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12 OUR CHILDREN’S EARTH FOUNDATION

13 UNITED STATES DISTRICT COURT  
14  
15 NORTHERN DISTRICT OF CALIFORNIA

16 OUR CHILDREN’S EARTH FOUNDATION, a  
17 non-profit corporation,

18 Plaintiff,

19 v.

20 MICHAEL S. REGAN, in his official capacity  
21 as ADMINISTRATOR, UNITED STATES  
22 ENVIRONMENTAL PROTECTION  
23 AGENCY

24 Defendant.

Civil Case No. 22-cv-695

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

1 Plaintiff Our Children’s Earth Foundation alleges as follows:

2 **INTRODUCTION**

3 1. The Clean Air Act is a model of cooperative federalism, whereby the Administrator of  
4 the Environmental Protection Agency (“EPA”) sets National Ambient Air Quality Standards  
5 (“NAAQS”) and the states develop specific plans to achieve these standards. States submit these State  
6 Implementation Plans, and revisions to those State Implementation Plans (collectively “SIPs”), to EPA,  
7 which reviews the SIPs to ensure they meet the requirements of the Clean Air Act.

8 2. The Clean Air Act mandates that the Administrator fully or partially approve or  
9 disapprove SIPs submitted by states no later than 18 months after EPA receives them.

10 3. The Administrator has violated his mandatory 18-month deadline to take action on  
11 certain SIPs submitted by the State of Nevada.

12 4. Plaintiff Our Children’s Earth Foundation brings this Clean Air Act citizen suit to compel  
13 Defendant Michael S. Regan, Administrator of the EPA, to perform his non-discretionary duty to review  
14 and take action on the Nevada SIP submissions at issue in this case. The timely review of these SIP  
15 submissions is necessary to ensure adequate protection of air quality and public health.

16 **JURISDICTION**

17 5. This is an action against the Administrator where there is alleged a failure of the  
18 Administrator to perform any act or duty under the Clean Air Act which is not discretionary with the  
19 Administrator. Thus, this Court has jurisdiction pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit  
20 provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question).

21 6. The requested declaratory relief is authorized by 28 U.S.C. § 2201(a) and 42 U.S.C. §  
22 7604(a). The requested injunctive relief is authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 7604(a).

23 7. This Court has personal jurisdiction over EPA and its officials, including Administrator  
24 Regan, because EPA is an agency of the federal government operating within the United States.

25 **NOTICE**

26 8. By letter dated November 17, 2021, Our Children’s Earth Foundation provided the  
27 Administrator with written notice of the claims concerning the Nevada SIP submissions in this action.

1 Our Children's Earth Foundation provided this notice pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R.  
2 §§ 54.2, 54.3. Although more than 60 days have elapsed since Our Children's Earth Foundation gave  
3 notice, Administrator Regan remains in violation of the law.

4 9. As Administrator Regan has failed to redress the Clean Air Act violations set forth in Our  
5 Children's Earth Foundation's notice letter referenced in paragraph 8, there exists now between the  
6 parties an actual, justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C.  
7 § 2201.

#### 8 VENUE

9 10. Venue in the United States District Court for the Northern District of California is proper  
10 under 28 U.S.C. § 1391(e) because at least one defendant resides in the judicial district, a substantial  
11 part of the events giving rise to this litigation occurred within this judicial district, Our Children's Earth  
12 Foundation resides within this judicial district, and there is no real property involved in the action.

#### 13 INTRADISTRICT ASSIGNMENT

14 11. Intradistrict assignment of this matter to the San Francisco Division of the Court is  
15 appropriate pursuant to Civil Local Rules 3-2(c) and (d) because Our Children's Earth Foundation's  
16 principal place of business is located in Napa, California; Our Children's Earth Foundation's principal  
17 counsel resides in San Francisco County, California; EPA resides in this judicial district and maintains a  
18 major regional office, responsible for the SIP submissions at issue, in San Francisco, California; and a  
19 substantial part of the events or omissions giving rise to Our Children's Earth Foundation's claims occur  
20 in EPA's San Francisco, California office.

