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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 CENTER FOR BIOLOGICAL DIVERSITY
15 *et al.*,

16 Plaintiffs,

17 v.

18 MICHAEL S. REGAN, in his official
19 capacity as the Administrator of the United
States Environmental Protection Agency,

20 Defendant.
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Case No. 3:20-cv-06020-WHA

~~[PROPOSED]~~ CONSENT DECREE

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1 WHEREAS, on August 27, 2020, Plaintiffs Center for Biological Diversity and Center
2 for Environmental Health (collectively, “Plaintiffs”) filed the above-captioned matter against
3 Michael S. Regan, in his official capacity as the Administrator of the United States
4 Environmental Protection Agency (hereinafter “EPA” or “Defendant”) (Dkt. No. 1);

5 WHEREAS, on January 22, 2021, Plaintiffs filed a First Amended Complaint (Dkt. No.
6 24) (the “First Am. Compl.”);

7 WHEREAS, Plaintiffs allege that EPA has failed to undertake certain non-discretionary
8 duties under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q, and that such alleged
9 failure is actionable under CAA section 304(a)(2), 42 U.S.C. § 7604(a)(2);

10 WHEREAS, CAA section 110(k) sets forth the process by which EPA reviews state
11 implementation plan (“SIP”) submissions and revisions. 42 U.S.C. § 7410(k). Pursuant to CAA
12 section 110(k)(1)(B), 42 U.S.C. § 7410(k)(1)(B), EPA must then determine whether a SIP
13 submission or revision is complete within six months after EPA receives the submission, and if
14 EPA does not determine completeness of the plan or revision within six months, then the
15 submittal is deemed complete by operation of law after six months, *id.*;

16 WHEREAS, pursuant to CAA section 110(k)(2)-(4), 42 U.S.C. § 7410(k)(2)-(4), EPA is
17 required to approve in whole or in part, disapprove, or conditionally approve in whole or in part,
18 each plan or revision, within 12 months of a determination of completeness by EPA or a
19 submittal deemed by operation of law to be complete;

20 WHEREAS, pursuant to CAA section 110(c)(1)(B), EPA must “promulgate a Federal
21 implementation plan [(“FIP”)] at any time within 2 years after the Administrator--
22 . . . disapproves a [SIP] submission in whole or in part, unless the State corrects the deficiency,
23 and the Administrator approves the plan or plan revision, before the Administrator promulgates
24 such [FIP],” 42 U.S.C. § 7410(c)(1)(B);

25 WHEREAS, in Claim 1 of the First Amended Complaint, Plaintiffs allege that EPA
26 issued a limited disapproval and limited approval of a permitting rule, Rule 1-220, New Source
27 Review (“NSR”) Standards (including [Prevention of Significant Deterioration (“PSD”)]
28 Evaluations), submitted to EPA on November 15, 2016 as a revision to the Mendocino County

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1 Air Quality Management District (“MCAQMD”) portion of the California SIP. *Final Rule*, 82
 2 Fed. Reg. 30,770 (July 3, 2017). Plaintiffs further allege that EPA failed to approve a SIP
 3 revision or promulgate a FIP addressing the deficiencies identified in the limited disapproval of
 4 Rule 1-220 within two years of the effective date of EPA’s July 3, 2017 final rule, *see* First Am.
 5 Compl. ¶¶ 50-52;

6 WHEREAS, on June 10, 2021, the Acting Regional Administrator for EPA Region 9
 7 signed a notice approving a California SIP submission addressing the deficiencies with Rule 1-
 8 220 of the MCAQMD portion of the California SIP that were the basis for EPA’s July 3, 2017
 9 limited disapproval of MCAQMD Rule 1-220 at 82 Fed. Reg. 30,770. *Final Rule*, 86 Fed. Reg.
 10 33,539 (June 25, 2021). Claim 1 is therefore moot;

