

1 Wendy Park (Cal. Bar No. 237331)  
2 CENTER FOR BIOLOGICAL DIVERSITY  
3 1212 Broadway, Suite 800  
4 Oakland, CA 94612  
5 Phone: 510-844-7100 (Ext. 338)  
6 Email: wpark@biologicaldiversity.org

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8 Attorney for Plaintiffs Center for Biological  
9 Diversity and Sierra Club

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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CENTER FOR BIOLOGICAL DIVERSITY )  
and SIERRA CLUB, )

Plaintiffs, )

v. )

MICHAEL S. REGAN, )  
in his official capacity as Administrator, )  
United States Environmental Protection )  
Agency, )

Defendant. )  
\_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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

**INTRODUCTION**

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2 1. This is a Clean Air Act “deadline” suit against Michael S. Regan, in his official capacity  
3 as Administrator of the United States Environmental Protection Agency (EPA), for his failure to  
4 perform mandatory duties which will protect people, ecosystems, and wildlife from dangerous  
5 exposure to sulfur oxides (SO<sub>x</sub>) air pollution.  
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7 2. SO<sub>x</sub>, which is formed primarily from the combustion of fossil fuel containing sulfur, such  
8 as coal and diesel, harms human health and the environment. Even short-term exposure to SO<sub>x</sub>  
9 has significant health impacts, including decrements in lung function, aggravation of asthma, and  
10 respiratory and cardiovascular morbidity. SO<sub>x</sub> also contributes to the formation of acid rain,  
11 which damages trees, crops, historic buildings, and monuments, and alters the acidity of both  
12 soils and water bodies.  
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14 3. The Clean Air Act requires EPA to establish health- and welfare-protective National  
15 Ambient Air Quality Standards (NAAQS) to limit the amount of SO<sub>x</sub> in the outdoor air. Areas  
16 with SO<sub>x</sub> pollution levels that exceed the standards must clean up their air.  
17

18 4. To better protect the public from SO<sub>x</sub>, EPA promulgated a sulfur dioxide (SO<sub>2</sub>) NAAQS  
19 in 2010. In response to the 2010 NAAQS, EPA designated the following areas as nonattainment,  
20 meaning that the air quality in these areas has SO<sub>2</sub> pollution that violates the standard: Detroit,  
21 MI Wayne County (part) (Detroit); Sullivan County (part), TN; Hayden, AZ; Miami, AZ; Giles  
22 County (part), VA; Huntington, IN; Evangeline Parish (part), LA; Piti-Cabras, Guam; Guayama-  
23 Salinas, PR; San Juan, PR; Alton Township, IL; Anne Arundel County and Baltimore County  
24 (part), MD (Baltimore); St. Clair, MI; Freestone and Anderson Counties (part), TX; Rusk and  
25 Panola Counties (part), TX; and Titus County (part), TX. More than 1.6 million people live in  
26 these areas with air pollution that exceeds the SO<sub>2</sub> NAAQS.  
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1 5. Despite the passage of 14 years since EPA created the 2010 SO<sub>2</sub> NAAQS, EPA has not  
2 taken all the steps mandated by Congress to bring the air pollution levels in these areas below  
3 that ambient air quality standard. Thus, the Plaintiffs are forced to bring this deadline suit to get  
4 EPA to perform its mandatory duties for which the deadlines have passed.  
5

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7 **JURISDICTION AND NOTICE**

8 6. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction over this  
9 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)  
10 (Clean Air Act).  
11

12 7. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or  
13 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to  
14 order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C.  
15 § 2202 authorizes this Court to issue injunctive relief.

16 8. Plaintiffs mailed, by certified mail, to EPA written notice of intent to sue regarding the  
17 violations alleged in this Complaint. The notice letter was postmarked December 20, 2023.  
18 EPA received it no later than December 29, 2023. More than 60 days have passed since  
19 Plaintiffs mailed the notice letter. EPA has not remedied the violations alleged in this  
20 Complaint. Therefore, a present and actual controversy exists between the parties.  
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23 **VENUE**

24 9. Venue is proper in this Court under 28 U.S.C. § 1391(e). Plaintiff Sierra Club maintains  
25 its principal place of business in Oakland, California. Oakland, California is in the Northern  
26 California judicial district. This is a civil action in which the defendant is an officer or employee  
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1 of the United States acting in his official capacity or under color of legal authority. No real  
2 property is involved in this action. Arizona is part of EPA Region 9. EPA Region 9 is  
3 headquartered in San Francisco, CA. Defendant EPA resides and performs its official duties in  
4 this district.

