

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB
85 Second Street, 2nd Floor
San Francisco, CA 94105,

and

WILDEARTH GUARDIANS
312 Montezuma Ave.
Santa Fe, NM 87501

Plaintiffs,

v.

LISA P. JACKSON, in her official capacity
as Administrator, United States Environmental
Protection Agency,
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460,

Defendant.

CIVIL FILE ACTION NO. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. Plaintiffs Sierra Club and WildEarth Guardians bring this Clean Air Act (“CAA”) citizen suit to compel the United States Environmental Protection Agency (“EPA”) to undertake overdue nondiscretionary duties. Specifically, Sierra Club and WildEarth Guardians challenge the failure of Defendant, Lisa P. Jackson, in her official capacity as Administrator of the EPA, to perform certain mandatory duties required by the CAA 42 U.S.C. §§ 7401-7671q, including the failure to take final action under 42 U.S.C. § 7410(k)(2) on multiple State Implementation Plans (“SIPs”) submittals.

2. In an effort to protect and enhance the quality of the nation's air, the CAA requires EPA to establish National Ambient Air Quality Standards ("NAAQS"). The CAA then requires individual states to develop the plans, known as State Implementation Plans (SIPs), to achieve and maintain those standards. The states are required to submit their SIPs to the EPA for review by the EPA to determine if the SIPs comply with the CAA. The CAA establishes a mandatory duty for EPA to take final action under on SIP submittals within 12 months after a state has submitted a SIP submittal that is administratively complete and publish notice of that action in the Federal Register.

3. EPA has failed to take final action on the 1997 Ozone National Ambient Air Quality Standard Infrastructure SIP submittals for Maine, Rhode Island Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah and Wyoming.

4. Had EPA approved the 1997 Ozone NAAQS Infrastructure SIPs for these states, EPA and citizens would be able to enforce the plans to ensure that the states attain and maintain health based NAAQS by the deadlines in the CAA. Had EPA disapproved the 1997 Ozone NAAQS SIPs as inconsistent with the CAA, the state would have already been required to make changes to the SIPs to meet the minimum requirements of the CAA or EPA would be required to impose sanctions and promulgate Federal Implementation Plans (FIPs).

5. Instead, EPA has failed to act on these SIP submittals, ignoring EPA's mandatory role to ensure that State plans attain and maintain the NAAQS to protect public health and welfare.

II. JURISDICTION, VENUE AND NOTICE

6. This action is brought pursuant to the Clean Air Act, 42 U.S.C. § 7401, *et seq.* Thus, this Court has subject matter jurisdiction over the claims set forth in this complaint pursuant to 42 U.S.C. § 7604(a)(2). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue injunctive relief.

7. A substantial part of the alleged events or omissions giving rise to Plaintiff's claims occurred in the District of Columbia. In addition, Defendant Lisa P. Jackson officially resides in the District of Columbia. Thus, venue is proper in this Court pursuant to 28 U.S.C. §1391(e).

8. On August 17, 2009 Plaintiff also mailed a letter via certified mail, return receipt requested to Defendant Lisa P. Jackson stating that Plaintiffs intended to sue Defendant for failure to take final action under 42 U.S.C. § 7410(k)(2) and publish notice of that action in the Federal Register on the 1997 Ozone NAAQS Infrastructure State Implementation Plans (SIPs) for Maine, Rhode Island, Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah and Wyoming.

9. More than sixty (60) days have passed since Defendant received Plaintiffs' notice of intent to sue letter. To date, Defendant has not remedied the violations alleged in this Complaint. Therefore, an actual controversy exists between the parties.

III. PARTIES

10. Plaintiff **SIERRA CLUB** sues on behalf of itself and its adversely impacted members. Sierra Club, founded in 1892, is a nonprofit public-benefit corporation with more than 700,000 members in the United States and with one or more chapters in every state. The Sierra Club's purpose includes "to practice and to promote responsible use of the earth's ecosystem and resources; to enlist and to educate humanity to protect and to restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives." Sierra Club activities include hiking, canoeing, caving, swimming, fishing, nature study, and advocacy for the improvement and protection of water quality and air quality across the nation.

