UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiff,

vs.

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.

Civ. No.-

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. Ground-level ozone ("ozone") pollution, commonly referred to as smog, represents a serious public health and ecosystem problem in the United States. Exposure to ozone pollution causes numerous respiratory problems, including asthma, pneumonia, bronchitis, and permanent scarring of lung tissue. Moreover, ozone's 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. To protect against these and other adverse affects on human health and welfare, the United States Environmental Protection Agency promulgated an 8-hour National Ambient Air

Quality Standard for ozone in 1997. The Environmental Protection Agency deemed those areas whose air quality at that time did not meet the standard as "nonattainment." The Clean Air Act then required states to submit state implementation plans by specific dates on how they planned to clean up their air. Now, 13 years after the promulgation of the 8-hour standard, at least four states still lack the approved nonattainment area state implementation plans required by Congress. Under the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Administrator of the Environmental Protection Agency has a mandatory duty to take final action on a submitted state implementation plan within 12 months of the date the submittal is deemed administratively complete. If a required submittal is not made and the Administrator issues a finding of failure to submit, that finding triggers a 24-month clock after which the Administrator has a mandatory duty to promulgate a Federal Implementation Plan covering the requirements of the absent submittal. Additionally, that finding also triggers an 18-month clock after which sanctions must be imposed on the state that failed to make the submittal. The Administrator has failed to take final action on at least two states' submittals for one area, and has failed to promulgate a Federal Implementation Plan and impose sanctions for at least four areas in three 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 duties with respect to at least five states.

II. JURISDICTION

3. 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).

4. 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.

III. NOTICE

5. 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 September 23, 2010. 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

6. 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

7. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization formed in 1892. Sierra Club's 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.

8. Sierra Club has over 750,000 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. Ozone in the affected areas threatens, and will continue to threaten, the health and welfare of the 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 impacted by ozone pollution.

9. EPA's failure to timely perform the mandatory duties described herein also adversely affects the Sierra Club, its 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.

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

11. 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

12. 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. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of these pollutants.

13. 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.

14. 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." See e.g., Sierra Club v. EPA, 129 F.3d 137, 138 (D.C. Cir. 1997).

15. For areas designated as nonattainment, the State must submit a state implementation plan showing how it plans to reduce the air pollution levels to below the National Ambient Air Quality Standard. See South Coast Air Quality Management Dist. v. EPA, 472 F.3d 882 887 (D.C. Cir. 2006) (discussing ozone nonattainment requirements found in 42 U.S.C. §§ 7511-7511f that apply to areas failing to reach attainment by the 1990 Clean Air Act Amendments); see also Sierra Club v. EPA, 129 F. 3d at 138 ("EPA must establish . . . a schedule by which the state must submit a state implementation plan revision that complies with the requirements for nonattainment areas in order to attain the National Ambient Air Quality Standards. . .") (citation omitted).

16. On July 18, 1997, EPA promulgated a new 8-hour ozone National Ambient Air Quality Standard. See 62 Fed. Reg. 38856 (July 18, 1997).

17. EPA, in implementing the 1997 8-hour standard, originally placed nonattainment areas into two separate categories: "subpart 1" for areas designated nonattainment under Title I, Part D, subpart 1 of the Clean Air Act, 42 U.S.C. §§ 7501-7509a, and "subpart 2" for areas

designated nonattainment under Title I, Part D, subpart 2 of the Clean Air Act, 42 U.S.C §§ 7511-7511f. See 69 Fed. Reg. 23858 (April 30, 2004).

18. The effective date of the nonattainment designation for the 1997 8-hour ozone standard is June 15, 2004. Id.

19. Nonattainment areas designated under subpart 2 were classified according to their design value at the time of the nonattainment designation. 42 U.S.C. § 7511(a)(1); see also 40 C.F.R. § 51.903(a) (2009).

20. A state in which a nonattainment area designated under subpart 2 is located is required to submit a state implementation plan meeting requirements dependant on the area's classification. See 42 U.S.C. § 7511a.

