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11 *Diversity and Sierra Club*

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

14 \_\_\_\_\_ )  
15 CENTER FOR BIOLOGICAL DIVERSITY )  
and SIERRA CLUB, )

16 *Plaintiffs,* )

17 v. )

18 )  
19 ANDREW R. WHEELER, in his official )  
capacity as Administrator, United States )  
20 Environmental Protection Agency, )

21 *Defendant.* )  
22 )  
23 \_\_\_\_\_ )

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

**COMPLAINT FOR**  
**DECLARATORY AND INJUNCTIVE**  
**RELIEF**

## INTRODUCTION

1  
2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.  
3 Plaintiffs Center for Biological Diversity and Sierra Club bring this action for declaratory  
4 judgment and injunctive relief to compel Defendant Andrew R. Wheeler (“Administrator,”  
5 “EPA,” or “Defendant”), in his official capacity as Administrator of the U.S. Environmental  
6 Protection Agency, to carry out his overdue legal obligation to officially determine whether  
7 certain moderate nonattainment areas of the country attained or did not attain the 2008 National  
8 Ambient Air Quality Standards (“standard” or “standards”) for ozone by the statutory deadline,  
9 an action necessary to strengthen clean air protections so as to bring communities with unhealthy  
10 levels of ozone pollution into compliance with clean air standards by a new legal deadline.  
11

12  
13 2. Ground-level ozone, or smog, seriously harms human health and the environment. Ozone  
14 is formed when volatile organic compounds and nitrogen oxides, emitted from, for example,  
15 tailpipes, smokestacks, and oil and gas production, react with sunlight. At high enough levels, it  
16 impairs breathing, inflames lungs, sends people to the hospital, and can even kill. Ozone also  
17 harms growing plants and ecosystems. The Clean Air Act requires EPA to establish health- and  
18 welfare-protective national ambient air quality standards (“ozone standards”) to limit the amount  
19 of ozone allowed in the outdoor air. 42 U.S.C. § 7409(a), (b). Areas with ozone pollution levels  
20 that violate the standards must clean up their air.  
21

22 3. EPA created the ozone standard at issue here in 2008, based on its finding that the prior  
23 ozone standard was inadequate to protect public health and welfare. 73 FR 16,436 (Mar. 27,  
24 2008) (promulgated Mar. 12, 2008). EPA then seriously delayed the implementation of the 2008  
25 ozone standard and made initial nonattainment designations with respective classifications  
26 effective July 20, 2012 – well after the Clean Air Act’s two-year deadline. *See* 42 U.S.C.  
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1 § 7407(d)(1)(B)(i) (designations due two years from the date of promulgation of the new or  
2 revised standard); *NRDC v. EPA*, 777 F.3d 456, 463 (D.C. Cir. 2014). Under the Act, the  
3 attainment deadline for certain nonattainment areas – those classified as “moderate” – was July  
4 20, 2018. 42 U.S.C. § 7511(a)(1); 40 C.F.R. § 51.1103(a) tbl.1.  
5

6 4. Within six months of the passage of the attainment deadline, or by January 20, 2019, the  
7 Act required EPA to determine whether each moderate nonattainment area met the deadline, with  
8 those that did not being reclassified by operation of law so that they are subject to more effective  
9 protections, and to publish notice in the Federal Register of the attainment determinations and  
10 reclassifications. 42 U.S.C. § 7511(b)(2)(A), (B).  
11

12 5. This deadline has passed and the Administrator has not yet finalized attainment  
13 determinations and published the required notice in the Federal Register for moderate  
14 nonattainment areas under the 2008 ozone standard. These areas include some of the most  
15 polluted areas of the country, where millions of people live and work, including Petitioners’  
16 members. EPA’s failure to meet the deadline that Congress prescribed violates the Clean Air  
17 Act. Thus, Plaintiffs seek both declaratory relief and an order to compel the Administrator to  
18 make and publish in the Federal Register final determinations for the following areas: Imperial  
19 County, CA; Mariposa County, CA; Nevada County (Western part), CA; San Diego County,  
20 CA; Phoenix-Mesa, AZ; Baltimore, MD; Chicago-Naperville, IL-IN-WI; Dallas-Fort Worth,  
21 TX; Greater Connecticut, CT; Houston-Galveston-Brazoria, TX; New York-N. New Jersey-Long  
22 Island, CT-NJ-NY; and Sheboygan County, WI.  
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#### 25 **JURISDICTION, VENUE, AND NOTICE**