11. Plaintiff **WILDEARTH GUARDIANS** ("Guardians") sues on behalf of itself and its adversely affected members. On September 4, 2008, Rocky Mountain Clean Air Action, merged with Guardians with Guardians being the surviving organization with all the rights and responsibilities of Rocky Mountain Clean Air Action. WildEarth Guardians protects and restores wildlife, wild rivers, and wild places in the American West. Guardians has over 4,500 members, some of whom reside in the District of Columbia.

12. Sierra Club and Guardians members live, work, raise their families, recreate and engage in economic and other activities, and will continue to do so on a regular basis, in and around Maine, Rhode Island, Connecticut, New Hampshire, Alabama, Kentucky, Mississippi, South Carolina, Wisconsin, Indiana, Michigan, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah and Wyoming. They are adversely affected by exposure to ozone. The adverse effects of such pollution include actual and/or threatened harm to their health, their families' health, their professional well being, educational and economic interests, and their aesthetic and recreational enjoyment of the environment in these states and areas.

13. The CAA violations alleged in this Complaint also deprive Sierra Club, Guardians and their members of certain procedural rights associated with EPA's required duty to take final action under 42 U.S.C. § 7410(k)(2) on SIPs, including notice and opportunity to comment. The CAA violations alleged in this Complaint also deprive Sierra Club, Guardians and their members of certain information.

14. Because Defendant has not taken final action on the SIPs and published notice of that action Sierra Club and Guardians' members cannot be certain that the SIPs ensure that the states attain and maintain the health and public welfare based NAAQS. In other words, EPA's failure to take final action prevents Sierra Club and Guardians' members from being certain that the SIPs afford the public the level of protection that the CAA requires.

15. The CAA violations alleged in this Complaint have injured and will continue to injure the interests of Plaintiffs organization and their members, unless and until this Court grants the requested relief. Granting the relief requested in this lawsuit would address these injuries by compelling EPA action.

16. Defendant **LISA P. JACKSON** is sued in her official capacity as the Administrator of the United States Environmental Protection Agency. She is charged in that role with taking various actions to implement and enforce the CAA, including the requirement to take final action on SIPs and the other actions sought in this Complaint.

IV. STATUTORY FRAMEWORK

17. The Clean Air Act aims "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1).

18. To help achieve this goal, the CAA, including the 1990 amendments, establishes a partnership between EPA and the states for attainment and maintenance of national air quality goals. *See* 42 U.S.C. §§ 7401-7515.

19. Pursuant to the CAA, EPA has set health based primary and public welfare based secondary national ambient air quality standards (NAAQSs) to limit levels of "criteria pollutants," including ozone. *See* 40 C.F.R. part 50.4-50.13.

20. The NAAQS are designed to protect the public from being exposed to levels of air pollutants that EPA has found to have adverse health and welfare impacts.

21. The Clean Air Act requires all areas of the country to meet NAAQS. 42 U.S.C. § 7409-7410.

22. In order to achieve this goal, States, or regions within a state, must adopt a pollution control plan (known as a State Implementation Plan ("SIP")) that contains enforceable emissions limitations necessary to attain and maintain the NAAQS and meet other applicable requirements of the CAA. 42 U.S.C. §§ 7410(a)(1), (a)(2)(A); § 7401(a)(1), (k).

23. The CAA requires States to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS no later than three (3) years after promulgating the NAAQS. 42 U.S.C. § 7410.

24. After the EPA-set deadline for States to submit their revised SIPs expires, EPA is required to make a finding as to whether the SIP submittal is complete within six months. If EPA fails to determine whether a SIP submittal is complete, it is deemed complete by operation of law six months after a state has submitted it.

25. Once a SIP is found or deemed by operation of law complete, EPA must take final action on the SIP approving in full, disapproving in full, or approving in part and disapproving in part within one year. 42 U.S.C. § 7410(k)(2). This is a mandatory duty.

V. STATEMENT OF FACTS

- Infrastructure SIPs for the 1997 8-Hour Ozone NAAQS -

26. EPA has failed to take final action approving or disapproving in whole or part on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming and publish notice of its action.

27. Pursuant to 42 U.S.C. § 7410, EPA has a mandatory duty to take final action (i.e. to approve, disapprove, approve in part or disapprove in part) on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming and publish notice of its action.

28. EPA required States to submit a SIP by January 7, 2008. 73 FR 16205, 16207 (March 27, 2008).

29. On March 27, 2008 (effective April 28, 2008), EPA found that Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming had submitted administratively complete 1997 8-hour ozone NAAQS Infrastructure SIPs. 73 FR at 16208.