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

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12 **PARTIES**

13 11. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
14 corporation incorporated and existing under the laws of the State of California, with its main  
15 California office in Oakland. The Center for Biological Diversity has approximately 84,000  
16 members throughout the United States and the world. The Center for Biological Diversity's  
17 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,  
18 ecosystems, public lands and waters, and public health through science, policy, and  
19 environmental law. Based on the understanding that the health and vigor of human societies and  
20 the integrity and wildness of the natural environment are closely linked, the Center for Biological  
21 Diversity is working to secure a future for animals and plants hovering on the brink of extinction,  
22 for the ecosystems they need to survive, and for a healthy, livable future for all of us.

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24 12. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws  
25 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and  
26 largest grassroots environmental organization in the United States, with more than 670,000  
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1 members nationally. Sierra Club’s mission is to explore, enjoy, and protect the wild places of  
2 the Earth; to practice and promote the responsible use of the Earth’s resources and ecosystems;  
3 to educate and enlist humanity to protect and restore the quality of the natural and human  
4 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this  
5 mission through advocacy, litigation, and educational outreach to its members and state chapters.  
6  
7 Sierra Club and its members have a long history of involvement in activities related to air  
8 quality.

9 13. Plaintiffs’ members live, work, recreate, travel, and engage in other activities throughout  
10 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the  
11 affected areas threatens and damages, and will continue to threaten and damage, the health and  
12 welfare of Plaintiffs’ members, as well as their ability to engage in and enjoy their other  
13 activities. Pollution diminishes Plaintiffs’ members’ ability to enjoy the aesthetic qualities and  
14 recreational opportunities of the affected areas.  
15

16 14. The acts and omissions of EPA alleged here harm Plaintiffs’ members by prolonging  
17 poor air quality conditions that adversely affect or threaten their health, and by nullifying or  
18 delaying measures and procedures mandated by the Act to protect their health from SO<sub>x</sub>  
19 pollution in places where they live, work, travel, and recreate.  
20

21 15. The acts and omissions of EPA alleged here further harm Plaintiffs’ members’ welfare  
22 interest in using and enjoying the natural environment. Elevated levels of SO<sub>x</sub> damage plant life,  
23 aquatic life, and natural ecosystems, thus harming Plaintiffs’ members’ recreational, scientific,  
24 and aesthetic interests.  
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1 16. EPA's failure to timely perform the mandatory duties described herein also adversely  
2 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
3 opportunities, as well as information that they are entitled to under the Clean Air Act.

4 17. The above injuries will continue until the Court grants the relief requested herein. A  
5 court order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs'  
6 and Plaintiffs' members' injuries.

7 18. Defendant MICHAEL S. REGAN is the Administrator of the EPA. Administrator Regan  
8 is charged with the duty to uphold the Clean Air Act and to take required regulatory actions  
9 according to the deadlines established by the Act, including the mandatory duties at issue in this  
10 case. Administrator Regan is sued in his official capacity.  
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14 **FACTUAL BACKGROUND: SULFUR DIOXIDE**

15 19. Of the SO<sub>x</sub> gases, sulfur dioxide (SO<sub>2</sub>) is the most common. *See* Sulfur Dioxide  
16 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
17 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited August 5, 2020). The largest source of SO<sub>2</sub> originates from the  
18 combustion of fossil fuels containing sulfur by power plants and other industrial facilities. *Id.*  
19 SO<sub>2</sub> is also produced during certain industrial processes, such as extracting metal from ore and in  
20 some oil refining processes, and by ships and other vehicles and heavy equipment that burn fuel  
21 with sulfur content. *Id.*; Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,524 (June  
22 22, 2010).  
23

24 21. Human health can be dangerously impacted by SO<sub>x</sub> emissions in as little as five minutes.  
25 Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,525. SO<sub>x</sub> pollution contributes to  
26 respiratory problems by impacting lung function and aggravating asthma, particularly for  
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1 children and the elderly. *Id.* at 35,525-29. SO<sub>x</sub> emissions can also aggravate existing heart and  
2 lung diseases, and cause respiratory and cardiovascular morbidity. *Id.*

