

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

vs.

) Civ. No.-

LISA P. JACKSON
in her Official Capacity as
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. The Clean Air Act requires states to submit certain state implementation plans to ensure that residents of each state are protected from the harmful impacts of air pollution. Such impacts can arise from ground-level ozone (“ozone”) pollution, commonly referred to as smog. Ozone represents a serious air quality issue in many parts of the United States. Exposure to ozone pollution causes numerous impacts to a person’s respiratory system, including asthma, pneumonia and bronchitis, and can result in the permanent scarring of lung tissue. Moreover, the detrimental effects extend beyond public health. Ozone pollution also interferes with

vegetation's ability to function properly. This interference results in injuries such as decreased crop yields and damage to native ecosystems.

2. Particulate matter less than 2.5 microns in diameter ("PM2.5"), sometimes referred to as fine particulate, is another major cause of air quality problems in many parts of the United States. Similar to ozone, human exposure to PM2.5 causes numerous respiratory problems, including decreased lung function, asthma and bronchitis, and is also associated with premature mortality, hospital admissions, cardiopulmonary disease and lung cancer. Furthermore, PM2.5's detrimental effects are not limited to human health. PM2.5 also contributes to regional haze, thereby contributing to the visibility range limitations in some of our Nation's most treasured areas.

3. In order to help protect the public from the damage caused by air pollution, including PM2.5 and ozone, the United States Environmental Protection Agency has promulgated National Ambient Air Quality Standards for certain "criteria" pollutants. Under the Clean Air Act, each state is required to submit state implementation plans to ensure that each National Ambient Air Quality Standard will be achieved, maintained and enforced as well as to ensure that emissions arising in one state will not significantly contribute to air quality problems in another state. Without such plans, the public is not afforded full protection against the harmful impacts of air pollution.

4. After a state submits a state implementation plan, the Administrator of the U.S. Environmental Protection Agency is required to determine whether it is administratively complete. If the Administrator does not make the completeness finding within six months after the date of the submittal, the state's submittal is deemed administratively complete by operation of law. The Administrator is then required to take final action on any state implementation plan

submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date a submittal is deemed administratively complete. The Administrator has failed to take final action on at least 30 submittals from eight different states. Accordingly, Plaintiff SIERRA CLUB brings this action against Defendant LISA P. JACKSON, in her official capacity as Administrator of the Environmental Protection Agency (“EPA”), to compel her to perform her mandatory duty with respect to these 30 state implementation plan submittals.

II. JURISDICTION

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

6. An actual controversy exists between the parties. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 506 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.

III. NOTICE

7. Sierra Club mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. EPA received the written notice on April 25, 2011. More than sixty days have passed since EPA received this “notice of intent to sue” letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

IV. VENUE

8. This civil action is brought against an officer of the United States acting in her official capacity. EPA is headquartered in this judicial district. Defendant Lisa P. Jackson officially resides in the District of Columbia. In addition, a substantial part of the events or omissions giving rise to the claims in this case occurred in the District of Columbia. Accordingly, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

V. PARTIES

9. Plaintiff SIERRA CLUB sues on behalf of itself and its members. Sierra Club is a national grassroots nonprofit conservation organization formed in 1892. Its purpose includes practicing and promoting the responsible use of earth's ecosystems and resources, and protecting and restoring the quality of the natural and human environment.

10. Sierra Club has over 600,000 members nationally. Members and staff of Sierra Club live, work, recreate and travel throughout the areas at issue in this case and will continue to do so on a regular basis. Air pollutants, including ozone and PM_{2.5}, in the affected areas threaten and injure, and will continue to threaten and injure, the health and welfare of Sierra Club's staff and members. Sierra Club staff's and members' ability to enjoy the aesthetic qualities and recreational opportunities is diminished in the respective areas.

11. EPA's failure to timely perform the mandatory duties described herein also adversely affects the Sierra Club's staff and members, depriving them of procedural protection and opportunities as well as information which they are entitled to under the Clean Air Act. The failure of EPA to perform the mandatory duties also creates uncertainty for Sierra Club's staff and members as to whether they are exposed to excess air pollution.

12. The above injuries will continue until the Court grants the relief requested in this Complaint.

13. Defendant LISA P. JACKSON is the Administrator of the United States Environmental Protection Agency. In that role Administrator Jackson has been charged by Congress with the duty to administer the Clean Air Act, including the mandatory duties at issue in this case.

VI. GENERAL ALLEGATIONS

14. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.” H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants, including ozone and PM2.5. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

15. Each National Ambient Air Quality Standard must be stringent enough to protect public health and welfare. Effects on welfare include, but are not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic impacts and effects on personal comfort and well-being.

