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9 *Attorneys for Citizens for Clean Air, a project of*  
10 *Alaska Community Action on Toxics, and Sierra Club*

11 UNITED STATES DISTRICT COURT  
12 FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

13 CITIZENS FOR CLEAN AIR, a project of )  
ALASKA COMMUNITY ACTION ON TOXICS, )  
14 and SIERRA CLUB , )

15 Plaintiffs, )

16 v. )

17 GINA MCCARTHY, in her official capacity as )  
Administrator of the United States Environmental )  
18 Protection Agency, and DENNIS MCLERRAN, in )  
his official capacity as Regional Administrator of )  
19 the United States Environmental Protection Agency )  
Region 10, )

20 Defendants. )  
21 \_\_\_\_\_ )

Case No.

) COMPLAINT FOR  
) DECLARATORY AND  
) INJUNCTIVE RELIEF

22  
23  
24  
25 COMPLAINT  
(Case No. )

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**INTRODUCTION**

1  
2 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*,  
3 to compel the U.S. Environmental Protection Agency (EPA) to take the statutorily required  
4 action of making a finding under 42 U.S.C. § 7410(k)(1)(B), and publishing notice of that  
5 finding in the *Federal Register*, that the State of Alaska failed to submit—prior to the statutory  
6 deadline—a nonattainment state implementation plan to combat persistent violations of air  
7 quality standards for fine particulate matter (PM-2.5) in the Fairbanks North Star Borough,  
8 Alaska.

9 2. The Fairbanks North Star Borough has some of the worst PM-2.5 pollution in the  
10 nation, with ambient air concentrations frequently in excess of the 24-hour National Ambient Air  
11 Quality Standards for PM-2.5. PM-2.5 pollution causes a range of significant, adverse health  
12 effects.

13 3. Under the Clean Air Act, the State of Alaska was required to develop and submit  
14 to EPA a state implementation plan to improve air quality in the Fairbanks North Star Borough  
15 no later than December 14, 2012. The State of Alaska has not submitted a plan. The Clean Air  
16 Act also imposed upon EPA a non-discretionary duty to issue a finding, no later than June 14,  
17 2013, that the State of Alaska failed to submit a PM-2.5 nonattainment state implementation  
18 plan. This finding is an important milestone under the Act: to incentivize submission of a plan,  
19 it triggers a subsequent, two-year deadline for penalties and imposition of a federally-developed  
20 plan if inaction by the State of Alaska persists.

21 4. This action seeks to compel Defendant GINA MCCARTHY, in her official  
22 capacity as EPA Administrator, and Defendant DENNIS MCLARREN, in his official capacity as  
23 Regional Administrator of EPA Region 10, to perform their mandatory duties to ensure that the  
24

1 residents of the Fairbanks North Star Borough are provided the health protections promised by  
2 law.

3 **JURISDICTION**

4 5. This Court has jurisdiction over this action to compel the performance of EPA’s  
5 non-discretionary duties pursuant to 42 U.S.C. §7604(a) (citizen suit provision of the Clean Air  
6 Act) and 28 U.S.C. § 1331 (federal question jurisdiction). The Court also has authority to order  
7 declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

8 **NOTICE**

9 6. Plaintiffs provided EPA with written notice of the claim stated in this action at  
10 least sixty days before commencing this action as required by 42 U.S.C. § 7604(b)(2). *See*  
11 Exhibit A (Letter from Colin C. O’Brien, counsel for Plaintiffs, to Gina McCarthy,  
12 Administrator of EPA, dated Feb. 4, 2014).

13 **VENUE**

14 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). Defendant EPA  
15 resides in this judicial district. EPA Region 10, which has authority over Alaska and is charged  
16 with reviewing state implementation plans for Alaska, is headquartered in Seattle. This civil  
17 action is brought against officers of the United States acting in their official capacities and a  
18 substantial part of the events or omissions giving rise to the claims in this case occurred in the  
19 Western District of Washington. Further, because EPA Region 10 is located within King  
20 County, assignment to the Seattle Division is proper under Civil Local Rule 3(d)(1).

