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5 Counsel for Plaintiffs Center for Biological Diversity and Center for Environmental Health

6  
7 **UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF COLUMBIA**

8		)
		)
9	CENTER FOR BIOLOGICAL DIVERSITY	)
	351 California St., Suite 600	)
10	San Francisco, CA 94104	)
		) Case No.
11	and	)
		)
12	CENTER FOR ENVIRONMENTAL HEALTH	) <b>COMPLAINT FOR DECLARATORY</b>
	2201 Broadway	) <b>AND INJUNCTIVE RELIEF</b>
13	Oakland, CA 94612	) (Clean Air Act, 42 U.S.C. §§ 7401 <i>et. seq.</i> )
		)
14		)
	Plaintiffs,	)
15		)
	v.	)
16		)
	GINA McCARTHY,	)
17	in her official capacity as Administrator of the	)
	United States Environmental Protection Agency,	)
18		)
	Defendant.	)
19		)

20 **I. INTRODUCTION**

21 1. Plaintiffs the Center for Biological Diversity and Center for Environmental Health  
22 (“Plaintiffs”) bring this Clean Air Act citizen suit to compel the United States Environmental  
23 Protection Agency (“EPA”) to undertake overdue mandatory duties regarding lead pollution.

1 Lead is highly toxic to wildlife, ecosystems, and people, especially children. As noted by the  
 2 EPA, there is no recognized safe level of lead in children's blood. Lead is persistent in the  
 3 environment and accumulates in soils, aquatic systems, and the biological tissues of plants,  
 4 animals and other organisms.

5 2. Defendant, Gina McCarthy, in her official capacity as Administrator of the United States  
 6 Environmental Protection Agency, has failed to make findings of failure to submit under 42  
 7 U.S.C. § 7410(k)(1)(B), and publish notice of those findings in the Federal Register, for  
 8 nonattainment state implementation plans for the 2008 lead National Ambient Air Quality  
 9 Standards for the following areas listed in Table 1:

TABLE 1<sup>1</sup>

AREA	STATE
Pottawattamie	Iowa
Arecibo	Puerto Rico

10  
 11  
 12  
 13 3. Furthermore, EPA has failed to take final action, pursuant to 42 U.S.C. § 7410(k)(2) –  
 14 (3), to approve or disapprove, in whole or part, the 2008 lead National Ambient Air Quality  
 15 Standards nonattainment state implementation plan submissions listed in Table 2 below:

TABLE 2<sup>2</sup>

AREA	COMPLETION DATE	FINAL ACTION DUE DATE
Tampa, Florida	12/29/2012	12/29/2013
Cleveland, Ohio	12/25/2012	12/25/2013
Delta, Ohio	12/25/2012	12/25/2013
Eagan, Minnesota	12/11/2012	12/11/2013
Frisco, Texas	4/17/2013	4/17/2014

22 <sup>1</sup> Environmental Protection Agency, *National Status of State SIP Requirements: Pollutant Requirement by State, Area (Requirement: Lead SIP, For Pollutant: Lead (2008))*, available at  
 23 [http://www.epa.gov/air/urbanair/sipstatus/reports/lead\\_2008\\_lead\\_sip\\_enbystate.html](http://www.epa.gov/air/urbanair/sipstatus/reports/lead_2008_lead_sip_enbystate.html) (last visited Nov. 18, 2014).

<sup>2</sup> *Id.*

1 4. Finally, EPA has failed to take final action pursuant to 42 U.S.C. § 7410(k)(2)–(3), to  
 2 approve or disapprove, in whole or part, the Clean Air Act section 110(a)(2) infrastructure state  
 3 implementation plan requirement for the following 2008 lead National Ambient Air Quality  
 4 Standards listed in Table 3 below:

5 **TABLE 3<sup>3</sup>**

6 Submittal	Completeness Date	Due Date for Final Action
7 North Carolina 110(a)(2) Lead (2008) Infrastructure SIP	01/20/13	01/20/14

8 5. Accordingly, Plaintiffs bring this action against Defendant Gina McCarthy, in her official  
 9 capacity as EPA Administrator, to compel her to perform her mandatory duties.