#### 21 THE PARTIES

22 12. Plaintiff OUR CHILDREN'S EARTH FOUNDATION is a non-profit corporation based  
23 in Napa, California dedicated to protecting the environment. Our Children's Earth Foundation promotes  
24 public awareness of domestic and international environmental impacts through information  
25 dissemination, education, and private enforcement of environmental protection statutes. Our Children's  
26 Earth Foundation enforcement cases aim to achieve public access to government information, ensure  
27 proper implementation of environmental statutes and permitting, and enjoin violations of environmental  
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1 and government transparency laws. Our Children’s Earth Foundation has an active membership of  
2 people from all over the United States with a significant portion of its members residing in Nevada.

3 13. Our Children’s Earth Foundation is a non-profit corporation. Therefore, Our Children’s  
4 Earth Foundation is a “person” within the meaning of 42 U.S.C. § 7602(e). As such, Our Children’s  
5 Earth Foundation may commence a civil action under 42 U.S.C. § 7604(a).

6 14. Our Children’s Earth Foundation brings this action on its own behalf and on behalf of its  
7 adversely affected members and staff. Our Children’s Earth Foundation’s members and staff live, work,  
8 bike, recreate, and/or conduct educational, research, advocacy, and other activities in Nevada in areas  
9 where air pollution, which should be regulated under the SIP submissions at issue in this case, harms  
10 their participation in and enjoyment of these activities. The air pollution that should be regulated by  
11 these SIPs also causes Our Children’s Earth Foundation’s members and staff to experience chronic and  
12 acute harms to their health, which could be lessened or eliminated if the Administrator took the required  
13 actions to regulate air pollution through the SIP submissions at issue in this case. Our Children’s Earth  
14 Foundation’s members and staff have concrete plans to continue living in and/or visiting Nevada and  
15 engaging in these activities. The air pollution that should be regulated by the SIP submissions at issue in  
16 this lawsuit adversely affects the interests of Our Children’s Earth Foundation and its members and staff.  
17 The Administrator’s failure to act on the SIP submissions at issue in this case also creates doubt and  
18 concern for Our Children’s Earth Foundation and its members and staff as to whether they are exposed  
19 to illegal levels of air pollution, or whether a Federal Implementation Plan (“FIP”) is necessary to ensure  
20 compliance with the law. The interests of Our Children’s Earth Foundation and its members and staff  
21 have been, are being, and will continue to be irreparably harmed by the Administrator’s failure to act on  
22 the SIP submissions at issue in this case.

23 15. The violations alleged in this Complaint deprive Our Children’s Earth Foundation and its  
24 members and staff of certain procedural rights associated with the Administrator’s required action on the  
25 SIP submissions, including notice and opportunity to comment. The violations alleged in this Complaint  
26 also deprive Our Children’s Earth Foundation and its members and staff of certain information  
27 associated with the Administrator’s required action on the SIP submissions. These procedural,  
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1 informational, and other injuries are directly tied to the other harms Our Children’s Earth Foundation  
2 and its members and staff are experiencing.

3 16. Furthermore, if the Administrator were to partially or fully disapprove of the SIP  
4 revisions at issue in this Complaint, the Administrator would be obligated to promulgate a FIP to correct  
5 any deficiencies within two years of any disapproval. Ultimately, the Administrator’s failure to act in  
6 compliance with his mandatory duties deprives Our Children’s Earth Foundation and its members and  
7 staff of certainty that air quality is being maintained and improved in Nevada and of the health and other  
8 benefits of that clean air.

9 17. The violations alleged in this Complaint have injured and continue to injure the interests  
10 of Our Children’s Earth Foundation and its members and staff. These injuries are traceable to the  
11 Administrator’s failure to act. Granting the requested relief would redress these injuries by compelling  
12 the Administrator to act in compliance with what Congress has determined is an integral part of the  
13 regulatory scheme for attaining and maintaining NAAQS.

