IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA COMMUNITIES AGAINST TOXICS
P.O. Box 845
Rosamond, CA 93560;

COALITION FOR A SAFE ENVIRONMENT
1601 N. Wilmington Blvd., Ste. B
Wilmington, CA 90744; *and*

SIERRA CLUB
2101 Webster St., Suite 1300
Oakland, CA 94612,
Plaintiffs,

v.

MICHAEL S. REGAN, Administrator,
U.S. Environmental Protection Agency, in his official capacity,
1200 Pennsylvania Ave., NW
Washington, DC 20460,
Defendant.

Civil Action No. 1:22-cv-1012

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a suit to compel the Administrator of the United States Environmental Protection Agency ("EPA") to take actions mandated by the Clean Air Act, 42 U.S.C. §§ 7401-7671q, to protect public health and the environment from industrial sources of air pollution. EPA has failed to perform its nondiscretionary duties under § 7412(d)(6) of the Clean Air Act ("the Act") to review air emission standards for Oil and Natural Gas Production and Natural Gas Transmission and Storage and to promulgate a rule that either revises the standards or determines that no revision is required. Thus, EPA is in ongoing violation of the Act. This complaint seeks to compel these overdue reviews and rulemakings for the Oil and Natural Gas Production and Natural Gas Transmission and Storage source categories ("oil and gas source categories")

regulated under the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 63, Subparts HH, HHH.

2. Oil and gas facilities are major sources of pollution. These sources emit highly hazardous air pollutants ("HAP"), including carcinogens like benzene. These sources also emit non-HAP volatile organic compounds, which react in the atmosphere to form health-harming ozone and fine particulate matter, as well as methane.

3. While EPA has failed to act, the COVID-19 pandemic has worsened the harm for communities where air pollution has increased mortality.[1] Communities exposed to these oil and gas industry emissions, who are disproportionately communities of color and low-income, need EPA to fulfill its overdue legal obligations to review and revise the emission standards applicable to these facilities, in order to help improve the air they breathe.

4. In particular, § 7412(d)(6) of the Clean Air Act requires the Administrator to "review, and revise as necessary" emission standards for hazardous air pollutants in listed categories at least every eight years after promulgating standards under § 7412. 42 U.S.C. § 7412(d)(6). Section 7412(f)(2) requires the Administrator to review the health and environmental risks that remain under the existing standards, and to promulgate standards that protect public health and the environment (or promulgate a determination that such standards are not required) within eight years after the promulgation of standards under § 7412(d).

5. More than eight years have passed since EPA's last § 7412(d)(6) review of the NESHAP for the oil and gas source categories, yet the agency has not reviewed and revised such

[1] *See, e.g.*, Michael Petroni et al., *Hazardous Air Pollutant Exposure as a Contributing Factor to COVID-19 Mortality in the United States*, 15 Envtl. Res. Lett., Sept. 2020, https://iopscience.iop.org/article/10.1088/1748-9326/abaf86.

standards, nor has it promulgated a determination that no such revisions are necessary, as required under § 7412(d)(6). 42 U.S.C. § 7412(f)(2).

6. Due to the Defendant Administrator's failures to act appropriately to control oil and gas sources' toxic air emissions, Plaintiffs California Communities Against Toxics, Coalition For A Safe Environment, and Sierra Club (collectively, "Plaintiffs") seek both a determination that the Defendant Administrator's failures to perform an action required by 42 U.S.C. § 7412(d)(6) violate the Clean Air Act, and an order to compel the Administrator to take the required action in accordance with an expeditious deadline set by this Court.

JURISDICTION AND VENUE

7. This action arises under the Clean Air Act, 42 U.S.C. § 7412(d)(6).

8. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 1331 and 1361.

9. 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 42 U.S.C. § 7604(a), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 28 U.S.C. § 1361.

10. 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.

11. By certified letter to the Administrator mailed on December 9, 2021, Plaintiffs gave notice of this action as required by 42 U.S.C. § 7604(b)(2) and 40 C.F.R. § 54.2(d).

12. As sixty days have passed since this submission, Plaintiffs have satisfied the notice requirements in 42 U.S.C. § 7604(b)(2).

13. Venue is vested in this Court under 28 U.S.C. § 1391(e) because the Defendant, EPA Administrator Michael S. Regan, resides in this district.

PARTIES

14. Plaintiff California Communities Against Toxics ("CCAT") is a nonprofit organization based in California. CCAT is an environmental justice network of members and member groups that advocates for environmental justice and protection from toxic air pollution in the State of California and nationally. Through public education, advocacy, and community organizing, CCAT aims to reduce individuals' exposure to pollution, to expand knowledge about the effects of toxic chemicals on human health and the environment, and to protect the most vulnerable people from harm.

