

1 PAUL R. CORT, State Bar No. 184336
Earthjustice
2 50 California Street
San Francisco, CA 94111
3 pcort@earthjustice.org
Tel: 415-217-2000
4 Fax: 415-217-2040

5 TOSH SAGAR, *Pro Hac Vice* Pending
JAMES S. PEW, *Pro Hac Vice* Pending
6 Earthjustice
7 1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
8 tsagar@earthjustice.org, jpew@earthjustice.org
Tel: 202-667-4500
9 Fax: 202-667-2356

10 *Counsel for Plaintiffs Citizens for Pennsylvania's Future,*
11 *Gasp, Louisiana Bucket Brigade, and Sierra Club*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14)
15)
16)
17)
18)
19)
20)
21)
22)
23)

CITIZENS FOR PENNSYLVANIA'S
FUTURE, GASP, LOUISIANA BUCKET
BRIGADE, and SIERRA CLUB,

Plaintiffs,

v.

ANDREW WHEELER, Administrator, U.S.
Environmental Protection Agency, in his
official capacity,

Defendant.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. This is a suit to compel the Administrator of the United States Environmental
3 Protection Agency (“EPA” or “the agency”) to take actions mandated by the Clean Air Act,
4 42 U.S.C. §§ 7401-7671q (“the Act”) to protect public health and the environment from coke
5 ovens, major industrial sources of highly toxic air pollutants. The Act requires the Administrator
6 to “review, and revise as necessary (taking into account developments in practices, processes,
7 and control technologies)” the emission standards for hazardous air pollutants promulgated under
8 § 7412(d) no later than eight years after such standards are initially promulgated. *Id.*
9 § 7412(d)(6). In addition, eight years after promulgating § 7412(d) standards, the Administrator
10 either must promulgate additional “residual risk” standards under § 7412(f)(2), due to the risk
11 remaining after the application of the § 7412(d) standards, or must determine that residual risk
12 standards are not required to protect human health or the environment. *Id.* § 7412(f)(2). Yet, the
13 Administrator has missed the statutory deadlines to complete the required regulatory duties for
14 the two categories of sources of toxic air pollution that are the subject of this complaint. The
15 Administrator has not taken the actions required by § 7412(d)(6) and § 7412(f)(2) for each of the
16 categories of sources of hazardous air pollutants enumerated in Table A, below (column entitled
17 “Source Category”) (collectively, the “Coke Oven Source Categories”):
18
19
20

Table A: Source Categories Covered By This Complaint

Source Category	Date Of Promulgation	Deadline For Action Pursuant To § 7412(d)(6) And § 7412(f)(2)
1. Coke Oven Batteries, 70 Fed. Reg. 19,992 (codified at 40 C.F.R. Part 63, Subpart L)	April 15, 2005	April 15, 2013

Table A: Source Categories Covered By This Complaint

Source Category	Date Of Promulgation	Deadline For Action Pursuant To § 7412(d)(6) And § 7412(f)(2)
2. Coke Ovens: Pushing, Quenching, and Battery Stacks, 68 Fed. Reg. 18,008 (codified at 40 C.F.R. Part 63, Subpart CCCCC), as amended by 70 Fed. Reg. 44,285	August 2, 2005 (or, alternatively, April 14, 2003)	August 2, 2013 (or, alternatively, April 14, 2011)

2. Due to the Defendant Administrator's failures to act, Plaintiffs Citizens for Pennsylvania's Future, Gasp, Louisiana Bucket Brigade, and Sierra Club (collectively, "Plaintiffs") seek both a determination that the Defendant Administrator's failures to perform each action required by 42 U.S.C. § 7412(d)(6) and § 7412(f)(2) violate the Clean Air Act, and an order to compel the Administrator to take each required action in accordance with an expeditious deadline set by this Court.

JURISDICTION AND VENUE

3. This action arises under the Clean Air Act, 42 U.S.C. § 7412(d)(6), (f)(2). This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may order the Administrator to perform the requisite acts and duties, may issue a declaratory judgment, and may grant further relief pursuant to the Clean Air Act, 42 U.S.C. § 7604(a), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 28 U.S.C. § 1361. Plaintiffs have a right to bring this action pursuant to the Clean Air Act, 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4. By certified letters to the Administrator posted on February 13, 2019, Plaintiffs gave notice of this action as required by 42 U.S.C. § 7604(b)(2).