3 22. SO<sub>x</sub> emissions also impact the environment. Acute and chronic exposures to SO<sub>x</sub> lead to  
4 foliar injury, decreased photosynthesis, and decreased vegetation growth. Secondary NAAQS  
5 for Oxides of Nitrogen and Sulfur, 77 Fed. Reg. 20,218, 20,224 (Apr. 3, 2012). In addition,  
6 because SO<sub>x</sub> emissions may be transmitted long distances, they contribute to visibility  
7 impairment problems in many national parks and wilderness areas. *See* Sulfur Dioxide  
8 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
9 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited March 24, 2024). Furthermore, SO<sub>x</sub> emissions have the potential to  
10 negatively affect endangered species. *See* Secondary NAAQS for Oxides of Nitrogen and  
11 Sulfur, 77 Fed. Reg. at 20,234. Finally, SO<sub>x</sub> emissions contribute to the formation of acid rain,  
12 which in turn impacts both the human and natural environment. Sulfur Dioxide Pollution: Sulfur  
13 Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last  
14 visited March 24, 2024). For example, acid rain damages trees, fish and wildlife, buildings, and  
15 monuments, and alters the acidity of both soils and water bodies. Effects of Acid Rain, EPA,  
16 <https://www.epa.gov/acidrain/effects-acid-rain> (last visited March 24, 2024).

17 23. SO<sub>x</sub> can also react with other compounds in the atmosphere to form small particles,  
18 which contribute to particulate matter (PM) pollution. Secondary NAAQS for Oxides of  
19 Nitrogen and Sulfur, 77 Fed. Reg. at 20,222. PM can penetrate deeply into the lungs and can  
20 contribute to health problems and death. *See* Sulfur Dioxide Pollution: Sulfur Dioxide Basics,  
21 EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited March 24,  
22 2024). SO<sub>x</sub> also facilitates mercury methylation, which results in a form of mercury that is  
23 especially dangerous to humans and wildlife. EPA, Integrated Science Assessment for Oxides of  
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1 Nitrogen and Sulfur – Ecological Criteria, Executive Summary at 12 (2008), *available at*  
2 <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=201485>.

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4 **STATUTORY AND REGULATORY BACKGROUND**

5  
6 24. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s  
7 air resources so as to promote the public health and welfare and the productive capacity of its  
8 population.” 42 U.S.C. § 7401(b)(1). In so enacting, Congress wanted to “**speed up**, expand,  
9 and intensify the war against air pollution in the United States with a view to assuring that the air  
10 we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong.,  
11 2d Sess. 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356 (emphasis added).

12  
13 25. Central to the Act is the requirement that EPA establish national ambient air quality  
14 standards (NAAQS) for certain widespread air pollutants that endanger public health and  
15 welfare, referred to as “criteria pollutants.” 42 U.S.C. §§ 7408-7409. One criteria pollutant is  
16 sulfur dioxide. *See* 40 C.F.R. §§ 50.4, 50.5, 50.17.

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

24  
25 27. After EPA sets or revises a NAAQS, the Clean Air Act requires EPA to take steps to  
26 implement the standard. Within two years of revising a standard, EPA must “designate” areas as  
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1 not meeting the standard, known as “nonattainment,” or meeting the standard, known as  
2 “attainment.” 42 U.S.C. § 7407(d)(1)(A)-(B).

3 28. For each area designated nonattainment, States<sup>1</sup> must develop a plan to attain the  
4 NAAQS. These plans, which must be submitted to EPA, are called State Implementation Plans  
5 (SIPs). *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7514 – 7514a. SIPs to attain the NAAQS  
6 in areas designated as nonattainment are known as nonattainment SIPs. These nonattainment  
7 SIPs must include various elements set forth in the Clean Air Act.  
8

9 29. EPA is required to determine whether a SIP submittal is administratively complete. 42  
10 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a State has not complied by  
11 providing the required SIP submittal, there is no submittal that can be deemed administratively  
12 complete, and EPA must make a determination stating that the State failed to submit the required  
13 state implementation plan. *Id.* This determination is referred to as a “finding of failure to  
14 submit.”  
15

16 30. A finding of failure to submit is critical because it triggers a two-year “clock” for EPA to  
17 step into the void left by the State’s failure to submit a SIP by promulgating a federal  
18 implementation plan (FIP) to reduce SO<sub>2</sub> levels to below the NAAQS. 42 U.S.C. § 7410(c).  
19

20 31. If a State does submit a SIP submittal, EPA must determine if the submittal is  
21 administratively complete. EPA has a mandatory duty to approve or disapprove administratively  
22 complete SIP submittals within 12 months of finding the submittal administratively complete.  
23 42 U.S.C. § 7410(k)(2) – (4).  
24

25 32. An additional mandatory duty that the Clean Air Act imposes on EPA is to determine if a  
26 nonattainment area has come into compliance with a NAAQS by the nonattainment area’s  
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28 <sup>1</sup> Plaintiffs use the term “State” in this complaint as the term is defined in 42 U.S.C. § 7602(d).