21 **PARTIES**

22 8. Plaintiff CITIZENS FOR CLEAN AIR, a project of ALASKA COMMUNITY  
23 ACTION ON TOXICS, is a coalition of local community members and citizens’ groups based in  
24 Fairbanks, Alaska who are committed to cleaning up the air while keeping everyone warm in the

1 winter. Alaska Community Action on Toxics is a non-profit environmental health research and  
2 advocacy organization whose mission is to assure justice by advocating for environmental and  
3 community health.

4 9. Plaintiff SIERRA CLUB is a national conservation organization of approximately  
5 650,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to  
6 practicing and promoting the responsible use of the earth’s ecosystems and resources; to  
7 educating and enlisting humanity to protect and restore the quality of the natural and human  
8 environment; and to using all lawful means to carry out these objectives. For over three decades,  
9 the Sierra Club has worked to enact, strengthen, and enforce the Clean Air Act and its  
10 regulations to reduce air pollution in the United States—including efforts to improve air quality  
11 in the Fairbanks North Star Borough. The Alaska Chapter of the Sierra Club has approximately  
12 1,400 members.

13 10. Plaintiffs’ members live, raise their families, work, recreate, and conduct  
14 educational, advocacy, and other activities in the Fairbanks North Star Borough. They are  
15 adversely affected by exposure to levels of PM-2.5 pollution that exceed the national, health-  
16 based standards for 24-hour concentrations of PM-2.5 established under the Clean Air Act. The  
17 adverse effects of such pollution include actual or threatened harm to their health, their families’  
18 health, their professional, educational, and economic interests, and their aesthetic and  
19 recreational enjoyment of the environment in the Fairbanks North Star Borough.

20 11. The Clean Air Act violation alleged in this Complaint has injured and continues  
21 to injure the interests of Plaintiffs and their members. The relief requested in this lawsuit would  
22 redress these injuries by compelling EPA to take the action mandated by Congress in the Clean  
23

1 Air Act’s requirements for improving air quality in areas violating national air quality standards,  
2 such as the Fairbanks North Star Borough.

3 12. Defendant GINA MCCARTHY is sued in her official capacity as the  
4 Administrator of the EPA. She is responsible for taking various actions to implement and  
5 enforce the Clean Air Act, including the mandatory duties at issue in this case.

6 13. Defendant DENNIS MCLERRAN is sued in his official capacity as EPA  
7 Regional Administrator for Region 10. He is responsible for implementing and enforcing the  
8 Clean Air Act in EPA Region 10, which includes the Fairbanks North Star Borough, Alaska.

9 **STATUTORY FRAMEWORK**

10 14. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war  
11 against air pollution in the United States with a view to assuring that the air we breathe  
12 throughout the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970), *reprinted*  
13 *in* U.S.C.C.A.N. 5356, 5356. Consistent with these goals, the Act requires EPA to set National  
14 Ambient Air Quality Standards for certain pollutants, “the attainment and maintenance of which  
15 . . . are requisite to protect the public health” with “an adequate margin of safety.” 42 U.S.C.  
16 §§ 7409(a), (b).

17 15. The Clean Air Act directs EPA to designate areas with air pollution levels that  
18 exceed a national standard as “nonattainment” areas. 42 U.S.C. § 7407(d)(1).

19 16. The Clean Air Act provides that each state with a nonattainment area must adopt a  
20 “state implementation plan” for improving air quality in that area in order to meet the National  
21 Ambient Air Quality Standards. 42 U.S.C. §§ 7407(a), 7410(a), 7502(b), and 7513a.

