15  
16 14. Plaintiffs' members live, work, recreate, travel, and engage in other activities throughout  
17 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the  
18 affected areas threatens and damages, and will continue to threaten and damage, the health and  
19 welfare of Plaintiffs' members, as well as their ability to engage in and enjoy their other  
20 activities. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and  
21 recreational opportunities of the affected areas.  
22

23 15. The acts and omissions of EPA alleged here harm Plaintiffs' members by prolonging  
24 poor air quality conditions that adversely affect or threaten their health, and by nullifying or  
25 delaying measures and procedures mandated by the Act to protect their health from SO<sub>x</sub>  
26 pollution in places where they live, work, travel, and recreate.  
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1 16. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare  
2 interest in using and enjoying the natural environment. Elevated levels of SO<sub>x</sub> damage plant life,  
3 aquatic life, and natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic  
4 interests.

5  
6 17. EPA's failure to timely perform the mandatory duties described herein also adversely  
7 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
8 opportunities, as well as information that they are entitled to under the Clean Air Act.

9 18. The above injuries will continue until the Court grants the relief requested herein. A  
10 court order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs'  
11 and Plaintiffs' members' injuries.

12  
13 19. Defendant ANDREW R. WHEELER is the Administrator of the EPA. Administrator  
14 Wheeler is charged with the duty to uphold the Clean Air Act and to take required regulatory  
15 actions according to the schedules established by the Act, including the mandatory duties at issue  
16 in this case. Administrator Wheeler is sued in his official capacity.

17  
18 **FACTUAL BACKGROUND: SULFUR DIOXIDE**

19 20. Sulfur pollution consists of sulfur oxide (SO<sub>x</sub>) gases. Of the SO<sub>x</sub> gases, sulfur dioxide  
20 (SO<sub>2</sub>) is the most common. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics, EPA,  
21 <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited August 5, 2020).  
22 The largest source of SO<sub>2</sub> originates from the combustion of fossil fuels containing sulfur by  
23 power plants and other industrial facilities. *Id.* SO<sub>2</sub> is also produced during certain industrial  
24 processes, such as extracting metal from ore and in some oil refining processes, and by ships and  
25 other vehicles and heavy equipment that burn fuel with a high sulfur content. *Id.*; Primary  
26 NAAQS for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,524 (June 22, 2010).  
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1 21. Human health can be dangerously impacted by SO<sub>x</sub> emissions in as little as five minutes.  
2 Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,525. SO<sub>x</sub> pollution contributes to  
3 respiratory problems by impacting lung function and aggravating asthma, particularly for  
4 children and the elderly. *Id.* at 35,525-29. SO<sub>x</sub> emissions can also aggravate existing heart and  
5 lung diseases, and cause respiratory and cardiovascular morbidity. *Id.*  
6

7 22. SO<sub>x</sub> emissions also impact the environment. Acute and chronic exposures to SO<sub>x</sub> lead to  
8 foliar injury, decreased photosynthesis, and decreased vegetation growth. Secondary NAAQS  
9 for Oxides of Nitrogen and Sulfur, 77 Fed. Reg. 20,218, 20,224 (Apr. 3, 2012). In addition,  
10 because SO<sub>x</sub> emissions may be transmitted long distances, they contribute to visibility  
11 impairment problems in many national parks and wilderness areas. *See* Sulfur Dioxide  
12 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
13 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited August 5, 2020). Furthermore, SO<sub>x</sub> emissions have the potential to  
14 negatively affect endangered species. *See* Secondary NAAQS for Oxides of Nitrogen and  
15 Sulfur, 77 Fed. Reg. at 20,234. Finally, SO<sub>x</sub> emissions contribute to the formation of acid rain,  
16 which in turn impacts both the human and natural environment. Sulfur Dioxide Pollution: Sulfur  
17 Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last  
18 visited August 5, 2020). For example, acid rain damages trees, crops, historic buildings, and  
19 monuments, and alters the acidity of both soils and water bodies. Effects of Acid Rain, EPA,  
20 <https://www.epa.gov/acidrain/effects-acid-rain> (last visited August 5, 2020).  
21

22 23. SO<sub>x</sub> can also react with other compounds in the atmosphere to form small particles,  
23 which contribute to particulate matter (PM) pollution. Secondary NAAQS for Oxides of  
24 Nitrogen and Sulfur, 77 Fed. Reg. at 20,222. PM can penetrate deeply into the lungs and can  
25 contribute to health problems and death. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics,  
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1 EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited August 5,  
2 2020). SO<sub>x</sub> also facilitates mercury methylation, which results in a form of mercury that is  
3 especially dangerous to humans and wildlife. EPA, Integrated Science Assessment for Oxides of  
4 Nitrogen and Sulfur – Ecological Criteria, Executive Summary at 12 (2008), *available at*  
5 <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=201485>.  
6

### 7 STATUTORY AND REGULATORY BACKGROUND

8 24. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s  
9 air resources so as to promote the public health and welfare and the productive capacity of its  
10 population.” 42 U.S.C. § 7401(b)(1). In so enacting, Congress wanted to “**speed up**, expand, and  
11 intensify the war against air pollution in the United States with a view to assuring that the air we  
12 breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess.  
13 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356 (emphasis added).  
14

15 25. Central to the Act is the requirement that EPA establish national ambient air quality  
16 standards (NAAQS) for certain widespread air pollutants that endanger public health and  
17 welfare, referred to as “criteria pollutants.” 42 U.S.C. §§ 7408-7409. One criteria pollutant is  
18 sulfur dioxide. *See* 40 C.F.R. §§ 50.4, 50.5, 50.17.  
19

20 26. The NAAQS establish allowable concentrations of criteria pollutants in ambient air, *i.e.*  
21 outdoor air. Primary standards must be stringent enough to protect public health. 42 U.S.C.  
22 § 7409(b)(1). Secondary standards must be stringent enough to protect public welfare, including,  
23 but not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*,  
24 haze), climate, damage to property, economic impacts, and effects on personal comfort and well-  
25 being. *Id.* §§ 7409(b)(2), 7602(h).  
26

27 27. After EPA sets or revises a standard, the Clean Air Act requires EPA to take steps to  
28 implement the standard. Within two years of revising a standard, EPA must “designate” areas as

1 not meeting the standard, known as “nonattainment,” or meeting the standard, known as  
2 “attainment.” 42 U.S.C. § 7407(d)(1)(A)-(B).

