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

CENTER FOR BIOLOGICAL DIVERSITY
and
CENTER FOR ENVIRONMENTAL
HEALTH

Plaintiffs,

vs.

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

Defendant.

Civ. No.

COMPLAINT

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

INTRODUCTION

1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401 – 7671q, and seeks to compel the Administrator of the United States Environmental Protection Agency (“EPA”) to carry out his outstanding legal obligations to: (1) promulgate a Federal Implementation Plan (“FIP”) addressing a permitting rule for the Mendocino County Air Quality Management District; (2) take final action on 51 state implementation plan elements submitted by the state of California to implement the 2008 8-hour ozone NAAQS for the Eastern Kern (Kern County) nonattainment area; (3) take final action on the Rule No. 428 (New Source Review Requirements for New and Modified Major Sources in Federally Designated Nonattainment Areas) submitted by the state of California to meet the moderate nonattainment requirements under the 2008 8-hour ozone NAAQS for the Northern Sierra Air Quality Management District; and (4) take final action on 7 state implementation plan elements submitted by the state of Colorado to implement the 2008 8-hour ozone NAAQS for the Denver Metro/North Front Range nonattainment area.

2. Ozone air pollution has profound effects on human health. EPA has found that short and long-term exposure to ozone can result in “enhanced respiratory symptoms in asthmatic individuals, school absences, and premature mortality.” 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008). Individuals particularly sensitive to ozone exposure include older adults, people with heart and lung disease, people who work and exercise outdoors, and children. *See* 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); 62 Fed. Reg. 38,653, 38,668 (July 18, 1997); 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

3. EPA also found that some plant species are especially sensitive to ozone pollution, which stunts growth, interferes with photosynthesis, and increases susceptibility to disease, weather, and insects. These negative impacts have a damaging effect on the surrounding ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon cycling. Studies link long-term ozone exposure to adverse health effects in birds such as inflammation, ruptured blood vessels, lung failure, decreases in egg production and hatching,

brood abandonment, and reduced growth.¹

4. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant ANDREW R. WHEELER, in his official capacity as Administrator for the EPA, to compel him to perform his mandatory duties to ensure health and public welfare protections promised under the Clean Air Act.

JURISDICTION

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

6. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the Tariff Act of 1930.

7. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. §§ 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

NOTICE

8. Plaintiffs mailed by certified mail, return receipt requested, written notice of intent to sue regarding Claims 1 - 3 of this Complaint. EPA received the notice letter regarding these claims in this Complaint on or about November 21, 2019.

9. Plaintiffs subsequently mailed by certified mail, return receipt requested, written notice of intent to sue regarding Claim 2 of this Complaint. EPA received the notice letter regarding this violation in this Complaint on or about January 30, 2020.

10. Plaintiffs subsequently mailed by certified mail, return receipt requested, written

¹ Olivia V. Sanderfoot and Tracey Holloway, *Air Pollution Impacts on Avian Species via Inhalation Exposure and Associated Outcomes*, 12 Environ. Res. Lett. 083002 (2017), available at <https://iopscience.iop.org/article/10.1088/1748-9326/aa8051/pdf>.

1 notice of intent to sue regarding Claim 1 - 3 of this Complaint. EPA received the notice letter
2 regarding these violations in this Complaint on or about February 24, 2020.

3 11. Plaintiffs subsequently mailed by certified mail, return receipt requested, written
4 notice of intent to sue regarding Claim 4 (2008 8-hour ozone NAAQS for Denver Metro/North
5 Front Range nonattainment area, Colorado) of this Complaint. EPA received the notice letter
6 regarding this violation in this complaint on or about April 2, 2020.

7 12. More than sixty days have passed since EPA received the notice letters discussed
8 above. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and
9 actual controversy exists between the parties.

10 VENUE

11 13. Defendant EPA resides in this judicial district. This civil action is brought against
12 an officer of the United States acting in his official capacity and a substantial part of the events
13 or omissions giving rise to the claims in this case occurred in the Northern District of California.
14 Some of the claims in this Complaint concerns EPA's failure to perform mandatory duties with
15 regard to California. EPA Region 9, which is responsible for California, is headquartered in San
16 Francisco. Thus, events and omissions at issue in this action occurred at EPA's Region 9
17 headquarters in San Francisco. Additionally, Plaintiff CENTER FOR ENVIRONMENTAL
18 HEALTH is headquartered in Oakland. Accordingly, venue is proper in this Court pursuant to 28
19 U.S.C. § 1391(e).

20 INTRADISTRICT ASSIGNMENT

21 14. A substantial part of the events and omissions giving rise to the claims in this case
22 occurred in the County of San Francisco. Accordingly, assignment to the Oakland or San
23 Francisco Division is proper pursuant to Civil L.R. 3-2(c) and (d).

24 PARTIES

25 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
26 corporation incorporated in California. The Center for Biological Diversity's mission is to ensure
27 the preservation, protection, and restoration of biodiversity, native species, ecosystems, public
28

lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

16. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California based non-profit organization that helps protect the public from toxic chemicals and promotes business products and practices that are safe for public health and the environment. The Center for Environmental Health works in pursuit of a world in which all people live, work, learn and play in health environments.

17. Plaintiffs' members live, work, recreate, travel and engage in activities throughout the areas at issue in this Complaint and will continue to do so on a regular basis. Pollution in the affected areas threatens and damages, and will continue to threaten and damage, the health and welfare of Plaintiffs' members. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities and recreational opportunities of the affected area.

18. EPA's failure to timely perform the mandatory duties described herein also adversely affects Plaintiffs, as well as their members, by depriving them of procedural protection, opportunities, and information that they are entitled to under the Clean Air Act. Furthermore, EPA's failure to perform its mandatory duties also creates uncertainty for Plaintiffs' members as to whether they are exposed to excess air pollution.

19. Defendant ANDREW R. WHEELER is sued in his official capacity as the Administrator of the EPA. In that role, EPA has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

20. The above injuries will continue until the Court grants the relief requested herein.

STATUTORY FRAMEWORK

21. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against air pollution in the United States with a view to assuring the air we breathe through the

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