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

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CENTER FOR BIOLOGICAL DIVERSITY )  
and SIERRA CLUB, )

Plaintiffs, )

v. )

LEE M. ZELDIN, )

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**

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2 1. This is a Clean Air Act “deadline” suit against Lee M. Zeldin, in his official capacity as  
3 Administrator of the United States Environmental Protection Agency (EPA), for his failure to  
4 protect people, ecosystems, and wildlife from dangerous exposure to sulfur oxides (SO<sub>x</sub>) air  
5 pollution.  
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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.  
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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: Sullivan County (part), Tennessee, Howard (part), Hutchinson (part), and Navarro  
22 (part) Counties, Texas, and Hayden, Arizona.  
23

24 5. When a state submits a state implementation plan (SIP) to EPA which is supposed to  
25 reduce pollution levels to below the NAAQS, the Clean Air Act requires that EPA review it  
26 within specified time frames. Tennessee, Texas, and Arizona submitted SIPs to EPA for  
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1 nonattainment areas, but EPA has not met the deadlines to review the SIPs and determine  
2 whether they meet the requirements of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2)-(4).

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5 **JURISDICTION AND NOTICE**

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

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

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14 8. Plaintiffs mailed to EPA by certified mail written notice of intent to sue regarding the  
15 violations alleged in this Complaint regarding Tennessee and Texas via a notice letter  
16 postmarked February 25, 2025. EPA received it no later than March 3, 2025. Plaintiffs mailed  
17 to EPA by certified mail written notice of intent to sue regarding the violations alleged in this  
18 Complaint regarding Arizona via a notice letter postmarked May 17, 2025. EPA received it no  
19 later than May 27, 2025. More than 60 days have passed since Plaintiffs mailed the notice  
20 letters. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and  
21 actual controversy exists between the parties.  
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23

24 **VENUE**

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26 9. Venue is proper in this Court under 28 U.S.C. § 1391(e). Plaintiff Sierra Club maintains  
27 its principal place of business in Oakland, California. Oakland, California is in the Northern  
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1 California judicial district. This is a civil action in which the defendant is an officer or employee  
2 of the United States or any agency thereof acting in his official capacity or under color of legal  
3 authority. No real property is involved in this action. Defendant EPA resides and performs its  
4 official duties in this district.  
5

6 10. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or  
7 Oakland Division of this Court because a substantial part of the events and omissions giving rise  
8 to the claims in this case occurred in the County of San Francisco.  
9

### 10 **PARTIES**

11 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
12 corporation incorporated and existing under the laws of the State of California, with its main  
13 California office in Oakland. The Center for Biological Diversity has over 93,000 members  
14 throughout the United States and the world. The Center for Biological Diversity's mission is to  
15 ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems,  
16 public lands and waters, and public health through science, policy, and environmental law.  
17 Based on the understanding that the health and vigor of human societies and the integrity and  
18 wildness of the natural environment are closely linked, the Center for Biological Diversity is  
19 working to secure a future for animals and plants hovering on the brink of extinction, for the  
20 ecosystems they need to survive, and for a healthy, livable future for all of us.  
21

22 12. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws  
23 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and  
24 largest grassroots environmental organization in the United States, with approximately 614,000  
25 members nationally. Sierra Club's mission is to explore, enjoy, and protect the wild places of  
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1 the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems;  
2 to educate and enlist humanity to protect and restore the quality of the natural and human  
3 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this  
4 mission through advocacy, litigation, and educational outreach to its members and state chapters.  
5 Sierra Club and its members are greatly concerned about the effects of air pollution on human  
6 health and the environment and have a long history of involvement in activities related to air  
7 quality.  
8

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

16 14. The acts and omissions of EPA alleged here harm Plaintiffs' members by prolonging  
17 poor air quality conditions that adversely affect or threaten their health, and by nullifying or  
18 delaying measures and procedures mandated by the Act to protect their health from SO<sub>x</sub>  
19 pollution in places where they live, work, travel, and recreate.  
20

21 15. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare  
22 interest in using and enjoying the natural environment. Elevated levels of SO<sub>x</sub> damage plant life,  
23 aquatic life, and natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic  
24 interests.  
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1 16. EPA's failure to timely perform the mandatory duties described herein also adversely  
2 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
3 opportunities, as well as information that they are entitled to under the Clean Air Act.