21. States are required to submit a demonstration of attainment no later than three years after their date of designation for nonattainment areas designated under subpart 2 that are classified as moderate or higher. See 40 C.F.R. § 51.908(a) (2009).

22. Furthermore, states are also required to submit state implementation plans that contain provisions implementing new reasonable available control technology ("RACT") requirements for volatile organic compounds ("VOCs"), 42 U.S.C. § 7511a(b)(2), and nitrogen oxides ("NOx"), 42 U.S.C. § 7511a(f), for nonattainment areas designated under subpart 2 that are classified as moderate or higher. See 40 C.F.R. § 51.912(a)(1) (2009).

23. Even if no area within a state is designated as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard, states included in the Ozone Transport Region, 42 U.S.C. § 7511c(a), must still submit a state implementation plan that includes provisions for the implementation of NOx and VOC RACT requirements. See 40 C.F.R. § 51.916(b)(2) (2009).

24. States in which nonattainment areas designated under subpart 2 and classified as moderate or higher are located are required to submit a state implementation plan provision for reasonable further progress ("RFP") toward attainment for that area. See 42 U.S.C. §§ 7511a(b)(1) (moderate), 7511a(c)(2)(B) (serious), 7511a(d) (severe), and 7511a(e) (extreme).

25. EPA classified the Milwaukee-Racine area in Wisconsin as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23947 (April 30, 2004).

26. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the demonstration of attainment for the Milwaukee-Racine area. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

27. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan containing RFP provisions for the Milwaukee-Racine area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

28. EPA classified the Sheboygan, Wisconsin area as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23947 (April 30, 2004).

29. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the demonstration of attainment for the Sheboygan area. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

30. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan containing RFP provisions for the Sheboygan area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

31. Though Wisconsin has submitted a redesignation request as well as a maintenance plan for both the Milwaukee-Racine and Sheboygan areas, see 75 Fed. Reg. 24944 (May 6, 2010), EPA has not approved the submittals. Furthermore, EPA cannot redesignate an area to attainment until "the Administrator has fully approved the applicable implementation plan for the area" under 42 U.S.C. § 7410(k). There has not been a submittal for these areas, so there can be no approval and, therefore, no redesignation. EPA also issued a direct final rule on December 15, 2010 finding that Milwaukee-Racine and Sheboygan, Wisconsin areas have attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). 75 Fed. Reg. 78164 (December 15, 2010). However, this finding has not yet become final.

32. EPA classified the Illinois portion of the Metro St. Louis area as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23898 (April 30, 2004).

33. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the NOx RACT requirements for the Illinois portion of the Metro St. Louis area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

34. On September 16, 2009 either EPA or operation of law deemed an Illinois submittal addressing the NOx RACT requirements for the Metro St. Louis area administratively complete. See EPA, Status of SIP Requirements for Designated Areas, Illinois SIP Requirements by Pollutant/Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/il_elembypoll.html#ozone-8hr__1997__725) (last viewed December 1, 2010).

35. Additionally, Illinois submitted state implementation plans addressing the demonstration of attainment and containing RFP provisions for their portion of the Metro St. Louis Area which either EPA or operation of law deemed administratively complete on January 2, 2008. See id.

36. EPA did *not* make a finding of failure to submit for Illinois concerning the demonstration of attainment and RFP requirements for the Metro St. Louis area.

37. Congress included Maine in the Ozone Transport Region in the 1990 Clean Air Act Amendments. See 42 U.S.C. § 7511c(a).

38. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the NOx and VOC RACT requirements for all of Maine, except that Northern Maine[1] was not included in the finding regarding the NOx RACT requirements. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

39. EPA classified the Missouri portion of the Metro St. Louis area as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23915 (April 30, 2004).

40. Missouri submitted a state implementation plan addressing the NOx and VOC RACT requirements for their portion of the Metro St. Louis area, which either EPA or operation of law deemed administratively complete on July 17, 2007. See EPA, Status of SIP Requirements for Designated Areas, Missouri SIP Requirements by Pollutant / Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/mo_elembypoll.html#ozone-8hr__1997__724) (last viewed December 1, 2010).