1 ecosystems and resources; to educating and enlisting humanity to protect and restore the quality
2 of the natural and human environment; and to using all lawful means to carry out these
3 objectives. The Sierra Club is dedicated to the protection of public health and the environment,
4 including clean air. Sierra Club brings this action on behalf of itself and its members.
5

6 10. Defendant Andrew Wheeler is the Administrator of the EPA. In that role he is
7 charged with the duty to uphold the Clean Air Act and to take required regulatory actions
8 according to the schedules established therein.

9 LEGAL FRAMEWORK

10 11. The Clean Air Act has the purpose “to protect and enhance the quality of the
11 Nation’s air resources so as to promote the public health and welfare and the productive capacity
12 of its population.” 42 U.S.C. § 7401(b)(1).
13

14 12. A “primary goal” of the Act is “pollution prevention.” *Id.* § 7401(c). Congress
15 found the Act to be necessary in part because “the growth in the amount and complexity of air
16 pollution brought about by urbanization, industrial development, and the increasing use of motor
17 vehicles, has resulted in mounting dangers to the public health and welfare, including injury to
18 agricultural crops and livestock, damage to and the deterioration of property, and hazards to air
19 and ground transportation.” *Id.* § 7401(a)(2).
20

21 13. To accomplish its objectives, the Act prescribes a regulatory framework within
22 which EPA is required to set technology and risk-based standards by specific deadlines to reduce
23 emissions of hazardous air pollutants¹ and the harm to health and the environment these
24 emissions cause. *Id.* § 7412.
25

26
27 ¹ The term “hazardous air pollutant” is defined as “any air pollutant listed pursuant to
28 [§ 7412(b)].” 42 U.S.C. § 7412(a)(6) (citing *id.* § 7412(b)).

1 14. In the 1990 Clean Air Act Amendments, Congress established new requirements
2 for EPA to control toxic air pollution. *Id.* By statute, Congress listed 189 pollutants as
3 “hazardous air pollutants” and required EPA to list every other compound “known to cause or
4 [that] may reasonably be anticipated to cause adverse effects to human health or adverse
5 environmental effects.” *Id.* § 7412(b)(1), (b)(3)(B); *see also id.* § 7412(c)(6).² Congress listed
6 “coke oven emissions” as one of the original 189 hazardous air pollutants. *Id.* § 7412(b)(1).

8 15. The Act requires EPA to list categories of major sources of hazardous air
9 pollutants. 42 U.S.C. § 7412(c)(1). A “major source” is defined as “any stationary source or
10 group of stationary sources located within a contiguous area and under common control that
11 emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more
12 of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air
13 pollutants.” *Id.* § 7412(a)(1).

15 16. Congress expressly identified “coke oven batteries” as a category of major
16 sources of hazardous air pollutants. 42 U.S.C. § 7412(d)(8).

17 17. EPA must promulgate emission standards for each listed category or subcategory
18 of major sources of hazardous air pollutants, including coke oven batteries. *Id.* § 7412(d). These
19 standards are often referred to as “maximum achievable control technology” or “MACT”
20 standards.
21

22 18. For the coke oven batteries source category, Congress mandated that EPA set
23 MACT standards to ensure that emissions from identified emissions points in the process of coke
24

25
26
27
28

² Currently, 187 hazardous air pollutants are listed for regulation. EPA, *Technology Transfer Network – Air Toxics Web Site: Modifications to the 112(b)1 Hazardous Air Pollutants*, <http://www.epa.gov/ttn/atw/pollutants/atwsmod.html> (last updated Feb. 23, 2016).

1 production—charging, doors, lids, and offtakes—do not exceed express statutory limits.

2 42 U.S.C. § 7412(d)(8)(A).