30. Even if EPA did not make a completeness finding on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming, such SIPs would have been deemed complete by operation of law six months after they were submitted.

31. EPA was required to take final action within one year after the effective date of its completeness finding, or in other words by April 28, 2009.

32. EPA has failed to take final action the 1997 8-hour Ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming and publish notice of its action.

FIRST CLAIM FOR RELIEF

**FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO ACT
TO TAKE FINAL ACTION UNDER 42 U.S.C. § 7410(k)(2)
ON STATE IMPLEMENTATION PLANS
(CAA 42 U.S.C. 7604(a)(2))**

33. Each allegation set forth in the complaint is incorporated herein by reference.

34. Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming submitted 1997 8-hour ozone NAAQS Infrastructure SIPs to EPA.

35. On March 27, 2008 (effective April 28, 2008), EPA found that Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming had submitted administratively complete 1997 8-hour ozone NAAQS Infrastructure SIPs. 73 FR 16205, 16208 (March 27, 2008).

36. The CAA requires EPA to act on (*i.e.* approve, disapprove, or approve in part and disapprove in part) the 1997 8-hour ozone NAAQS Infrastructure SIPs within 12 months of the date of the completeness finding. 42 U.S.C. § 7410(k). Thus, the deadline for EPA to act was on or about April 28, 2009.

37. To date, EPA has failed to take final action on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming.

38. Accordingly, EPA has violated and continues to violate CAA §110(k)(2), 42 U.S.C. § 7410(k), since April 28, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

[A] DECLARE

That Defendant's failure to take final action on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming and publish notice on that action constitutes a failure to perform an act or duty that is not discretionary for Defendant within the meaning of 42 U.S.C. § 7509(c)(1); 42 U.S.C. §7511(b)(2)(A);

[B] ORDER


Defendant to take final action on the 1997 8-hour ozone NAAQS Infrastructure SIPs for Maine, Rhode Island, Connecticut, Ohio, Louisiana, Kansas, Nebraska, Missouri, Colorado, Montana, South Dakota, Utah, and Wyoming by a certain date;

[C] RETAIN jurisdiction of this action to ensure compliance with the Court's Order;

[D] AWARD Plaintiffs the costs of litigation, including reasonable attorneys' fees and costs; and

[E] GRANT such other relief as the Court deems just and proper.

Respectfully submitted,


/s/ Robert Ukeiley

Robert Ukeiley
Law Office of Robert Ukeiley
435 R Chestnut Street, Suite 1

Berea, KY 40403
Tel: (859) 986-5402
Fax: (866) 618-1017
E-mail: rukeiley@igc.org

Counsel for Plaintiffs

Dated: January 22, 2010

C
10-133
JLF

CIVIL COVER SHEET

JS-44
(Rev.1/05 DC)

I (a) PLAINTIFFS SIERRA CLUB and WILDEARTH GUARDIANS 88888	DEFENDANTS LISA P. JACKSON
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)	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

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Law Office of Robert Ukeiley 435 R Chestnut St. Ste 1 Berea, KY 40403 859-986-5402	Case: 1:10-cv-00133 Assigned To : Friedman, Paul L. Assign. Date : 1/22/2010 Description: Admn. Agency Review
---	--

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																												
<table style="width:100%;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%; text-align: center;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)																												
<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)																												
	PTF	DFT		PTF	DFT																								
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																								
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																								
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																								

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input checked="" type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
---	---	--	--

E. General Civil (Other)
OR
 F. Pro Se General Civil

Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
---	---	---	--

136

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 42 U.S.C. 7604(a)(2) Violation of Mandatory Duty under Clean Air Act.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23 **DEMAND \$** _____ **JURY DEMAND:** YES NO (Check YES only if demanded in complaint)

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form

DATE 1/21/2010 SIGNATURE OF ATTORNEY OF RECORD [Signature]

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET 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 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. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence Use 11001 to indicate plaintiff is resident of Washington, D C , 88888 if plaintiff is resident of the United States but not of Washington, D C , and 99999 if plaintiff is outside the United States
- III. CITIZENSHIP OF PRINCIPAL PARTIES This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II
- IV. CASE ASSIGNMENT AND NATURE OF SUIT The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause
- VIII. RELATED CASES, IF ANY If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form