22 17. Under the Clean Air Act, states must submit such plans to EPA for review. 42  
23 U.S.C. §§ 7410(a)(1) and 7502(b). The Act prescribes deadlines for plan submission. Generally,

1 nonattainment state implementation plans are due no later than three years after a nonattainment  
2 designation. *See id.* §§ 7501–7509a (Subpart 1 of Part D of Title I of the Act, “Nonattainment  
3 Areas in General”); § 7502(b) (general deadline). For areas designated as nonattainment for  
4 particulate matter pollution, the Act establishes a more stringent plan submission deadline of 18  
5 months. *See id.* §§ 7513–7513b (Subpart 4 of Part D of Title I of the Act, “Additional Provisions  
6 for Particulate Matter Nonattainment Areas”); 7513a(a)(2)(B) (particulate matter deadline).

7 18. The Clean Air Act requires EPA to determine whether any state implementation  
8 plan is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this  
9 determination “no later than 6 months after the date, if any, by which a State is required to  
10 submit the plan or revision.” *Id.*

11 19. If a state completely fails to submit a required state implementation plan by the  
12 deadline, then there is no submittal that may be deemed administratively complete, and EPA  
13 therefore must make a determination—and publish notice of that determination in the *Federal*  
14 *Register*—stating that the state failed to submit an administratively complete state  
15 implementation plan. 42 U.S.C. § 7410(k)(1)(B). Such a determination is referred to as a  
16 “finding of failure to submit.”

17 20. Upon issuing a finding of failure to submit, the Clean Air Act establishes a two-  
18 year deadline for EPA either to approve a state implementation plan (subsequently submitted by  
19 state authorities to address the deficiency) or to promulgate a federal implementation plan. 42  
20 U.S.C. § 7410(c)(1). When a state implementation plan is required to address nonattainment of  
21 an air quality standard, a finding of failure to submit also starts the clock on mandatory sanctions  
22 intended to induce states to develop and submit their plan. More specifically, eighteen (18)  
23 months after the finding, all proposed new pollution sources within the nonattainment area

1 become subject to a heightened permitting requirement. *Id.* § 7509(a), (b)(2); 40 C.F.R.  
2 § 52.31(c), (d). Twenty-four (24) months after the finding, a moratorium on federal highway  
3 funds also is imposed, with an exemption for safety and mass transit projects. 42 U.S.C. §  
4 7509(b)(1); 40 C.F.R. § 52.31(d).

5 21. If EPA fails to take a non-discretionary action, such as acting on a state  
6 implementation plan submittal or failing to issue a “finding of failure to submit,” citizens are  
7 empowered to seek a court order to compel prompt action. 42 U.S.C. § 7604(a)(2).

8 22. Implementing the foregoing statutory provisions, EPA established attainment and  
9 nonattainment designations for the 2006 24-hour PM-2.5 National Ambient Air Quality  
10 Standards on November 13, 2009. 74 Fed. Reg. 58,688 (Nov. 13, 2009). At the time, EPA  
11 declared that, “[f]or those areas designated nonattainment, states must develop a State  
12 Implementation Plan . . . and [] must submit these plans no later than three years from the  
13 effective date” of the agency’s designations to provide for attainment of the standard. *Id.* at  
14 58,689 (citing Clean Air Act section 172(b), 42 U.S.C. § 7502(b)).

15 23. Subsequently, the United States Court of Appeals for the District of Columbia  
16 determined that EPA incorrectly promulgated regulations to implement the various PM-2.5  
17 standards pursuant to the more lenient implementation provisions of Subpart 1 of Part D of Title  
18 I of the Clean Air Act, 42 U.S.C. §§ 7501–7509a, without also addressing the particulate-matter-  
19 specific provisions of Subpart 4 of Part D of Title I of the Act, *id.* §§ 7513–7513b. *See Natural*  
20 *Res. Def. Council v. EPA*, 706 F.3d 428, 429, 434-36 (D.C. Cir. 2013).