1 attainment date. That is, when EPA designates an area as nonattainment, the Clean Air Act also  
2 requires EPA to set a specific date by which the nonattainment area must come into compliance  
3 with a NAAQS, that is “attain” the NAAQS. This is known as the nonattainment area’s  
4 attainment date. No later than 6 months after the attainment date for a nonattainment area, EPA  
5 has a mandatory duty to determine whether an area has attained the NAAQS and publish a notice  
6 in the Federal Register of that determination. 42 U.S.C. § 7509(c). This finding is important  
7 because if EPA finds that a nonattainment area failed to attain by its attainment date, the State in  
8 which the nonattainment area is located must develop and submit to EPA a new, better  
9 nonattainment state implementation plan to bring the nonattainment area into attainment.  
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### 12 **FACTUAL BACKGROUND**

13  
14 33. SO<sub>2</sub> is the pollutant that EPA has used as a surrogate parameter for regulation of all SO<sub>x</sub>  
15 emissions since first promulgating a NAAQS for SO<sub>2</sub> in 1971. *See* Nat’l Primary and Secondary  
16 Ambient Air Quality Standards, 36 Fed. Reg. 8,186 (Apr. 30, 1971). Effective August 23, 2010,  
17 EPA revised the primary SO<sub>2</sub> NAAQS. Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at  
18 35,520. EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks **a year**  
19 will be prevented by the 2010 SO<sub>2</sub> NAAQS. EPA, Final Regulatory Impact Analysis for the  
20 SO<sub>2</sub> NAAQS, at 5-35 (2010), *available at* [https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf)  
21 [so2\\_ria\\_final\\_2010-06.pdf](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf). However, these lives can only be saved and adverse health avoided  
22 if EPA actually and effectively implements the 2010 SO<sub>2</sub> NAAQS so that nonattainment areas  
23 attain the NAAQS.  
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**CLAIM ONE**  
**(Failure to Make Findings of Failure to Submit SIPs)**

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2  
3 34. Plaintiffs incorporate by reference all paragraphs listed above.

4 35. EPA is required to determine whether a state implementation plan (SIP) submittal is  
5 administratively complete. 42 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a  
6 State has failed to submit any required SIP submittal, there is no submittal that may be deemed  
7 administratively complete, and EPA must make a determination stating that the State failed to  
8 submit the required SIP submittal. *Id.* This determination is usually referred to as a “finding of  
9 failure to submit.”  
10

11 36. On January 28, 2022, EPA found that the Detroit sulfur dioxide nonattainment area failed  
12 to attain the 2010 primary 1-hour SO<sub>2</sub> NAAQS by its attainment date of October 4, 2018. 87  
13 Fed. Reg. 4501 (Jan. 28, 2022). This triggered an obligation for Michigan to submit a SIP revision  
14 by January 30, 2023 pursuant to Clean Air Act Section 179(d). 87 Fed. Reg. at 4502.  
15

16 37. It has been more than six months since January 30, 2023. However, Michigan has not  
17 submitted this SIP revision. Nor has EPA made a finding of failure to submit.

18 38. Therefore, EPA is in violation of its mandatory duty to make a finding of failure to  
19 submit a “post-failure to attain” SIP revision including the emission inventory, attainment  
20 demonstration, contingency measures, nonattainment New Source Review (NNSR), reasonably  
21 available control measures/reasonably available control technology (RACM/RACT), and  
22 reasonable further progress (RFP) elements.  
23

24 39. On April 5, 2022, EPA found that the Sullivan County, TN sulfur dioxide nonattainment  
25 area failed to attain the 2010 primary 1-hour SO<sub>2</sub> NAAQS by its attainment date of October 4,  
26 2018. 87 Fed. Reg. 19,645 (Apr. 5, 2022). This triggered an obligation for Tennessee to submit a  
27 SIP revision by April 5, 2023, pursuant to Clean Air Act Section 179(d). *Id.*  
28

1 40. It has been more than six months since April 5, 2023. However, Tennessee has not  
2 submitted this SIP revision. Nor has EPA made a finding of failure to submit.