26 6. This action arises under the Clean Air Act, 42 U.S.C. § 7511(b)(2)(A), (B). Because this  
27 action raises a federal question, this Court has jurisdiction pursuant to 42 U.S.C. § 7604(a)(2)  
28

1 and 28 U.S.C. §§ 1331 and 1361. This Court may grant the relief Plaintiffs request pursuant to 42  
2 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 2201(a), 2202, and 1361. Plaintiffs have a right to bring  
3 this action pursuant to the Clean Air Act, 42 U.S.C. § 7604(a)(2); 28 U.S.C. § 1361; and the  
4 Administrative Procedure Act, 5 U.S.C. §§ 701-706.

5  
6 7. By certified mail, with a courtesy copy sent by electronic mail, Plaintiffs provided the  
7 Administrator with written notice posted on March 4, 2019, of this action as required by the  
8 Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54.

9 8. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a) a Plaintiff resides in  
10 this district; b) this district is one in which Defendant EPA resides and performs its official  
11 duties; and c) a substantial part of the events and omissions giving rise to this claim occurred and  
12 is occurring in this district because EPA's Regional Office in San Francisco, California, has a  
13 substantial role in implementing the EPA duties at issue in this case.

14  
15 9. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or  
16 Oakland Division of this Court because a Plaintiff resides in Oakland, and Defendant EPA  
17 resides in San Francisco.

## 18 **PARTIES**

19  
20 10. Plaintiff **Center for Biological Diversity** is an organization incorporated and existing  
21 under the laws of the State of California, with its main California office in Oakland. The Center  
22 uses science and law in its work, which focuses on the preservation, protection, and restoration  
23 of biodiversity, native species, ecosystems, public lands and waters, and public health.

24 11. Plaintiff **Sierra Club** is a nonprofit corporation organized and existing under the laws of  
25 the State of California, with its headquarters located in Oakland. The Club is dedicated to the  
26 protection and enjoyment of the environment.  
27  
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1 12. Plaintiffs have members living, working, and engaging in outdoor activities in all 50  
2 states and Washington, DC, including in the areas at issue here.

3 13. Defendant Andrew R. Wheeler is the Administrator of the U.S. Environmental Protection  
4 Agency. Administrator Wheeler is charged with the duty to uphold the Clean Air Act and to take  
5 required regulatory actions according to the schedules established by the Act. Administrator  
6 Wheeler is sued in his official capacity.

#### 8 **FACTUAL BACKGROUND: OZONE**

9 14. Ozone, the main component of smog, is a corrosive air pollutant that inflames the lungs  
10 and constricts breathing, and likely kills people. *See Am. Trucking Ass'ns v. EPA*, 283 F.3d 355,  
11 359 (D.C. Cir. 2002); 80 FR 65,292, 65,308/3-09/1 (Oct. 26, 2015); EPA, *Integrated Science*  
12 *Assessment for Ozone and Related Photochemical Oxidants* 2-20 to -24 tbl.2-1, EPA-HQ-OAR-  
13 2008-0699-0405 (Feb. 2013) (“ISA”). It causes and exacerbates asthma attacks, emergency room  
14 visits, hospitalizations, and other serious health harms. *E.g.*, EPA, *Policy Assessment for the*  
15 *Review of the Ozone National Ambient Air Quality Standards* 3-18, 3-26 to -29, 3-32, EPA-HQ-  
16 OAR-2008-0699-0404 (Aug. 2014) (“PA”); ISA 2-16 to -18, 2-20 to -24 tbl.2-1. Ozone-induced  
17 health problems can force people to change their ordinary activities, requiring children to stay  
18 indoors and forcing people to take medication and miss work or school. *E.g.*, PA 4-12.

19 15. Ozone can harm healthy adults, but others are more vulnerable. *See* 80 FR 65,310/1-3.  
20 Because their respiratory tracts are not fully developed, children are especially vulnerable to  
21 ozone pollution, particularly when they have elevated respiratory rates, as when playing  
22 outdoors. *E.g.*, *id.* 65,310/3, 65,446/1; PA 3-81 to -82. People living with lung disease and the  
23 elderly also have heightened vulnerability. *See* 80 FR 65,310/3. People living with asthma suffer  
24 more severe impacts from ozone exposure than healthy individuals and are more vulnerable at  
25 lower levels of exposure. *Id.* 65,311/1 n.37, 65,322/3.