16. Pursuant to 42 U.S.C. § 7407(d)(1)(A), areas that fail to meet the National Ambient Air Quality Standard for a pollutant are designated “nonattainment” for that pollutant, while those that meet the standard are designated “attainment” and areas without enough available information for classification are designated as “unclassifiable.” *See, e.g., Sierra Club v. EPA*, 129 F.3d 137, 138 (D.C. Cir. 1997).

17. A state, through state implementation plans made pursuant to the Clean Air Act, 42 U.S.C. § 7410(a)(2), “must specify emission limitations and other measures necessary to attain and maintain the NAAQS for each pollutant.” *Sierra Club v. EPA*, 129 F.3d at 138.

18. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. *See* 42 U.S.C. § 7410(k)(1)(B). If, six months after a state submits a state implementation plan, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. *Id.*

19. EPA has a mandatory duty to take final action – by approving or disapproving in full or in part – on any administratively complete state implementation plan submittal within 12 months of the date the submittal is deemed administratively complete. 42 U.S.C. § 7410(k)(2) and (3).

VII. STATE IMPLEMENTATION PLAN SUBMITTALS

20. Tables 1 and 2, below, lists 30 state implementation plan submittals made by the respective states, including the dates the state submitted the plan or revision or the date EPA or operation of law deemed the submittal administratively complete. Each submittal is assigned a number, for the purposes of this complaint only, for easy reference.

Table 1

| # | State | Submittal/ Completeness Date | Contents of Submittal | Citation |
|---|-------|------------------------------------|--|---|
| 1 | NJ | Submittal: October 29, 2007 | Included, but is not limited to, attainment demonstration for the New York-Northern New Jersey-Long Island and Philadelphia-Wilmington-Atlantic City 1997 8-hour ozone nonattainment areas | 74 Fed. Reg. 21578, 21579 (May 8, 2009) |

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|---|----|---------------------------------|---|---|
| 2 | NY | Completeness: August 9, 2008 | Attainment demonstration for the New York-Northern New Jersey-Long Island 1997 8-hour ozone nonattainment area | EPA, Status of SIP Requirements for Designated Areas ¹ |
| 3 | NY | Completeness: March 1, 2007 | Reasonably available control technology (“RACT”) for nitrogen oxides (“NOx”) for major sources and non-CTG volatile organic compounds (“VOC”) for major sources requirements for the New York-Northern New Jersey-Long Island 1997 8-hour ozone nonattainment area | EPA, Status of SIP Requirements for Designated Areas ² |
| 4 | MA | Completeness: July 31, 2008 | Included, but is not limited to, attainment demonstration, emission inventories, reasonable further progress (“RFP”), volatile organic compound (“VOC”) and nitrogen oxides (“NOx”) contingency measures and reasonably available control technology (“RACT”) for Nox for major sources and non-CTG VOC for major sources requirements for the Boston-Lawrence-Worcester (E. Mass) 1997 8-hour ozone nonattainment area | 75 Fed. Reg. 57221, 57230 (May 8, 2009); EPA, Status of SIP Requirements for Designated Areas ³ |
| 5 | MA | Completeness: July 31, 2008 | Included, but is not limited to, the attainment demonstration, emission inventories, RFP, VOC and NOx contingency measures and RACT for NOx for major sources and non-CTG VOC for major sources requirements for the Springfield (W. Mass) 1997 8-hour ozone nonattainment area, including | 75 Fed. Reg. 57221, 57230 (May 8, 2009); EPA, Status of SIP Requirements for Designated Areas ⁴ |

¹ New York: Ozone 8-Hr (1997)/ New York-N. New Jersey-Long Island (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ny_elebypoll.html#ozone-8hr_1997_693) (Last Viewed Aug. 23, 2011)

² New York: Ozone 8-Hr (1997)/ New York-N. New Jersey-Long Island (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ny_elebypoll.html#ozone-8hr_1997_693) (Last Viewed Aug. 23, 2011)

³ Massachusetts: Ozone 8-Hr (1997)/ Boston-Lawrence-Worcester (E. Mass) (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ma_elebypoll.html#ozone-8hr_1997_609) (last viewed August 23, 2011).

⁴ Massachusetts: Ozone 8-Hr (1997)/ Springfield (W. Mass) (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ma_elebypoll.html#ozone-8hr_1997_723) (last viewed August 23, 2011).