21 24. Under Subpart 4, nonattainment state implementation plans for particulate matter,  
22 including the 2006 24-hour PM-2.5 National Ambient Air Quality Standards, are due no later  
23 than “18 months after the designation as nonattainment.” 42 U.S.C. § 7513a(a)(2)(B).

**STATEMENT OF FACTS**

25. This case involves EPA’s failure to timely implement the National Ambient Air Quality Standards for 24-hour concentrations of PM-2.5. PM-2.5 includes hazardous forms of dirt, soot, smoke, and liquid droplets found in the air.

PM-2.5 is “produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants,” thus “[s]ources of fine particles include . . . motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning.” 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006).

The effects of PM-2.5 on human health are significant. For example, exposure has been associated “with an array of health effects, notably premature mortality, increased respiratory symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function.” 62 Fed. Reg. 38,652, 38,668 (July 18, 1997). It is therefore vital that EPA timely implement Clean Air Act requirements for PM-2.5 to protect public health and welfare against PM-2.5.

EPA first adopted 24-hour National Ambient Air Quality Standards for PM-2.5 in 1997. 62 Fed. Reg. 38,652 (July 18, 1997). In 2006, EPA strengthened these standards, revising the maximum allowed 24-hour average concentration of PM-2.5 from 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ . 71 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. § 50.13).

EPA made attainment and nonattainment designations for the 2006 24-hour PM-2.5 National Ambient Air Quality Standards on November 13, 2009. 74 Fed. Reg. 58,688 (Nov. 13, 2009). In that rulemaking, effective on December 14, 2009, EPA designated the Fairbanks North Star Borough as a nonattainment area. *Id.* at 58,696, 58,702. Because December 14, 2009 was the effective date for EPA’s designations, a nonattainment state implementation plan for the



1 Fairbanks North Star Borough was due no later than December 14, 2012. 42 U.S.C. §§ 7502(b);  
2 7513a(a)(2)(B).

3 30. To date, the State of Alaska has failed to submit to EPA a state implementation  
4 plan to address unhealthy 24-hour levels of PM-2.5 pollution in the Fairbanks North Star  
5 Borough.

6 31. EPA was required to issue, with respect to the Fairbanks North Star Borough, a  
7 finding of failure to submit a state implementation plan for the 2006 24-hour PM-2.5 National  
8 Ambient Air Quality Standard no later than six months after the plan submission deadline—i.e.,  
9 no later than June 14, 2013. 42 U.S.C. § 7410(k)(1)(B).

10 32. To date, EPA has failed to make a finding of failure to submit for the State of  
11 Alaska’s obligation to submit a nonattainment state implementation plan for the Fairbanks North  
12 Star Borough addressing the 24-hour PM-2.5 National Ambient Air Quality Standard.

13 **CLAIM FOR RELIEF**  
14 **(Failure to make a finding of failure to submit)**

15 33. Plaintiffs reallege each and every allegation set forth above, as if fully set forth  
16 herein.

17 34. The deadline for 2006 24-hour PM-2.5 National Ambient Air Quality Standard  
18 nonattainment state implementation plan submissions was no later than December 14, 2012.

19 35. The State of Alaska has not submitted a nonattainment state implementation plan  
20 to address violations of the 2006 24-hour PM-2.5 National Ambient Air Quality Standards in the  
21 Fairbanks North Star Borough.

22 36. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a  
23 finding of failure to submit within six months of the submission deadline and no later than June  
24 14, 2013.

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

2 38. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42  
3 U.S.C. § 7410(k)(1)(B), since June 15, 2013, or earlier.