1 16. Ozone also damages vegetation and forested ecosystems, causing or contributing to  
2 widespread stunting of plant growth, tree deaths, visible leaf injury, reduced carbon storage, and  
3 reduced crop yields. PA 5-2 to -3; ISA 9-1. By harming vegetation, ozone can also damage entire  
4 ecosystems, leading to ecological and economic losses. 80 FR 65,370/1-2, 65,377/3.  
5

#### 6 **STATUTORY AND REGULATORY BACKGROUND**

7 17. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s  
8 air resources so as to promote the public health and welfare and the productive capacity of its  
9 population.” 42 U.S.C. § 7401(b)(1). One “primary goal” is “pollution prevention.” *Id.* § 7401(c).  
10 Congress found the Act to be necessary in part because “the growth in the amount and  
11 complexity of air pollution brought about by urbanization, industrial development, and the  
12 increasing use of motor vehicles, has resulted in mounting dangers to the public health and  
13 welfare.” *Id.* § 7401(a)(2).  
14

15 18. Central to the Act is the requirement that EPA establish national ambient air quality  
16 standards for certain widespread air pollutants that endanger public health and welfare, referred  
17 to as “criteria pollutants.” *Id.* §§ 7408-7409. One criteria pollutant is ground-level ozone. *See* 40  
18 C.F.R. §§ 50.9, 50.10, 50.15, 50.19.  
19

20 19. The national ambient air quality standards establish allowable concentrations of criteria  
21 pollutants in ambient air, *i.e.*, outdoor air. Primary standards protect public health, including that  
22 of sensitive populations such as asthmatics, children, and the elderly. 42 U.S.C. § 7409(b)(1).  
23 Secondary standards protect public welfare, including protection against damage to animals,  
24 crops, vegetation, and water. *Id.* §§ 7409(b)(2), 7602(h). EPA must review and, as appropriate,  
25 revise these standards at least every five years. *Id.* § 7409(d)(1).  
26

27 20. After EPA sets or revises a standard, the Clean Air Act requires EPA to take steps to  
28 implement the standard. *See, e.g.*, 73 FR 16,503/1-3. Within two years of revising a standard,

1 EPA must “designate” areas as not meeting the standard, or “nonattainment”; meeting the  
2 standard, or “attainment”; or, if EPA lacks information to make a designation, “unclassifiable.”  
3 42 U.S.C. § 7407(d)(1)(A)-(B).

4 21. States must plan how they will attain the new or revised standard. They must implement  
5 certain protections designed to ensure that air quality in nonattainment areas will attain ozone  
6 standards by specified deadlines. *Id.* §§ 7410(a), (c), 7502; *see also id.* §§ 7511-7511f  
7 (provisions specific to ozone nonattainment areas). Among the protections is a preconstruction  
8 permitting program, which requires modified and new “major” factories and power plants in  
9 nonattainment areas to operate state-of-the-art pollution controls and to secure reductions in air  
10 pollution from other sources sufficient to more than offset the new pollution they will introduce.  
11 *Id.* §§ 7503, 7511a. Each state must adopt a “state implementation plan” that includes all the  
12 protections Congress required for nonattainment areas and any specific measures the state  
13 determines should be implemented to address local sources of air pollution contributing to  
14 elevated ozone levels. *Id.* § 7410(a)(2)(I).

15 22. Simultaneous with designations, the Act requires EPA to classify each ozone  
16 nonattainment area based on the severity of its ozone pollution. *Id.* § 7511(a)(1) tbl.1. The  
17 classifications are, in increasing order, “marginal,” “moderate,” “serious,” “severe,” and  
18 “extreme.” *Id.*

19 23. The higher the classification, the longer the area has to come into attainment, but the  
20 more stringent the controls a state must adopt. For example, in a “moderate” nonattainment area,  
21 the Act’s preconstruction permitting program applies only to a source with the potential to emit  
22 at least 100 tons per year of an ozone-forming pollutant, and it requires the source to offset each  
23 new ton with 1.15 tons of reductions in that pollutant. *Id.* §§ 7511a(b)(5), 7602(j). By contrast, in  
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1 a “serious” nonattainment area, the threshold for the preconstruction permitting program is 50  
2 tons per year, and the offset ratio increases to 1.2 tons of reductions for every ton proposed to be  
3 emitted. *Id.* § 7511a(c), (c)(10). Thus, in a serious area, more new and modified sources must  
4 apply state-of-the-art pollution controls and obtain offsetting pollution reductions, and they must  
5 obtain more offsets, than in a moderate area.  
6