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| 6 | MA | Submittal: February 13, 2008 | Included, but is not limited to, revisions to 310 CMR 7.02(8), 7.03, 7.04(4), 7.12, 7.26(30)-(36) | Letter from Laurie Burt, Commissioner, Massachusetts DEP, to Robert Varney, Regional Administrator, EPA Region 1 (Feb. 13, 2008) |
| 7 | MA | Submittal: September 14, 2006 | Included, but is not limited to, revisions to the Visible Emission Rule under 310 CMR 7.06 | Letter from Arleen O'Donnell, Acting Commissioner, Massachusetts DEP, to Robert Varney, Regional Administrator, EPA Region 1 (Sept. 14, 2006) |
| 8 | MA | Submittal: July 12, 2006 | Included, but is not limited to, NOx Allowance Trading Program and Certification of the Tunnel Ventilation Systems in the Metro Boston Air Pollution Control District | Letter from Robert Golledge, Jr., Commissioner, Massachusetts DEP, to Robert Varney, Regional Administrator, EPA Region 1 (July 12, 2006) |
| 9 | CT | Completeness: June 8, 2007 | Included, but is not limited to, the emission inventory, contingency measures for VOC and NOx, RACT for NOx for major sources and non-CTG VOC for major sources, and RFP requirements for the Greater Connecticut 1997 8-hour ozone nonattainment area, | EPA, Status of SIP Requirements for Designated Areas ⁵ |
| 10 | CT | Submittal: December 1, 2004 | Included, but is not limited to, revisions to recordkeeping, monitoring and visible emission rules | Letter from Anne R. Gobin, Acting Chief, Connecticut Bureau of Air Management, to Robert Varney, Regional Administrator, EPA |

⁵ Connecticut: Ozone 8-Hr (1997)/ Greater Connecticut Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ct_elebypoll.html#ozone-8hr_1997_646) (last viewed August 23, 2011)

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| | | | | Region 1 (December 1, 2004) |
| 11 | PA | Submittal: May 5, 2009 | Included, but is not limited to, NO _x for major sources and non-CTG VOC for major sources for the Allegheny County 1997 8-hour ozone RACT requirements | Letter from John Hanger, Secretary, Pennsylvania DEP, to William C. Early, Acting Regional Administrator, EPA Region III (May 5, 2009) |
| 12 | PA | Submittal: April 14, 2009 | Included, but is not limited to, amendments to the general plan approval requirements at 25 <i>Pa. Code</i> Chapter 127, Subchapter B | Letter from John Hanger, Secretary, Pennsylvania DEP, to William C. Early, Acting Regional Administrator, EPA Region III (April 14, 2009) |
| 13 | PA | Submittal: June 26, 2008 | Included, but is not limited to, amendments to the Allegheny County Health Department (“ACHD”) Rules and Regulations, Article XXI, relating to the prevention of significant deterioration (“PSD”) program and a revision addressing ACHD’s compliance with 42 U.S.C. § 7401(a)(2)(C), (D)(i) and (J) | Letter from Kathleen A. McGinty, Secretary, Pennsylvania DEP, to Donal Welsh, Regional Administrator, EPA Region III (June 26, 2008) |
| 14 | PA | Submittal: August 29, 2007 | Philadelphia-Wilmington-Atlantic City 1997 8-Hour Ozone Nonattainment Area Attainment Demonstration | 74 Fed. Reg. 21604, 21605 (May 8, 2009) |
| 15 | PA | Submittal: August 9, 2007 | Included, but is not limited to, revisions to nonattainment NSR regulations at 25 <i>Pa. Code</i> § 121.1 and Chapter 127 | Letter from Kathleen A. McGinty, Secretary, Pennsylvania DEP, to Donal Welsh, Regional Administrator, EPA Region III (Aug. 9, 2007) |
| 16 | PA | Submittal: September 25, 2006 | Included, but is not limited to, 1997 8-hour ozone RACT plan for Philadelphia County addressing NO _x for major sources and non-CTG-VOC for major sources | 73 Fed. Reg. 50270, 50271 (Aug. 26, 2008) |

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| 17 | WV | Submittal: June 16, 2004 | Included Rule 45 CSR 28 | Letter from Stephanie R. Timmermeyer, Cabinet Secretary, West Virginia DEP, to Judith M. Katz, Director, Air Protection Division, EPA Region III (June 16, 2004) |
| 18 | MD | Submittal: June 30, 2008 | Revision #08-08, included, but is not limited to, revisions to the 2009 NOx ozone season and NOx annual allocations, its 2009 set-aside allocations and the CSP allocations | 74 Fed. Reg. 56117, 56118 (October 30, 2009) |
| 19 | MD | Submittal: October 24, 2007 | Revision #07-13, included, but is not limited to, revisions to nonattainment provisions for major new sources and major modifications under COMAR 26.11.17 | Letter from Shari T. Wilson, Secretary, Maryland Dept. of the Environment, to Donald Welsh, Regional Administrator, EPA Region III (Oct. 24, 2007) |
| 20 | MD | Submittal: June 12, 2007 | Revision #07-07, included, but is not limited to, revisions to a consent order for Mirant Chalk Point power plant | |
| 21 | MD | Submittal: September 12, 2006 | Revision #06-07, included, but is not limited to, a 1997 8-hour ozone RACT plan addressing NOx for major sources as well as non-CTG VOC for major sources ⁶ | Letter from Kendl P. Philbrick, Secretary, Maryland Dept. of the Environment, to Donald Welsh, Regional Administrator, EPA Region III (Sept. 12, 2006) |
| 22 | DE | Submittal: April 3, 2008 | Included, but is not limited to, emission inventory requirements for the 1997 PM2.5 NAAQS for all Delaware counties | Letter from John Hughes, Secretary, Delaware Dept. of Nat. Resources and Environmental Control, to Donald Welsh, Regional |