11 WHEREAS, in Claim 2 of the First Amended Complaint, Plaintiffs allege that EPA has
 12 not taken final action on the following elements of three SIP submittals or revisions for the
 13 Eastern Kern (Kern County), California nonattainment area for the 2008 ozone National
 14 Ambient Air Quality Standards (“2008 ozone NAAQS”) and that more than 12 months have
 15 passed since a determination of completeness (including completeness by operation of law), *see*
 16 First Am. Compl. ¶¶ 54-56:

Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
2(a)	Contingency measures for volatile organic compounds (“VOC”) and nitrogen oxides (“NO _x ”) pursuant to 42 U.S.C. §§ 7502(c)(9) and 7511a(c)(9) and 40 C.F.R. § 51.1102 (hereinafter “Contingency Measures”)	October 25, 2017	April 25, 2018
2(b)	Base year emissions inventory requirements pursuant to 42 U.S.C. §§ 7502(c)(3) and 7511a(a)(1) and 40 C.F.R. § 51.1115(a) (“Emissions Inventory”)	October 25, 2017	April 25, 2018
2(c)	Emissions statement pursuant to 42 U.S.C. § 7511a(a)(3)(B) and 40 C.F.R. § 51.1102 (“Ozone Emissions	October 25, 2017	April 25, 2018

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Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
	Statement")		
2(d)	Nonattainment new source review pursuant to 42 U.S.C. § 7511a(a)(2)(C) ("NNSR")	May 23, 2018	August 28, 2018
2(e)	Attainment demonstration pursuant to 42 U.S.C. §§ 7502(c)(1) and 7511a(c)(2)(A) and 40 C.F.R. § 51.1108(b) ("Serious Area Ozone Attainment Demonstration")	October 25, 2017	April 25, 2018
2(f)	Reasonably Available Control Technology ("RACT") Non-Control Techniques Guideline ("CTG") VOC for Major Sources pursuant to 42 U.S.C. § 7511a(b)(2)(C) ("RACT Non-CTG VOC for Major Sources")	August 9, 2017	February 9, 2018
2(g)	Control of VOC Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations, EPA-453/R-97-004 (Dec. 1997) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(h)	CTG for Automobile and Light-Duty Truck Assembly Coatings, EPA 453/R-08-006 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(i)	Control of VOC from Bulk Gasoline Plants, EPA-450/2-77-035 (Dec. 1977) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(j)	Control of VOC Equipment Leaks from Natural Gas/Gasoline Processing Plants, EPA-450/3-83-007 (Dec. 1983) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(k)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VII: Factory Surface Coating of Flat Wood Paneling, EPA-450/2-78-032 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(l)	CTG for Fiberglass Boat Manufacturing Materials, EPA 453/R-08-004 (Sept. 2008) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018

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Item	State Implementation Plan Submittal and/or Applicable Elements or Control Techniques Guideline	Submittal Date (on or about)	Date of Completeness by EPA Determination or by Operation of Law
2(m)	CTG for Flat Wood Paneling Coatings, EPA-453/R-06-004 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(n)	CTG for Flexible Package Printing, EPA-453/R-06-003 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(o)	Control of VOC Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment, EPA-450/3-83-006 (Mar. 1984) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(p)	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VIII: Graphic Arts-Rotogravure and Flexography, EPA-450/2-78-033 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(q)	CTG for Industrial Cleaning Solvents, EPA-453/R-06-001 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(r)	CTG for Large Appliance Coatings, EPA-453/R-07-004 (Sept. 2007) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(s)	Control of VOC Emissions from Large Petroleum Dry Cleaners, EPA-450/3-82-009 (Sept. 1982) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(t)	Control of VOC Leaks from Gasoline Tank Trucks and Vapor Collection Systems, EPA-450/2-78-051 (Dec. 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(u)	Control of VOC Leaks from Petroleum Refinery Equipment, EPA-450/2-78-036 (June 1978) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018
2(v)	CTG for Offset Lithographic Printing and Letterpress Printing, EPA-453/R-06-002 (Sept. 2006) pursuant to 42 U.S.C. § 7511a(b)(2)	August 9, 2017	February 9, 2018

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