4 39. This Clean Air Act violation constitute a “failure of the Administrator to perform  
5 any act or duty under this chapter which is not discretionary with the Administrator,” within the  
6 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is  
7 ongoing.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiffs respectfully request that the Court:

10 1. Declare that the Administrator is in violation of the Clean Air Act with regard to  
11 her mandatory, nondiscretionary duty under 42 U.S.C. § 7410(k)(1)(B) to make a finding that the  
12 State of Alaska has failed to submit a nonattainment state implementation plan addressing 24-  
13 hour concentrations of PM-2.5 in the Fairbanks North Star Borough;

14 2. Issue an injunction requiring the Administrator to make and publish in the  
15 *Federal Register* a finding of failure to submit, as required by law;

16 3. Retain jurisdiction of this matter until such time as EPA has complied with its  
17 non-discretionary duties under the Clean Air Act;

18 4. Award to Plaintiffs their reasonable costs of litigation, including attorneys’ fees  
19 and expert witness fees; and

20 5. Grant such further relief as the Court deems just and proper.

1 Respectfully submitted this 24th day of April, 2014.

2 s/ Janette K. Brimmer

3 Janette K. Brimmer (WSB #41271)

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17 *Attorneys for Citizens for Clean Air, a project of Alaska*  
18 *Community Action on Toxics, and Sierra Club*

# **EXHIBIT A**



February 4, 2014

**Via Certified and Electronic Mail**  
**Return Receipt Requested**

Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
E: McCarthy.Gina@epa.gov

**Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit**

Dear Administrator McCarthy:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (“the Act”). As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), to issue a “finding of failure to submit” addressing the State of Alaska’s failure to develop and submit a nonattainment state implementation plan (“SIP”) to combat persistent violations of the 24-hour national ambient air quality standard for fine particulate matter (“24-hour PM<sub>2.5</sub> NAAQS”) in the Fairbanks North Star Borough, Alaska.

Inhalable airborne particles present serious air quality problems in many areas of the United States, including in the Fairbanks North Star Borough. Numerous scientific studies have linked particle pollution exposure, especially exposure to PM<sub>2.5</sub>, to a variety of problems, including premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.<sup>1</sup> A recent report released by the American Lung Association ranked Fairbanks as the ninth dirtiest U.S. city for 24-hour PM<sub>2.5</sub> pollution.<sup>2</sup>

As you are aware, EPA established a 24-hour national ambient air quality standard for PM<sub>2.5</sub> in 1997 that was revised by the agency in 2006 to provide increased protection for public health and welfare. 71 Fed. Reg. 61,144 (Oct. 17, 2006). EPA established its air quality designations for

<sup>1</sup> See U.S. EPA, Health and Environmental Effects of Particulate Matter (PM), *available at* <http://www.epa.gov/particles/health.html> (last viewed Feb. 3, 2014).

<sup>2</sup> See American Lung Association, State of the Air 2013 at 13, *available at* <http://www.stateoftheair.org/2013/assets/ala-sota-2013.pdf> (last visited Feb. 3, 2014).

the 24-hour PM<sub>2.5</sub> NAAQS on November 13, 2009, identifying the Fairbanks North Star Borough as a “nonattainment area” for the revised standard. 74 Fed. Reg. 58,688, 58,702 (Nov. 13, 2009). At the time, EPA declared that, “[f]or those areas designated nonattainment, states must develop a State Implementation Plan (SIP) . . . *no later than three years from the effective date*” of the agency’s designations to provide for attainment of the standard. *Id.* at 59,689 (citing section 172(b) of the Act, 42 U.S.C. § 7502(b)) (emphasis added). EPA’s 24-hour PM<sub>2.5</sub> NAAQS designations were effective December 14, 2009, *id.* at 58,688, meaning that a nonattainment SIP for the Fairbanks North Star Borough was due no later than December 14, 2012. This deadline has passed but Alaska state officials have yet to propose a SIP to address the unhealthy 24-hour levels of PM<sub>2.5</sub> pollution in the Fairbanks North Star Borough, let alone secure the final state and EPA approval required for such provisions to take the force of law.<sup>3</sup>