⁶ It appears EPA did not address this submittal in 76 Fed. Reg. 38334 (June 30, 2011) and 76 Fed.Reg. 58116 (Sept. 20, 2011).

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| | | | | Adminstrator, EPA Region III (April 3, 2008) |
| 23 | DE | Completeness: October 8, 2008 | Philadelphia-Wilmington 1997 PM2.5 Nonattainment Area Plan, including attainment demonstration, contingency measures, emission inventory and RACM/RACT requirements | EPA, Status of SIP Requirements for Designated Areas ⁷ |
| 24 | DE | Submittal: November 1, 2007 | Included, but is not limited to, revisions to Regulation 1102 | 75 Fed. Reg. 48566, 48568 (Aug. 11, 2010) (“Prior to [this] submittal, Delaware submitted substantive amendments to Regulation 1102, Appendix A. EPA’s action on that SIP revision is still pending.”) |
| 25 | DE | Submittal: June 13, 2007 | Philadelphia-Wilmington 1997 8-Hour Ozone Nonattainment Area Plan, including the attainment demonstration | 74 Fed. Reg. 21599, 21600 (May 8, 2009) |

Table 2

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|----|----|---------------------------------|--|--|
| 26 | CT | Submittal: October 26, 2001 | Included, but is not limited to, General Permit to Limit Potential to Emit | Letter from Arthur J. Rocque, Jr., Commissioner, Connecticut DEP, to Robert Varney, Regional Administrator, EPA Region 1 (Oct. 26, 2001) |
| 27 | CT | Submittal: September 4, 2002 | Included, but is not limited to, single source NOx credits for RACT compliance | |
| 28 | CT | Submittal: June 14, 2002 | Included, but is not limited to, amendments to the new source review | Letter from Arthur J. Rocque, Jr., |

⁷ Delaware: PM2.5 (1997)/ Philadelphia-Wilmington (available at http://www.epa.gov/air/urbanair/sipstatus/reports/de_elembypoll.html#pm-2.5_1997_784) (last viewed August 23, 2011)

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|----|----|--------------------------------|---|--|
| | | | ("NSR") and Title V operating permit programs | Commissioner, Connecticut DEP, to Robert Varney, Regional Administrator, EPA Region 1 (June 14, 2002) |
| 29 | MD | Submittal: December 1, 2003 | Revision #03-11, included, but is not limited to, revisions to the FBE solid fuel cutoffs in the general permit rule at COMAR 26.11.02.10 | Letter from Kendl P. Philbrick, Acting Secretary, Maryland Dept. of the Environment, to Donald Welsh, Regional Administrator, EPA Region III (Dec. 1, 2003) |
| 30 | DE | Submittal: October 6, 1997 | Included, but is not limited to, revisions to Regulation 34 pertaining to the state's emissions banking and trading program | Letter from Christophe A. G. Tulou, Secretary, Delaware Dept. of Nat. Resources and Environmental Control, to W. Michael McCabe, Regional Administrator, EPA Region III (Oct. 6, 1997) |

VIII. CLAIMS FOR RELIEF

CLAIM ONE

(EPA's Failure to Take Final Action on 25 State Implementation Plan Submittals)

21. Plaintiff incorporates by reference paragraphs 1 through 20.
22. On October 29, 2007 New Jersey submitted a state implementation plan, #1 in Table 1
See 74 Fed. Reg. 21578, 21579 (May 8, 2009).

23. Pursuant to the Clean Air Act, either EPA or operation of law deemed New Jersey's October 29, 2007 state implementation plan submittal administratively complete by no later than April 29, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

24. Though EPA had proposed to disapprove New Jersey's submittal addressing the attainment demonstration requirements for the 1997 8-hour ozone NAAQS, *see* 74 Fed. Reg. 21578 (May 8, 2009), it later re-opened the public comment period, *see* 74 Fed. Reg. 29451 (June 22, 2009) and has not taken final action on the submittal as proposals have no legal effect.

25. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on New Jersey's October 29, 2007 state implementation plan submittal by no later than April 29, 2009.

26. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part New Jersey's October 29, 2007 state implementation plan submittal by April 29, 2009.