10 **II. JURISDICTION**

11 6. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this  
 12 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2)  
 13 (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

14 7. An actual controversy exists between the parties. This case does not concern federal  
 15 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of  
 16 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §  
 17 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue  
 18 injunctive relief.

19 **III. NOTICE**

20 8. On June 18, 2014 Plaintiffs mailed to EPA by certified mail, return receipt requested,  
 21 written notice of intent to sue regarding the violations alleged in claims one and two in this  
 22

23 <sup>3</sup> Environmental Protection Agency, *Status of SIP Infrastructure Requirements: North Carolina Infrastructure  
 Requirements by Pollutant*, available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html) (last  
 visited Nov. 18, 2014).

1 Complaint. EPA received this written notice on June 23, 2014, as indicated by the return receipt  
2 cards. On July 14, 2014 Plaintiff Center for Biological Diversity mailed EPA by certified mail,  
3 return receipt requested, written notice of intent to sue regarding the violations alleged in claim  
4 three in this Complaint. EPA received written notice on July 21, 2014 as indicated by the return  
5 receipt cards. More than sixty days have passed since EPA received these “notices of intent to  
6 sue” letters. EPA has not remedied the violations alleged in this Complaint. Therefore, a  
7 present and actual controversy exists.

#### 8 **IV. VENUE**

9 9. Plaintiff Center for Environmental Health resides in this judicial district. This civil  
10 action is brought against an officer of the United States acting in her official capacity, and there  
11 is no real property involved in the action. Therefore, venue is proper in this Court pursuant to 28  
12 U.S.C. § 1391(e).

#### 13 **V. INTRADISTRICT ASSIGNMENT**

14 10. Assignment to the San Francisco Division or the Oakland Division is proper pursuant to  
15 Civil Local Rule 3-2(c) and (d) because this civil action is brought against an officer of the  
16 United States acting in her official capacity, there is no real property involved in the action, and  
17 Plaintiff Center for Environmental Health resides in this judicial district.

#### 18 **VI. PARTIES**

19 11. Plaintiff Center for Biological Diversity brings this action on behalf of itself and its  
20 adversely impacted members. Plaintiff the Center for Biological Diversity is a non-profit  
21 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has over  
22 50,000 members throughout the United States and the world. The Center for Biological  
23 Diversity’s mission is to ensure the preservation, protection, and restoration of biodiversity,

1 native species, ecosystems, public lands and waters, and public health through science, policy,  
2 and environmental law. Based on the understanding that the health and vigor of human societies  
3 and the integrity and wildness of the natural environment are closely linked, the Center for  
4 Biological Diversity is working to secure a future for animals and plants hovering on the brink of  
5 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

6 12. The Center for Biological Diversity and its members include individuals with varying  
7 interests in wildlife species and their habitat, ranging from scientific, professional, and  
8 educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological  
9 Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational,  
10 conservation, recreational, and aesthetic values of the regions inhabited by these species,  
11 including the regions at issue in this action. The Center for Biological Diversity's members  
12 observe and study native species and their habitat, and derive professional, scientific,  
13 educational, recreational, aesthetic, inspirational, and other benefits from these activities and  
14 have an interest in preserving the possibility of such activities in the future. The Center for  
15 Biological Diversity and its members have participated in efforts to protect and preserve natural  
16 areas, including the habitat essential to the continued survival of native species, and to address  
17 threats to the continued existence of these species, including the threats posed by air pollution  
18 and other contaminants.

19 13. Plaintiff Center for Environmental Health brings this action on behalf of itself and its  
20 adversely impacted members. Plaintiff the Center for Environmental Health is an Oakland, CA  
21 based nonprofit organization that helps protect the public from toxic chemicals and promotes  
22 business products and practices that are safe for public health and the environment. The Center  
23

1 for Environmental Health works in pursuit of a world in which all people live, work, learn, and  
2 play in healthy environments.

