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

SIERRA CLUB; AIR ALLIANCE
HOUSTON; CENTER FOR BIOLOGICAL
DIVERSITY; CITIZENS FOR
PENNSYLVANIA’S FUTURE; CLEAN AIR
COUNCIL; and TEXAS
ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES,

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**

INTRODUCTION

1. Ground-level ozone, also called smog, seriously harms human health and the environment. Exposure to ozone, whether at high levels over short periods of time, or at lower levels sustained over longer periods of time, impairs breathing, inflames lungs, sends people to the hospital, and can even kill. Ozone pollution also harms plants and ecosystems.

2. Ozone forms in the air when its precursors, nitrogen oxides and volatile organic compounds, react in the presence of sunlight. These precursor pollutants are emitted from numerous sources—for example, power plants, chemical plants, oil and gas production, and vehicles. Both ozone and its precursor pollutants travel across state lines and contribute to unhealthy ozone levels in downwind states.

3. The Clean Air Act requires the United States Environmental Protection Agency (“EPA”) to set health- and welfare-protective national standards limiting the concentration of ozone

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 allowed in the outdoor air. 42 U.S.C. § 7409(a), (b). The Act also includes a “Good Neighbor”
2 provision that requires upwind states to control the pollution emitted within their borders that
3 significantly contributes to violations of the standards in downwind areas. 42 U.S.C. §
4 7410(a)(2)(D)(i)(I).

5 4. States must submit to EPA plans to attain the standards and to satisfy the Good Neighbor
6 provision. 42 U.S.C. § 7410(a)(1). If a state fails to submit a Good Neighbor plan or submits an
7 inadequate Good Neighbor plan, EPA must promulgate a federal plan instead. 42 U.S.C. §
8 7410(c)(1).

9 5. In 2015, EPA strengthened the national ozone standard, triggering a requirement for
10 states to adopt plans implementing the Good Neighbor provision and submit them “within 3
11 years” to EPA for approval. 42 U.S.C. § 7410(a); 80 Fed. Reg. 65,292 (Oct. 26, 2015).

12 6. On December 5, 2019, and effective January 6, 2020, EPA found that four states failed to
13 submit complete plans: New Mexico, Pennsylvania, Utah, and Virginia.¹ 84 Fed. Reg. 66,614
14 (Dec. 5, 2019) (effective Jan. 6, 2020). This finding triggered EPA’s obligation to promulgate
15 federal plans for the four states within two years, or by January 6, 2022. 42 U.S.C. § 7410(c)(1).

16 7. Separately, EPA missed its deadline to approve or disapprove Good Neighbor plans
17 submitted by thirty-two additional states. Plaintiffs Sierra Club, Air Alliance Houston, Center for
18 Biological Diversity, and Texas Environmental Justice Advocacy Services, among others, sued
19 to compel the overdue action, and this Court entered a consent decree. *See* Consent Decree,
20 *Downwinders*, No. 4:21-cv-03551-DMR (N.D. Cal. Jan. 12, 2022).

¹ EPA also found that Maine, Rhode Island, and South Dakota failed to submit adequate plans. 84 Fed. Reg. 66,614 (Dec. 5, 2019). These states are not at issue in this complaint because EPA subsequently approved new plans from these states. 85 Fed. Reg. 67,653 (South Dakota); 86 Fed. Reg. 45,870 (Maine); 86 Fed. Reg. 70,409 (Rhode Island).

1 8. In accordance with that consent decree, on February 28, 2022, EPA signed proposed
2 federal Good Neighbor plans for 22 states.² At the same time, EPA also signed proposed federal
3 Good Neighbor plans for Pennsylvania, Utah, and Virginia.³ These proposals are expected to be
4 published shortly in the Federal Register. However, as of the date of this filing, EPA has not
5 finalized federal Good Neighbor plans for Pennsylvania, Utah, and Virginia, and has neither
6 proposed nor finalized a federal Good Neighbor plan for New Mexico.

7 9. EPA has failed to promulgate federal Good Neighbor plans for New Mexico,
8 Pennsylvania, Utah, and Virginia by January 6, 2022. This failure violates the Clean Air Act.
9 Thus, Sierra Club, Air Alliance Houston, Center for Biological Diversity, Citizens for
10 Pennsylvania's Future, Clean Air Council, and Texas Environmental Justice Advocacy Services
11 (collectively, "Plaintiffs") seek both declaratory relief and an order to compel the Administrator
12 to promptly promulgate final federal Good Neighbor plans for these four states.

13 JURISDICTION, VENUE, DIVISIONAL ASSIGNMENT, AND NOTICE

14 10. This is an action to compel the Administrator to perform a non-discretionary act or duty
15 under the Clean Air Act. 42 U.S.C. § 7604(a)(2); *id.* § 7410(a)(2)(D)(i)(I), (c)(1). This Court has
16 jurisdiction pursuant to section 7604(a)(2) of the Act; 28 U.S.C. § 1331 (federal question
17 jurisdiction); and 28 U.S.C. § 1361 (action to compel an officer of the U.S. to perform [their]
18 duty).

² Including Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming. *See* EPA, Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone, available at: https://www.epa.gov/system/files/documents/2022-03/nprm_transport-fip_2060-av5_prepublication.pdf (not yet published in the Federal Register).

³ *Id.* EPA also signed a proposal to correct its prior approval of Delaware's Good Neighbor plan and issue a federal plan. *Id.*

11. This Court may grant the relief Plaintiffs request pursuant to 42 U.S.C. § 7604(a)(2); the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and 28 U.S.C. § 1361.

12. By certified mail postmarked January 7, 2022, with a courtesy copy sent by electronic mail, Plaintiffs provided the Administrator with written notice of this action as required by the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. § 54.1-54.3.

13. Venue is vested in this Court under 28 U.S.C. § 1391(e) because this suit names an officer of an agency of the United States acting in their official capacity, no real property is involved in this action, and Plaintiff Sierra Club resides in this judicial district. Additionally, EPA maintains an office in San Francisco.

14. This case is properly assigned to the Oakland Division of this Court because Sierra Club resides in Oakland. Civil L.R. 3-2(c), (d).

PARTIES

15. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California, with its headquarters located in Oakland, California. The Sierra Club is a national membership organization dedicated to the protection of public health and the environment, including clean air, with over 780,000 members who reside in all 50 states, the District of Columbia, and U.S. territories.

16. Plaintiff Air Alliance Houston is a nonprofit corporation organized and existing under the laws of the State of Texas, with its headquarters in Houston, Texas. Air Alliance Houston works to reduce air pollution in the Houston region to protect public health and environmental integrity through research, education, and advocacy.

17. Plaintiff Center for Biological Diversity is a nonprofit conservation organization incorporated under the laws of the State of California, headquartered in Tucson, Arizona, and with an office in Oakland, California. The Center for Biological Diversity has approximately

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