3 19. Once the Administrator has promulgated MACT standards for a source category,
4 “[t]he Administrator shall review, and revise as necessary (taking into account developments in
5 practices, processes, and control technologies), [MACT] standards...no less often than every 8
6 years.” *Id.* § 7412(d)(6). This provision requires the Administrator either to promulgate revised
7 MACT standards or to issue a final determination not to revise the existing standards based upon
8 a published finding that revision is not “necessary” to ensure the standards satisfy § 7412(d). *Id.*

9
10 20. Section 7412(f) requires further action “to protect health and environment.” It
11 mandates that EPA submit a report to Congress regarding residual risk—i.e. “the risk to public
12 health remaining, or likely to remain” after the application of MACT standards under § 7412(d).
13 *Id.* § 7412(f)(1). If Congress does not act on the recommendations submitted in the report,
14 Section 7412(f)(2) directs that:
15

16 (A) ...the Administrator shall, within 8 years after
17 promulgation of standards for each category or subcategory of
18 sources pursuant to [§ 7412(d)], promulgate standards for such
19 category or subcategory if promulgation of such standards is
20 required in order to provide an ample margin of safety to protect
21 public health in accordance with this section ... or to prevent,
22 taking into consideration costs, energy, safety, and other relevant
23 factors, an adverse environmental effect. Emission standards
24 promulgated under this subsection shall provide an ample margin
25 of safety to protect public health in accordance with this section (as
26 in effect before November 15, 1990) If standards promulgated
27 pursuant to [§ 7412(d)] and applicable to a category or subcategory
28 of sources emitting a pollutant (or pollutants) classified as a
known, probable or possible human carcinogen do not reduce
lifetime excess cancer risks to the individual most exposed to
emissions from a source in the category or subcategory to less than
one in one million, the Administrator shall promulgate standards
under this subsection for such source category.

...

1 (C) The Administrator shall determine whether or not to
2 promulgate such standards and, if the Administrator decides to
3 promulgate such standards, shall promulgate the standards 8 years
4 after promulgation of the [§ 7412(d) standards] for each source
5 category or subcategory concerned.

6 *Id.* § 7412(f)(2). Thus, if residual risk standards are “required in order to provide an ample
7 margin of safety to protect public health” or “to prevent ... an adverse environmental effect,”
8 then the Administrator must promulgate such standards within eight years of the promulgation of
9 § 7412(d) standards. *Id.* § 7412(f)(2)(A).

10 21. In 1999, EPA submitted a report to Congress pursuant to § 7412(f)(1). *See* EPA,
11 EPA-453/R-99-001, *Residual Risk Report to Congress* (Mar. 1999),
12 http://www.epa.gov/airtoxics/rrisk/risk_rep.pdf. Congress did not act on that report’s
13 recommendations. Congressional inaction triggered the duty of the Administrator to determine
14 whether to promulgate residual risk standards under §7412(f)(2) for those source categories for
15 which EPA had promulgated § 7412(d) standards. 42 U.S.C. § 7412(f)(2). Therefore, under
16 § 7412(f)(2), EPA is required either to promulgate residual risk standards that will protect the
17 public with an ample margin of safety or to determine that such standards are not necessary.

18 22. The Act guarantees citizens a right to present their views and information to EPA
19 and have them considered by the agency. The Act applies § 7607(d) rulemaking requirements to
20 “the promulgation or revision of any ... emission standard or limitation under section 7412(d) of
21 this title” and “any standard under section 7412(f) of this title,” among others. *Id.*
22 § 7607(d)(1)(C). Section 7607(d) requires EPA to provide public notice of proposed rulemaking
23 accompanied by a statement of its basis and purpose, which must include the factual data on
24 which the proposed rule is based and the methodology used in obtaining and analyzing the data.
25 *Id.* § 7607(d)(3). Section 7607(d) also requires EPA to allow any person to submit written
26 comments, data, or documentary information, and to present data, views, or arguments orally.
27
28

1 27. Charging, coking, soaking, pushing, and quenching all result in the formation of
2 coke oven emissions.