As you also are aware, if a state fails to develop a required SIP, section 110(k)(1)(B) requires the Administrator to make a so-called “finding of failure to submit” no later than six months after the SIP submission deadline. 42 U.S.C. § 7410(k)(1)(B). EPA’s nondiscretionary obligation to make a “finding of failure to submit” within six months of the SIP submission deadline reflects Congress’s goal to establish “statutory teeth” to enforce the deadline. *NRDC v. EPA*, 22 F.3d 1125, 1131 (D.C. Cir. 1994). Because December 14, 2012, was the deadline for the State of Alaska to submit a nonattainment SIP for the 24-hour PM<sub>2.5</sub> NAAQS, you were required to issue a “finding of failure to submit” for the Fairbanks North Star Borough no later than June 14, 2013. Having not issued the mandatory finding, EPA has been in violation of section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), since June 15, 2013.<sup>4</sup>

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue a “finding of failure to submit” addressing the Fairbanks North Star Borough unless EPA

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<sup>3</sup> The State of Alaska lacks EPA-approved SIP provisions that address PM<sub>2.5</sub> pollution in any way, even though the NAAQS was first adopted in 1997—more than 15 years ago. *See* 73 Fed. Reg. 62,902, 62,903 (Oct. 22, 2008); 77 Fed. Reg. 16,785, 16,786 (Mar. 22, 2012). In the face of the current nonattainment of the 24-hour PM<sub>2.5</sub> NAAQS, it is imperative that EPA abide by the Act’s substantive provisions and deadline requirements intended to improve air quality and protect public health.

<sup>4</sup> In 2009, EPA established a three-year deadline for submission of 24-hour PM<sub>2.5</sub> nonattainment SIPs—but this deadline was incorrect as a matter of law. The D.C. Circuit recently ruled that EPA unlawfully has been promulgating regulations to implement the various PM<sub>2.5</sub> NAAQS pursuant to the more lenient implementation provisions of Subpart 1 of Part D of Title I of the Act, 42 U.S.C. §§ 7501–7509a (Subpart 1), instead of the stricter, particulate-matter-specific provisions of Subpart 4 of Part D of Title I, *id.* §§ 7513–7513b (Subpart 4). *NRDC v. EPA*, 706 F.3d 428, 429, 434–36 (D.C. Cir. 2013). Per Subpart 4, nonattainment SIPs for the 24-hour PM<sub>2.5</sub> NAAQS were due no later than “18 months after the designation as nonattainment,” not three years after designation. 42 U.S.C. § 7513a(2)(B); *see also* EPA, *Strategies for Reducing Residential Wood Smoke* at 32 (revised Mar. 2013) (“Areas designated as nonattainment for the PM<sub>2.5</sub> NAAQS are required to develop a SIP within 18 months of the effective date of the designations.”). In other words, Alaska’s nonattainment SIP for the 24-hour PM<sub>2.5</sub> NAAQS was actually due June 14, 2011. As far overdue as a nonattainment SIP for Fairbanks is, there is no justification for EPA to continue to delay issuance of a “finding of failure to submit.”

has fully performed this duty within 60 days of the postmark date of this letter. As required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

Citizens for Clean Air, a project of Alaska Community Action on Toxics  
505 West Northern Lights Blvd., Suite 205  
Anchorage, Alaska 99503  
T: 907.222.7714

Sierra Club  
85 Second St., 2nd Floor  
San Francisco, CA 94105  
T: 415.977.5500

Citizens for Clean Air (CCA) is a coalition of local community members and citizens groups in Fairbanks, Alaska who are committed to cleaning up the air while keeping everyone warm in the winter. CCA is a project of Alaska Community Action on Toxics (ACAT), a non-profit environmental health research and advocacy organization whose mission is to assure justice by advocating for environmental and community health. The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 2.1 million members and supporters nationwide including in Fairbanks, Alaska.

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to further discuss the basis for this claim or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to me using the contact information indicated below.