14 18. Defendant MICHAEL S. REGAN is Administrator of the United States Environmental  
15 Protection Agency. Mr. Regan is sued in his official capacity. The Administrator is charged with  
16 implementation and enforcement of the Clean Air Act. As described below, the Clean Air Act assigns  
17 the Administrator certain non-discretionary duties, and Administrator Regan has failed to comply with  
18 these duties.

19 **LEGAL BACKGROUND**

20 19. The Clean Air Act establishes a partnership between EPA and the states for the  
21 attainment and maintenance of NAAQS. *See* 42 U.S.C. §§ 7401-7515. This system is intended to “speed  
22 up, expand, and intensify the war against air pollution in the United States with a view to assuring that  
23 the air we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970),  
24 *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356. Towards this end, EPA has set NAAQS for seven  
25 pollutants. *See* 40 C.F.R. §§ 50.4-50.17.

26 20. States, or regions within a state, must adopt a pollution control plan that contains  
27 enforceable emissions limitations necessary to attain NAAQS and meet applicable requirements of the  
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1 Clean Air Act, including ensuring attainment, maintenance, and enforcement of NAAQS. *See, e.g.*, 42  
2 U.S.C. § 7410(a)(1), (a)(2)(A). All such plans must be submitted to and approved by the Administrator.  
3 42 U.S.C. § 7410(a)(1), (k).

4 21. Within 60 days of the Administrator's receipt of a proposed SIP or SIP revision, the  
5 Clean Air Act requires the Administrator to determine whether the submission is sufficient to meet the  
6 minimum criteria established by the Administrator for such proposals. 42 U.S.C. § 7410(k)(1)(B). If the  
7 Administrator fails to make this "completeness" finding, the proposed SIP or SIP revision is deemed  
8 complete by operation of law six months after submission. *Id.* If the Administrator determines that the  
9 proposed SIP or SIP revision does not meet the minimum criteria, the State is considered not to have  
10 made the submission. *Id.* § 7410(k)(1)(C).

11 22. Within 12 months of finding that a proposed SIP or SIP revision is complete (or deemed  
12 complete by operation of law), the Administrator must act to approve, disapprove, or approve in part and  
13 disapprove in part, the submission. *See* 42 U.S.C. § 7410(k)(2). At most then, the Administrator has a  
14 maximum of 18 months to take action on a SIP after it has been submitted.

15 23. Once the Administrator approves a SIP or SIP revision, polluters must comply with all  
16 emission standards and limitations contained in the SIP, and all such standards and limitations become  
17 federal law and are enforceable by the Administrator and citizens in federal courts. *See* 42 U.S.C. §§  
18 7413, 7604(a).

19 24. If the Administrator finds that a State has failed to make a complete SIP submission or  
20 disapproves a SIP submission in whole or in part, the Clean Air Act requires the Administrator to  
21 promulgate a FIP within two years of that finding. 42 U.S.C. § 7410(c)(1)(A), (B).

22 25. If the Administrator fails to perform a non-discretionary duty, such as acting on a  
23 proposed SIP or SIP revision within the Clean Air Act deadlines, the Clean Air Act allows any person to  
24 bring suit to compel the Administrator to perform that duty. *See* 42 U.S.C. § 7604(a)(2).

### 25 **FACTUAL BACKGROUND**

26 26. This lawsuit concerns the below SIP submissions that the State of Nevada submitted to  
27 EPA between December 11, 2015 and March 16, 2020. A list of these SIP submissions is included as  
28

1 Table 1, below. EPA has not taken final action on any of these SIP submissions, and they are now all  
2 overdue.

3 **Table 1.** Information relating to the overdue Nevada SIP submittals at issue in this lawsuit.