15. Plaintiff Coalition For A Safe Environment ("CFASE") is a nonprofit community-based organization that advocates for environmental justice, public health, public safety, emergency preparedness, and community sustainability. CFASE was established in April 2001 in the predominantly Latino community of Wilmington in Los Angeles, California. As part of its work to protect communities from the harmful effects of toxic air pollution, CFASE serves its members and constituents by conducting public health surveys, distributing public health and environmental information, distributing personal protective equipment ("PPE") and COVID-19 home test kits, preparing research reports, evaluating environmental impact reports, investigating environmental incidents, preparing public comment documents, and attending governmental agency public hearings, private business meetings, and community organization meetings.

16. Plaintiff Sierra Club is a nonprofit corporation with its headquarters located in Oakland, California. The Sierra Club is a national membership organization whose mission is to explore, enjoy, and protect the planet; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives. As

such, Sierra Club is dedicated to the protection of public health and the environment, and regularly advocates for policies that protect air quality. It has 64 chapters and over than 780,000 members who reside in all 50 states, the District of Columbia, and Puerto Rico.

17. Defendant Michael S. Regan is the Administrator of the EPA. In that role, he is charged with the duty to uphold the Clean Air Act and to take required regulatory actions according to the schedules established therein. *See* 42 U.S.C. § 7601.

LEGAL FRAMEWORK

18. The Clean Air Act's purpose is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). A "primary goal" of the Act is "pollution prevention." *Id.* § 7401(c). Congress enacted this law in part because "the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare." *Id.* § 7401(a)(2).

19. In the 1990 Clean Air Act Amendments, Congress strengthened § 7412 and established new requirements for EPA to control toxic air pollution. By statute, Congress listed 189 air pollutants that it determined to be "hazardous" for regulation and required EPA to list any other compounds "known to cause or [that] may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." *Id.* § 7412(b)(1), (b)(3)(B); *see also id.* § 7412(a)(6); § 7602(g).

20. The Act requires EPA to list categories of sources of all hazardous air pollutants. 42 U.S.C. § 7412(c)(1). According to deadlines provided in the Act, EPA must then promulgate emission standards for each listed category or subcategory of such major and area sources of

hazardous air pollutants. *Id.* § 7412(d); *id.* § 7412(a)(1) (definition of major source). The standards for major sources, often referred to as "maximum achievable control technology" or "MACT" standards, must require "the maximum degree of reduction in emissions of . . . hazardous air pollutants . . . [that] is achievable . . . ." *Id.* § 7412(d)(2). The "floor" or minimum stringency required of such standards must reflect what the best controlled source or sources have "achieved." *Id.* § 7412(d)(3).

21. Once the Administrator has promulgated emission standards pursuant to § 7412(d) for a source category, EPA must ensure that such standards continue to strengthen over time. First, "[t]he Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every [eight] years." *Id.* § 7412(d)(6).

22. In addition to revising standards to reflect control "developments," EPA must make all revisions that are "necessary" to bring standards into full compliance with the Clean Air Act, *id.*, such as setting limits on all uncontrolled HAP emissions and removing all illegal exemptions or loopholes. *See Louisiana Envtl. Action Network v. EPA*, 955 F.3d 1088, 1096 (D.C. Cir. 2020); *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008).

23. If the Administrator finds that no such revisions are "necessary," he must issue a final determination as to that fact. 42 U.S.C. § 7412(d)(6).

24. Section 7412(d) standards become effective "upon promulgation." *See id.* § 7412(d)(10); *see also id.* § 7412(i) (setting compliance schedule for § 7412(d) standards).

FACTS

Overdue EPA Nondiscretionary Duties Under 42 U.S.C. § 7412 (d)(6)

25. EPA listed the Oil and Natural Gas Production source category as a major source of hazardous air pollutants in 1992. EPA, Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 31,576 (July 16, 1992). On February 12, 1998, EPA added Natural Gas Transmission and Storage to the list of major source categories. *See* EPA, National Emission Standards for Hazardous Air Pollutants; Revision of List of Categories of Sources and Schedule for Standards Under Section 112 of the Clean Air Act, 63 Fed. Reg. 7,155 (Feb. 12, 1998).

26. As of 2012, EPA has estimated that Oil and Natural Gas Production facilities emit 9,000 tons per year of hazardous air pollutants,[2] while Natural Gas Transmission and Storage facilities emit over 650 tons per year.[3] EPA has recognized that these emissions include organic hazardous air pollutants such as n-hexane, the "BTEX" compounds (benzene, toluene, ethylbenzene, and xylenes), and dozens of other hazardous air pollutants. 40 C.F.R. Part 63, Subparts HH & HHH.

27. EPA first promulgated the NESHAP for the oil and gas source categories under § 7412(d) of the Clean Air Act on June 17, 1999. *See* 40 C.F.R. Part 63, Subparts HH and HHH; Final Rule, 64 Fed. Reg. 32,610 (June 17, 1999); Proposed Rule, 63 Fed. Reg. 6,288 (Feb. 6, 1998). These standards apply to Oil and Natural Gas Production facilities and Natural Gas

[2] EPA Ofc. of Air and Radiation, Final Residual Risk Assessment for the Oil and Gas Production and Natural Gas Transmission and Storage Source Categories, at 28 (Apr. 2012), https://www.regulations.gov/document/EPA-HQ-OAR-2010-0505-4558.
[3] *Id.* at 23.

