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## INTRODUCTION

1  
2 1. Plaintiffs seek declaratory and injunctive relief through the citizen suit provision of the  
3 Clean Air Act (the Act) against Michael S. Regan, Administrator of the United States  
4 Environmental Protection Agency (EPA), for the agency's failure to complete mandatory duties  
5 required by section 42 U.S.C. §§ 7410(k)(1) and 7410(k)(2) – (4) of the Act. Specifically, EPA  
6 failed to make findings that three areas designated as in "Serious" nonattainment for the 2008  
7 ozone National Ambient Air Quality Standards (NAAQS)—Greater Connecticut and that state's  
8 New York metro region, and San Diego County (California)—did not submit their required state  
9 implementation plan (SIP) elements by deadlines EPA set. *See* Table 1, *infra*. In addition, in  
10 violation of 42 U.S.C. § 7410(k)(2), EPA failed to take final action to approve, disapprove, or  
11 conditionally approve ozone nonattainment SIP element submittals for four areas: the West  
12 Mojave Desert (California); Dallas-Fort Worth (Texas); Eastern Kern County (California), and  
13 specifically that area's Rule 425.3 governing Portland Cement Kilns; and the Denver  
14 Metro/North Front Range (Colorado). *See* Table 2, *infra*.

15 2. Ground-level ozone—commonly known as "smog"—damages both people's health and  
16 the environment. Human exposure to ozone pollution causes "decreased lung function and  
17 increased respiratory symptoms," leading to increased emergency department visits and hospital  
18 admissions. National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27,  
19 2008) (to be codified at 40 C.F.R. pts. 50, 58); see also EPA, *Health Effects of Ozone Pollution*,  
20 <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution> (last visited  
21 Dec. 27, 2021). For plants and animals, ozone pollution can alter an ecosystem's structure and  
22 function, thereby putting species' survival at risk. National Ambient Air Quality Standards for  
23 Ozone, 73 Fed. Reg. at 16,486-89; see also EPA, *Ecosystem Effects of Ozone Pollution*,  
24 <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (last  
25 visited Dec. 27, 2021). Ozone pollution also contributes to the climate crisis by hindering plant  
26 growth, thereby reducing plants' ability to sequester carbon. National Ambient Air Quality  
27 Standards for Ozone, 73 Fed. Reg. at 16,486-89.

1 3. EPA's failures to fulfill its duties required under the Act mean that people living in these  
2 nonattainment areas are, and will continue to be, subjected to unhealthy levels of ozone  
3 pollution, and further environmental degradation will occur because the areas in nonattainment  
4 have not submitted the required plan elements to chart a course towards attainment of ozone  
5 standards.

6 4. Plaintiffs ask this Court to find that EPA violated the Act when it failed, within the Act's  
7 six-month timeframe, to make findings of failure to submit for each of the states listed in Table  
8 1, *infra*. Plaintiffs also ask that this Court order EPA to take final action by issuing findings of  
9 failure to submit to each state listed in Table 1, *infra*, for each of the SIP elements by a date  
10 certain.

11 5. Plaintiffs further ask this Court to find that EPA violated the Act when it failed, within  
12 the Act's twelve-month timeframe, to approve, disapprove, or conditionally approve the SIP  
13 submittals listed in Table 2, *infra*. Plaintiffs ask that this Court order EPA to take final action on  
14 each of those SIP submittals by a date certain.

15 6. Plaintiffs intend to recover all available litigation costs, including reasonable attorneys'  
16 fees, under section 304(d) of the Act, 42 U.S.C. § 7604(d).

### 17 JURISDICTION

18 7. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because this case  
19 involves federal questions arising under the Clean Air Act, 42 U.S.C. § 7410, as well as 42  
20 U.S.C. § 7604(a)(2), which authorizes any person to sue to compel the performance of a  
21 nondiscretionary duty under the Act.

22 8. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or  
23 1146, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to order  
24 declaratory relief under 28 U.S.C. § 2201. If this Court orders declaratory relief, 28 U.S.C. §  
25 2202 authorizes this Court to issue injunctive relief.