27. On August 9, 2008, either EPA or operation of law deemed New York's state implementation plan submittal, #2 in Table 1, administratively complete. *See* EPA, Status of SIP Requirements for Designated Areas, New York: Ozone 8-Hr (1997)/ New York-N. New Jersey-Long Island (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ny_lembypoll.html#ozone-8hr_1997_693) (last viewed August 23, 2011).

28. Though EPA has taken final action on certain portions of New York's submittal addressing the New York-N. New Jersey-Long Island area, that action did not address the attainment demonstration. *See* 76 Fed. Reg. 51264 (August 18, 2011)

29. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on New York's state implementation plan submittal by no later than August 9, 2009.

30. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part New York's state implementation plan, #2 in Table 1, by August 9, 2009.

31. On March 1, 2007, either EPA or operation of law deemed New York's state implementation plan submittal, #3 in Table 1, administratively complete. *See* EPA, Status of SIP Requirements for Designated Areas, New York: Ozone 8-Hr (1997)/ New York-N. New Jersey-Long Island (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ny_elembypoll.html#ozone-8hr_1997_693) (last viewed August 23, 2011).

32. Though EPA has taken final action on certain portions of New York's submittal addressing the New York-N. New Jersey-Long Island area, that action did not address the RACT non-CTG VOC for major sources or RACT NO_x for major sources. *See* 76 Fed. Reg. 51264 (August 18, 2011)

33. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on New York's state implementation plan submittal by no later than March 1, 2008.

34. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part New York's state implementation plan, #3 in Table 1, by March 1, 2008.

35. On January 31, 2008, Massachusetts submitted a state implementation plan, #4 in Table 1, that either EPA or operation of law deemed administratively complete on July 31, 2008. *See* 75 Fed. Reg. 57221, 57230 (May 8, 2009); EPA, Status of SIP Requirements for Designated

Areas, Massachusetts: Ozone 8-Hr (1997)/ Boston-Lawrence-Worcester (E. Mass) (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ma_elebypoll.html#ozone-8hr_1997_609) (last viewed August 23, 2011).

36. While EPA has proposed to approve the portion of Massachusetts' submittal addressing the emission inventory, RFP, and contingency measures for VOC and NO_x, *see* 75 Fed. Reg. 57221 (Sept. 20, 2010), it has not taken final action as proposals have no legal effect.

37. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Massachusetts' state implementation plan submittal, #4 in Table 1, by no later than July 31, 2009.

38. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Massachusetts' state implementation plan submittal, #4 in Table 1, by July 31, 2009.

39. On January 31, 2008, Massachusetts submitted a state implementation plan, #5 in Table 1, that either EPA or operation of law deemed administratively complete on July 31, 2008. *See* 75 Fed. Reg. 57221, 57230 (May 8, 2009); EPA, Status of SIP Requirements for Designated Areas, Massachusetts: Ozone 8-Hr (1997)/ Springfield (W. Mass) (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ma_elebypoll.html#ozone-8hr_1997_723) (last viewed August 23, 2011).

40. While EPA has proposed to approve the portion of Massachusetts' submittal addressing the emission inventory, RFP, and contingency measures for VOC and NO_x, *see* 75 Fed. Reg. 57221 (Sept. 20, 2010), it has not taken final action as proposals have no legal effect.

41. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Massachusetts' state implementation plan submittal, #5 in Table 1, by no later than July 31, 2009.

42. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Massachusetts' state implementation plan submittal, #5 in Table 1, by July 31, 2009.

43. On February 13, 2008, Massachusetts submitted a state implementation plan, #6 in Table 1.

44. Pursuant to the Clean Air Act, either EPA or operation of law deemed Massachusetts' February 13, 2008 state implementation plan submittal administratively complete by no later than August 13, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

45. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Massachusetts' February 13, 2008 state implementation plan submittal by no later than August 13, 2009.

46. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Massachusetts' February 13, 2008 state implementation plan submittal by August 13, 2009.

47. On September 14, 2006, Massachusetts submitted a state implementation plan, #7 in Table 1.

48. Pursuant to the Clean Air Act, either EPA or operation of law deemed Massachusetts' September 14, 2006 state implementation plan submittal administratively complete by no later than March 14, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

49. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Massachusetts' September 14, 2006 state implementation plan submittal by no later than March 14, 2008.

50. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Massachusetts' September 14, 2006 state implementation plan submittal by March 14, 2008.

51. On July 12, 2006, Massachusetts submitted a state implementation plan, #8 in Table 1.

52. Pursuant to the Clean Air Act, either EPA or operation of law deemed Massachusetts' July 12, 2006 state implementation plan submittal administratively complete by no later than January 12, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

53. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Massachusetts' July 12, 2006 state implementation plan submittal by no later than January 12, 2008.

54. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Massachusetts' July 12, 2006 state implementation plan submittal by January 12, 2008.