Transmission and Storage facilities that are major and area sources of hazardous air pollutant emissions.

28. In 2010, in response to litigation brought by WildEarth Guardians and the San Juan Citizens Alliance, *see WildEarth Guardians v. Jackson*, Case No. 09-cv-00089-CKK (D.D.C. Jan. 14, 2009), EPA signed a consent decree that committed the agency to initiating a review of the NESHAP for the oil and gas source categories pursuant to § 7412(d)(6). 77 Fed. Reg. 49,490, 49,496 (Aug. 16, 2012).

29. On August 16, 2012, the Administrator finalized its review and promulgated updated NESHAP standards under § 7412(d)(2)-(3) for the oil and gas source categories ("2012 NESHAP rule"). *See* 40 C.F.R. 63 Subparts HH & HHH; 77 Fed. Reg. at 49,490.

30. In the 2012 NESHAP rule, EPA decided to revise certain provisions of the original standards and not to revise others. *See* 77 Fed. Reg. at 49,501-02.

31. The agency also conducted a § 7412(f)(2) residual risk review in 2012, but did not promulgate any modifications to the emission standards to assure an ample margin of safety to protect public health. *See id*. at 49,503-07.

32. In compliance with § 7412(d)(6), the Administrator was required to "review, and revise as necessary" the 2012 NESHAP rule for the oil and gas source categories no later than August 16, 2020, *i.e.*, within eight years.

33. The Administrator did not review the 2012 NESHAP rule and promulgate revisions, or promulgate a determination that no revisions were necessary between August 16, 2012 and August 16, 2020. Nor has the Administrator taken such action since August 16, 2020.

34. Therefore, the Administrator has violated and is in ongoing violation of his statutory duty under § 7412(d)(6) for the oil and gas source categories.

Petition for Reconsideration

35. On October 15, 2012, Plaintiffs and other environmental organizations filed a petition for reconsideration of certain aspects of the 2012 NESHAP rule.

36. The reconsideration petition seeks to rectify a number of serious flaws in the 2012 NESHAP rule pursuant to 42 U.S.C. § 7607(d)(7)(B), including EPA's failure to regulate all emission points within the oil and gas source categories (including condensate tanks, truck unloading, and pigging operations), failure to require controls for all hazardous air pollutants emitted by the oil and gas source categories, the illegal addition of an affirmative defense to civil penalties for violations of emission standards that are caused by malfunctions, and failure to consider new health risk and pollution control information and to assure an ample margin of safety to protect public health.

37. In December 2012, EPA informed the environmental organizations that the agency anticipated granting reconsideration on certain issues raised in the administrative petitions concerning the 2012 NESHAP rule.[4] In January 2013, EPA further informed environmental organizations that the agency anticipated signing a proposed rulemaking in April 2014 and taking final action in May 2015.[5]

38. EPA did not propose action on or complete reconsideration in the spring of 2014, claiming the need to study additional issues.

[4] *See* Unopposed Motion of Respondent EPA to Sever the Challenges to the NSPS and NESHAP Rules, to Hold Litigation in Abeyance, and to Govern Further Proceedings, *Am. Petroleum Inst. v. EPA*, Case No. 12-1405, Doc. No. 1415624, at 4 (D.C. Cir. Jan. 16, 2013)
[5] *Id.*

39. In 2015 and 2016, EPA solicited information from the public that would support the reconsideration process, including through a formal Information Collection Request ("ICR") proposal. *See* 81 Fed. Reg. 35,763 (June 3, 2016).

40. The environmental organizations submitted detailed written comments and verbal testimony to EPA on the importance of gathering robust and up-to-date air toxics data needed to help the agency characterize hazardous air pollutants emitted from oil and gas sources and better estimate short- and long-term health benefits of regulating emissions under sections 111 and 112 of the Clean Air Act.[6]

41. In November 2016, EPA issued the finalized ICR to owners and operators of oil and gas sources that would have collected emissions data on various pollutants from those sources, including hazardous air pollutants.[7]

42. Shortly thereafter, in December 2016, EPA issued a response letter to the environmental organizations, which stated that its process for reconsideration of the 2012 NESHAP rule was still "on-going" and included a review of at least three key issues.[8]

43. In early 2017, EPA withdrew the ICR without notice and comment and stopped seeking the emission data.[9]

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[6] *See* Technical Comments of Community and Environmental Groups Addressing the Inclusion of Hazardous Air Pollutants in the Oil and Gas Information Collection Request, filed by Natural Resources Defense Council et al. (Aug. 2, 2016), https://www.regulations.gov/comment/EPA-HQ-OAR-2016-0204-0066.