**NOTICE**

9. In satisfaction of 42 U.S.C. § 7604(b) and 40 C.F.R. § 54, Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint.

10. On September 27, 2021, Plaintiffs sent the first notice letter to EPA via certified mail, alerting the agency that it missed its deadlines to issue findings of failure to submit to “Serious” nonattainment areas for the 2008 ozone NAAQS pursuant to 42 U.S.C. § 7410(k)(1)(B). EPA received the notice letter no later than October 4, 2021. The statutory 60-day notice period expired no later than on December 3, 2021. EPA has not remedied all of the violations alleged in the notice letter.

11. On October 14, 2021, Plaintiffs sent a second notice letter, via certified mail, alerting EPA that it failed to take timely final action on certain SIP submittals for the West Mojave Desert area, pursuant to 42 U.S.C. § 7410(k)(2). EPA received the notice letter no later than October 19, 2021. The statutory 60-day notice period expired no later than on December 18, 2021. EPA has not remedied the violations alleged in the notice letter.

12. On February 11, 2022, Plaintiffs sent a third notice letter, via certified mail, alerting EPA that it failed to take timely final action on certain SIP submittals for Dallas-Fort Worth, Eastern Kern County, and Denver Metro/North Front Range, pursuant to 42 U.S.C. § 7410(k)(2). EPA received the notice letter no later than February 16, 2022. The statutory 60-day notice period expired no later than on April 17, 2022. EPA has not remedied the violations alleged in the notice letter.

**VENUE**

13. Venue in this Court is proper under 28 U.S.C. § 1391(e)(1) for several reasons. First, Plaintiff Center for Environmental Health resides in the district, with their headquarters at 2201 Broadway, Suite 508, Oakland, California. Second, Defendant EPA resides and performs its official duties in this district, with a regional headquarters office at 75 Hawthorne St., San Francisco, California. Third, three of the claims in this Complaint—concerning San Diego, the

1 West Mojave Desert, and Eastern Kern County—concern EPA’s failure to perform mandatory  
2 duties within EPA Region 9, meaning a substantial part of the events or omissions giving rise to  
3 the claims in this case occurred in the Northern District of California.

4 **INTRADISTRICT ASSIGNMENT**

5 14. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or  
6 Oakland Division of this Court because a substantial part of the events and omissions giving rise  
7 to the claims in this case occurred in the County of San Francisco, where EPA Region 9 is  
8 headquartered.

9 **PARTIES**

10 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
11 corporation incorporated and existing under the laws of the State of California. The Center for  
12 Biological Diversity has approximately 89,610 members throughout the United States and the  
13 world. Approximately 15,000 of these members live in the areas at issue here that are designated  
14 as in “Serious” nonattainment for the 2008 ozone NAAQS. The Center for Biological Diversity’s  
15 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,  
16 ecosystems, public lands and waters, and public health through science, policy, and  
17 environmental law.

18 16. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a 501(c)(3) nonprofit  
19 corporation organized and existing under the laws of the State of California, with its  
20 headquarters located in Oakland. The Center for Environmental Health protects the public from  
21 toxic chemicals by working with communities, consumers, workers, government, and the private  
22 sector to demand and support business practices that are safe for public health and the  
23 environment. The Center for Environmental Health works in pursuit of a world in which all  
24 people live, work, learn, and play in healthy environments.

25 17. Plaintiffs are “persons” as defined by the Act, 42 U.S.C. § 7602(e).

26 18. As a result of EPA’s failures of its mandatory duties to (1) hold the states in Table 1,  
27 *infra*, accountable for missing their deadlines to submit SIP elements; and (2) take final action on  
28

1 complete SIP submittals in Table 2, *infra*, for the West Mojave Desert area, Plaintiffs have  
2 suffered and will continue to suffer harm from ozone pollution.

