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

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

Plaintiffs,)

v.)

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

Defendant.)

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

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

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 Michael S. Regan, in his official capacity as
4 Administrator of the United States Environmental Protection Agency (EPA), for his failure to
5 protect people, ecosystems, and wildlife from dangerous exposure to sulfur oxides (SO_x) air
6 pollution.
7

8 2. SO_x, which is formed primarily from the combustion of fuel with sulfur, such as coal and
9 diesel, harms human health and the environment. Even short-term exposure to SO_x has
10 significant health impacts, including decrements in lung function, aggravation of asthma, and
11 respiratory and cardiovascular morbidity. SO_x also contributes to the formation of acid rain,
12 which damages trees, crops, historic buildings, and monuments, and alters the acidity of both
13 soils and water bodies.
14

15 3. The Clean Air Act requires EPA to establish health- and welfare-protective National
16 Ambient Air Quality Standards (NAAQS) to limit the amount of SO_x in the outdoor air. Areas
17 with SO_x pollution levels that exceed the standards must clean up their air.
18

19 4. To better protect the public from SO_x, the EPA promulgated a sulfur dioxide (SO₂)
20 NAAQS in 2010. In response to the 2010 NAAQS, EPA designated the following areas as
21 nonattainment, meaning that the air quality in these areas has SO₂ pollution that violates the
22 standard: Detroit, MI Wayne County (part)¹ (Detroit) and Anne Arundel County and Baltimore
23
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26 ¹ This is the area bounded on the east by the Michigan-Ontario border, on the south by the
27 Wayne County-Monroe County border, on the west by Interstate 75 north to Southfield Road,
28 Southfield Road to Interstate 94, and Interstate 94 north to Michigan Avenue, and on the north
by Michigan Avenue to Woodward Avenue and a line on Woodward Avenue extended to the
Michigan-Ontario border. *See* 40 C.F.R. § 81.323.

1 County, MD² (Baltimore). Nearly 1.3 million people live and work in these areas with air
2 pollution that exceeds the SO₂ NAAQS.

3 5. When a state submits a state implementation plan (SIP) to EPA which is supposed to
4 reduce pollution levels to below the NAAQS, the Clean Air Act requires that EPA review it
5 within specified time frames. Maryland submitted a SIP to EPA for the Baltimore nonattainment
6 area, but EPA has not met the deadline to review the SIP and determine whether it meets the
7 requirements of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2)-(4). If a state fails to submit a
8 required SIP by the deadline set by the Clean Air Act, EPA is required to make a finding that the
9 state failed to submit its required SIP. This finding triggers a requirement that EPA promulgate a
10 Federal Implementation Plan (FIP) within two years of the finding to filling in the gap left by the
11 state's failure to submit a SIP. EPA made a finding, effective April 18, 2016, that Michigan
12 failed to submit the required SO₂ nonattainment SIP for Detroit. However, despite that fact that
13 more than two years has passed, EPA has failed to promulgate a FIP.
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17 JURISDICTION AND NOTICE

18 6. 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

22 7. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or
23 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to
24

25
26 ² This is portions of Anne Arundel County that are within 26.8 kilometers of Herbert A.
27 Wagner's Unit 3 stack, which is located at 39.17765 N. latitude, 76.52752 W. longitude and
28 portions of Baltimore County that are within 26.8 kilometers of Herbert A. Wagner's Unit 3
stack, which is located at 39.17765 N. latitude, 76.52752 W. longitude. *See* 40 C.F.R. § 81.321.

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 8. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of
4 intent to sue regarding the violations alleged in this Complaint. The notice letter was postmarked
5 May 18, 2021. EPA received it no later than May 25, 2021. More than 60 days have passed
6 since Plaintiffs mailed the notice letter. EPA has not remedied the violations alleged in this
7 Complaint. Therefore, a present and actual controversy exists between the parties.
8

9 **VENUE**

10 9. Venue is proper in this Court under 28 U.S.C. § 1391(e). Plaintiff Center for
11 Environmental Health maintains its principal place of business in Oakland, California. Plaintiff
12 Sierra Club maintains its principal place of business in Oakland, California. Oakland, California
13 is in the Northern California judicial district. This is a civil action in which the defendant is an
14 officer or employee of the United States or any agency thereof acting in his official capacity or
15 under color of legal authority. No real property is involved in this action. Defendant EPA
16 resides and performs its official duties in this district.
17

18 10. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or
19 Oakland Division of this Court because a substantial part of the events and omissions giving rise
20 to the claims in this case occurred in the County of San Francisco.
21

22 **PARTIES**

23 11. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit corporation
24 organized and existing under the laws of the State of California, with its headquarters located in
25 Oakland. The Center for Environmental Health protects the public from toxic chemicals by
26 working with communities, consumers, workers, government, and the private sector to demand
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28

1 and support business practices that are safe for public health and the environment. The Center
2 for Environmental Health works in pursuit of a world in which all people live, work, learn, and
3 play in healthy environments.

4 12. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws
5 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and
6 largest grassroots environmental organization in the United States, with more than 795,000
7 members nationally. Sierra Club's mission is to explore, enjoy, and protect the wild places of
8 the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems;
9 to educate and enlist humanity to protect and restore the quality of the natural and human
10 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this
11 mission through advocacy, litigation, and educational outreach to its members and state chapters.
12 Sierra Club and its members are greatly concerned about the effects of air pollution on human
13 health and the environment and have a long history of involvement in activities related to air
14 quality.

15 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
16 corporation incorporated and existing under the laws of the State of California, with its main
17 California office in Oakland. The Center for Biological Diversity has approximately 74,000
18 members throughout the United States and the world. The Center for Biological Diversity's
19 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,
20 ecosystems, public lands and waters, and public health through science, policy, and
21 environmental law. Based on the understanding that the health and vigor of human societies and
22 the integrity and wildness of the natural environment are closely linked, the Center for Biological
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