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Sierra Club

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

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

Plaintiffs,)

Civil Action No. 3:20-cv-5436-EMC

v.)

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

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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

Defendant.)

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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. Plaintiffs file this
6 Amended Complaint to add additional claims to Plaintiffs’ original Complaint.

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.

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

16 4. To better protect the public from SO_x, the EPA promulgated a new sulfur dioxide (SO₂)
17 NAAQS in 2010. In response to the 2010 NAAQS, EPA designated several areas that are at
18 issue here as nonattainment, meaning that the air quality in these areas has SO₂ pollution that
19 violates the standard. More than 1.45 million people live and work in these areas with air
20 pollution that exceeds the SO₂ NAAQS.

21 5. EPA has failed to meet several deadlines that Congress prescribed in the Clean Air Act.
22 The congressionally mandated deadline has passed for four states and territories to submit to
23 EPA plans, called State Implementation Plans (SIPs), to clean up the SO_x pollution in the

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 following nonattainment areas: Piti-Cabras, Guam; Huntington, Indiana; Evangeline Parish,
2 Louisiana; and Guyama-Salinas and San Juan, Puerto Rico. EPA has a mandatory duty to make
3 a finding that a state has failed to submit a SIP to reduce air pollution within six months after a
4 SIP submittal is due. 42 U.S.C. § 7410(k)(1)(B). This deadline has passed as well. Yet EPA
5 has not published the required findings.

6 6. When a state does submit a SIP to EPA, the Clean Air Act requires that EPA review it
7 within specified time frames. Illinois submitted a SIP to EPA for the Alton Township
8 nonattainment area, but EPA has not met the deadline to review the SIP and determine whether it
9 meets the requirements of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2)-(4).

10 7. Last, all nonattainment areas must attain the NAAQS within a specified time. No later
11 than six months after the attainment date for a nonattainment area, EPA has a mandatory duty to
12 determine whether an area has attained the NAAQS and publish notice of that determination. 42
13 U.S.C. § 7509(c). EPA has failed to perform this mandatory duty for the following nine areas:
14 Hayden and Miami, Arizona; Southwest Indiana (parts of Daviess and Pike Counties);
15 Muscatine, Iowa; St. Bernard Parish, Louisiana; Detroit, Michigan; Jackson County, Missouri;
16 Sullivan County, Tennessee; and Rhinelander, Wisconsin.

17 JURISDICTION AND NOTICE

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

21 9. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or
22 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C.
2 § 2202 authorizes this Court to issue injunctive relief.

3 10. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of
4 intent to sue regarding the violations alleged herein. The notice letter for the violations alleged
5 in the original Complaint was postmarked May 28, 2020. EPA received it no later than June 5,
6 2020. More than 60 days have passed since Plaintiffs mailed this notice letter. EPA has not
7 remedied the violations alleged in the original Complaint. On August 11, 2020, Plaintiffs mailed
8 to EPA by certified mail, return receipt request, a second written notice of intent to sue regarding
9 the additional violations that are included in this Amended Complaint. EPA received this second
10 notice letter no later than August 17, 2020. More than 60 days have passed since Plaintiffs
11 mailed this second notice letter. EPA has not remedied the violations alleged in this Amended
12 Complaint. Therefore, a present and actual controversy exists between the parties.

13 VENUE

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

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

4 **PARTIES**

5 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
6 corporation incorporated and existing under the laws of the State of California, with its main
7 California office in Oakland. The Center for Biological Diversity has over 81,000 members
8 throughout the United States and the world. The Center for Biological Diversity's mission is to
9 ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems,
10 public lands and waters, and public health through science, policy, and environmental law.

11 Based on the understanding that the health and vigor of human societies and the integrity and
12 wildness of the natural environment are closely linked, the Center for Biological Diversity is
13 working to secure a future for animals and plants hovering on the brink of extinction, for the
14 ecosystems they need to survive, and for a healthy, livable future for all of us.

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

22 15. 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

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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