3 19. At least 15,000 of Plaintiffs' members live, work, recreate, travel, and engage in other  
4 activities throughout the areas at issue in this complaint and will continue to do so on a regular  
5 basis. Pollution in the affected areas threatens and damages, and will continue to threaten and  
6 damage, the health and welfare of Plaintiffs' members, as well as their ability to engage in and  
7 enjoy activities, particularly outdoor activities such as walking, biking, hiking, and playing with  
8 their children.

9 20. EPA's failures alleged herein also harm Plaintiffs' members' welfare interest in using and  
10 enjoying the natural environment. Elevated levels of ground-level ozone damage plant life and  
11 natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic interests in the  
12 nonattainment areas at issue in this complaint.

13 21. In addition, EPA's failure to timely perform its mandatory duties described herein  
14 adversely impacts Plaintiffs' members by depriving them of procedural protection and  
15 opportunities, as well as other information they are entitled to under the Act. For example, the  
16 Emissions Inventory SIP element that many areas listed in Table 1, *infra*, have not provided  
17 information—such as the pollution discharged into the atmosphere broken down by specified  
18 source categories—that the Act explicitly says the public is entitled to. Plaintiffs may use the  
19 information provided in the Emissions Inventory to identify priorities for advocacy, or to better  
20 understand the health impacts of particular sources in the nonattainment areas. For Plaintiffs to  
21 try and create an Emissions Inventory-type document on their own would require large amounts  
22 of organizational resources and expenses, meaning that this information provided as part of SIP  
23 submittal saves Plaintiffs time and money.

24 22. The above injuries will continue until the Court grants the relief requested herein. A court  
25 order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs' and  
26 Plaintiffs' members' injuries.

1 23. Defendant MICHAEL S. REGAN is the Administrator of the EPA. Administrator Regan  
2 is charged with the duty to uphold the Clean Air Act and to take required regulatory actions  
3 according to the schedules established by the Act, including the mandatory duties at issue in this  
4 case. Administrator Regan is sued in his official capacity.

#### 5 **STATUTORY AND REGULATORY BACKGROUND**

6 24. The Clean Air Act seeks “to protect and enhance the quality of the Nation’s air resources  
7 so as to promote the public health and welfare and the productive capacity of its population.” 42  
8 U.S.C. § 7401(b)(1).

9 25. Central to the Act is the requirement that EPA establish NAAQS for certain widespread  
10 air pollutants that endanger public health and welfare, referred to as “criteria pollutants.” 42  
11 U.S.C. §§ 7408-7409. One criteria pollutant is ozone. *See* 40 C.F.R. §§ 50.9, 50.10, 50.15, 50.19.

12 26. The NAAQS establish allowable concentrations of criteria pollutants in ambient air.  
13 Primary standards must be stringent enough to protect public health. 42 U.S.C. § 7409(b)(1).  
14 Secondary standards must be stringent enough to protect public welfare, including, but not  
15 limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze),  
16 climate, damage to property, economic impacts, and effects on personal comfort and well-being.  
17 *Id.* §§ 7409(b)(2), 7602(h).

18 27. After EPA sets or revises a NAAQS, the Act requires EPA to take steps to ensure that the  
19 standard is met. One of the first steps EPA must take is to identify, or “designate,” areas of the  
20 country that either meet or do not meet the standard. 42 U.S.C. § 7407(d)(1)(A)-(B). Areas that  
21 meet the standard are in “attainment,” whereas those that do not meet the standard are designated  
22 as in “nonattainment.” *Id.* § 7407(d)(1)(A). Areas designated as in nonattainment are also  
23 classified according to the severity; classification categories for ozone nonattainment areas are  
24 Marginal, Moderate, Serious, Severe, and Extreme. *Id.* § 7511. Nonattainment areas are then  
25 subject to specific mandatory measures depending on their level of classification. *Id.* § 7511a.  
26 These plans, which must be submitted to EPA, are called a state implementation plan (SIP). *Id.* §  
27 7410(a)(2)(I).

1 28. EPA is required to determine whether a SIP submittal is administratively complete. 42  
2 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has not complied by  
3 providing the required documentation, there is no submittal that can be deemed administratively  
4 complete, and EPA has a non-discretionary duty to make a determination stating that the state  
5 failed to submit the required SIP. *Id.* This determination is commonly referred to as a “finding of  
6 failure to submit.”