3 14. Plaintiffs' members live, work, recreate, travel and engage in economic and other  
4 activities throughout the areas at issue in this complaint and will continue to do so on a regular  
5 basis. Pollution in the affected areas threatens and damages, and will continue to threaten and  
6 damage, the health and welfare of Plaintiffs' members as well as their ability to engage in and  
7 enjoy their other activities. Pollution adversely impacts and diminishes Plaintiffs' members'  
8 ability to enjoy the aesthetic qualities and recreational opportunities of the affected areas, their  
9 professional well-being, as well as their educational and economic interests in the affected areas.

10 15. EPA's failure to timely perform the mandatory duties described herein also adversely  
11 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
12 opportunities, as well as information that they are entitled to under the Clean Air Act, including  
13 but not limited to ambient monitoring data gathered in accordance with applicable regulations,  
14 public notice of exceedances of National Ambient Air Quality Standards, and emissions  
15 inventories. The failure of EPA to perform the mandatory duties also creates uncertainty for  
16 Plaintiffs' members as to whether they are exposed to excess air pollution.

17 16. The above injuries will continue until the Court grants the relief requested herein.

18 17. Defendant Gina McCarthy is the Administrator of the EPA. In that role, Administrator  
19 McCarthy is charged by Congress with the duty to administer the Clean Air Act, including the  
20 mandatory duties at issue in this case.

## 21 **VII. LEGAL BACKGROUND**

22 18. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against  
23 air pollution in the United States with a view to assuring that the air we breathe throughout the

1 Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970); *reprinted in* 1970  
2 U.S.C.C.A.N. 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air  
3 Quality Standards for certain pollutants. 42 U.S.C. § 7409(a). National Ambient Air Quality  
4 Standards establish maximum allowable concentrations in the air of such pollutants.

5 19. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act  
6 requires that EPA designate each area of the country as either a clean air area for that standard,  
7 which is known as “attainment” in Clean Air Act parlance, or a polluted area, which is known as  
8 “nonattainment” in Clean Air Act parlance. *See* 42 U.S.C. § 7407(d).

9 20. Under the Clean Air Act, each state is required to submit state implementation plans to  
10 ensure that each National Ambient Air Quality Standard will be achieved, maintained, and  
11 enforced. *See* 42 U.S.C. § 7410(a)(1). Without such plans, the public is not afforded full  
12 protection against the harmful impacts of air pollution.

13 21. The Clean Air Act requires states to submit “infrastructure” state implementation plans  
14 that implement, maintain, and enforce a new or revised National Ambient Air Quality Standard  
15 within 3 years of EPA issuing the standard. *See* 42 U.S.C. §§ 7410(a)(2). These infrastructure  
16 state implementation plans must address a number of basic requirements including, among other  
17 things, ambient air quality monitoring and data systems, programs for enforcement of control  
18 measures, and adequate authority and resources to implement the plan. *Id.*

19 22. For polluted areas which EPA has designated as “nonattainment,” states must submit  
20 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,  
21 7514, 7514a.

22 23. The Clean Air Act requires EPA to determine whether any state implementation plan  
23 submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this

1 determination by “no later than 6 months after the date, if any, by which a State is required to  
2 submit the plan or revision.” *Id.*

3 24. If a state fails to submit any required state implementation plan, there is no submittal that  
4 may be deemed administratively complete, and EPA must make a determination, and publish  
5 notice of that determination in the Federal Register, stating that the state failed to submit an  
6 administratively complete state implementation plan submittal within six months of when the  
7 submittal was due. *See* 42 U.S.C. §§ 7410(c)(1), 7410(k)(1)(B). This is referred to as a “finding  
8 of failure to submit.”

9 25. Once a state does submit a state implementation plan submittal, EPA has a mandatory  
10 duty to take final action on any administratively complete state implementation plan submission  
11 by approving in full, disapproving in full, or approving in part and disapproving in part within 12  
12 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2)  
13 and (3).