55. On June 8, 2007 either EPA or operation of law deemed a submittal made by Connecticut, #9 in Table 1, administratively complete. *See* EPA, Status of SIP Requirements for Designated Areas, Connecticut: Ozone 8-Hr (1997)/ Greater Connecticut Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ct_elembypoll.html#ozone-8hr_1997_646) (last viewed August 23, 2011).

56. EPA has since determined that the Greater Connecticut area has attained the 1997 8-hour ozone NAAQS. *See* 75 Fed. Reg. 53219 (Aug. 31, 2010). While this determination suspends the

obligation of a state to submit specific SIP components, it does not suspend EPA's mandatory duty to take final action on state implementation plan submittals that have already been made by approving in full, disapproving in full, or approving in part and disapproving in part. *See* 40 C.F.R. § 51.1004(c) (2010); 40 C.F.R. § 51.918 (2010). *See also* 76 Fed. Reg. 6590, 6592 (Feb. 7, 2011) (Although 40 C.F.R. § 51.918, which uses the same language as 40 C.F.R. §51.1004(c), suspends a state's requirements to submit an attainment demonstration and RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the NAAQS for as long as the area continues to attain the NAAQS, "EPA is not precluded from acting upon these elements, if [the state] submits them for EPA review and approval.").

57. Moreover, while EPA has proposed to approve the portion of Connecticut's submittal addressing the emission inventory and RFP requirements, *see* 75 Fed. Reg. 57221 (Sept. 20, 2010), it has not taken final action as proposals have no legal effect.

58. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Connecticut's state implementation plan submittal addressing the 1997 8-hour ozone nonattainment area of Greater Connecticut by no later than June 8, 2008.

59. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's state implementation plan submittal, #9 in Table 1, by June 8, 2008.

60. On December 1, 2004, Connecticut submitted a state implementation plan, #10 in Table 1.

61. Pursuant to the Clean Air Act, either EPA or operation of law deemed Connecticut's December 1, 2004 state implementation plan submittal administratively complete by no later than June 1, 2005. *See* 42 U.S.C. § 7410(k)(1)(B).

62. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Connecticut's December 1, 2004 state implementation plan submittal by no later than June 1, 2006.

63. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's December 1, 2004 state implementation plan submittal by June 1, 2006.

64. On May 5, 2009, Pennsylvania submitted a state implementation plan, #11 in Table 1.

65. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's May 5, 2009 state implementation plan submittal administratively complete by no later than November 5, 2009. *See* 42 U.S.C. § 7410(k)(1)(B).

66. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's May 5, 2009 state implementation plan submittal by no later than November 5, 2010.

67. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's May 5, 2009 state implementation plan submittal by November 5, 2010.

68. On April 14, 2009, Pennsylvania submitted a state implementation plan #12 in Table 1.

69. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's April 14, 2009 state implementation plan submittal administratively complete by no later than October 14, 2009. *See* 42 U.S.C. § 7410(k)(1)(B).

70. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's April 14, 2009 state implementation plan by no later than October 14, 2010.

71. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's April 14, 2009 state implementation plan submittal by October 14, 2010.

72. On June 26, 2008, Pennsylvania submitted a state implementation plan #13 in Table 1.

73. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's June 26, 2008 state implementation plan submittal administratively complete by no later than December 26, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

74. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's June 26, 2008 state implementation plan submittal by no later than December 26, 2009.

75. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's June 26, 2008 state implementation plan submittal by December 26, 2009.

76. On August 29, 2007, Pennsylvania submitted a state implementation plan, #14 in Table 1. *See* 74 Fed. Reg. 21604, 21605 (May 8, 2009).

77. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's August 29, 2007 state implementation plan submittal administratively complete by no later than February 29, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

78. Though EPA had proposed to disapprove Pennsylvania's submittal addressing the attainment demonstration requirements for the 1997 8-hour ozone NAAQS, *see* 74 Fed. Reg. 21604 (May 8, 2009), it later re-opened the public comment period, *see* 74 Fed. Reg. 29450 (June 22, 2009) and has not taken final action as proposals have no legal effect.

79. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's August 29, 2007 state implementation plan submittal by no later than March 1, 2009.

80. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's August 29, 2007 state implementation plan submittal by March 1, 2009.

81. On August 9, 2007, Pennsylvania submitted a state implementation plan, #15 in Table 1.

82. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's August 9, 2007 state implementation plan submittal administratively complete by no later than February 9, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

83. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's August 9, 2007 state implementation plan submittal by no later than February 9, 2009.

84. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's August 9, 2007 state implementation plan submittal by February 9, 2009.

85. On September 25, 2006, Pennsylvania submitted a state implementation plan, #16 in Table 1. *See* 73 Fed. Reg. 50270, 50271 (Aug. 26, 2008).