7 29. A finding of failure to submit is critical because it triggers a two-year clock for EPA to  
8 step into the void left by the state’s failure to submit a SIP by promulgating a federal  
9 implementation plan (FIP) to reduce a criteria pollutant’s levels to below the NAAQS. 42 U.S.C.  
10 § 7410(c).

11 30. Under the Act, EPA also has a nondiscretionary duty to take final action to approve,  
12 disapprove, or conditionally approve a SIP submittal within twelve months of the submittal  
13 either being deemed, or found, administratively complete. 42 U.S.C. § 7410(k)(2) – (4).

#### 14 **FACTUAL BACKGROUND**

15 31. Ground-level ozone forms when other pollutants, known as ozone precursors, react in the  
16 presence of sunlight. *See* EPA, *Ozone and Ozone Standards: The Basics*,  
17 <https://www.epa.gov/sites/default/files/2016-04/documents/20151001basicsfs.pdf> (last visited  
18 Dec. 28, 2021). Ozone is found both in the Earth’s stratosphere and at ground level, though the  
19 impacts of ozone in each region are distinct. Stratospheric ozone protects the Earth from harmful  
20 radiation from the sun’s rays, whereas ground-level ozone—a key component of smog—is  
21 harmful to human health and the environment. *Id.*

22 32. Serious negative health effects occur in individuals exposed to ozone pollution. These  
23 health impacts include throat irritation, lung tissue damage, and exacerbation of asthma,  
24 bronchitis, heart disease, and emphysema. National Ambient Air Quality Standards for Ozone,  
25 80 Fed. Reg. 65,292, 65,302-11 (Oct. 26, 2015) (to be codified at 40 C.F.R. pts. 50-53, 58).  
26 Exposure to elevated levels of ground-level ozone is also linked increased emergency department  
27 visits, hospitalizations, and even death. *Id.* at 65,302; *see also* Ana M. Vicedo-Cabrera, et al.,  
28



1 *Short term association between ozone and mortality: global two stage time series study in 406*  
2 *locations in 20 countries*, BMJ 368 (2020), <https://www.bmj.com/content/368/bmj.m108>.

3 Certain populations are especially susceptible to harm from ozone pollution, such as children, the  
4 elderly, those with existing lung disease, and individuals who work primarily outside. 80 Fed.  
5 Reg. at 65,310-11. People of color and those living below the federal poverty line are likely to  
6 face greater risks of harms from ozone exposure. Review of the Ozone National Ambient Air  
7 Quality Standards, 85 Fed. Reg. 49,830, 49,849-50 (Aug. 14, 2020) (to be codified at 40 C.F.R.  
8 pt. 50).

9 33. Ozone pollution is also harmful to the environment. Ground-level ozone can be  
10 especially harmful to sensitive vegetation—including trees such as the black cherry, quaking  
11 aspen, white pine, and ponderosa pine. EPA, *Ecosystem Effects of Ozone Pollution*,  
12 <https://www.epa.gov/ground-level-ozone-pollution/ecosystem-effects-ozone-pollution> (last  
13 visited Dec. 27, 2021). Ozone pollution harms soils, water, and wildlife, and their associated  
14 ecosystems, leading to diminished clean air and water. National Ambient Air Quality Standards  
15 for Ozone, 73 Fed. Reg. 16,436, 16,485-86 (Mar. 27, 2008) (to be codified at 40 C.F.R. pts. 50,  
16 58). Excess ground-level ozone also contributes to the climate crisis, as ozone pollution hinders  
17 plant growth, thereby reducing the natural carbon sequestration potential of plants. *Id.* at 16,486;  
18 *see generally Biological Carbon Sequestration*, UC Davis,  
19 <https://climatechange.ucdavis.edu/science/carbon-sequestration/biological/> (last visited Dec. 28,  
20 2021).

21 34. On March 27, 2008, EPA published revised NAAQS for ozone. 73 Fed. Reg. 16,436.