3 28. Coke oven emissions are an oily, yellow-brown smoke composed of 43
4 constituent pollutants that are each listed as hazardous air pollutants under the Clean Air Act.
5 Constituent hazardous air pollutants include organic compounds—including polycyclic organic
6 matter (POM), polynuclear aromatic hydrocarbons (PAH), and volatile organic compounds
7 (VOC), such as benzene, toluene, and xylene—metals, such as lead and mercury, and other
8 hazardous air pollutants, such as hydrochloric acid and hydrofluoric acid.
9

10 29. Coke oven emissions are hazardous. EPA has recognized that coke oven
11 emissions can cause serious acute and chronic human health effects. Breathing these pollutants
12 can cause cancer as well as other kinds of chronic, long-term harm. In addition, breathing coke
13 oven emissions can cause acute harm from short-term exposure.
14

15 30. EPA has classified coke oven emissions as a known human carcinogen. Studies of
16 workers in coke oven batteries show an increased risk of death from cancer of the lung, trachea
17 and bronchus, kidney, prostate, and other sites. EPA has recognized that carcinogens have no
18 safe level of human exposure. *Natural Res. Def. Council v. EPA*, 824 F.2d 1211, 1215 (D.C. Cir.
19 1987) (observing that EPA determined “that known and probable carcinogens have no safe
20 threshold”); *see also* S. Rep. No. 101-228, at 175 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385,
21 3560 (“Federal Government health policy since the mid-1950s has been premised on the
22 principle that there is no safe level of exposure to a carcinogen”).
23

24 31. EPA’s own risk assessment indicates that approximately 4 million people are
25 exposed to coke oven emissions. As a result, 500,000 people face a cancer risk greater than 1 in
26
27
28

1 1,000,000. National Emissions Standards for Coke Oven Batteries, 70 Fed. Reg. 19,992, 19,993
2 (Apr. 15, 2005).

3 32. In humans, coke oven emissions are associated with other chronic health disorders
4 including, blood disorders, damage to the central nervous system, and respiratory lesions, and
5 acute health disorders, including irritation of skin, eyes, and mucous membranes, and depression
6 of the central nervous system. Additionally, animal studies have reported weakness, depression,
7 shortness of breath, general edema, and effects on the liver from acute oral exposure to coke
8 oven emissions.
9

10 33. Some of the hazardous air pollutants emitted from coke ovens persist in the
11 environment or bioaccumulate.
12

13 34. For example, EPA has determined that lead, a constituent of coke oven emissions,
14 is a persistent, bioaccumulative, and toxic heavy metal that threatens the neurological
15 development of children and can precipitate high blood pressure, heart disease, kidney disease,
16 and reduced fertility in adults. Lead is likely to cause cancer. Lead and Lead Compounds;
17 Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release
18 Reporting, 66 Fed. Reg. 4500, 4501-04 (Jan. 17, 2001); EPA, *Lead Compounds, Hazard*
19 *Summary*, <https://www.epa.gov/sites/production/files/2016-09/documents/lead-compounds.pdf>
20 (last updated Sep. 2011); EPA, *Basic Information About Lead Air Pollution*,
21 <https://www.epa.gov/lead-air-pollution/basic-information-about-lead-air-pollution> (last updated
22 Mar. 30, 2016). There is no safe level of human exposure to lead. Nat'l Inst. of Env'tl. Health
23 Scis., *Lead*, www.niehs.nih.gov/health/topics/agents/lead/ (last updated Oct. 12, 2018); World
24 Health Org.; *Lead poisoning and health*, www.who.int/mediacentre/factsheets/fs379/en/ (last
25 updated Aug. 2015).
26
27
28

1 35. In another example, mercury, a constituent of coke oven emissions, is deposited
2 in water and accumulates in the aquatic food chain. EPA, *How People are Exposed to Mercury*,
3 <https://www.epa.gov/mercury/how-people-are-exposed-mercury> (last updated Apr. 3, 2019).
4 EPA has determined that pregnant women and developing fetuses and young children are
5 particularly vulnerable to mercury exposure. EPA, *Health Effects of Exposures to Mercury*,
6 <https://www.epa.gov/mercury/health-effects-exposures-mercury> (last updated Jan. 29, 2019);
7 National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric
8 Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric
9 Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional
10 Steam Generating Units, 76 Fed. Reg. 24,976, 24,977-78 (May 3, 2011). Pollutants that persist or
11 bioaccumulate in the environment can harm human health via routes or pathways other than
12 inhalation, such as when a pollutant falls on the soil and children are exposed through playing in
13 the soil, or when people eat fish, shellfish, breast-milk, or other food in which such pollutants
14 have accumulated. *See, e.g.*, EPA, *Basic Information about Mercury*,
15 <http://www.epa.gov/mercury/basic-information-about-mercury> (last updated Jan. 29, 2019);
16 EPA, *How People are Exposed to Mercury*. In addition, EPA has found that such pollutants can
17 harm fish and plants. *See, e.g.*, EPA, *Basic Information about Mercury*; EPA, EPA-452/R-97-
18 008, *Mercury Study Report to Congress*, Vol. VI at 2-26 to 2-27 (Dec. 1997),
19 <http://www.epa.gov/sites/production/files/2015-09/documents/volume6.pdf>.

