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3 OUR CHILDREN'S EARTH FOUNDATION

4 UNITED STATES DISTRICT COURT
5
6 NORTHERN DISTRICT OF CALIFORNIA

7 OUR CHILDREN'S EARTH FOUNDATION, a
8 non-profit corporation,

9 Plaintiff,

0 v.

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

4 Defendant.

Civil Case No. 20-cv-8530

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 Our Children’s Earth Foundation (“OCE”) alleges as follows:

2 **INTRODUCTION**

3 1. OCE brings this action under section 304(a)(2) of the Clean Air Act, 42 U.S.C. §
4 7604(a)(2), against Andrew R. Wheeler, in his official position as Administrator of the U.S.
5 Environmental Protection Agency (“EPA”). This Complaint challenges Administrator Wheeler’s failure
6 to timely assemble, publish, and publish notice in the Federal Register of, as required by section
7 110(h)(1) of the Clean Air Act, 42 U.S.C. § 7410(h)(1), comprehensive documents setting forth the state
8 implementation plans (“SIPs”) for the States of California, Arizona, and Nevada.

9 **JURISDICTION**

10 2. This Court has subject matter jurisdiction under section 304 of the Clean Air Act, 42
11 U.S.C. § 7604(a)(2), which allows any person to institute a lawsuit against the Administrator where the
12 Administrator has failed to perform a nondiscretionary act under the Clean Air Act. This Court also has
13 jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1361
14 (action to compel an officer of the United States to perform his duty).

15 3. This Court has authority to grant declaratory relief pursuant to the Declaratory Judgment
16 Act, 28 U.S.C. § 2201. This Court has authority to grant injunctive relief pursuant to 28 U.S.C. § 2202.

17 4. This Court has authority to award costs and attorney fees pursuant to 42 U.S.C. §
18 7604(d).

19 5. This Court has personal jurisdiction over Administrator Wheeler because he is an EPA
20 official and EPA is an agency of the federal government operating within the United States.

21 **NOTICE**

22 6. By letter dated September 6, 2020, OCE provided the Administrator with written notice
23 of its claims concerning Administrator Wheeler’s failure to carry out his duty to assemble, publish, and
24 publish notice in the Federal Register of comprehensive SIP submissions for the 50 states, including
25 California, Arizona, and Nevada. OCE provided this notice pursuant to 42 U.S.C. § 7604(b)(2) and 40
26 C.F.R. §§ 54.2, 54.3. Administrator Wheeler received this notice letter on September 21, 2020.

27 Although more than 60 days have elapsed since OCE gave notice, Administrator Wheeler remains in

1 violation of the law. As a result, the Clean Air Act claims made in this Complaint are ripe for judicial
2 review and the harm Administrator Wheeler has caused and will cause to OCE and its members and
3 staff can be remedied by an order of this Court.

4 **VENUE**

5 7. Venue in the United States District for the Northern District of California is proper under
6 section 304 of the Clean Air Act, 42 U.S.C. § 7604, and 28 U.S.C. § 1391(b) and (e) because a
7 substantial part of the events or omissions giving rise to the claim occurred within this District, OCE
8 resides in this District, and because EPA maintains its Region IX¹ headquarters in this District.

9 **INTRADISTRICT ASSIGNMENT**

10 8. Intradistrict assignment of this matter to the San Francisco Division of the Court is
11 appropriate pursuant to Civil Local Rule 3-2(d) because EPA's Region IX headquarters, where the
12 events or omissions that are the source of this lawsuit occurred, is located in San Francisco, California;
13 OCE's principal place of business is located in Napa, California; and OCE's lead counsel resides in San
14 Francisco, California.

15 **THE PARTIES**

16 9. Plaintiff OUR CHILDREN'S EARTH FOUNDATION is a non-profit corporation based
17 in Napa, California that is dedicated to protecting the environment. OCE promotes public awareness of
18 domestic and international environmental impacts through information dissemination, education, and
19 private enforcement of environmental protection statutes. OCE enforcement cases aim to achieve public
20 access to government information, ensure proper implementation of environmental statutes and
21 permitting, and enjoin violations of environmental and government transparency laws. OCE has an
22 active membership of people from all over the United States with a significant number of members
23 residing in California, Arizona, and Nevada and in states harmed by interstate transport of air pollutants
24 originating in California, Arizona, and Nevada.

25 _____
26 ¹ EPA Region IX's jurisdiction extends to California, Arizona, Nevada, Hawaii, the Pacific Islands, and
27 148 Tribal Nations.