4 <b>SPeCS Review Page</b>	5 <b>SPeCS Review Page ID</b>	6 <b>State Submittal Date</b>	7 <b>Final Action Deadline</b>
8 NV Infrastructure SIP for 2012 PM 2.5	14529	12/11/15	6/11/17
9 PM Revised Air Quality Standards and Definitions	20178	12/11/15	6/11/17
10 NV 2015 Ozone i-SIP	26074	9/28/18	3/28/20
11 Clark County Section 0 Definitions	90386	4/12/19	10/12/20
12 Clark County Section 12.0 Applicability, General Requirements and Transition Procedures	90468	4/12/19	10/12/20
13 Clark County Section 12.1 Permit Requirements for Minor Sources	90469	4/12/19	10/12/20
14 Clark County Section 12.11 General Permits for Minor Stationary	90404	4/12/19	10/12/20
15 Clark County Rescission of Section 10 - Compliance Schedules	97178	6/10/19	12/10/20
16 Clark County Section 0 Definitions 2020 Revision	208369	3/16/20	9/16/21
17 Clark County Section 2 Procedures for Adoption and Revision of Regulations and for Inclusion of Those Regulations in the State Implementation Plan	208391	3/16/20	9/16/21
18 Clark County Section 4 Control Officer	208767	3/16/20	9/16/21
19 Clark County Section 12.0 Applicability and General Requirements	208770	3/16/20	9/16/21
20 Clark County Section 33 Chlorine in Chemical Processes	208773	3/16/20	9/16/21
21 Clark County Section 41 Fugitive Dust	208775	3/16/20	9/16/21
22 Clark County Section 53 Oxygenated Wintertime Gasoline	208779	3/16/20	9/16/21
23 Clark County Section 90 Fugitive Dust from Open Areas and Vacant	208782	3/16/20	9/16/21
24 Clark County Section 93 Fugitive Dust from Paved Roads and Street Sweeping Equipment	208784	3/16/20	9/16/21
25 Clark County Section 94 Permitting and Dust Control for Construction Activities	208788	3/16/20	9/16/21

26 27. The first column in Table 1 contains the State Plan Electronic Collection System  
27 (“SPeCS”) Review Page Name for the 18 SIP submissions, which is a brief descriptive name used  
28 internally by EPA explaining the focus of the revision in the submission. SPeCS is the system through

1 which EPA allows states to submit SIP revisions online and where EPA organizes, reviews, and tracks  
2 active SIP submissions.

3 28. The second column in Table 1 contains the SPeCS Review Page identification numbers  
4 for the SIP submissions at issue in this Complaint. These are internal EPA tracking numbers used to  
5 identify various SIP submissions by unique number identifiers.

6 29. The third and fourth columns of Table 1 provide the dates that Nevada submitted the SIPs  
7 to EPA and EPA's deadlines to take final action on the SIP submissions (no later than eighteen months  
8 from the submission dates).

9 30. As Table 1 shows, all of the SIPs at issue in this lawsuit were submitted to EPA between  
10 December 11, 2015 and March 16, 2020.

11 31. All of the SIP submissions at issue in this lawsuit were deemed administratively complete  
12 no later than six months after submission. EPA was then required to take final agency action on all of  
13 the SIP submissions at issue in this lawsuit, approving, disapproving, or partially approving and partially  
14 disapproving of the submissions, within twelve months of their administrative completion date.

15 32. As Table 1 shows, the dates by which EPA was required to take final action on all of the  
16 SIPs at issue in this lawsuit were between June 11, 2017 and September 16, 2021.

17 33. Each one of the SIP submissions at issue in this lawsuit, listed in Table 1, is still before  
18 the Administrator and is awaiting final action in accordance with the Clean Air Act. As of the filing of  
19 this Complaint, the Administrator has not granted and published final full or partial approval or  
20 disapproval to the Nevada SIP submissions referenced in Table 1.

21 **FIRST CLAIM FOR RELIEF**  
22 **Failure to Perform a Non-Discretionary Duty**  
23 **to Act on Nevada's SIP Submittals**

24 34. Our Children's Earth Foundation repeats and incorporates by reference the allegations in  
25 the above paragraphs and all paragraphs of this Complaint.

26 35. EPA received at least 18 SIP submissions from the State of Nevada between December  
27 11, 2015 and March 16, 2020.  
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1 Dated: February 2, 2022

Respectfully submitted,

2  
3 By:

/s/ Christopher Sproul

Christopher Sproul

*Counsel for Our Children's Earth Foundation*

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