7 24. Within six months of the passage of an attainment deadline, the Act requires EPA to  
8 determine whether each area met the deadline; areas that failed to meet their deadline are  
9 reclassified by operation of law, and EPA must publish notice in the Federal Register of its  
10 attainment determinations and any reclassifications. 42 U.S.C. § 7511(b)(2)(A), (B). Under  
11 limited circumstances, an area may qualify for up to two one-year extensions. 42 U.S.C.  
12 § 7511(a)(5); 40 C.F.R. § 51.1107.  
13

14 **FACTUAL BACKGROUND: 2008 OZONE STANDARD REVISION AND EPA’S**  
15 **FAILURE TO MAKE ATTAINMENT DETERMINATIONS FOR**  
16 **MODERATE NONATTAINMENT AREAS**

17 25. EPA strengthened the ozone standard in 2008 based on an extensive scientific record  
18 demonstrating that the prior ozone standards were inadequate to protect public health and  
19 welfare. 73 FR 16,436. EPA set the level of the standard at 75 parts per billion.  
20

21 26. Violations of the 2008 ozone standard are found by analyzing air monitoring data about  
22 the actual level of ozone in the air to determine whether the three-year average of the annual  
23 fourth highest eight-hour ozone concentrations exceed 75 parts per billion. 40 C.F.R. § 50.15(b).

24 27. The revision to the ozone standard triggered EPA’s obligation to “promulgate the  
25 designations of all areas” of the country as meeting (“in attainment of”) or not meeting (“in  
26 nonattainment of”) the standard within two years—*i.e.*, by March 12, 2010. 42 U.S.C.  
27  
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1 § 7407(d)(1)(B)(i). EPA extended the two-year deadline by an additional year, to March 12,  
2 2011, and then missed it. 77 FR 30,088, 30,091/1 (May 21, 2012).<sup>1</sup>

3 28. Ultimately, EPA completed all designations effective July 20, 2012. *Id.* 30,088/2; 77 FR  
4 34,221, 34,221/3 (June 11, 2012). The Administrator’s designations triggered Clean Air Act  
5 attainment deadlines. Moderate nonattainment areas had up to six years, *i.e.*, until July 20, 2018,  
6 to attain the 2008 ozone standard. 77 FR 30,160 (May 21, 2012); *see* 80 FR 12,264, 12,267/3-  
7 68/2 (Mar. 6, 2015) (revising attainment deadlines in light of *NRDC*, 777 F.3d 456).<sup>2</sup>

9 29. Within six months of the moderate attainment deadline, *i.e.*, by January 20, 2019, EPA  
10 had a mandatory duty to determine whether those moderate areas had in fact attained the 2008  
11 ozone standard. *See* 40 C.F.R. § 51.1103(a) tbl.1; 83 FR 56,781 (Nov. 14, 2018). Areas that did  
12 not attain would be reclassified by operation of law, and EPA had a mandatory duty to publish  
13 notice in the Federal Register identifying the areas that failed to attain and those areas’  
14 reclassifications.  
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19 <sup>1</sup> In 2015, EPA reviewed and revised the ozone standard. EPA set a new more stringent ozone  
20 standard at 70 parts per billion based on a finding that the 2008 standard is not requisite to  
21 protect public health with an adequate level of safety. 80 FR 65,292 (Oct. 26, 2015). This  
standard is not at issue here.

22 <sup>2</sup> The marginal area attainment deadline passed on July 20, 2015. EPA subsequently made  
23 attainment determinations, including reclassifications and extensions, and published notices in  
24 the Federal Register for all marginal nonattainment areas. 81 FR 26,697, 26,699 tbl.3 (May 4,  
25 2016) (among areas that failed to attain the standard and were reclassified to “moderate” are  
26 Chicago-Naperville, IL-IN-WI; Greater Connecticut, CT; Imperial County, CA; Mariposa  
27 County, CA; Nevada County (Western part), CA; New York-N. New Jersey-Long Island, NY-  
28 NJ-CT; Phoenix-Mesa, AZ; and San Diego County, CA); 81 FR 90,207 (Dec. 14, 2016)  
(reclassifying Houston-Galveston-Brazoria, TX, area to “moderate” after granting one-year  
extension); 81 FR 91,841 (Dec. 19, 2016) (reclassifying Sheboygan County, WI, to “moderate”  
after granting one-year extension).