22 35. On August 23, 2019, EPA classified the areas listed in Table 1, *infra*, as “Serious”  
23 nonattainment for the 2008 ozone NAAQS. Determinations of Attainment by the Attainment  
24 Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as  
25 Moderate for the 2008 Ozone National Ambient Air Quality Standards, 84 Fed. Reg. 44,238  
26 (Aug. 23, 2019) (to be codified at 40 C.F.R. pts. 52, 81). More than 6.8 million people live in  
27 these areas. *See* EPA, *Nonattainment and Maintenance Area Population Tool: 2008 Ozone*,

1 [https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b](https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b9455e)  
2 9455e (last visited April 18, 2022).

3 36. The “Serious” nonattainment designation triggered a duty for the state air agencies to  
4 submit SIP revisions and implement controls to satisfy the Act’s statutory and regulatory  
5 requirements according to deadlines EPA set forth in the 2019 final rule. EPA gave the “Serious”  
6 nonattainment states until August 3, 2020 to submit their required SIP elements, with the  
7 exception for the element addressing Reasonably Available Control Technology (RACT)  
8 measures not tied to attainment, which was 18 months after the effective date of the final rule  
9 redesignating these areas to the serious classification, that is March 23, 2021. Determinations of  
10 Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of  
11 Several Areas Classified as Moderate for the 2008 Ozone National Ambient Air Quality  
12 Standards, 84 Fed. Reg. at 44,245, 44,246.

13 37. The states did not submit all of their required SIP elements by these deadlines.

14 38. EPA had a statutory duty to, six months after the states’ deadlines—or February 3, 2021  
15 and September 23, 2021 based on the SIP element—to issue findings that the states missed their  
16 deadlines. 42 U.S.C. § 7410(k)(1)(B).

17 39. EPA remains in violation of its mandatory duty to issue findings of failure to submit for  
18 the areas and elements listed in Table 1, *infra*.

19 **TABLE 1 - AMENDED**

Area	Overdue Elements	EPA Deadline to Make a Finding of Failure to Submit
<b>Greater Connecticut, CT</b>	<ul style="list-style-type: none"> <li>• Enhanced Monitoring</li> </ul>	Feb. 3, 2021
<b>New York-North New Jersey-Long Island, New York-New Jersey-Connecticut (CT portion)</b>	<ul style="list-style-type: none"> <li>• Enhanced Monitoring</li> <li>• Attainment Demonstration- Serious</li> <li>• Clean-Fuel Vehicle Programs</li> <li>• Contingency Measures for Attainment</li> <li>• Contingency Measures for RFP Milestones</li> <li>• I/M Enhanced</li> <li>• RFP Serious</li> </ul>	Feb. 3, 2021

Area	Overdue Elements	EPA Deadline to Make a Finding of Failure to Submit
San Diego County, CA	<ul style="list-style-type: none"> <li>• RACT Measures Tied to Attainment</li> </ul>	Feb. 3, 2021
	<ul style="list-style-type: none"> <li>• RACT Measures Not Tied to Attainment</li> </ul>	Sept. 23, 2021

40. Under the Act, EPA also has a nondiscretionary duty to take final action to approve, disapprove, or conditionally approve a SIP submittal within twelve months of the submittal either being deemed, or found, administratively complete. 42 U.S.C. § 7410(k)(2) – (4).

41. On May 21, 2012, EPA classified the West Mojave Desert area, covering parts of Los Angeles and San Bernardino Counties in California, as “Severe-15” nonattainment for the 2008 ozone NAAQS. Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 Fed. Reg. 30,088 (May 21, 2012) (to be codified at 40 C.F.R. pt. 81). More than 926,000 people live in this area. *See* EPA, *Nonattainment and Maintenance Area Population Tool: 2008 Ozone*, <https://epa.maps.arcgis.com/apps/MapSeries/index.html?appid=7935a00e2554440a8daf6cc035b9455e> (last visited Dec. 28, 2021).