41. Additionally, Missouri submitted state implementation plans that addressed the demonstration of attainment and contained RFP provisions for their portion of the Metro St.

[1] The counties included in the Northern Maine exemption include Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties. See 71 Fed. Reg. 5791 (Feb. 3, 2006).

Louis area, which either EPA or operation of law deemed administratively complete on December 21, 2007. Id.

VII. CLAIMS FOR RELIEF

CLAIM ONE

(EPA's Failure to Promulgate Federal Implementation Plans and Impose Sanctions for Certain Areas Designated as Nonattainment for the 1997 8-Hour Ozone National Ambient Air Quality Standard)

42. Plaintiff incorporates by reference paragraphs 1 through 41.

43. EPA's final rule designating certain areas as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard became effective on June 15, 2004. 69 Fed. Reg. 23858 (April 30, 2004).

44. States in which areas designated as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard are located are required to submit state implementation plans containing specific requirements by a date to be determined based on the classification and effective date of designation. See 42 U.S.C. § 7511a; see also 40 C.F.R. §§ 51.908(a) (2009) (due date for submittals addressing an area's demonstration of attainment), 51.912 (2009) (due date for submittals addressing NOx and RACT requirements), and 51.910(a)(1)(i) (due date for plans addressing RFP requirements).

45. Even if no area within a state is designated as nonattainment for the 1997 8-hour ozone National Ambient Air Quality Standard, states included in the Ozone Transport Region, 42 U.S.C. § 7511c(a), must still submit a state implementation plan that includes provisions for the implementation of NOx and VOC RACT requirements. See 40 C.F.R. § 51.916(b)(2) (2009).

46. If EPA does not receive a required state implementation plan by the statutory deadline, EPA must issue a finding of failure to submit a sufficient state implementation plan no later than six months after the date by which the submittal was due. 42 U.S.C. § 7410(k)(1)(B).

47. Pursuant to the Clean Air Act, EPA has a mandatory duty to promulgate a Federal Implementation Plan two years after EPA "finds that a State has failed to make a required submission . . . ." 42 U.S.C. § 7410(c)(1)(A).

48. EPA's mandatory duty to promulgate a Federal Implementation Plan continues until "the State corrects the deficiency, *and* the Administrator approves the plan or plan revisions." 42 U.S.C. § 7410(c)(1) (emphasis added).

49. If EPA determines a state has failed to submit a sufficient state implementation plan, and the deficiency is not corrected within 18 months, EPA also has a mandatory duty to impose one of two sanctions on the state. See 42 U.S.C. § 7509(a). If the "deficiency has not been corrected within 6 months thereafter," EPA has a mandatory duty to impose the second sanction. Id.

50. EPA classified the Milwaukee-Racine area in Wisconsin as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23947 (April 30, 2004).

51. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the demonstration of attainment for the Milwaukee-Racine area. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

52. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan containing RFP provisions for the Milwaukee-Racine area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

53. EPA's finding of failure triggered a 24-month clock after which EPA must promulgate a Federal Implementation Plan for the Milwaukee-Racine area under 42 U.S.C. § 7410(c)(1) that addresses the requirements referenced in paragraphs 51 and 52.

54. EPA's finding of failure to submit also triggered 18-month and 24-month clocks after which EPA must impose sanctions under 42 U.S.C. § 7509(a).

55. EPA has not approved a plan for Wisconsin that addresses the requirements referenced in paragraphs 51 and 52.

56. Thus, EPA has a mandatory duty to promulgate a Federal Implementation Plan for the Milwaukee-Racine area in Wisconsin that arose on March 24, 2010.

57. EPA also has a mandatory duty to impose sanction on Wisconsin under 42 U.S.C. § 7509(a) as of September 24, 2009 and March 24, 2010.

58. EPA has failed to promulgate a Federal Implementation Plan for the Milwaukee-Racine area in Wisconsin.

59. EPA has also failed to impose any sanctions on Wisconsin.

60. EPA classified the Sheboygan, Wisconsin area as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23947 (April 30, 2004).

61. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the demonstration of attainment for the Sheboygan area. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

62. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan containing RFP provisions for the Sheboygan area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

63. EPA's finding of failure triggered a 24-month clock after which EPA must promulgate a Federal Implementation Plan for the Sheboygan area under 42 U.S.C. § 7410(c)(1) that addresses the requirements referenced in paragraphs 61 and 62.

64. EPA's finding of failure to submit also triggered 18-month and 24-month clocks after which EPA must impose a sanction under 42 U.S.C. § 7509(a).

65. Wisconsin has not yet made the submittals referenced in paragraphs 61 and 62.

66. EPA has not approved a plan for Wisconsin that addresses the requirements referenced in paragraphs 61 and 62.

67. Thus, EPA has a mandatory duty to promulgate a Federal Implementation Plan for the Sheboygan, Wisconsin area that arose on March 24, 2010.

68. EPA also has a mandatory duty to impose sanctions on Wisconsin under 42 U.S.C. § 7509(a) as of September 24, 2009 and March 24, 2010.

69. EPA has failed to promulgate a Federal Implementation Plan for the Sheboygan, Wisconsin area.

70. EPA has also failed to impose any sanctions on Wisconsin.

71. EPA classified the Illinois portion of the Metro St. Louis area as a moderate nonattainment area under subpart 2 for the 1997 8-hour ozone National Ambient Air Quality Standard. 69 Fed. Reg. 23858, 23898 (April 30, 2004).

72. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the NOx RACT for major sources requirements for the Illinois portion of the Metro St. Louis area. 73 Fed. Reg. 15416, 15418 (March 24, 2008).

73. EPA's finding of failure triggered a 24-month clock after which EPA must promulgate a Federal Implementation Plan for Illinois' portion of the Metro St. Louis area under 42 U.S.C. § 7410(c)(1) that addresses the requirements referenced in paragraph 72.

74. EPA's finding of failure to submit also triggered 18-month and 24-month "clock" after which EPA must impose sanctions under 42 U.S.C. § 7509(a).

75. Illinois did submit a plan or revision addressing the requirements referenced in paragraph 72 for the Metro St. Louis area which either EPA or operation of law deemed administratively complete on September 16, 2009. See EPA, Status of SIP Requirements for Designated Areas, Illinois SIP Requirements by Pollutant/Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/il_elembypoll.html#ozone-8hr__1997__725) (last viewed December 1, 2010).

76. On December 8, 2010, EPA proposed to wave NOx RACT requirements. 75 Fed. Reg. 76332 (Dec. 8, 2010). However, EPA has not finalized its proposal or approved Illinois' submittal addressing the requirements referenced in paragraph 72.

77. Thus, EPA has a mandatory duty to promulgate a Federal Implementation Plan for the Illinois portion of the Metro St. Louis area on March 24, 2010.

78. EPA also has a mandatory duty to impose sanction on Illinois under 42 U.S.C. § 7509(a) as of September 24, 2009 and March 24, 2010.

79. EPA has failed to promulgate a Federal Implementation Plan for the Illinois' portion of the Metro St. Louis area.

80. EPA has also failed to impose any sanctions on Illinois.

81. Congress included Maine in the Ozone Transport Region in the 1990 Clean Air Act Amendments. See 42 U.S.C. § 7511c(a).

82. Therefore, Maine is required to submit a state implementation plan or revision providing for the implementation of RACT for NOx and VOCs. See 40 C.F.R. § 51.916(b)(2) (2009).

83. On March 24, 2008, EPA issued a finding of failure to submit a sufficient state implementation plan addressing the NOx and VOC RACT requirements for all of Maine, except

that Northern Maine was not included in the finding regarding the NOx RACT requirements. 73 Fed. Reg. 15416, 15417 (March 24, 2008).

84. EPA's finding of failure triggered a 24-month clock after which EPA must promulgate a Federal Implementation Plan for Maine, except for the NOx RACT requirement in Northern Maine, under 42 U.S.C. § 7410(c)(1) that addresses the requirements referenced in paragraph 83.