1 30. On November 14, 2018, EPA initiated a proposal for certain moderate nonattainment  
2 areas. 83 FR 56,781. This proposal fails to address all moderate nonattainment areas and is not  
3 final.

4 31. January 20, 2019, has passed, and, to date, EPA has failed to make the required  
5 attainment determinations under the 2008 standard and to publish the required notice in the  
6 Federal Register for the following moderate areas under the 2008 ozone standard: Imperial  
7 County, CA; Mariposa County, CA; Nevada County (Western part), CA; San Diego County,  
8 CA; Phoenix-Mesa, AZ; Baltimore, MD; Chicago-Naperville, IL-IN-WI; Dallas-Fort Worth,  
9 TX; Greater Connecticut, CT; Houston-Galveston-Brazoria, TX; New York-N. New Jersey-Long  
10 Island, CT-NJ-NY; and Sheboygan County, WI. *See* 42 U.S.C. § 7511(b)(2)(A), (B).

#### 11 **PLAINTIFFS' INJURIES**

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14 32. Plaintiffs' members include individuals who live, work, travel, and engage in recreational  
15 activities in the areas for which EPA has failed to make and publish in the Federal Register final  
16 attainment determinations, including reclassifications, in the timeframe required by 42 U.S.C.  
17 § 7511(b)(2)(A). These areas include major metropolitan areas where air quality violates the  
18 2008 ozone standard, such as San Diego, Phoenix, Chicago, Dallas, Houston, and New York  
19 City, as well as other communities like Imperial County, CA.

20  
21 33. The acts and omissions of EPA alleged here harm Plaintiffs' members by prolonging  
22 poor air quality conditions that adversely affect or threaten their health, and by nullifying or  
23 delaying measures and procedures mandated by the Act to protect their health from ozone  
24 pollution in places where they live, work, travel, and recreate. Indeed, ozone levels that exceed  
25 the 2008 standard can exacerbate Plaintiffs' members' health problems such as asthma and  
26 chronic obstructive pulmonary disease, causing physical problems that force them to limit  
27 outdoor activities that they would otherwise be able to do and enjoy.  
28

1 34. The acts and omissions of EPA alleged here also harm Plaintiffs' members because their  
2 reasonable concerns about the health effects of their ozone exposure diminish their enjoyment of  
3 activities they previously enjoyed or would like to continue to engage in, and of areas they  
4 previously enjoyed or would like to continue to use.

5  
6 35. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare  
7 interest in using and enjoying the natural environment in areas that do not meet the 2008  
8 standard. Elevated levels of ozone damage plant life, aquatic life, and natural ecosystems, thus  
9 harming Plaintiffs' members' recreational and aesthetic interests. Ozone damage to vegetation  
10 can lead to wildlife avoidance of certain areas, as well as a reduction in biodiversity or other  
11 changes to a local community's ecosystem, making it more difficult for Plaintiffs' members to  
12 observe, fish, cultivate, study, research, or write about wildlife, plants, or ecosystems.

13  
14 36. Even Plaintiffs' members in other areas that are downwind of the areas at issue in this  
15 Complaint are injured by EPA's failure to act. By delaying enhanced controls on ozone pollution  
16 in the areas at issue here, EPA prolongs and exacerbates ozone levels downwind that harm  
17 Plaintiffs' members in those areas.