Sincerely,

/s/ Colin C. O'Brien  
Colin C. O'Brien  
Earthjustice  
441 W. 5th Ave., Suite 301  
Anchorage, AK 99501  
T: 907.792.7103  
E: [cobrien@earthjustice.org](mailto:cobrien@earthjustice.org)

cc via e-mail:

Dennis McLerran, Regional Administrator, Region 10, [mclerran.dennis@epa.gov](mailto:mclerran.dennis@epa.gov)  
Sara Schneeberg, Air and Radiation Law Office, Office of General Counsel,  
[schneeberg.sara@epa.gov](mailto:schneeberg.sara@epa.gov)

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

See attachment.

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

DEFENDANTS

See attachment.

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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)
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
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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, Personal Injury, Real Estate, etc.

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

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
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): See attachment. Brief description of cause: See attachment.

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

DATE 04/24/2014 SIGNATURE OF ATTORNEY OF RECORD s/ Janette K. Brimmer

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



**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.

**ATTACHMENT TO CIVIL COVER SHEET**

**I. (a)**

**PLAINTIFFS**

CITIZENS FOR CLEAN AIR, a project of ALASKA COMMUNITY ACTION ON TOXICS,  
and SIERRA CLUB

**DEFENDANT**

GINA MCCARTHY, in her official capacity as Administrator of the United States  
Environmental Protection Agency  
DENNIS MCLERRAN, in his official capacity as Regional Administrator of the United States  
Environmental Protection Agency Region 10

**I. (b)**

**County of Residence of First Listed Plaintiff**

Fairbanks North Star Borough, Alaska

**I. (c) ATTORNEYS FOR PLAINTIFFS**

Janette K. Brimmer  
EARTHJUSTICE  
705 Second Avenue, Suite 203  
Seattle, WA 98104  
206.343.7340

Colin C. O'Brien  
EARTHJUSTICE  
441 W. 5th Avenue, Suite 301  
Anchorage, AK 99501  
907.792.7103

**VI. CAUSE OF ACTION**

**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):**

Clean Air Act citizen suit provision, 42 U.S.C. § 7604

1 **Brief description of cause:**

2 Challenge to the U.S. Environmental Protection Agency's failure to fulfill its statutory duty to  
3 issue a finding that the State of Alaska has failed to submit a state implementation plan to  
4 address violations of the 24-hour national ambient air quality standard for fine particulate matter  
5 in the Fairbanks North Star Borough, Alaska.  
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# United States District Court

for the  
Western District of Washington

CITIZENS FOR CLEAN AIR, a project of ALASKA  
COMMUNITY ACTION ON TOXICS, and SIERRA  
CLUB,

\_\_\_\_\_  
*Plaintiff*

v.

GINA MCCARTHY, in her official capacity as  
Administrator of the United States Environmental  
Protection Agency, and DENNIS MCLERRAN, in his  
official capacity as Regional Administrator of the United  
States Environmental Protection Agency Region 10,

\_\_\_\_\_  
*Defendant*

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

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Gina McCarthy, Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 1101A  
Washington, DC 20460

A lawsuit has been filed against you.

Within \_\_\_ days after service of this summons on you (not counting the day you received it) - or <sup>60</sup>\_\_\_ days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Janette K. Brimmer  
EARTHJUSTICE  
705 Second Avenue, Suite 203  
Seattle, WA 98104

Colin C. O'Brien  
EARTHJUSTICE  
441 W. 5th Avenue, Suite 301  
Anchorage, AK 99501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

PROOF OF SERVICE

***This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1)***

This summons for *(name of individual and title, if any)* \_\_\_\_\_

was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons and complaint on the individual at *(place)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and complaint at the individual's residence or usual place of abode with *(name)*

\_\_\_\_\_, a person of suitable age and discretion who resides there,

on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons and complaint on *(name of individual)* \_\_\_\_\_

who is designated by law to accept service of process on behalf of *(name of organization)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.

United States District Court

for the Western District of Washington

CITIZENS FOR CLEAN AIR, a project of ALASKA COMMUNITY ACTION ON TOXICS, and SIERRA CLUB,

Plaintiff

v.