[7] Letter from Peter Tsirigotis, Dir., Sector Policies & Programs Div., Ofc. of Air Quality Planning & Standards, EPA, to Earthjustice, at 1-2 (Dec. 14, 2016) [hereinafter Tsirigotis Letter].

[8] *Id.* at 1.

[9] *See* 82 Fed. Reg. 12,817 (Mar. 7, 2017); *see also* EPA's Motion to Continue Holding Cases in Abeyance Pending Administrative Reconsideration, Am. Petroleum Inst. v. EPA, Case No. 12-1405, Doc. No. 1698120 ¶¶ 7-8 (D.C. Cir. Oct. 10, 2017).

44. Several months later, EPA sent a letter to the environmental organizations and other petitioners for reconsideration, indicating that the agency "hereby grants the petitions for reconsideration" on two discrete issues: "[e]stablishment of standards that accounted for variability using an upper prediction limit of 99 percent," and "standards for small glycol dehydrators."[10] Accordingly, by this letter, EPA "conven[ed] a proceeding to reconsider these issues related to the 2012 NESHAP."[11] The letter did not address any of the other issues raised in the environmental groups' 2012 petition for reconsideration.

45. EPA has thus far taken no further action pursuant to this reconsideration process, which ostensibly remains ongoing to this day.[12]

46. EPA has delayed completing final action on reconsideration for over nine years.

Health Effects of Oil and Gas Sources' Air Pollution

47. There are about 2,996 Oil and Natural Gas Production facilities regulated under Subpart HH, 580 of which are major sources. There are about 103 Natural Gas Transmission and Storage facilities regulated under Subpart HHH, 72 of which are major sources.[13]

48. For the Oil and Natural Gas Production source category, there are currently four regulated emission points: large and small glycol dehydrators, storage vessels with the potential for flash emissions, and equipment leaks from ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service (as defined in 40 C.F.R. § 63.761), which are

[10] Letter from E. Scott Pruitt, Administrator, EPA, to American Petroleum Institute et al. (Oct. 6, 2017).
[11] *Id.*
[12] *See* EPA's Status Report, Am. Petroleum Inst. v. EPA, Case No. 12-1405, Doc. No. 1923054, at 2 (D.C. Cir. Nov. 18, 2021); *see also* Tsirigotis Letter, *supra*.
[13] Lists created by searching EPA's ECHO website for sources regulated under MACT Subparts HH and HHH and narrowing the search to those facilities listed as major sources. *See* EPA, Enforcement and Compliance History Online (ECHO), https://echo.epa.gov/.

located at natural gas processing plants. 40 C.F.R. § 63.760(b). For the Natural Gas Transmission and Storage, currently regulated emission points include only large and small glycol dehydrators. 40 C.F.R. § 63.1270(b).

49. There are 57 million people living within 50 kilometers of oil and gas facilities, according to EPA data.[14] Residents of rural communities like Eagle Ford, Texas, and of urban neighborhoods such as Wilmington in the city of Los Angeles, are surrounded by oil and gas operations near their homes, public schools, childcare centers, senior citizen housing complexes, workplaces, healthcare facilities, and recreational parks.[15]

50. EPA's 2012 residual risk assessment showed that individuals living in close proximity to oil and gas sources endure substantial cancer, chronic non-cancer, and acute health threats, as well as temporary and permanent disabilities, from being exposed daily to emissions from nearby oil and gas facilities.

51. The oil and gas sector emits thousands of tons of harmful compounds each year, including organic hazardous air pollutants such as benzene.[16] Benzene is a known human

[14] EPA Ofc. of Air and Radiation, Final Residual Risk Assessment for the Oil and Gas Production and Natural Gas Transmission and Storage Source Categories, at 31-32 tbl. 4.2-1 (Apr. 2012), https://www.regulations.gov/document/EPA-HQ-OAR-2010-0505-4558.

[15] *See, e.g.*, Jim Morris et al., *Big Oil, Bad Air: Fracking the Eagle Ford Shale of South Texas*, Ctr. For Pub. Integrity (Feb. 18, 2014), https://eagleford.publicintegrity.org/; Alexandria Herr & Clayton Aldern, *California's Dirty Little Secret: Oil Wells in the Backyard*, Grist (Oct. 13, 2021), https://grist.org/project/accountability/wilmington-california-oil-gas-setbacks/ ("[The Wilmington Oil Field] pumps out 46,000 barrels per day from 1,550 active wells. Wilmington is also home to more than 50,000 residents, more than 90 percent of whom are people of color.").

