

1 Jonathan Evans (Cal. Bar # 247376)
2 CENTER FOR BIOLOGICAL DIVERSITY
3 1212 Broadway, Suite 800
4 Oakland, CA 94612
5 Telephone: (510) 844-7100 x318
6 Cellphone: (213) 598-1466
7 Email: jevans@biologicaldiversity.org

8 *Attorney for Plaintiffs Center for Biological Diversity and*
9 *Center for Environmental Health*

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

12 CENTER FOR BIOLOGICAL DIVERSITY

Case No.

13 and

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

14 CENTER FOR ENVIRONMENTAL
15 HEALTH

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

16 Plaintiffs,

17 vs.

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

21 Defendant.

INTRODUCTION

1
2 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401–7671q,
3 and seeks to compel the Administrator of the United States Environmental Protection Agency
4 (“EPA”) to carry out his outstanding legal obligations to promulgate Federal Implementation
5 Plans (“FIP”) to address requirements for the 2008 ozone National Ambient Air Quality
6 Standards (“NAAQS”) that apply to nonattainment areas in California and New Hampshire.

7 2. Ozone air pollution has profound effects on human health. EPA found that ozone
8 “posed multiple, serious threats to health” including: worsening respiratory and cardiovascular
9 health, increased likelihood of early death, increased asthma-related hospital admissions,
10 increased likelihood of children developing asthma as adolescents, and lower birthweights and
11 decreased lung function in newborns.¹ Individuals particularly sensitive to ozone exposure
12 include older adults, people with heart and lung disease, people who work and exercise outdoors,
13 and children.²

14 3. Ozone is also harmful to vegetation and ecosystems.³ Ozone can be especially
15 harmful to sensitive vegetation—including trees such as the black cherry, quaking aspen, white
16 pine, and ponderosa pine—during the growing season.⁴ Ozone pollution can also indirectly harm
17 soils, water, wildlife, and their associated ecosystems, leading to diminished clean air and water.⁵

18 4. Finally, ozone pollution also contributes to the climate crisis, as ozone is a
19 greenhouse gas and ozone pollution also hinders plant growth throughout a plant’s lifecycle,
20 thereby shrinking the carbon sequestration potential of plants.⁶

21 5. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and
22

23 ¹ American Lung Association, *Ozone*, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone>
24 (last updated Apr. 20, 2020) (summarizing the results of Table 1-1 in EPA, *Integrated Science Assessment for Ozone
and Related Photochemical Oxidants*, 1-5 (2013)), EPA/600/R-10/076F.

25 ² 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); *see* 73 Fed. Reg. 16436, 16440 (Mar. 27, 2008).

26 ³ EPA, *Ecosystem Effects of Ozone Pollution*, [https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-
ozone-pollution](https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution) (last updated Mar. 8, 2022).

27 ⁴ *Id.*, *see also* EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, 8-42 (Apr.
2020), EPA/600/R-20/012.

28 ⁵ 73 Fed. Reg. 16436, 16486 (Mar. 27, 2008).

⁶ *Id.*; *see generally* University California Davis, *Biological Carbon Sequestration*,
<https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/> (last updated Nov. 5, 2021).

1 CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant MICHAEL
2 S. REGAN, in his official capacity as Administrator for the United States EPA, to compel him to
3 perform his mandatory duties to ensure health and public welfare protections promised under the
4 Clean Air Act.

5 JURISDICTION

6 6. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction
7 over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. §
8 7604(a) (Clean Air Act citizen suit).

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

12 8. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. §
13 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
14 injunctive relief.

15 NOTICE

16 9. Plaintiffs gave EPA written notice of intent to sue regarding the claims alleged in
17 this Complaint on February 10, 2021, by certified mail.

18 10. More than sixty days have passed since Plaintiffs mailed the notice letter
19 discussed above. EPA has not remedied the violations alleged in this Complaint. Therefore, a
20 present and actual controversy exists between the parties.

21 VENUE

22 11. Defendant EPA resides in this judicial district. This civil action is brought against
23 an officer of the United States acting in his official capacity. Some of the claims in this
24 Complaint concern EPA’s failure to perform mandatory duties regarding California. EPA Region
25 9, which is responsible for California, is headquartered in San Francisco. Thus, events and
26 omissions at issue in this action occurred at EPA’s Region 9 headquarters in San Francisco.
27 Additionally, Plaintiff CENTER FOR ENVIRONMENTAL HEALTH resides in Oakland.
28

1 Accordingly, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

2 **INTRADISTRICT ASSIGNMENT**

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

6 **PARTIES**

7 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
8 corporation incorporated in California. The Center for Biological Diversity’s mission is to ensure
9 the preservation, protection, and restoration of biodiversity, native species, ecosystems, public
10 lands and waters, and public health through science, policy, and environmental law. Based on the
11 understanding that the health and vigor of human societies and the integrity and wildness of the
12 natural environmental are closely linked, the Center for Biological Diversity is working to secure
13 a future for animals and plants hovering on the brink of extinction, to protect the ecosystems they
14 need to survive, and for a healthy, livable future for all of us.

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

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

25 16. Plaintiffs have a member whose work focuses on California deserts including the
26 Mojave Desert. This member is adversely affected by EPA’s failure to issue a FIP for the Los
27 Angeles—San Bernardino Counties (West Mojave Desert), California area.

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