42. EPA indicates that certain SIP elements for the West Mojave Desert area—the Reasonable Further Progress (RFP) contingency and attainment contingency measures—were administratively complete by no later than June 11, 2019. *See* EPA, *Required State Implementation Plan Elements Dashboard*, [https://edap.epa.gov/public/extensions/S4S\\_Public\\_Dashboard\\_2/S4S\\_Public\\_Dashboard\\_2.html](https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html) (search for “West Mojave Desert” and “2008 ozone standard”, and entry for “Contingency Provisions for RFP Milestones 182(c)(9)”); *see also* Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California, 86 Fed. Reg. 24,809, 24,811 (May 10, 2021) (to be codified at 40 C.F.R. pt. 52).

1 43. EPA's mandatory twelve-month deadline for the West Mojave Desert contingency  
2 measures SIP elements passed on June 11, 2020. EPA has not taken final action on this  
3 submittal, in violation of the Clean Air Act. 42 U.S.C. § 7410(k)(2) – (4). *See* Table 2, *infra*.

4 44. On August 23, 2019, EPA classified the Dallas-Fort Worth, Texas area as in “Serious”  
5 nonattainment for the 2008 ozone NAAQS. Determination of Attainment by the Attainment  
6 Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as  
7 Moderate for the 2008 Ozone National Ambient Air Quality Standards, 84 Fed. Reg. 44,238  
8 (Aug. 23, 2019) (to be codified at 40 C.F.R. pts. 52, 81). All elements of that area's  
9 nonattainment SIP were due by no later than August 3, 2020, with the exception for RACT  
10 measures not tied to attainment, which were due March 23, 2021. *Id.* at 44,245-46.

11 45. Dallas-Fort Worth submitted the SIP elements listed in Table 2, *infra*, by no later than  
12 May 13, 2020. The submittal was administratively complete no later than November 13, 2020.  
13 EPA has proposed rules approving the SIP submittals. Air Plan Approval; Texas; Clean Air Act  
14 Requirements for Enhanced Vehicle Inspection and Maintenance and Nonattainment New  
15 Source Review, 86 Fed. Reg. 11,913, 11,914-15 (Mar. 1, 2021) (to be codified at 40 C.F.R. pt.  
16 52); Air Plan Approval; Texas; Reasonable Further Progress Plan for the Dallas-Fort Worth  
17 Ozone Nonattainment Area, 85 Fed. Reg. 64,084 (Oct. 9, 2020) (to be codified at 40 C.F.R. pt.  
18 52).

19 46. It has been more than twelve months since the SIP elements for Dallas-Fort Worth listed  
20 in Table 2 were deemed or found administratively complete. EPA has not taken final action to  
21 approve, disapprove, or conditionally approve these SIP elements, as required under 42 U.S.C. §  
22 7410(k)(2) – (4).

23 47. On August 22, 2018, the California Air Resources Board submitted to EPA Eastern Kern  
24 APCD rule 425.3, Portland Cement Kilns. This submittal was found or deemed administratively  
25 complete by no later than February 22, 2019.

26 48. It has been more than twelve months since Rule 425.3 was deemed or found  
27 administratively complete. *See* Table 2, *infra*. EPA has not taken final action to approve,  
28

1 disapprove, or conditionally approve this SIP elements, as required under 42 U.S.C. § 7410(k)(2)  
2 – (4).

3 49. On July 27, 2020, Colorado submitted a SIP revision for the 2015 ozone NAAQS for the  
4 Denver Metro/North Front Range Marginal nonattainment area covering nonattainment new  
5 source review (“NNSR”). Approval and Promulgation of Implementation Plans; Colorado;  
6 Denver Metro/North Front Range Nonattainment Area, 86 Fed. Reg. 60,434, 60,435 (Nov. 2,  
7 2021) (to be codified at 40 C.F.R. pt. 52). This submittal was deemed or found to be complete by  
8 no later than January 27, 2021. On November 2, 2021, EPA proposed approving this SIP  
9 submittal. *Id.* at 60,434.