4 17. The above injuries will continue until the Court grants the relief requested herein. A  
5 court order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs'  
6 and Plaintiffs' members' injuries.

7 18. Defendant LEE M. ZELDIN is the Administrator of the EPA. Administrator Zeldin is  
8 charged with the duty to uphold the Clean Air Act and to take required regulatory actions  
9 according to the schedules established by the Act, including the mandatory duties at issue in this  
10 case.  
11

12 19. Administrator Zeldin is sued in his official capacity.  
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#### 15 **FACTUAL BACKGROUND: SULFUR DIOXIDE**

16 20. Of the SO<sub>x</sub> gases, sulfur dioxide (SO<sub>2</sub>) is the most common. *See* Sulfur Dioxide  
17 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
18 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited June 5, 2025). The largest source of SO<sub>2</sub> is the combustion of fossil  
19 fuels containing sulfur by power plants and other industrial facilities. *Id.* SO<sub>2</sub> is also produced  
20 during certain industrial processes, such as extracting metal from ore and in some oil refining  
21 processes, and by ships and other vehicles and heavy equipment that burn fuel with a high sulfur  
22 content. *Id.*; Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,524 (June 22, 2010).

23 21. Human health can be dangerously impacted by SO<sub>x</sub> emissions in as little as five minutes.  
24 Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,525. SO<sub>x</sub> pollution contributes to  
25 respiratory problems by impacting lung function and aggravating asthma, particularly for  
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1 children and the elderly. *Id.* at 35,525-29. SO<sub>x</sub> emissions can also aggravate existing heart and  
2 lung diseases, and cause respiratory and cardiovascular morbidity. *Id.*

3 22. SO<sub>x</sub> emissions also impact the environment. Acute and chronic exposures to SO<sub>x</sub> lead to  
4 foliar injury, decreased photosynthesis, and decreased vegetation growth. Secondary NAAQS  
5 for Oxides of Nitrogen and Sulfur, 77 Fed. Reg. 20,218, 20,224 (Apr. 3, 2012). In addition,  
6 because SO<sub>x</sub> emissions may be transmitted long distances, they contribute to visibility  
7 impairment problems in many national parks and wilderness areas. *See* Sulfur Dioxide  
8 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
9 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited June 5, 2025). Furthermore, SO<sub>x</sub> emissions have the potential to  
10 negatively affect endangered species. *See* Secondary NAAQS for Oxides of Nitrogen and  
11 Sulfur, 77 Fed. Reg. at 20,234. Finally, SO<sub>x</sub> emissions contribute to the formation of acid rain,  
12 which in turn impacts both the human and natural environment. Sulfur Dioxide Pollution: Sulfur  
13 Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last  
14 visited June 5, 2025). For example, acid rain damages trees, crops, historic buildings, and  
15 monuments, and alters the acidity of both soils and water bodies. Effects of Acid Rain, EPA,  
16 <https://www.epa.gov/acidrain/effects-acid-rain> (last visited June 5, 2025).