1 10. OCE is a non-profit corporation. Therefore, OCE is a “person” within the meaning of 42
2 U.S.C. § 7602(e). As such, OCE may commence a civil action under 42 U.S.C. § 7604(a).

3 11. OCE has a direct stake in the outcome of this action. As a result of Administrator
4 Wheeler’s failure to timely assemble, publish, and publish notice in the Federal Register of the
5 comprehensive SIPs for California, Arizona, and Nevada, OCE is unable to ascertain the applicable
6 federal clean air requirements, for purposes of education, advocacy, and enforcement, in the same fashion
7 that OCE can with published laws. As a result of Administrator Wheeler’s failure to timely assemble,
8 publish, and publish notice in the Federal Register of the comprehensive SIPs for California, Arizona,
9 and Nevada, OCE’s goals of education, advocacy, and enforcement of clean air laws are more difficult to
10 achieve. For example, ascertaining the applicable federal clean air requirements for purposes of education,
11 advocacy, and enforcement is more time consuming, resulting in draining the few resources that are
12 available to OCE for achieving its mission. Comparisons between the different SIP provisions, which at
13 times is essential for advocacy, is also impossible without up-to-date, published SIPs.

14 12. A significant number of OCE’s members live in, work in, and/or visit the states of
15 California, Arizona, and Nevada and/or states harmed by interstate transport of air pollutants originating
16 in California, Arizona, and/or Nevada. OCE’s members and staff breathe the excessively polluted air
17 when they are located in these states. Air pollution is exacerbated in these states where regulated entities
18 are unaware of Clean Air Act requirements and where citizen and organization enforcement of Clean Air
19 Act requirements is hampered by compromised availability of information on current standards,
20 regulations, and rules. The health, wellbeing, and enjoyment of these members and staff have been and
21 continue to be adversely affected by Defendant’s failure to assemble, publish, and publish notice in the
22 Federal Register of the comprehensive SIPs for California, Arizona, and Nevada in that, among other
23 things, the SIPs are more difficult to enforce because of their inaccessibility to the public and publicly
24 minded enforcement groups and because the standards are more difficult for regulated entities to ascertain
25 and comply with. As a result, the interests of OCE and its members and staff have been, are being, and
26 will continue to be irreparably harmed by the Administrator’s failure to comply with his duty to
27

1 assemble, publish, and publish notice in the Federal Register of the comprehensive SIPs for California,
2 Arizona, and Nevada.

3 13. OCE has previously filed two lawsuits challenging the Administrator's failure to comply
4 with his SIP assembly and publication duties across the Nation. *See Our Children's Earth Foundation v.*
5 *EPA, et al.*, 01-cv-1475 (N.D. Cal. 2001) (EPA Region IX); *Our Children's Earth Foundation v. EPA, et*
6 *al.*, 03-cv-1705 (N.D. Cal. 2003) (EPA Regions I-VIII and X). However, the Administrator is again failing
7 to comply with his obligations with regard to these duties, requiring OCE to expend further resources in
8 the present enforcement action.

9 14. The violations alleged in this Complaint also deprive OCE and its members and staff of
10 certain information associated with the Administrator's required actions regarding the comprehensive
11 California, Arizona, and Nevada SIPs. These procedural, informational, and other injuries are directly
12 tied to the other harms OCE and its members and staff are experiencing.

13 15. The violations alleged in this Complaint have injured and continue to injure the interests
14 of OCE and its members and staff. These injuries are traceable to the Administrator's failures to act.
15 Granting the requested relief would redress these injuries by compelling the Administrator to act in
16 compliance with what Congress has determined is an integral part of the regulatory scheme for attaining
17 and maintaining National Ambient Air Quality Standards ("NAAQS"), discussed below.

18 16. Defendant ANDREW R. WHEELER is Administrator of the EPA. Mr. Wheeler is sued
19 in his official capacity. The Administrator is charged with implementation and enforcement of the Clean
20 Air Act. As described below, the Clean Air Act assigns the Administrator certain non-discretionary
21 duties, including the SIP assembly and publication duties that serve as the basis of this lawsuit, and
22 Administrator Wheeler has failed to comply with these duties.

23 17. Administrator Wheeler failed to assemble, publish, and publish notice in the Federal
24 Register of the comprehensive SIPs for California, Arizona, and Nevada. As of this filing, Administrator
25 Wheeler's failure is ongoing.

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