10 50. It has been more than twelve months since Colorado’s NNSR submittal was deemed or  
11 found administratively complete. *See* Table 2, *infra*. EPA has not taken final action to approve,  
12 disapprove, or conditionally approve this SIP revision, as required under 42 U.S.C. § 7410(k)(2)  
13 – (4).

14  
15 **TABLE 2 - AMENDED**

Area	Elements	Completeness Date (no later than)	EPA’s Deadline to Approve, Disapprove, or Conditionally Approve
<b>West Mojave Desert</b>	<ul style="list-style-type: none"> <li>• Contingency Measures VOC and NOX for attainment</li> <li>• Contingency Provisions for RFP Milestones</li> </ul>	June 11, 2019	June 11, 2020
<b>Dallas-Fort Worth, TX</b>	<ul style="list-style-type: none"> <li>• Emissions Inventory</li> <li>• Contingency Measures for Attainment</li> <li>• Contingency Provisions for RFP Milestones</li> <li>• I/M Enhanced</li> <li>• Non-attainment NSR for Serious</li> <li>• RFP for Serious</li> </ul>	Nov. 13, 2020	Nov. 13, 2021

Area	Elements	Completeness Date (no later than)	EPA's Deadline to Approve, Disapprove, or Conditionally Approve
<b>Eastern Kern Air Pollution Control District, CA</b>	<ul style="list-style-type: none"> <li>• Rule 425.3, Portland Cement Kilns</li> </ul>	Feb. 22, 2019	Feb. 22, 2020
<b>Denver Metro/North Front Range, CO</b>	<ul style="list-style-type: none"> <li>• Marginal Nonattainment NNSR SIP revision (2015 ozone standards)</li> </ul>	Jan. 27, 2021	Jan. 27, 2022

### CLAIM ONE

#### Failure to Perform a Nondiscretionary Duty Pursuant to 42 U.S.C. § 7410(k)(1)(B)

51. Plaintiffs incorporate by reference all paragraphs listed above.

52. EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to, after six months following SIP submittal deadlines, issue findings of failure to submit to states that do not timely submit SIP elements.

53. It has been more than six months since the states listed in Table 1 (above) were required to submit the nonattainment SIP elements listed in that table.

54. EPA has not issued findings of failure to submit for the nonattainment SIP elements in the nonattainment areas listed in Table 1 above.

55. EPA is therefore in violation of its mandatory duty under the Act to issue findings of failure to submit within six months after the due date of SIP elements, pursuant to 42 U.S.C. § 7410(k)(1)(B).

### CLAIM TWO

#### Failure to Perform a Nondiscretionary Duty Pursuant to 42 U.S.C. § 7410(k)(2) – (4)

56. Plaintiffs incorporate by reference all paragraphs listed above.

1 57. EPA has a mandatory duty under 42 U.S.C. § 7410(k)(2) – (4) to, within twelve months  
2 of a SIP submittal being deemed or found to be administratively complete, take final action  
3 approving, disapproving, or conditionally approving the complete SIP submittal.

4 58. It has been more than twelve months since the states listed in Table 2 (above) submitted  
5 SIP elements that EPA determined to be complete.

6 59. EPA has not taken final action to approve, disapprove, or conditionally approve the SIP  
7 submittals listed in Table 2 by the deadlines listed in that table.

8 60. EPA is therefore in violation of its mandatory duty to take final action on complete SIP  
9 submittals within twelve months, pursuant to 42 U.S.C. § 7410(k)(2).

10 **RELIEF REQUESTED**

11 Plaintiffs respectfully request that the Court:

- 12 (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his  
13 failure to perform each mandatory duty listed above;
- 14 (B) Issue an injunction requiring the Administrator to perform his mandatory duties by  
15 certain dates;
- 16 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court’s  
17 order;
- 18 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys’ and expert fees;  
19 and
- 20 (E) Grant such further relief as the Court deems just and proper.

21 Respectfully Submitted,

22 /s/ Victoria Bogdan Tejada  
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Counsel for Plaintiffs Center for Biological  
Diversity and Center for Environmental Health

DATED: April 22, 2022