18  
19 37. The acts and omissions of EPA alleged here further deprive Plaintiffs and their members  
20 of procedural rights and protections to which they would otherwise be entitled, including, but not  
21 limited to, the right to participate in proceedings to determine whether their communities (or  
22 upwind communities) meet the 2008 ozone standard or must increase protections against ozone  
23 pollution, the right to judicially challenge final attainment determinations adversely affecting  
24 their members, the right to enforce requirements of the Act for preparation and implementation  
25 of plans to remedy and prevent violations of the 2008 ozone standard, and the right to comment  
26 on and judicially challenge such plans.  
27  
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1 38. The EPA acts and omissions alleged here further injure Plaintiffs and their members by  
2 depriving them of information to which they are entitled by law, including, but not limited to,  
3 EPA's published identification of each area's attainment status. If Plaintiffs had access to such  
4 information, they would use it to, among other things: educate their members and the public  
5 about the scope of ozone standard violations nationwide, including identification of areas that  
6 still violate the 2008 ozone standard and areas that now meet the standard; advocate for adoption  
7 of adequate measures to bring areas that continue to violate that standard into compliance and  
8 prevent relapse of violations in areas found to have timely attained; and more efficiently target  
9 Plaintiffs' actions to promote effective implementation of the 2008 ozone standard. Such  
10 information would also assist Plaintiffs' members in determining whether they are exposed to  
11 ozone levels that violate the health standard and in taking action to protect themselves, their  
12 families, their property, and their animals from ozone pollution. The acts and omissions  
13 complained of here deprive Plaintiffs and their members of the benefits of such information and  
14 thus cause them injury.

17 39. EPA's failure also hampers Plaintiffs' ability to perform certain programmatic functions  
18 essential to their missions, such as ensuring that states put in place the public health and  
19 environmental protections that accompany more stringent nonattainment classifications, and  
20 educating the public about these protections.

22 40. Accordingly, the health, recreational, aesthetic, procedural, informational, and  
23 organizational interests of Plaintiffs and their members have been and continue to be adversely  
24 affected by the acts and omissions of EPA alleged here.  
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1 41. A court order requiring EPA to promptly make and publish in the Federal Register final  
2 determinations for the nonattainment areas complained of here, as the law requires, would  
3 redress Plaintiffs' and Plaintiffs' members' injuries.

4  
5 **CLAIM FOR RELIEF**

6 42. The allegations of all foregoing paragraphs are incorporated as if set forth fully below.

7 Violation of the Clean Air Act

8 43. EPA's deadline for making moderate area attainment determinations and publishing  
9 notice thereof in the Federal Register under the 2008 ozone standard was January 20, 2019.

10 44. To date, the Administrator has failed to make and publish in the Federal Register final  
11 attainment determinations and reclassifications by that deadline, as required by 42 U.S.C.  
12 § 7511(b)(2)(A) and (B), for the following moderate areas: Imperial County, CA; Mariposa  
13 County, CA; Nevada County (Western part), CA; San Diego County, CA; Phoenix-Mesa, AZ;  
14 Baltimore, MD; Chicago-Naperville, IL-IN-WI; Dallas-Fort Worth, TX; Greater Connecticut,  
15 CT; Houston-Galveston-Brazoria, TX; New York-N. New Jersey-Long Island, CT-NJ-NY; and  
16 Sheboygan County, WI.

17  
18 45. This constitutes a "failure of the Administrator to perform any act or duty under this  
19 chapter which is not discretionary" within the meaning of the Clean Air Act, 42 U.S.C.  
20 § 7604(a)(2), and thus is a violation of the Act. EPA's violations are ongoing.

21  
22 **RELIEF REQUESTED**

23 Plaintiffs respectfully request that the Court:

- 24 (1) Declare that EPA's failure to timely make and publish in the Federal Register attainment  
25 determinations, including any reclassifications, for each of the moderate areas under the  
26 2008 National Ambient Air Quality Standards for ozone identified in Paragraph 44 by the  
27 deadline required by 42 U.S.C. § 7511(b)(2)(A) and (B) constitutes a "failure of the  
28

1 Administrator to perform any act or duty under this chapter which is not discretionary”  
2 within the meaning of 42 U.S.C. § 7604(a)(2);

3 (2) Enjoin the Administrator from continuing to violate the above-described nondiscretionary  
4 duty for each such area;

5  
6 (3) Order the Administrator to make area attainment determinations for each of the moderate  
7 nonattainment areas under the 2008 National Ambient Air Quality Standards for ozone  
8 identified in Paragraph 44 and to publish notice in the Federal Register identifying the  
9 attainment determination and reclassification, if any, by an expeditious date-certain  
10 deadline specified by this Court;

11 (4) Retain jurisdiction to ensure compliance with the Court’s decree;

12 (5) Award Plaintiffs the costs of this action, including attorneys’ fees; and,

13 (6) Grant such other relief as the Court deems just and proper.  
14

15  
16 DATED: May 7, 2019

17  
18 Respectfully Submitted,

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