[16] *See*, *e.g.*, Natural Resources Defense Council, *Drilling in California: Who's at Risk?*, at 6 (Oct. 2014), https://www.nrdc.org/sites/default/files/california-fracking-risks-report.pdf; Ctr. for Biological Diversity, *Danger Next Door: The Top 12 Air Toxics Used for Neighborhood Oil Drilling in Los Angeles* (Dec. 2017), https://www.biologicaldiversity.org/publications/papers/DangerNextDoor.pdf.

carcinogen, which EPA identified as a major contributor to cancer risk nationwide in the 2014 National Air Toxics Assessment.[17]

52. EPA has long recognized that carcinogens have no safe level of human exposure and that cancer risk is additive.

53. Prenatal exposure to carcinogens and other air pollutants and exposure during early childhood increase an individual's lifetime cancer risk and other health risks due to greater vulnerability to harm from pollution during early stages of development.

54. Socioeconomic disparities and related stressors increase vulnerability to carcinogenic and other toxic exposures.

55. EPA recently "conducted a new analysis of HAP-related exposures and risks across the United States" from the oil and gas sector. Based on 2017 National Emissions Inventory data—which "includes emissions from the sources subject to regulation and sources outside of the regulation"—EPA estimated that approximately 6.8 million people have a cancer risk of more than one-in-one-million, more than 142,000 people have a cancer risk of equal to or more than 50-in-one-million, and more than 38,000 people have a cancer risk of equal to or more than 100-in-one-million.[18] EPA's presumptive limit on maximum individual lifetime risk is approximately 100-in-one million.[19]

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[17] 2014 NATA Summary of Results, at 4, https://www.epa.gov/sites/default/files/2020-07/documents/nata_2014_summary_of_results.pdf.

[18] EPA, Regulatory Impact Analysis for the Proposed Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, at 4-25 to 4-26, 4-30 tbl. 4-7 (Oct. 2021) [hereinafter RIA], https://www.epa.gov/system/files/documents/2021-11/proposal-ria-oil-and-gas-nsps-eg-climate-review_0.pdf.

[19] EPA originally articulated its 100-in-one-million presumption in the 1989 Benzene Rule. Plaintiffs have previously indicated in comments to the agency that this figure is now outdated and that a lower presumptive level of risk acceptability is necessary to take into account the

56. Breathing and dermal absorption of certain pollutants emitted by oil and gas sources can also cause other kinds of chronic, long-term harm, such as damage to the liver and kidneys; respiratory issues; degeneration of the nervous system; degeneration of the immune system; and developmental and reproductive harms, including birth defects, ovarian damage, and developmental delay.

57. In addition, breathing some of these pollutants can cause severe or acute harm from short-term exposure, such as difficulty breathing or decline in neurobehavioral performance.

58. Some of the hazardous air pollutants emitted from oil and gas sources persist in the environment or bioaccumulate.

59. People living near oil and gas facilities are not only exposed to multiple sources, but also to multiple pollutants, and through multiple routes of exposure.

60. In addition, volatile organic compounds, which are emitted in significant quantities by oil and gas sources, are precursors to the formation of ozone in the ambient air.[20]

61. Ambient ozone can cause or worsen asthma attacks, lung inflammation, reduced lung function, respiratory symptoms (*e.g.*, cough, chest pain, throat and nose irritation), and increase lung permeability. Both short-term and long-term exposure to ozone is associated with increased hospitalizations and deaths from respiratory causes. *See* EPA, National Ambient Air

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sensitivity of children and populations exposed to multiple sources of pollution. *See* Comments on National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Sector; Review and Proposed Rule for 40 C.F.R. Part 63 (July 28, 2011), filed by Sierra Club et al. (Nov. 30, 2011), https://www.regulations.gov/comment/EPA-HQ-OAR-2010-0505-4457.

[20] *See* RIA at 3-16.

Quality Standards for Ozone, 80 Fed. Reg. 65,292, 65,307-08 (Oct. 26, 2015). Research has also linked long-term exposure to ozone to direct negative impacts on the cardiovascular system.[21]

62. As EPA has repeatedly recognized, children are especially vulnerable to the harmful effects of ozone, including asthma. *See, e.g.*, *id.* at 65,310-13, 65,446. Asthma-related hospitalizations and deaths are elevated among children, particularly among Black children. EPA, National Ambient Air Quality Standards for Ozone, Final Rule, 62 Fed. Reg. 38,856, 38,864 (July 18, 1997). In fact, "Black children are two times as likely to be hospitalized for asthma and are four times as likely to die from asthma as White children."[22]

63. EPA has found that ozone can also damage vegetation including forests, commercial trees, and agricultural crops, significantly harming ecosystems.

Revision Rulemakings

64. The 2012 NESHAP rule for Oil and Natural Gas Production and Natural Gas Transmission and Storage contains outdated provisions that EPA would likely be required to revise and strengthen in the overdue rulemakings. These revisions would likely lead to reductions in air pollution and the avoidance or reduction of exposure to such pollution for people living near oil and gas sources.