86. Pursuant to the Clean Air Act, either EPA or operation of law deemed Pennsylvania's September 25, 2006 state implementation plan submittal administratively complete by no later than March 25, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

87. While EPA has proposed to approve the portion of Pennsylvania's September 25, 2006 submittal that includes the 8-hour ozone RACT plan for Philadelphia County, *see* 73 Fed. Reg. 50270 (August 26, 2008), it has not taken final action as proposals have no legal effect.

88. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Pennsylvania's September 25, 2006 state implementation plan submittal by no later than March 25, 2008.

89. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Pennsylvania's September 25, 2006 state implementation plan submittal by March 25, 2008.

90. On June 16, 2004, West Virginia submitted a state implementation plan, #17 in Table 1.

91. Pursuant to the Clean Air Act, either EPA or operation of law deemed West Virginia's June 16, 2004 state implementation plan submittal administratively complete by no later than December 16, 2004. *See* 42 U.S.C. § 7410(k)(1)(B).

92. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on West Virginia's June 16, 2004 state implementation plan submittal by no later than December 16, 2005.

93. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part West Virginia's June 16, 2004 state implementation plan submittal by December 16, 2005.

94. On June 30, 2008, Maryland submitted a state implementation plan (revision #08-08), #18 in Table 1. *See* 74 Fed. Reg. 56117 (October 30, 2009).

95. Pursuant to the Clean Air Act, either EPA or operation of law deemed Maryland's June 30, 2008 state implementation plan submittal administratively complete by no later than December 30, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

96. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Maryland's June 30, 2008 state implementation plan submittal, revision #08-08, by no later than December 30, 2009.

97. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Maryland's June 30, 2008 state implementation plan submittal by December 30, 2009.

98. On October 24, 2007, Maryland submitted a state implementation plan (revision #07-13), #19 in Table 1.

99. Pursuant to the Clean Air Act, either EPA or operation of law deemed Maryland's October 24, 2007 state implementation plan submittal administratively complete by no later than April 24, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

100. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Maryland's October 24, 2007 state implementation plan submittal, revision #07-13, by no later than April 24, 2009.

101. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Maryland's October 24, 2007 state implementation plan submittal by April 24, 2009.

102. On June 12, 2007, Maryland submitted a state implementation plan (revision #07-07), #20 in Table 1.

103. Pursuant to the Clean Air Act, either EPA or operation of law deemed Maryland's June 12, 2007 state implementation plan submittal administratively complete by no later than December 12, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

104. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Maryland's June 12, 2007 state implementation plan submittal, revision #07-07, by no later than December 12, 2008.

105. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Maryland's June 12, 2007 state implementation plan submittal by December 12, 2008.

106. On September 12, 2006, Maryland submitted a state implementation plan (revision #06-07), #21 in Table 1.

107. Pursuant to the Clean Air Act, either EPA or operation of law deemed Maryland's September 12, 2006 state implementation plan submittal administratively complete by no later than March 12, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

108. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Maryland's September 12, 2006 state implementation plan submittal, revision #06-06, by no later than March 12, 2008.

109. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Maryland's September 12, 2006 state implementation plan submittal by March 12, 2008.

110. On April 3, 2008, Delaware submitted a state implementation plan, #22 in Table 1.

111. Pursuant to the Clean Air Act, either EPA or operation of law deemed Delaware's April 3, 2008 state implementation plan submittal administratively complete by no later than October 3, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

112. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Delaware's April 3, 2008 state implementation plan submittal by no later than October 3, 2009.

113. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Delaware's April 3, 2008 state implementation plan submittal by October 3, 2009.

114. On October 8, 2008, either EPA or operation of law deemed Delaware's state implementation plan submittal, #23 in Table 1, administratively complete. *See* EPA, Status of SIP Requirements for Designated Areas, Delaware: PM_{2.5} (1997)/ Philadelphia-Wilmington (available at http://www.epa.gov/air/urbanair/sipstatus/reports/de_elembypoll.html#pm-2.5_1997_784) (last viewed August 9, 2011).

115. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Delaware's state implementation plan submittal, #23 in Table 1, by no later than October 8, 2009.

116. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Delaware's state implementation plan submittal, #23 in Table 1, by October 8, 2009.

117. On November 1, 2007, Delaware submitted a state implementation plan, #24 in Table 1.

118. Pursuant to the Clean Air Act, either EPA or operation of law deemed Delaware's November 1, 2007 state implementation plan submittal administratively complete by no later than May 1, 2008. *See* 42 U.S.C. § 7410(k)(1)(B).

119. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Delaware's November 1, 2007 state implementation plan submittal by no later than May 1, 2009.

120. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Delaware's November 1, 2007 state implementation plan submittal by May 1, 2009.