3 41. Therefore, EPA is in violation of its mandatory duty to make a finding of failure to  
4 submit a “post-failure to attain” SIP revision including the emission inventory, attainment  
5 demonstration, contingency measures, nonattainment New Source Review (NNSR), reasonably  
6 available control measures/reasonably available control technology (RACM/RACT), and  
7 reasonable further progress (RFP) elements.  
8

9 42. On January 31, 2022, EPA found that the Hayden and Miami, AZ sulfur dioxide  
10 nonattainment areas failed to attain the 2010 primary 1-hour SO<sub>2</sub> NAAQS by their attainment  
11 date of October 4, 2018. 87 Fed. Reg. 4,805 (Jan. 31, 2022). This triggered an obligation for  
12 Arizona to submit SIP revisions by January 31, 2023, pursuant to Clean Air Act Section 179(d).  
13

14 43. It has been more than six months since January 31, 2023. However, Arizona has not  
15 submitted these SIP revisions. Nor has EPA made findings of failure to submit.

16 44. Therefore, EPA is in violation of its mandatory duty to make findings of failure to submit  
17 “post-failure to attain” SIP revisions including the emission inventory, attainment demonstration,  
18 contingency measures, nonattainment New Source Review (NNSR), reasonably available control  
19 measures/ reasonably available control technology (RACM/RACT), and reasonable further  
20 progress (RFP) elements.  
21

22 45. On March 26, 2021, effective April 30, 2021, EPA promulgated its “Round 4” of  
23 nonattainment designations. 86 Fed. Reg. 16,055 (Mar. 26, 2021). This required States with  
24 nonattainment areas to submit nonattainment areas SIPs within 18 months of the effective date of  
25 the nonattainment designation, that is by no later than October 31, 2022. 86 Fed. Reg. at 16,057.  
26 In Round 4, EPA designated Giles County (part), VA as nonattainment areas.  
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1 46. It has been more than six months since October 31, 2022. However, Virginia has not  
2 submitted any of the SIP elements except the attainment demonstration. Nor has EPA made a  
3 finding of failure to submit.

4 47. Therefore, EPA is in violation of its mandatory duties to make a finding of failure to  
5 submit SIP elements for Virginia including the emission inventory, contingency measures,  
6 nonattainment New Source Review (NNSR), reasonably available control measures/reasonably  
7 available control technology (RACM/RACT), and reasonable further progress (RFP) elements.  
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10 **CLAIM TWO**  
11 **(Failure to promulgate FIPs)**

12 48. Plaintiffs incorporate by reference all paragraphs listed above.

13 49. On March 18, 2016, effective April 18, 2016, EPA published a finding that Arizona had  
14 failed to submit the required SO<sub>2</sub> nonattainment plan for the Hayden nonattainment area by the  
15 submittal deadline. *See* 81 Fed. Reg. 14,736, 14,738 (Mar. 18, 2016). This finding triggered a  
16 requirement that EPA promulgate a Federal Implementation Plan (FIP) within two years of the  
17 finding unless, before promulgating the FIP (a) the State had made the necessary complete  
18 submittal and (b) EPA had approved the submittal as meeting applicable requirements. *See* 42  
19 U.S.C. § 7410(c)(1). As a result, EPA was required to promulgate a FIP for the Hayden SO<sub>2</sub>  
20 nonattainment area by no later than April 18, 2018 for the attainment demonstration, contingency  
21 measures, enforceable emissions limitations and controls, RACM/RACT, and RFP elements. *See*  
22 85 Fed. Reg. 71,547 (Nov. 10, 2020).

23  
24 50. EPA has not promulgated a FIP for the Hayden SO<sub>2</sub> nonattainment area for the  
25 attainment demonstration, contingency measures, enforceable emissions limitations and controls,  
26 RACM/RACT, and RFP elements. Nor has the State made the necessary complete submittal and  
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1 EPA approved the submittal as meeting applicable requirements. Therefore EPA is in violation  
2 of this mandatory duty for the Hayden SO<sub>2</sub> nonattainment area.

3 51. On November 3, 2020, effective December 3, 2020, EPA published a finding that  
4 Indiana, Louisiana, Guam, and Puerto Rico had failed to submit the required SO<sub>2</sub> nonattainment  
5 plans for the Huntington, Evangeline Parish, Piti-Cabras, Guayama-Salinas, and San Juan  
6 nonattainment areas by the submittal deadline. *See* 85 Fed. Reg. 69,504, 69,506 (Nov. 3, 2020).