#### 14 **VIII. FACTS**

15 26. This case involves EPA’s failure to timely implement the National Ambient Air Quality  
16 Standards for lead. There is no safe level of exposure to lead. When EPA originally set the lead  
17 National Ambient Air Quality Standard in 1978, it relied on what was then deemed “the  
18 maximum safe blood lead level . . . for a population of young children.” 73 Fed. Reg. 66,964,  
19 66,983 (Nov. 12, 2008) (quoting 43 Fed. Reg. 46,247, 46,253 (Oct. 5, 1978)). Thirty years later,  
20 in 2008, EPA noted the increased evidence of risks posed by significantly lower levels of lead  
21 exposure: “Based on the current evidence, the Staff Paper first concluded that young children  
22 remain the sensitive population of primary focus in this review and that ‘there is now no  
23 recognized safe level of [lead] in children’s blood . . . .’” *Id.* at 66,984 (quoting Environmental



1 Protection Agency, *Review of the National Ambient Air Quality Standards for Lead: Policy*  
2 *Assessment of Scientific and Technical Information, Office of Air Quality Planning and*  
3 *Standards Staff Paper*, EPA-452/R-07-013 (Nov. 2007)). EPA concluded that the risk of  
4 population Intelligence Quotient (“IQ”) loss in children and other sensitive populations from  
5 airborne lead exposure was unacceptably high, and that the 1978 lead National Ambient Air  
6 Quality Standard was inadequate to protect public health with an adequate margin of safety. *Id.*  
7 at 66,987. EPA thus reduced the primary lead National Ambient Air Quality Standard by 90  
8 percent, from 1.5 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) averaged over a calendar quarter to 0.15  
9  $\mu\text{g}/\text{m}^3$  averaged over a rolling 3-month period, in order to satisfy the Clean Air Act requirement  
10 that primary National Ambient Air Quality Standards protect public health with an adequate  
11 margin of safety. *Id.* at 66,990-67,007.

12 27. The effects of lead are not limited to public health. As EPA noted when promulgating the  
13 2008 lead National Ambient Air Quality Standard, “[l]ead is persistent in the environment and  
14 accumulates in soils, aquatic systems (including sediments), and some biological tissues of  
15 plants, animals and other organisms, thereby providing long-term, multi-pathway exposures to  
16 organisms and ecosystems.” *Id.* at 67,008. Ecosystems near sources of lead emissions  
17 experience “decreases in species diversity, loss of vegetation, changes to community  
18 composition, decreased growth of vegetation, and increased number of invasive species.” *Id.*

19 28. EPA promulgated a revised National Ambient Air Quality Standard for lead on  
20 November 12, 2008, which became effective on January 12, 2009. *See generally* 73 Fed. Reg.  
21 66,964 (Nov. 12, 2008). On November 22, 2010 EPA made nonattainment designations for the  
22 2008 lead National Ambient Air Quality Standards for sixteen areas based on data from a  
23 monitoring network dating to prior to 2010, including the following: Tampa, Florida; Eagan,

1 Minnesota; Cleveland and Delta, Ohio; and Frisco, Texas. 75 Fed. Reg. 71,033 (Nov. 22, 2010).  
2 Those sixteen nonattainment designations became effective December 31, 2010. *Id.* at 71,040-  
3 44. For all other areas, the EPA deferred action so that data from newly deployed monitors  
4 could be considered in making appropriate designation decisions. EPA designated all remaining  
5 areas of the United States as attainment or nonattainment on November 22, 2011, including  
6 Pottawattamie, Iowa; and Arecibo Municipio, Puerto Rico. 76 Fed. Reg. 72,097 (November 22,  
7 2011). All remaining nonattainment designations became effective December 31, 2011. *Id.* As  
8 prescribed by the EPA Administrator by the rule, nonattainment state implementation plans were  
9 due within eighteen months from the effective date of designations, or by no later than June 30,  
10 2013 for all nonattainment designations that became effective by the rule in 2011. *Id.* at 72098;  
11 42 U.S.C. § 7410(a)(1).