20 36. EPA has listed two categories as major sources of hazardous air pollutants that
21 involve coke oven batteries, Coke Oven Batteries and Coke Ovens: Pushing, Quenching, and
22 Battery Stacks. Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air
23 Act Amendments of 1990, 57 Fed. Reg. 31,576 (July 16, 1992); National Emission Standards for
24
25
26
27
28

1 Hazardous Air Pollutants; Revision of Initial List of Categories of Sources and Schedule for
2 Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990, 61 Fed.
3 Reg. 28,197 (June 4, 1996); National Emission Standards for Hazardous Air Pollutants: Revision
4 of Source Category List and Schedule for Standards Under Section 112 of the Clean Air Act,
5 64 Fed. Reg. 63,025 (Nov. 18, 1999).

6
7 37. As EPA has explained, the two Coke Oven Source Categories cover different
8 emission points in facilities that contain coke oven batteries. As the Clean Air Act expressly
9 singled out the emissions resulting from charging and coking—by establishing maximum limits
10 on coke oven emissions from charging and leakage during coking from doors, lids, and offtakes,
11 42 U.S.C. § 7412(d)(8)(A)—EPA established the source category entitled “Coke Oven Batteries”
12 to cover only those statutorily enumerated emissions points. EPA established a second source
13 category, entitled “Coke Oven: Pushing, Quenching, and Battery Stacks,” to cover other
14 emissions points from coke oven batteries that are not expressly enumerated in the Clean Air
15 Act.
16

17 38. Coke Oven Batteries

18
19 a. The Administrator promulgated national emission standards for hazardous air
20 pollutants for Coke Oven Batteries on April 15, 2005. 70 Fed. Reg. 19,992.

21 b. The Administrator was required to take final action to fulfill his 42 U.S.C.
22 § 7412(f)(2) and § 7412(d)(6) duties for the Coke Oven Batteries source category by April 15,
23 2013, *i.e.*, “within 8 years after promulgation” and “no less often than every 8 years.”

24 c. More than eight years have passed since the Administrator promulgated emission
25 standards under 42 U.S.C. § 7412 for Coke Oven Batteries.
26
27
28

1 d. The Administrator has not completed the reviews required by § 7412(d)(6) and
2 § 7412(f)(2) for Coke Oven Batteries.

3 e. The Administrator has not published public notice of a proposed rule or
4 determination, and has not accepted comments, data, or argument on a proposed rule or
5 determination, nor has he responded to significant comments or new data, or issued a statement
6 of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6)
7 and § 7412(f)(2) for Coke Oven Batteries.

9 f. Since April 15, 2005, the Administrator has not promulgated a final rule or
10 determination pursuant to § 7412(f)(2) for Coke Oven Batteries.

11 g. Since April 15, 2005, the Administrator has not promulgated a revised final rule
12 or determination pursuant to § 7412(d)(6) for Coke Oven Batteries.

14 39. Coke Ovens: Pushing Quenching, and Battery Stacks

15 a. The Administrator promulgated national emission standards for hazardous air
16 pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks on April 14, 2003. 68 Fed.
17 Reg. 18,008. Those standards were challenged and, pursuant to a settlement of that challenge,
18 revised on August 2, 2005. 70 Fed. Reg. 44285.