17 23. SO<sub>x</sub> can also react with other compounds in the atmosphere to form small particles,  
18 which contribute to particulate matter (PM) pollution. Secondary NAAQS for Oxides of  
19 Nitrogen and Sulfur, 77 Fed. Reg. at 20,222. PM can penetrate deeply into the lungs and can  
20 contribute to health problems and death. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics,  
21 EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited June 5,  
22 2025). SO<sub>x</sub> also facilitates mercury methylation, which results in a form of mercury that is  
23 especially dangerous to humans and wildlife. EPA, Integrated Science Assessment for Oxides of  
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1 Nitrogen and Sulfur – Ecological Criteria, Executive Summary at 12 (2008), *available at*  
2 <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=201485>. SO<sub>2</sub> is the pollutant that EPA  
3 has used as a surrogate parameter for regulation of all SO<sub>x</sub> emissions since first promulgating a  
4 NAAQS for SO<sub>2</sub> in 1971. *See* Nat'l Primary and Secondary Ambient Air Quality Standards, 36  
5 Fed. Reg. 8,186 (Apr. 30, 1971). Effective August 23, 2010, EPA revised the primary SO<sub>2</sub>  
6 NAAQS. Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,520. EPA estimated that  
7 2,300 to 5,900 premature deaths and 54,000 asthma attacks **a year** will be prevented by the 2010  
8 SO<sub>2</sub> NAAQS. EPA, Final Regulatory Impact Analysis for the SO<sub>2</sub> NAAQS, at 5-35 (2010),  
9 *available at* [https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2\\_ria\\_final\\_2010-06.pdf](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf). However,  
10 these lives can only be saved and adverse health avoided if EPA actually implements the 2010  
11 SO<sub>2</sub> NAAQS.  
12  
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#### 14 STATUTORY AND REGULATORY BACKGROUND

15 24. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s  
16 air resources so as to promote the public health and welfare and the productive capacity of its  
17 population.” 42 U.S.C. § 7401(b)(1). In so enacting, Congress wanted to “**speed up**, expand,  
18 and intensify the war against air pollution in the United States with a view to assuring that the air  
19 we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong.,  
20 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356 (emphasis added).  
21

22 25. Central to the Act is the requirement that EPA establish national ambient air quality  
23 standards (NAAQS) for certain widespread air pollutants that endanger public health and  
24 welfare, referred to as “criteria pollutants.” 42 U.S.C. §§ 7408-7409. One criteria pollutant is  
25 sulfur dioxide. *See* 40 C.F.R. §§ 50.4, 50.5, 50.17.  
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1 26. The NAAQS establish allowable concentrations of criteria pollutants in ambient air, *i.e.*  
2 outdoor air. Primary standards must be stringent enough to protect public health with an  
3 adequate margin of safety. 42 U.S.C. § 7409(b)(1). Secondary standards must be stringent  
4 enough to protect public welfare, including, but not limited to, effects on soils, water, vegetation,  
5 manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic  
6 impacts, and effects on personal comfort and well-being. *Id.* §§ 7409(b)(2), 7602(h).

7  
8 27. After EPA sets or revises a standard, the Clean Air Act requires EPA to take steps to  
9 implement the standard. Within two years of revising a standard, EPA must “designate” areas as  
10 not meeting the standard, known as “nonattainment,” or meeting the standard, known as  
11 “attainment.” 42 U.S.C. § 7407(d)(1)(A)-(B).

12  
13 28. For each area designated nonattainment, states must develop a plan to attain the NAAQS.  
14 These plans, which must be submitted to EPA, are called State Implementation Plans (SIPs). *See*  
15 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7514 – 7514a. SIPs to attain the NAAQS in areas  
16 designated as nonattainment are known as nonattainment SIPs. These nonattainment SIPs  
17 include various elements.

18  
19 29. If a state submits a SIP submittal, EPA must determine if the submittal is administratively  
20 complete. EPA has a mandatory duty to approve or disapprove administratively complete SIP  
21 submittals within 12 months of finding the submittal administratively complete. 42 U.S.C. §  
22 7410(k)(2) – (4).

1 **CLAIM ONE**

2 **(Failure to Approve or Disapprove Nonattainment SIP Submittals by the Statutory**  
3 **Deadline)**

4 30. Plaintiffs incorporate by reference all paragraphs listed above.

5 31. Tennessee submitted a state implementation plan (SIP) to EPA for the Sullivan County  
6 SO<sub>2</sub> nonattainment area on February 9, 2023 which included the following elements: Attainment  
7 Demonstration, Contingency Measures, Emissions Inventory, Reasonably available control  
8 measures/Reasonably available control technology (RACM/RACT), and Reasonable Further  
9 Progress (RFP).  
10

11 32. Because EPA did not determine by August 9, 2023 whether the SIP submittal met the  
12 minimum statutory criteria, Tennessee’s SIP submittal was “deemed by operation of law” to  
13 meet the minimum statutory criteria and thus be administratively complete by no later than  
14 August 9, 2023. *See* 42 U.S.C. § 7410(k)(1)(B).