7 52. This finding triggered a requirement that EPA promulgate FIPs within two years of the  
8 finding unless, before promulgating the FIP (a) the State had made the necessary complete  
9 submittal and (b) EPA had approved the submittal as meeting applicable requirements. *See* 42  
10 U.S.C. § 7410(c)(1). As a result, EPA was required to promulgate FIPs for the Huntington,  
11 Evangeline Parish, Piti-Cabras, Guayama-Salinas, and San Juan SO<sub>2</sub> nonattainment areas by no  
12 later than December 3, 2022 for the emissions inventory, attainment demonstration, contingency  
13 measures, enforceable emissions limitations and controls, RACM/RACT, nonattainment new  
14 source review (NNSR), and RFP elements.  
15

16 53. EPA has not promulgated FIPs for the Huntington, Evangeline Parish, Piti-Cabras,  
17 Guayama-Salinas, and San Juan SO<sub>2</sub> nonattainment areas for the emissions inventory, attainment  
18 demonstration, contingency measures, enforceable emissions limitations and controls,  
19 RACM/RACT, nonattainment new source review (NNSR), and RFP elements. Nor have the  
20 States made the necessary complete submittal and EPA approved the submittal as meeting  
21 applicable requirements. Therefore, EPA has failed to perform these mandatory duties for the  
22 Huntington, Evangeline Parish, Piti-Cabras, Guayama-Salinas, and San Juan SO<sub>2</sub> nonattainment  
23 areas.  
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**CLAIM THREE**  
**(Failure to Make Determinations of Whether Areas Have Attained By Their Attainment Dates)**

54. Plaintiffs incorporate by reference all paragraphs listed above.

55. No later than 6 months after the attainment date for a nonattainment area, EPA has a mandatory duty to determine whether an area has attained the NAAQS and publish a notice in the Federal Register of that determination. 42 U.S.C. § 7509(c).

56. EPA designated all of the areas listed in Table 1 below as nonattainment for the 2010 SO<sub>2</sub> NAAQS effective no later than January 12, 2017. 81 Fed. Reg. 45,039 (July 12, 2016); 81 Fed. Reg. 89,870 (Dec. 13, 2016). Therefore, these areas had an attainment date of no later than January 12, 2022. *See* 42 U.S.C. § 7514a(a).

57. As a result, EPA had a mandatory duty to determine whether these areas attained by the attainment date and publish notice of such finding by no later than July 12, 2022. *See* 42 U.S.C. § 7509(c). EPA has not determined whether these areas attained by the attainment date and publish notice of such finding for the areas listed in Table 1. Therefore, EPA is in violation of its mandatory duty to determine whether the areas in Table 1 attained by their attainment date and publish notice of such a finding.

TABLE 1  
(Round 2 Nonattainment Areas)

STATE	AREA
IL	Alton Township
MD	Anne Arundel County and Baltimore County
MI	St. Clair
TX	Freestone and Anderson Counties
TX	Rusk and Panola Counties
TX	Titus County

58. EPA designated all of the areas listed in Table 2 below as nonattainment for the 2010 SO<sub>2</sub> NAAQS effective no later than April 9, 2018. 83 Fed. Reg. 1,098 (Jan. 9, 2018). Therefore, these areas had an attainment date of no later than April 9, 2023. *See* 42 U.S.C. § 7514a(a). As a result, EPA had a mandatory duty to determine whether these areas attained by the attainment date and publish notice of such finding by no later than October 9, 2023. *See* 42 U.S.C. § 7509(c).

59. EPA has not determined whether these areas attained by the attainment date and publish notice of such finding for the areas listed in Table 2. Therefore, EPA is in violation of its mandatory duty to determine whether the areas in Table 2 attained by their attainment date and publish notice of such a finding.

TABLE 2  
(Round 3 Nonattainment Areas)

“STATE”	AREA
IN	Huntington
LA	Evangeline Parish (Partial)
GUAM	Piti-Cabras
PR	San Juan
PR	Guayama-Salinas

### RELIEF REQUESTED

Plaintiffs respectfully request that the Court:

- (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his failure to perform each mandatory duty listed above;
- (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties by certain dates;
- (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court’s order;

1 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;  
2 and

3 (E) Grant such further relief as the Court deems just and proper.  
4

5 Respectfully Submitted,

6 /s/ Wendy Park  
7 Wendy Park (Cal. Bar No. 237331)  
8 CENTER FOR BIOLOGICAL DIVERSITY  
9 1212 Broadway, Suite 800  
10 Oakland, CA 94612  
11 Phone: 510-844-7100 (Ext. 338)  
12 Email: wpark@biologicaldiversity.org

13 Counsel for Plaintiffs Center for Biological  
14 Diversity and Sierra Club

15 DATED: March 28, 2024  
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