19 b. The Administrator was required to take final action to fulfill his 42 U.S.C.
20 § 7412(f)(2) and § 7412(d)(6) duties for Coke Ovens: Pushing, Quenching, and Battery Stacks
21 source category by August 2, 2013, or, alternatively, April 14, 2011, *i.e.*, “within 8 years after
22 promulgation” and “no less often than every 8 years.”
23

24 c. More than eight years have passed since the Administrator promulgated emission
25 standards under 42 U.S.C. § 7412 for Coke Ovens: Pushing, Quenching, and Battery Stacks.
26
27
28

1 d. The Administrator has not completed the reviews required by § 7412(d)(6) and
2 § 7412(f)(2) for Coke Ovens: Pushing, Quenching, and Battery Stacks.

3 e. The Administrator has not published public notice of a proposed rule or
4 determination, and has not accepted comments, data, or argument on a proposed rule or
5 determination, nor has he responded to significant comments or new data, or issued a statement
6 of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6)
7 and § 7412(f)(2) for Coke Ovens: Pushing, Quenching, and Battery Stacks.

9 f. Since August 2, 2005, the Administrator has not promulgated a final rule or
10 determination pursuant to § 7412(f)(2) for Coke Ovens: Pushing, Quenching, and Battery Stacks.

11 g. No rule or determination promulgated pursuant to § 7412(f)(2) for Coke Ovens:
12 Pushing, Quenching, and Battery Stacks is currently effective.

14 h. Since, August 2, 2005, the Administrator has not promulgated a revised final rule
15 or determination pursuant to § 7412(d)(6) for Coke Ovens: Pushing, Quenching, and Battery
16 Stacks.

17 i. No rule or determination promulgated pursuant to § 7412(d)(6) for Coke Ovens:
18 Pushing, Quenching, and Battery Stacks is currently effective.

19
20 **ALLEGATIONS OF INJURY**

21 40. Plaintiffs and their members have been, are being, and will continue to be harmed
22 by the Administrator's failures to take the actions required by 42 U.S.C. § 7412(d)(6) and
23 § 7412(f)(2) for the Coke Oven Source Categories.

24 41. Plaintiffs' members live, work, travel, recreate, and engage in a wide variety of
25 other activities near coke ovens batteries and facilities where coke oven batteries will be
26 constructed. Plaintiffs' members suffer or will suffer exposure and other harm to their health,
27
28

1 recreational, aesthetic, educational, professional, and other interests due to breathing the
2 hazardous air pollutants emitted by coke ovens and by other pathways of exposure as described
3 in paragraphs 29-35, above. Exposure to hazardous air pollutants emitted by sources in the Coke
4 Oven Source Categories has adverse health effects which may include respiratory, neurological,
5 developmental, and reproductive harm; damage to bodily organs and the central nervous system;
6 and cancer, as well as other health effects described in paragraphs 29-35, above.

8 42. Plaintiffs' members are concerned that coke oven emissions and emissions of
9 other hazardous air pollutants are or will be present in the locations where they live, work, travel,
10 recreate, and engage in other activities. These reasonable concerns about their increased
11 exposure from such activities and other resulting harms from such exposure diminish their
12 enjoyment of activities and areas they previously enjoyed or would like to continue to engage in
13 or use and thereby harm their recreational, aesthetic, educational, professional, and other
14 interests.

16 43. Plaintiffs and their members suffer additional harm because they do not have
17 information, published findings, or determinations from the Administrator regarding: the best
18 available current pollution control methods, practices, and technologies to achieve emission
19 reductions; the health and environmental risks that remain after application of the existing
20 standards; or other information relevant to the need for stronger emission standards for the
21 sources in the Coke Oven Source Categories. This information would be provided to Plaintiffs,
22 their members, and all other interested members of the public as a result of the Administrator's
23 required actions pursuant to § 7412(d)(6) and § 7412(f)(2). *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(6)
24 (describing notice and informational disclosures required as part of rulemakings under § 7412).
25 If Plaintiffs and their members had this information, they would use it to work for stronger health
26
27
28

1 and environmental protections; to educate members, supporters, and the public pursuant to their
2 organizational missions; and to protect themselves and their families from hazardous air
3 pollutants and affected land, water, and food. The denial of this information impairs Plaintiffs'
4 ability to provide information and services to their members to assist them in protecting their
5 interests, hampers the ability of Plaintiffs and their members to take actions to protect their
6 health and communities, and diminishes their enjoyment of activities in their daily life.