65. As part of its overdue § 7412(d)(6) review and revision, EPA would be required to set limits on all currently uncontrolled HAP emissions from the oil and gas source categories. *See Louisiana Envtl. Action Network*, 955 F.3d at 1096 ("There is no dispute that the Act requires EPA to have in place emission standards to control *all* the listed pollutants that a source

[21] EPA, *Study Examines if Long-Term Exposure to Ozone Impacts the Cardiovascular System* (Feb. 20, 2020), https://www.epa.gov/sciencematters/study-examines-if-long-term-exposure-ozone-impacts-cardiovascular-system.

[22] EPA, *Children's Environmental Health Disparities: Black and African American Children and Asthma*, at 3, https://www.epa.gov/sites/production/files/2014-05/documents/hd_aa_asthma.pdf.

category emits, and requires the Agency to revise existing standards that are underinclusive to add section 112(d)(2)-(3) controls for listed but unaddressed pollutants.") (emphasis added).

66. There are many emission points and emissions in the Oil and Natural Gas Production and Natural Gas Transmission and Storage source categories that remain uncontrolled. For example, there are currently no control standards for storage vessels without the potential for flash emissions ("PFE"), storage tanks with PFE in the production sector, storage vessels and equipment leaks in the transmission and storage sector, pigging, tank loading, compressors, and flowback and produced water storage. Nor does the current NESHAP place controls on non-benzene HAP emissions from large glycol dehydrators or non-BTEX HAP emissions from small glycol dehydrators.

67. In addition, the NESHAPs for Oil and Natural Gas Production and Natural Gas Transmission and Storage contain affirmative defenses to civil penalties for exceedances of the emission standards caused by during startup, shutdown, and malfunction periods. *See* 40 C.F.R. §§ 63.762, 63.1272. Communities near oil and gas sources are exposed to spikes in dangerous pollution from uncontrolled releases during startups, shutdowns, and malfunctions. Affirmative defenses for exceedances during these events are illegal because they exceed EPA's authority and violate the Clean Air Act citizen suit provision under § 304(a). *See* 42 U.S.C. § 7604(a); *Natural Res. Def. Council v. EPA*, 749 F.3d 1055, 1062-63 (D.C. Cir. 2014). Thus, under a § 7412(d)(6) review process, EPA would be required to remove the unlawful affirmative defenses in the current rules for excess emissions during startup, shutdown, and malfunction events. *See Sierra Club*, 551 F.3d at 1027-28.

68. EPA's overdue § 7412(d)(6) review must also "tak[e] into account developments in practices, processes, and control technologies," 42 U.S.C. § 7412(d)(6), such as fenceline

monitoring and corrective action for fugitive air emissions of benzene, which EPA has put in place at a similar source—petroleum refineries—as a way of assuring compliance with the emission standards. *See* 80 Fed. Reg. 75,178 (Dec. 1, 2015).

69. Further, the NESHAPs for Oil and Natural Gas Production and Natural Gas Transmission and Storage incorporate EPA's general flare standards under 40 C.F.R. § 63.11, which are also overdue for review under § 7412(d)(6). Yet on multiple occasions, EPA has recognized that the general flare standards under 40 C.F.R. § 63.11 are outdated, lead to the operation of flares with poor destruction efficiency, and require revision. For example, in recent rulemakings for refineries and chemical and petrochemical source categories, EPA adopted improved flare operational and monitoring requirements.[23] This is yet another issue that EPA would likely find necessary to revise after performing its statutorily required review under § 7412(d)(6).

70. Indeed, EPA implicitly recognized this in its recent proposed revisions to the standards of performance for the Crude Oil and Natural Gas source category, in which the agency sought comment on "whether additional measures to ensure proper performance of flares would be appropriate to ensure that flares meet the current 95 percent control requirement," specifically noting the recent improvements for flare standards that EPA promulgated for petroleum refineries in 2015 and other industrial sectors in several recent NESHAP rulemakings. *See* Standards of Performance for New, Reconstructed, and Modified Sources and Emissions

[23] *See*, *e.g.*, EPA, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Residual Risk and Technology Review, 85 Fed. Reg. 49,084, 49,094 (Aug. 12, 2020); EPA, National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production, 85 Fed. Reg. 40,386, 40,389 (July 6, 2020); EPA, Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 80 Fed. Reg. 75,178, 75,206 (Dec. 1, 2015).

Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review; Proposed Rule, 86 Fed. Reg. 63,110, 63,246 (Nov. 15, 2021).

71. Developments have also occurred in leak detection and repair—such as the use of leak detection sensor network technology—and other types of pollution controls that can achieve lower levels of emissions from oil and gas sources, which EPA would need to consider in the overdue § 7412(d)(6) rulemaking.[24]

ALLEGATIONS OF INJURY

72. Plaintiffs and their members are and will continue to be harmed by the Administrator's failures to take the actions required by 42 U.S.C. § 7412(d)(6) for the oil and gas source categories under 40 C.F.R. Part 63, Subparts HH and HHH.