GINA MCCARTHY, in her official capacity as Administrator of the United States Environmental Protection Agency, and DENNIS MCLERRAN, in his official capacity as Regional Administrator of the United States Environmental Protection Agency Region 10,

Defendant

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

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Dennis McLerran, Regional Administrator
United States Environmental Protection Agency, Region 10
1200 Sixth Avenue
Mail Code: RA-140
Seattle, WA 98101

A lawsuit has been filed against you.

Within \_\_\_ days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Janette K. Brimmer
EARTHJUSTICE
705 Second Avenue, Suite 203
Seattle, WA 98104

Colin C. O'Brien
EARTHJUSTICE
441 W. 5th Avenue, Suite 301
Anchorage, AK 99501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

PROOF OF SERVICE

***This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1)***

This summons for *(name of individual and title, if any)* \_\_\_\_\_

was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons and complaint on the individual at *(place)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and complaint at the individual's residence or usual place of abode with *(name)*

\_\_\_\_\_, a person of suitable age and discretion who resides there,

on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons and complaint on *(name of individual)* \_\_\_\_\_

who is designated by law to accept service of process on behalf of *(name of organization)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.

United States District Court

for the
Western District of Washington

CITIZENS FOR CLEAN AIR, a project of ALASKA
COMMUNITY ACTION ON TOXICS, and SIERRA
CLUB,

Plaintiff

v.

GINA MCCARTHY, in her official capacity as
Administrator of the United States Environmental
Protection Agency, and DENNIS MCLERRAN, in his
official capacity as Regional Administrator of the United
States Environmental Protection Agency Region 10,

Defendant

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

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Eric H. Holder, Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

A lawsuit has been filed against you.

Within \_\_\_ days after service of this summons on you (not counting the day you received it) - or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal
Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Janette K. Brimmer Colin C. O'Brien
EARTHJUSTICE EARTHJUSTICE
705 Second Avenue, Suite 203 441 W. 5th Avenue, Suite 301
Seattle, WA 98104 Anchorage, AK 99501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk



PROOF OF SERVICE

***This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1)***

This summons for *(name of individual and title, if any)* \_\_\_\_\_

was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons and complaint on the individual at *(place)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and complaint at the individual's residence or usual place of abode with *(name)*

\_\_\_\_\_, a person of suitable age and discretion who resides there,

on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons and complaint on *(name of individual)* \_\_\_\_\_

who is designated by law to accept service of process on behalf of *(name of organization)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.

United States District Court

for the
Western District of Washington

CITIZENS FOR CLEAN AIR, a project of ALASKA
COMMUNITY ACTION ON TOXICS, and SIERRA
CLUB,

Plaintiff

v.

GINA MCCARTHY, in her official capacity as
Administrator of the United States Environmental
Protection Agency, and DENNIS MCLERRAN, in his
official capacity as Regional Administrator of the United
States Environmental Protection Agency Region 10,

Defendant

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

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Jenny A. Durkan, U.S. Attorney
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101

A lawsuit has been filed against you.

Within \_\_\_ days after service of this summons on you (not counting the day you received it) - or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) - you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal
Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address is:

Janette K. Brimmer Colin C. O'Brien
EARTHJUSTICE EARTHJUSTICE
705 Second Avenue, Suite 203 441 W. 5th Avenue, Suite 301
Seattle, WA 98104 Anchorage, AK 99501

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

PROOF OF SERVICE

***This section should not be filed with the court unless required by Fed. R. Civ. P. 4(1)***

This summons for *(name of individual and title, if any)* \_\_\_\_\_

was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons and complaint on the individual at *(place)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons and complaint at the individual's residence or usual place of abode with *(name)*

\_\_\_\_\_, a person of suitable age and discretion who resides there,

on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons and complaint on *(name of individual)* \_\_\_\_\_

who is designated by law to accept service of process on behalf of *(name of organization)*

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.