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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_x) air pollution.
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7 2. SO_x, 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_x has
9 significant health impacts, including decrements in lung function, aggravation of asthma, and
10 respiratory and cardiovascular morbidity. SO_x 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_x in the outdoor air. Areas
16 with SO_x pollution levels that exceed the standards must clean up their air.
17

18 4. To better protect the public from SO_x, the EPA promulgated a sulfur dioxide (SO₂)
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 SO₂ 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 SO₂ 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_x 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.
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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.
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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_x
26 pollution in places where they live, work, travel, and recreate.
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