3 28. For each area designated nonattainment, states must develop a plan to attain the NAAQS.  
4 These plans, which must be submitted to EPA, are called State Implementation Plans (SIPs). *See*  
5 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7514 – 7514a. Under the Clean Air Act, the term  
6 “State” includes Guam and Puerto Rico. 42 U.S.C. § 7602(d).

7  
8 29. EPA is required to determine whether a SIP submittal is administratively complete. 42  
9 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has not complied by  
10 providing the required documentation, there is no submittal that can be deemed administratively  
11 complete, and EPA must make a determination stating that the state failed to submit the required  
12 state implementation plan. *Id.* This determination is referred to as a “finding of failure to  
13 submit.”

14  
15 30. A finding of failure to submit is critical because it triggers a two-year clock for EPA to  
16 step into the void left by the state’s failure to submit a SIP by promulgating a federal  
17 implementation plan (FIP) to reduce SO<sub>x</sub> levels to below the NAAQS. 42 U.S.C. § 7410(c).

#### 18 **FACTUAL BACKGROUND: FINDINGS OF FAILURE TO SUBMIT**

19  
20 31. SO<sub>2</sub> is the pollutant that EPA has used as a surrogate parameter for regulation of all SO<sub>x</sub>  
21 emissions since first promulgating a NAAQS for SO<sub>2</sub> in 1971. *See* Nat’l Primary and Secondary  
22 Ambient Air Quality Standards, 36 Fed. Reg. 8,186 (Apr. 30, 1971). Effective August 23, 2010,  
23 EPA revised the primary SO<sub>2</sub> NAAQS. Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at  
24 35,520. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks **a year**  
25 will be prevented by the 2010 SO<sub>2</sub> NAAQS. EPA, Final Regulatory Impact Analysis for the SO<sub>2</sub>  
26 NAAQS, at 5-35 (2010), available at <https://www3.epa.gov/ttn/ecas/docs/ria/naaqs->  
27

1 [so2\\_ria\\_final\\_2010-06.pdf](#). However, these lives can only be saved and adverse health avoided  
 2 if EPA actually implements the 2010 SO<sub>2</sub> NAAQS. EPA is in violation of its mandatory duty to  
 3 issue a finding of failure to submit nonattainment SIPs for the nonattainment areas listed in Table  
 4 1 below.

TABLE 1

a.	<b>AREA &amp; ELEMENT(S)</b>	<b>SUBMITTAL DEADLINE (No later than)</b>	<b>DEADLINE FOR FINDING OF FAILURE TO SUBMIT (No later than)</b>
b.	Piti-Cabras, Guam: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment New Source Review (NSR), Reasonably Available Control Measure/Reasonably Available Control Technology (RACM/RACT), Reasonable Further Progress (RFP)	10/9/2019	4/9/2020
c.	Huntington, IN: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020
d.	Evangeline Parish, (Partial), LA: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020
e.	Guayama-Salinas, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020
f.	San Juan, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020

**CLAIM ONE**

**(Failure to make Finding of Failure to Submit)**

32. Plaintiffs incorporate by reference all paragraphs listed above.

33. Effective April 9, 2018, EPA designated the following areas nonattainment for the 2010 primary SO<sub>2</sub> NAAQS: Piti-Cabras, Guam; Huntington, Indiana; Evangeline Parish (partial), Louisiana; and Guayama-Salinas and San Juan, Puerto Rico. Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary NAAQS – Round 3, 83 Fed. Reg. 1,098, 1,171-72, 1,122, 1,130 (Jan. 9, 2018). These states and territories were required to submit a SIP to EPA for their nonattainment areas by October 9, 2019. *Id.* at 1,100.

34. The states and territories listed in Table 1 above have not submitted nonattainment SIP elements for the nonattainment areas listed in Table 1 above. *See* Nat'l Designated Area Reports, EPA, [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2\\_2010\\_en.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2_2010_en.html) (last visited June 23, 2020).

35. It is more than six months after these nonattainment SIP submittals were due.

36. EPA had a mandatory duty to make findings of failure to submit for nonattainment SIP elements for the nonattainment areas listed in Table 1 by the dates listed in Table 1.

37. Yet, EPA has not issued findings of failure to submit for the nonattainment SIP elements in the nonattainment areas listed in Table 1 above.

38. Therefore, EPA is in violation of its mandatory duty to issue findings of failure to submit pursuant to 42 U.S.C. § 7410(k)(1)(B).

**RELIEF REQUESTED**

Plaintiffs respectfully request that the Court:

- (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform each mandatory duty listed above;

1 (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties  
2 by certain dates;

3 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's  
4 order;

5 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;  
6 and  
7

8 (E) Grant such further relief as the Court deems just and proper.

9  
10 Respectfully Submitted,

11 /s/ Jonathan Evans

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19 Counsel for Plaintiffs Center for Biological  
20 Diversity, Center for Environmental Health, and  
21 Sierra Club

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28 DATED: August 6, 2020