

Paul R. Cort, State Bar No. 184336
Earthjustice
50 California Street
San Francisco, CA 94111
Tel: 415-217-2000/Fax: 415-217-2040
pcort@earthjustice.org

Kathleen Riley, *Pro Hac Vice* Pending
Neil Gormley, *Pro Hac Vice* Pending
Earthjustice
1001 G St NW, Suite 1000
Washington, DC 20001
Tel: 202-667-4500/Fax: 202-667-2356
kriley@earthjustice.org
ngormley@earthjustice.org

Counsel for Downwinders at Risk, Sierra Club, Center for Biological Diversity, Air Alliance Houston, Texas Environmental Justice Advocacy Services, Appalachian Mountain Club, Earthworks, Natural Resources Defense Council, and Environmental Defense Fund

Zachary Fabish, State Bar No. 247535
Sierra Club
50 F Street, NW, 8th Floor
Washington, DC 20001
(202) 675-7917
zachary.fabish@sierraclub.org

Counsel for Sierra Club

Hayden Hashimoto, State Bar No. 325150
Clean Air Task Force
114 State St., 6th Floor
Boston, MA 02109
(808) 342-8837
hhashimoto@catf.us

Counsel for Clean Wisconsin

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOWNWINDERS AT RISK; SIERRA
CLUB; CENTER FOR BIOLOGICAL
DIVERSITY; AIR ALLIANCE HOUSTON;
TEXAS ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES; CLEAN
WISCONSIN; APPALACHIAN
MOUNTAIN CLUB; EARTHWORKS;
NATURAL RESOURCES DEFENSE
COUNCIL; and ENVIRONMENTAL
DEFENSE FUND,

Plaintiffs,

v.

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

Defendant.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. Ground-level ozone, or smog, seriously harms human health and the environment. Ozone
3 is formed when sunlight triggers a reaction between volatile organic compounds and nitrogen
4 oxides emitted by, for example, power plants, oil and gas production, and motor vehicles. Ozone
5 and its precursor pollution travels across state lines; indeed, in many areas with elevated ozone
6 levels, most of the ozone pollution comes from across state lines.

7 2. To protect public health and the environment, the Clean Air Act requires EPA to
8 establish health- and welfare-protective national ambient air quality standards, including for
9 ozone. 42 U.S.C. § 7409(a), (b). The Act is centrally concerned with ensuring that all areas of the
10 country attain and maintain these standards “as expeditiously as practicable but not later than”
11 specified deadlines. *See* 42 U.S.C. § 7511(a)(1).

12 3. The Act includes a “Good Neighbor Provision” to address the pollution that crosses state
13 lines. 42 U.S.C. § 7410(a)(2)(D)(i)(I). The Good Neighbor Provision requires states to eliminate
14 pollution that significantly contributes to nonattainment of the ozone standard, or interferes with
15 maintenance of the standard, in downwind states. *Id.*

16 4. To ensure that downwind areas can timely attain and maintain the standards, the Act
17 imposes a series of intermediate deadlines on both states and the EPA. Within three years of
18 adoption of a standard, states must adopt and submit plans to EPA that implement their
19 obligations under the Act, including those of the Good Neighbor Provision. 42 U.S.C. § 7410(a).
20 EPA must approve or disapprove¹ states’ complete plans “[w]ithin 12 months,” based on whether
21 the plans satisfy the Act. 42 U.S.C. § 7410(k)(2), (3); 42 U.S.C. § 7410(a)(2)(D)(i)(I). If EPA

¹ EPA may also approve in part and disapprove in part. 42 U.S.C. § 7410(k)(3).

1 disapproves a state’s plan, EPA must promulgate a federal plan within two years—unless the
2 state corrects its plan first. 42 U.S.C. § 7410(c)(1)(B).

3 5. EPA adopted a strengthened ozone standard in 2015, triggering the Act’s requirement
4 that states adopt Good Neighbor plans and submit them to EPA. 80 Fed. Reg. 65,292 (Oct. 26,
5 2015); 42 U.S.C. § 7410(a).

6 6. More than 32 states have submitted Good Neighbor plans to EPA, including Alabama,
7 Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa,
8 Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana,
9 Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee,
10 Texas, West Virginia, Wisconsin, and Wyoming.² These states’ plans were “complete” by or
11 before dates between February 27, 2019, and November 21, 2019. *See* 42 U.S.C. § 7410(k)(1)(B)
12 (deeming states’ plans complete “6 months after receipt of the submission” if EPA has not
13 determined the plan is incomplete); *infra* ¶ 49 (listing dates each state’s plans were “complete”).

14 7. Thus, the Act required EPA to approve or disapprove these states’ Good Neighbor plans
15 by or before dates between February 27, 2020, and November 21, 2020. *See* 42 U.S.C. §
16 7410(k)(2) (requiring action “[w]ithin 12 months” of states’ plans being determined or deemed
17 complete). However, EPA has not finalized approval or disapproval of any of the 32 states’
18 Good Neighbor plans.

² *See* EPA, National Status of a 110(a)(2) Ozone (2015) SIP Infrastructure Requirement, https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110_a_2_ozone_2015_section_110_a_2_d_i_-_i_prong_1_interstate_transport_-_significant_contribution_inbystate.html (Prong 1), and https://www3.epa.gov/airquality/urbanair/sipstatus/reports/x110_a_2_ozone_2015_section_110_a_2_d_i_-_i_prong_2_interstate_transport_-_interfere_with_maintenance_inbystate.html (Prong 2).

1 8. EPA’s failure to approve or disapprove states’ complete Good Neighbor plans in
2 compliance with the one-year deadline prescribed by Congress violates Clean Air Act section
3 7410(k)(2).

4 9. EPA’s violation of its statutory deadline prolongs the presence of harmful levels of ozone
5 in downwind areas. Not only have upwind states failed to eliminate their significant
6 contributions “as expeditiously as practicable,” many states’ significant contributions will
7 continue even after downwind states’ attainment deadlines—including the August 2021
8 attainment deadline for many areas. *See* 42 U.S.C. § 7511(a)(1) tbl.1; *infra* ¶ 43. Yet, without
9 EPA’s disapproval of inadequate state plans, the Act’s requirement that EPA promulgate an
10 adequate federal plan is not triggered.

11 10. To remedy EPA’s failure to comply with its statutory obligation, Downwinders at Risk,
12 Sierra Club, Center for Biological Diversity, Air Alliance Houston, Texas Environmental Justice
13 Advocacy Services, Clean Wisconsin, Appalachian Mountain Club, Earthworks, Natural
14 Resources Defense Council, and Environmental Defense Fund (collectively, “Plaintiffs”) seek
15 both declaratory relief and an order to compel the Administrator to approve or disapprove states’
16 Good Neighbor plans as expeditiously as possible.

17 JURISDICTION, VENUE, AND NOTICE

18 11. This is an action to compel the Administrator to perform a non-discretionary act or duty
19 under the Clean Air Act. 42 U.S.C. § 7604(a)(2); *id.* § 7410(a)(2)(D)(i)(I), (k)(2). This Court has
20 jurisdiction over this action under section 7604(a)(2) of the Act as well as 28 U.S.C. § 1331
21 (federal question jurisdiction).

22 12. The requested declaratory and injunctive relief is authorized by the Declaratory Judgment
23 Act, 28 U.S.C. §§ 2201–2202, and section 7604(a)(2) of the Clean Air Act.

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