8 44. Plaintiffs and their members suffer harm because they are denied the opportunity
9 to submit written comments, data, and documentary information to EPA and to present data,
10 views, or arguments to EPA and have them considered by EPA and responded to as part of the
11 overdue § 7412(d)(6) and § 7412(f)(2) rulemakings. The Administrator's failures to conduct the
12 overdue rulemakings deny Plaintiffs and their members the opportunity to seek greater health
13 protections and emissions reductions, and to have EPA consider and respond to such comments
14 in taking the final actions required by § 7412(d)(6) and § 7412(f)(2). Deprivation of the ability to
15 present comments and arguments and have them considered and addressed by EPA impairs
16 Plaintiffs' and their members' ability to serve and protect their interests and fulfill their
17 organizational missions.

19 45. Plaintiffs and their members suffer harm because the Administrator has not
20 issued a final rule or determination under § 7412(d)(6) and § 7412(f)(2) addressing matters these
21 provisions require, as discussed above. Any such rule or determination would be judicially
22 reviewable. *See id.* § 7607(b); *see also id.* § 7607(d). Deprivation of the right to judicial review
23 harms the ability of Plaintiffs and their members to protect their interests and fulfill their
24 organizational missions.
25
26
27
28

1 46. The Administrator's failures to take actions required by § 7412(d)(6) and
2 § 7412(f)(2) deprive Plaintiffs' members of the cleaner air that would result from those actions.
3 Consequently, Defendant prolongs and increases Plaintiffs' members' exposure to hazardous air
4 pollutants and the related and resulting health, recreational, aesthetic, and other injuries as
5 described above. Defendant also prolongs and increases the hazardous air pollutant exposure of
6 wildlife, plants, water, land, local communities, and ecosystems, resulting in harm to Plaintiffs'
7 members' interests, as described above. Emission reductions required under § 7412(d)(6) and
8 § 7412(f)(2) would reduce these exposures, and would reduce the related health, recreational,
9 aesthetic, and other harms suffered by Plaintiffs' members.
10

11 47. By not taking the actions required by § 7412(d)(6) and § 7412(f)(2), the
12 Administrator deprives Plaintiffs and their members of information, published findings, and
13 determinations, as described above. *See, e.g., id.* § 7607(d)(3)-(6). In addition, the
14 Administrator's failures to take the actions required by § 7412(d)(6) and § 7412(f)(2) deprive
15 Plaintiffs and their members of the opportunity to receive judicial review of the lawfulness of the
16 final EPA actions. *See id.* § 7607(b). These failures make it more difficult for Plaintiffs and their
17 members to seek health and environmental protections from hazardous air pollutants; to shield
18 themselves, their families, and other community members from exposure to such pollutants; to
19 protect their health, recreational, aesthetic, and other interests; and to be able to enjoy activities
20 in their daily life without concerns about exposure to hazardous air pollutants. These failures also
21 impair Plaintiffs' abilities to provide educational services to their members concerning hazardous
22 air pollution from the sources in the Coke Oven Source Categories and hinder Plaintiffs' ability
23 to provide services and take actions vital to fulfilling their public health missions.
24
25
26
27
28

1 48. For all of the foregoing reasons, the failures complained of herein cause Plaintiffs
2 and their members injuries for which they have no adequate remedy at law. Granting the
3 requested relief would redress these injuries.
4

5 **CLAIMS FOR RELIEF**

6 49. The allegations of all foregoing paragraphs are hereby incorporated as if set forth
7 fully herein.