## 12 IX. CLAIMS FOR RELIEF

### 13 CLAIM ONE

14 (Failure to make a finding of failure to submit.)

15 29. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

16 30. The deadline for the 2008 lead National Ambient Air Quality Standard nonattainment  
17 state implementation plan submissions was no later than June 30, 2013.

18 31. More than six months have passed since June 30, 2013.

19 32. Iowa has not submitted a 2008 lead National Ambient Air Quality Standards  
20 nonattainment state implementation plan for the Pottawattamie nonattainment area.

21 33. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA had a mandatory duty to make a finding of  
22 failure to submit for Iowa by no later than December 30, 2013.

23 34. EPA has failed to make such a finding.

1 35. Puerto Rico has not submitted a 2008 lead National Ambient Air Quality Standards  
2 nonattainment state implementation plan for the Arecibo nonattainment area.

3 36. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA had a mandatory duty to make a finding of  
4 failure to submit for Puerto Rico by no later than December 30, 2013.

5 37. EPA has failed to make such a finding.

6 CLAIM TWO

7 (Failure to Take Final Action on Nonattainment State Implementation Plan Submissions.)

8 38. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

9 39. The Clean Air Act requires EPA to determine whether any state implementation plan  
10 submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).

11 40. If, six months after a state submits a state implementation plan, EPA has not made the  
12 completeness finding and has not found the submission to be incomplete, the submission is  
13 deemed administratively complete by operation of law. *Id.*

14 41. EPA must take final action on an administratively complete submission by approving in  
15 full, disapproving in full, or approving in part and disapproving in part within 12 months of the  
16 date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) and (3).

17 42. By no later than December 29, 2012 either EPA or operation of law deemed Florida's  
18 submission addressing the nonattainment element of the 2008 lead nonattainment state  
19 implementation plan for the Tampa nonattainment area administratively complete.

20 43. EPA had a mandatory duty to take final action, and publish notice of that action in the  
21 Federal Register, by approving in full, disapproving in full, or approving in part and  
22 disapproving in part Florida's submission by no later than December 29, 2013. 42 U.S.C. §  
23 7410(k)(2) and (3).

1 44. EPA has failed to perform this mandatory duty.

2 45. By no later than December 11, 2012 either EPA or operation of law deemed Minnesota's  
3 submission addressing the nonattainment element of the 2008 lead nonattainment state  
4 implementation plan for the Eagan nonattainment area administratively complete.

5 46. EPA had a mandatory duty to take final action, and publish notice of that action in the  
6 Federal Register, by approving in full, disapproving in full, or approving in part and  
7 disapproving in part Minnesota's submission by no later than December 11, 2013. 42 U.S.C. §  
8 7410(k)(2) and (3).

9 47. EPA has failed to perform this mandatory duty.

10 48. By no later than December 25, 2012 either EPA or operation of law deemed Ohio's  
11 submission addressing the nonattainment element of the 2008 lead nonattainment state  
12 implementation plan for the Cleveland nonattainment area administratively complete.

13 49. EPA had a mandatory duty to take final action, and publish notice of that action in the  
14 Federal Register, by approving in full, disapproving in full, or approving in part and  
15 disapproving in part Ohio's submission by no later than December 25, 2013. 42 U.S.C. §  
16 7410(k)(2) and (3).

17 50. EPA has failed to perform this mandatory duty.

18 51. By no later than December 25, 2012 either EPA or operation of law deemed Ohio's  
19 submission addressing the nonattainment element of the 2008 lead nonattainment state  
20 implementation plan for the Delta nonattainment area administratively complete.

21 52. EPA had a mandatory duty to take final action, and publish notice of that action in the  
22 Federal Register, by approving in full, disapproving in full, or approving in part and  
23

1 disapproving in part Ohio's submission by no later than December 25, 2013. 42 U.S.C. §  
2 7410(k)(2) and (3).