73. Plaintiffs' members live, work, travel, recreate, attend school or educational programs, provide healthcare to family members, and engage in a variety of other activities near facilities in the source category. Plaintiffs' members suffer exposure and other harm to their health, recreational, aesthetic, educational, professional, and other interests due to breathing hazardous air pollutants emitted by facilities in the source category. Exposure to hazardous air pollutants emitted by sources in the source category has adverse health effects, which may include respiratory, neurological, developmental, and reproductive harm; damage to bodily organs and the central nervous system; cancer; and temporary and permanent disabilities, as well as other health effects described above.

74. Plaintiffs' members are concerned that hazardous air pollutants are present in the locations where they live, work, travel, recreate, attend school or educational programs, provide

[24] Other developments include multi-gas open path extractive Fourier transform infrared spectroscopy, optical remote sensing instruments including Solar Occultation Flux, differential optical absorption spectroscopy, and differential absorption LIDAR.

healthcare to family members, and engage in other activities. These reasonable concerns about their increased exposure from such activities and other resulting harms from such exposure diminish their enjoyment of activities and areas they previously enjoyed or would like to continue to engage in or use, and thereby harm their recreational, aesthetic, educational, professional, and other interests.

75. For example, Plaintiff Sierra Club has over 285,000 members across Texas, California, Pennsylvania, Ohio, New Mexico, North Dakota, Oklahoma, West Virginia, Colorado, Utah, Wyoming, and Louisiana, where oil and gas activity and infrastructure are particularly prevalent, including sources that are regulated by Subparts HH and HHH or that could be regulated if EPA took the actions required by § 7412(d)(6).

76. One of these members lives in the city of Fort Worth, Texas, with his wife and two children. There are at least 40 active gas wells at over a dozen different well sites located within 2.5 miles of the member's home. These wells are co-located with more than 50 storage tanks. The closest active well facilities to the member's house are located approximately 0.5 miles away and are co-located with three storage tanks. The member's children attend school in a building within 700 feet of an active gas well pad. There are also more than 40 gas wells within that same 2.5-mile radius of the member's house that have been permitted but not yet drilled. In greater Tarrant County, there are at least 3,300 active gas wells. Finally, there are two active gas processing plants within 20 miles of the member's house. The member is concerned about his exposure and his family's exposure to hazardous air pollutants from these facilities and the associated elevated risk of health harm as described above. *See supra* ¶¶ 50-52, 55-57, 60-62.

77. In previous litigation either concerning EPA's 2012 NESHAP rule or the related New Source Performance Standards, Plaintiffs' members have filed declarations demonstrating

the specific harms they have suffered from oil and gas sources due to EPA's actions or inaction.[25] In compliance with this Circuit's requirements, Plaintiffs are prepared to file their members' declarations with their principal brief or in the event their standing is challenged.

78. Further, oil and gas sources emit air pollutants that can damage surrounding wildlife, plants, waters, land, communities, and ecosystems, and thus harm Plaintiffs' members' recreational, aesthetic, educational, professional, and other interests in those wildlife, plants, waters, land, communities, or ecosystems. As detailed above, the pollution emitted by oil and gas sources includes hazardous air pollutants and volatile organic compounds, which contribute to ambient ozone that can harm plant species and can result in changes in wildlife habitat. These changes can lead to wildlife avoidance of certain areas, as well as a reduction in biodiversity or other changes to a local community's ecosystem. Ecosystem changes make it more difficult for Plaintiffs' members to observe, fish, cultivate, study, research, or write about wildlife, plants, or ecosystems.

79. Plaintiffs and their members suffer additional harm because they do not have up-to-date information, public safety advisories, published findings, or determinations from the Administrator regarding the emission limitations existing sources have achieved, the current pollution control methods, practices, and technologies that could be or are being used to achieve emission reductions, the health and environmental risks that remain under the existing standards, or other information relevant to the need for stronger emission and performance standards. This information would be provided to Plaintiffs, their members, and other interested members of the

[25] *See, e.g.*, Declaration of John MacFarlane, California v. Regan, Case No. 20-1357, Doc. No. 1874715 (D.C. Cir. Dec. 7, 2020); Declaration of Jesse N. Marquez, Am. Petroleum Inst. v. EPA, Case No. 12-1405, Doc. No. 1405110 (D.C. Cir. Nov. 14, 2012); Declaration of Jane Williams, Am. Petroleum Inst. v. EPA, Case No. 12-1405, Doc. NO. 1405110 (D.C. Cir. Nov. 14, 2012).

public as a result of the Administrator's required actions pursuant to § 7412(d)(6). *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(6) (describing notice and informational disclosures required as part of rulemakings under § 7412).

80. If Plaintiffs and their members had this information, they would use it to work for stronger health and environmental protections; to educate members, supporters, and the public pursuant to their organizational missions; and to protect themselves and their families from air pollutants and affected land, water, and food. The denial of this information impairs Plaintiffs' ability to provide information and services to their members to assist them in protecting their interests, hampers the ability of Plaintiffs and their members to take actions to protect their health and communities—including research and adoption of new mitigation and emergency preparedness measures—and diminishes their enjoyment of activities in their daily lives.