8 Violations of § 7412(d)(6) of the Clean Air Act

9 50. Each of the Administrator’s ongoing failures to review and either revise or issue a
10 revision determination regarding the emission standards for both Coke Oven Source Categories
11 enumerated in Paragraph 1, above, in accordance with 42 U.S.C. § 7412(d)(6), constitutes a
12 “failure of the Administrator to perform any act or duty under this chapter which is not
13 discretionary” within the meaning of § 7604(a)(2) of the Clean Air Act for each such source
14 category.
15

16 51. Each day the Administrator fails to take these legally required actions, Defendant
17 commits new, additional, and ongoing violations of its duties under § 7412(d)(6).
18

19 Violations of § 7412(f)(2) of the Clean Air Act

20 52. Each of the Administrator’s ongoing failures either to promulgate § 7412(f)(2)
21 residual risk standards or to issue a final determination not to promulgate such standards for each
22 of the Coke Oven Source Categories enumerated in Paragraph 1, above, constitutes a “failure of
23 the Administrator to perform any act or duty under this chapter which is not discretionary”
24 within the meaning of § 7604(a)(2) of the Clean Air Act for each such source category.
25

26 53. Each day the Administrator fails to take these legally required actions, Defendant
27 commits new, additional, and ongoing violations of its duties under § 7412(f)(2).
28

PRAYER FOR RELIEF

1
2 54. WHEREFORE, Plaintiffs respectfully request, for each of the Coke Oven Source
3 Categories enumerated in Paragraph 1, above, that the Court:

4 (1) Declare that each of the Defendant Administrator’s failures within eight years to
5 review and either revise standards promulgated under § 7412(d) or issue a final determination
6 that such revision is not necessary for each of the Coke Oven Source Categories pursuant to
7 § 7412(d)(6), constitutes a “failure of the Administrator to perform any act or duty under this
8 chapter which is not discretionary with the Administrator” within the meaning of § 7604(a)(2);
9

10 (2) Order the Defendant Administrator to review and either to revise the emission
11 standards or to issue a final determination that such revision is not necessary for each of the
12 Coke Oven Source Categories pursuant to § 7412(d)(6) in accordance with an expeditious
13 deadline specified by this Court;
14

15 (3) Declare that each of the Defendant Administrator’s failures, within eight years of
16 promulgating an emission standard, either to promulgate § 7412(f)(2) standards or to issue a final
17 determination that such standards are not required for each of the Coke Oven Source Categories
18 constitutes a “failure of the Administrator to perform any act or duty under this chapter which is
19 not discretionary with the Administrator” within the meaning of § 7604(a)(2);
20

21 (4) Order the Defendant Administrator either to promulgate § 7412(f)(2) standards or
22 to issue a final determination that such standards are not required for each of the Coke Oven
23 Source Categories pursuant to § 7412(f)(2) in accordance with an expeditious deadline specified
24 by this Court;
25

26 (5) Retain jurisdiction to ensure compliance with this Court’s decree;

27 (6) Award Plaintiffs the costs of this action, including attorney’s fees; and,
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(7) Grant such other relief as the Court deems just and proper.

DATED: April 15, 2019

Respectfully Submitted,

/s/ Tosh Sagar
Tosh Sagar (D.C. Bar No. 1562693)
James S. Pew (D.C. Bar No. 448830)
Earthjustice
1625 Massachusetts Ave., NW, Suite 702
Washington, DC 20036
tsagar@earthjustice.org jpew@earthjustice.org
Tel: 202-667-4500
Fax: 202-667-2356

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Citizens for Pennsylvania's Future, Gasp, Louisiana Bucket Brigade, Sierra Club

(b) County of Residence of First Listed Plaintiff Allegheny County, PA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Paul R. Cort, Earthjustice, 50 California Street, Ste. 500, San Francisco, CA 94111, (415) 217-2000 (see attachment for additional attorneys)

DEFENDANTS

Andrew Wheeler, Administrator, U.S. Environmental Protection Agency, in his official capacity

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Clean Air Act, 42 U.S.C. §§ 7412(d)(6), 7412(f)(2)
Brief description of cause: Failure to review and revise as necessary hazardous air pollutant emission standards for coke ovens in violation of the Clean Air Act.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 04/15/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Paul R. Cort

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

CIVIL COVER SHEET
Attachment

I. (c) Attorneys

Tosh Sagar
Earthjustice
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
(202) 667-4500
**Pro Hac Vice* application submitted concurrently with Complaint

James S. Pew
Earthjustice
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
(202) 667-4500
**Pro Hac Vice* application submitted concurrently with Complaint