121. On June 13, 2007, Delaware submitted a state implementation plan, #25 in Table 1. *See* 74 Fed. Reg. 21599, 21600 (May 8, 2009).

122. Pursuant to the Clean Air Act, either EPA or operation of law deemed Delaware's June 13, 2007 state implementation plan submittal administratively complete by no later than December 13, 2007. *See* 42 U.S.C. § 7410(k)(1)(B).

123. Though EPA had proposed to disapprove 1997 8-hour ozone attainment demonstration for the nonattainment area of Philadelphia-Wilmington-Atlantic City, *see* 74 Fed. Reg. 21599 (May 8, 2009), it later re-opened the public comment period, *see* 74 Fed. Reg. 29450 (June 22, 2009) and has not taken final action as proposals have no legal effect.

124. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Delaware's June 13, 2007 state implementation plan submittal by no later than December 13, 2008.

125. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Delaware's June 13, 2007 state implementation plan submittal by December 13, 2008.

126. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) and (3) to take final action by approving in full, disapproving in full or approving in part and disapproving in part state implementation plan submittals identified in Table 1 above by New Jersey, New York, Massachusetts, Connecticut, Pennsylvania, West Virginia, Maryland and Delaware. This violation of a mandatory duty is ongoing.

CLAIM TWO

(EPA's Failure to Take Final Action on 5 State Implementation Plan Submittals)

127. Plaintiff incorporates by reference paragraphs 1 through 126.

128. On October 26, 2001, Connecticut submitted a state implementation plan, #26 in Table 2.

129. Pursuant to the Clean Air Act, either EPA or operation of law deemed Connecticut's October 26, 2001 state implementation plan submittal administratively complete by no later than April 26, 2002. *See* 42 U.S.C. § 7410(k)(1)(B).

130. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Connecticut's October 26, 2001 state implementation plan submittal by no later than April 26, 2003.

131. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's October 26, 2001 state implementation plan submittal by April 26, 2003.

132. On September 4, 2002, Connecticut submitted a state implementation plan, #27 in Table 2.

133. Pursuant to the Clean Air Act, either EPA or operation of law deemed Connecticut's September 4, 2002 state implementation plan submittal administratively complete by no later than March 4, 2003. *See* 42 U.S.C. § 7410(k)(1)(B).

134. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Connecticut's September 4, 2002 state implementation plan submittal by no later than March 4, 2004.

135. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's September 4, 2002 state implementation plan submittal by March 4, 2004.

136. On June 14, 2002, Connecticut submitted a state implementation plan, #28 in Table 2.

137. Pursuant to the Clean Air Act, either EPA or operation of law deemed Connecticut's June 14, 2002 state implementation plan submittal administratively complete by no later than December 14, 2002. *See* 42 U.S.C. § 7410(k)(1)(B).

138. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Connecticut's June 14, 2002 state implementation plan submittal by no later than December 14, 2003.

139. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's June 14, 2002 state implementation plan submittal by December 14, 2003.

140. On December 1, 2003, Maryland submitted a state implementation plan (revision #03-11), #29 in Table 2.

141. Pursuant to the Clean Air Act, either EPA or operation of law deemed Maryland's December 1, 2003 state implementation plan submittal administratively complete by no later than June 1, 2004. *See* 42 U.S.C. § 7410(k)(1)(B).

142. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Maryland's December 1, 2003 state implementation plan submittal, revision #03-11, by no later than June 1, 2005.

143. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Maryland's December 1, 2003 state implementation plan submittal by June 1, 2005.

144. On October 6, 1997, Delaware submitted a state implementation plan, #30 in Table 2.

145. Pursuant to the Clean Air Act, either EPA or operation of law deemed Delaware's October 6, 1997 state implementation plan submittal administratively complete by no later than April 6, 1998. *See* 42 U.S.C. § 7410(k)(1)(B).

146. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Delaware's October 6, 1997 state implementation plan submittal by no later than April 6, 1999.

147. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Delaware's October 6, 1997 state implementation plan submittal by April 6, 1999.

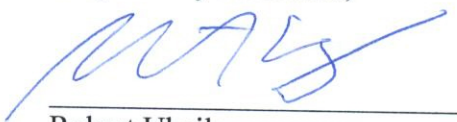
148. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) and (3) to take final action by approving in full, disapproving in full or approving in part and disapproving in part state implementation plan submittals in Table 2 by Connecticut, Maryland and Delaware. This violation of a mandatory duty is ongoing.

REQUEST FOR RELIEF

WHEREFORE, Sierra Club respectfully requests that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform each mandatory duty listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties by a certain date;
- C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- D. Grant Sierra Club its reasonable costs of litigation, including attorneys' and expert witness fees; and
- E. Grant such further relief as the Court deems proper.

Respectfully submitted,



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