15 33. As a result, EPA has a mandatory duty to approve or disapprove, either in full or in part,  
16 Tennessee’s above-listed elements of the SIP submittal by August 9, 2024. *See* 42 U.S.C. §  
17 7410(k)(2)-(4).  
18

19 34. It has been more than 12 months since the above referenced SIP submittal for Sullivan  
20 County was found administratively complete. Yet, EPA has not approved or disapproved, either  
21 in full or in part, the above referenced SIP submittal.  
22

23 35. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, either in  
24 full or in part, Tennessee’s above-listed elements of the SIP submittal for Sullivan County.

25 36. Texas submitted SIPs to EPA for the Howard, Hutchinson, and Navarro Counties SO<sub>2</sub>  
26 nonattainment areas on October 24, 2022 which included the following elements: Attainment  
27 Demonstration, Contingency Measures, Emissions Inventory, Reasonably available control  
28

1 measures/Reasonably available control technology (RACM/RACT), Reasonable Further  
2 Progress (RFP), and Nonattainment New Source Review.

3 37. No later than April 24, 2023, these SIP submittals were determined or “deemed by  
4 operation of law” to meet the minimum statutory criteria and thus be administratively complete.  
5  
6 *See* 42 U.S.C. § 7410(k)(1)(B).

7 38. As a result, EPA has a mandatory duty to approve or disapprove, either in full or in part,  
8 Texas’s above-listed elements of the SIP submittals by April 24, 2024. *See* 42 U.S.C. §  
9 7410(k)(2)-(4).

10 39. It has been more than 12 months since the above referenced SIP submittals for Howard,  
11 Hutchinson, and Navarro Counties were found administratively complete. Yet, EPA has not  
12 approved or disapproved, either in full or in part, the above referenced SIP submittals.

13  
14 40. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, either in  
15 full or in part, Texas’s above-listed elements of the SIP submittals for Howard, Hutchinson, and  
16 Navarro Counties.

17 41. Arizona submitted a state implementation plan (SIP) to EPA for the Hayden SO<sub>2</sub>  
18 nonattainment area on October 3, 2023 entitled “Final SIP Revision: 2023 Hayden Sulfur  
19 Dioxide Nonattainment Area for the 1971 and 2010 SO<sub>2</sub> NAAQS”.

20  
21 42. EPA determined by May 2, 2024 letter that Arizona’s submittal is administratively  
22 complete.

23 43. As a result, EPA has a mandatory duty to approve or disapprove, either in full or in part,  
24 Arizona’s above-listed SIP submittal by May 2, 2025. *See* 42 U.S.C. § 7410(k)(2)-(4).  
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1 44. It has been more than 12 months since the above referenced SIP submittal for Hayden  
2 was found administratively complete. Yet, EPA has not approved or disapproved, either in full  
3 or in part, the above referenced SIP submittal.

4 45. Therefore, EPA is in violation of its mandatory duty to approve or disapprove, either in  
5 full or in part, Arizona's above-listed elements of the SIP submittal for Hayden.  
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7  
8 **RELIEF REQUESTED**

9 Plaintiffs respectfully request that the Court:

- 10 (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his  
11 failure to perform each mandatory duty listed above;  
12  
13 (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties  
14 by certain dates;  
15  
16 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's  
17 order;  
18  
19 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;  
20 and  
21 (E) Grant such further relief as the Court deems just and proper.

22 Respectfully Submitted,

23 /s/ Wendy Park  
24 Wendy Park (Cal. Bar No. 237331)  
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26 Counsel for Plaintiffs Center for Biological  
27 Diversity and Sierra Club

28 DATED: August 5, 2025