3 53. EPA has failed to perform this mandatory duty.

4 54. By no later than April 17, 2013 either EPA or operation of law deemed Texas'  
5 submission addressing the nonattainment element of the 2008 lead nonattainment state  
6 implementation plan for the Frisco nonattainment area administratively complete.

7 55. EPA had a mandatory duty to take final action, and publish notice of that action in the  
8 Federal Register, by approving in full, disapproving in full, or approving in part and  
9 disapproving in part Texas' submission by no later than April 17, 2014. 42 U.S.C. § 7410(k)(2)  
10 and (3).

11 56. EPA has failed to perform this mandatory duty.

12 CLAIM THREE

13 (Failure to Take Final Action on Infrastructure State Implementation Plan Submissions.)

14 57. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

15 58. The Clean Air Act requires EPA to determine whether any state implementation plan  
16 submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).

17 59. If, six months after a state submits a state implementation plan, EPA has not made the  
18 completeness finding and has not found the submission to be incomplete, the submission is  
19 deemed administratively complete by operation of law. *Id.*

20 60. EPA must take final action on an administratively complete submission by approving in  
21 full, disapproving in full, or approving in part and disapproving in part within 12 months of the  
22 date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) and (3).

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1 61. By no later than January 20, 2013 either EPA or operation of law deemed North  
2 Carolina's submission addressing the lead state implementation plan infrastructure requirement  
3 under Clean Air Act section 110(a)(2) regarding the 2008 lead national ambient air quality  
4 standards administratively complete.

5 62. EPA had a mandatory duty to take final action, and publish notice of that action in the  
6 Federal Register, by approving in full, disapproving in full, or approving in part and  
7 disapproving in part North Carolina's lead infrastructure state implementation plan submission  
8 by no later than January 20, 2014. 42 U.S.C. § 7410(k)(2) and (3).

9 63. EPA has failed to perform this mandatory duty.

10  
11 **REQUEST FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully requests that the Court:

- 13 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her  
14 failure to perform the mandatory duties listed above;
- 15 B. ORDER Defendant to take final action on:
- 16 a. findings of failure to submit a nonattainment state implementation plan  
17 for the 2008 lead National Ambient Air Quality Standards for  
18 Pottawattamie, Iowa, and Arecibo, Puerto Rico;
  - 19 b. findings to approve or disapprove, in whole or part, the 2008 lead  
20 National Ambient Air Quality Standards nonattainment state  
21 implementation plan submissions for Tampa, Florida, Cleveland and  
22 Delta, Ohio, Eagan, Minnesota, and Frisco, Texas;
- 23

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c. a finding to approve or disapprove, in whole or part, the 2008 lead National Ambient Air Quality Standards infrastructure state implementation plan submission for North Carolina.

- C. Retain jurisdiction of this matter for purposes of enforcing the Court’s order;
- D. Grant the Plaintiffs their reasonable costs of litigation, including attorneys’ and experts’ fees; and;
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jonathan Evans  
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Counsel for Plaintiffs Center for Biological Diversity and  
Center for Environmental Health

Dated: November 20, 2014

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR ENVIRONMENTAL HEALTH

(b) County of Residence of First Listed Plaintiff San Francisco, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Center for Biological Diversity 351 California St., Suite 600 San Francisco, CA. 94619 (415) 436-9682 x 318

DEFENDANTS

U.S Environmental Protection Agency, GINA MCCARTHY, Administrator

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

NOTE:

Attorneys (If Known)

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

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

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

- Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State PTF DEF 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §§ 7401 et seq. (Clean Air Act). Brief description of cause: Failure to perform mandatory duties pursuant to the Clean Air Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) (X) SAN FRANCISCO/OAKLAND ( ) SAN JOSE ( ) EUREKA

DATE SIGNATURE OF ATTORNEY OF RECORD

11/20/14 /s/ Jonathan Evans



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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.