81. Plaintiffs and their members suffer harm because they are denied the opportunity to present written comments, data, documentary information, views, and arguments to EPA and have them considered by the agency and responded to as part of the overdue § 7412(d)(6) rulemaking. The Administrator's failures to conduct the overdue rulemakings have thus denied Plaintiffs and their members the opportunity to seek greater health protections and emissions reductions—including the development of new mitigation and emergency preparedness provisions—and to have EPA consider and respond to such comments in taking the final actions required by § 7412(d)(6). This deprivation of the opportunity to present comments and arguments and have them considered and addressed by EPA impairs Plaintiffs' and their members' ability to serve and protect their interests and fulfill their organizational missions.

82. Plaintiffs and their members suffer harm because the Administrator has not issued final rules or determinations under § 7412(d)(6) addressing and including all matters these

provisions require, as discussed above. Any such rule or determination would be judicially reviewable. *See* 42 U.S.C. § 7607(b). Deprivation of the right to judicial review further harms the ability of Plaintiffs and their members to protect their interests and fulfill their organizational missions.

83. The Administrator's failures to take actions required by § 7412(d)(6) deprive Plaintiffs' members of the cleaner air that would result from those actions. Consequently, Defendant's violation of § 7412(d)(6) prolongs and increases Plaintiffs' members' exposure to hazardous air pollutants, volatile organic compounds that contribute to ozone, and the related and resulting health, recreational, aesthetic, and other injuries as described above. Defendant also prolongs and increases the air pollutant exposure of wildlife, plant, water, land, local communities, and ecosystems, resulting in harm to Plaintiffs' members' interests, as described above. Emission reductions required under § 7412(d)(6) would reduce these exposures, and would reduce the related health, recreational, aesthetic, and other harms suffered by Plaintiffs' members.

84. By not taking the actions required by § 7412(d)(6), the Administrator deprives Plaintiffs and their members of information, published findings, and determinations, as described above. *See, e.g.*, *id.* § 7607(d)(3)-(6). In addition, the Administrator's failures to take the actions required by § 7412(d)(6) deprive Plaintiffs and their members of the opportunity to receive judicial review of the lawfulness of the final EPA actions. *See id.* § 7607(b). These failures make it more difficult for Plaintiffs and their members to seek health and environmental protections from air pollutants; to shield themselves, their families, and other community members from exposure to such pollutants; to protect their health, recreational, aesthetic, and other interests; and to be able to enjoy activities in their daily life without concerns about exposure to air

pollutants. These failures also impair Plaintiffs' ability to provide educational services to their members concerning air pollution from oil and gas sources and hinder Plaintiffs' ability to provide services and take actions vital to fulfilling their public health missions.

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

CLAIM FOR RELIEF

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

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

87. Each of the Administrator's ongoing failures to review and to either revise or issue a determination not to revise the NESHAP regulating oil and gas source categories under 40 C.F.R. Part 63, Subparts HH and HHH, in accordance with 42 U.S.C. § 7412(d)(6), constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary" within the meaning of § 7604(a)(2) of the Clean Air Act for each such source category.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request, for the NESHAP regulating oil and gas source categories, 40 C.F.R. Part 63, Subparts HH and HHH, that the Court:

(1) Declare that each of the Defendant Administrator's failures to review the emission standards and to either revise standards promulgated under § 7412 or issue a final

determination that such revision is not necessary under § 7412(d)(6) for the oil and gas source categories within eight years, constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of § 7604(a)(2);

(2) Order the Defendant Administrator to review the emission standards and to either revise them appropriately or issue a final determination that such revision is not necessary under § 7412(d)(6) for each of the oil and gas source categories, in accordance with an expeditious deadline specified by this Court;

WHEREFORE, Plaintiffs respectfully request, for each of the above-listed obligations and rulemakings at issue in this case, that the Court retain jurisdiction to ensure compliance with this Court's decree, award Plaintiffs the costs of this action, including attorney's fees, and grant such other relief as the Court deems just and proper.

DATED: April 12, 2022

Respectfully submitted,

/s/ *Adam Kron*
Adam Kron (D.C. Bar No. 992135)
Adrienne Y. Lee (D.C. Bar No. 1742666)
EARTHJUSTICE
1001 G Street NW, Suite 1000
Washington, D.C. 20001
(202) 667-4500
akron@earthjustice.org
alee@earthjustice.org

Counsel for Plaintiffs California Communities Against Toxics, Coalition For A Safe Environment, and Sierra Club

Andres Restrepo (D.C. Bar No. 999544)
SIERRA CLUB
50 F St. NW, 8th Floor
Washington, D.C. 20001
(301) 367-7572
andres.restrepo@sierraclub.org

Counsel for Plaintiff Sierra Club