85. EPA's finding of failure to submit also triggered 18-month and 24-month clocks after which EPA must impose a sanction under 42 U.S.C. § 7509(a).

86. Maine has not yet made the submittals referenced in paragraph 83.

87. EPA has not approved a plan for Maine that addresses the requirements referenced in paragraph 83.

88. Thus, EPA has a mandatory duty to promulgate a Federal Implementation Plan for Maine, except for the NOx RACT requirement in Northern Maine that arose on March 24, 2010.

89. EPA also has a mandatory duty to impose sanctions on Maine under 42 U.S.C. § 7509(a) as of September 24, 2009 and March 24, 2010.

90. EPA has failed to promulgate a Federal Implementation Plan for the required portions of Maine.

91. EPA has also failed to impose any sanctions on Maine.

92. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(c)(1) to promulgate Federal Implementation Plans for the Milwaukee-Racine and Sheboygan areas in Wisconsin, Illinois' portion of Metro St. Louis and Maine.

93. EPA is also in violation of its mandatory duty under 42 U.S.C. § 7509(a) to impose sanctions on Wisconsin, Illinois and Maine.

CLAIM TWO
(EPA's Failure to Take Final Action Pursuant to 42 U.S.C. 7410(k)(2))

94. Plaintiffs incorporate by reference paragraphs 1 through 93.

95. The Clean Air Act requires EPA to determine whether a state implementation plan 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.

96. EPA then has a mandatory duty to take final action on an administratively complete 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 it is deemed administratively complete. 42 U.S.C. § 7410(k)(2).

97. Missouri submitted a state implementation plan addressing the NOx and VOC RACT requirements for their portion of the Metro St. Louis area, which either EPA or operation of law deemed administratively complete on July 17, 2007. See EPA, Status of SIP Requirements for Designated Areas, Missouri SIP Requirements by Pollutant / Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/mo_elembypoll.html#ozone-8hr__1997__724) (last viewed December 1, 2010).

98. Thus, pursuant to 42 U.S.C. § 7410(k)(2), Congress required EPA to take final action by approving in full, disapproving in full or approving in part and disapproving in part Missouri's submittal referenced in paragraph 97 by no later than July 17, 2008.

99. EPA has failed to take final action by not approving in full, disapproving in full or approving in part and disapproving in part Missouri's submittal referenced in paragraph 97.

100. Additionally, Missouri submitted state implementation plans that addressed the demonstration of attainment and contained RFP provisions for their portion of the Metro St. Louis area, which either EPA or operation of law deemed administratively complete on December 21, 2007. See EPA, Status of SIP Requirements for Designated Areas, Missouri SIP Requirements by Pollutant / Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/mo_elembypoll.html#ozone-8hr__1997__724) (last viewed December 1, 2010).

101. Thus, pursuant to 42 U.S.C. § 7410(k)(2), Congress required EPA to take final action by approving in full, disapproving in full or approving in part and disapproving in part Missouri's submittals referenced in paragraph 100 by no later than December 21, 2008.

102. EPA has failed to take final action by not approving in full, disapproving in full or approving in part and disapproving in part Missouri's submittals referenced in paragraph 100.

103. Illinois submitted state implementation plans addressing the demonstration of attainment and containing RFP provisions for their portion of the Metro St. Louis Area which either EPA or operation of law deemed administratively complete on January 2, 2008. See EPA, Status of SIP Requirements for Designated Areas, Illinois SIP Requirements by Pollutant/Area (available at http://www.epa.gov/air/urbanair/sipstatus/reports/il_elembypoll.html#ozone-8hr__1997__725) (last viewed December 1, 2010).

104. Thus, pursuant to 42 U.S.C. § 7410(k)(2), Congress required EPA to take final action by approving in full, disapproving in full or approving in part and disapproving in part Illinois' submittals referenced in paragraph 103 by no later than December 21, 2008.

105. EPA has failed to take final action by not approving in full, disapproving in full or approving in part and disapproving in part Illinois' submittals referenced in paragraph 103.

106. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) to take final action by approving in full, disapproving in full or approving in part and disapproving in part submittals by Missouri and Illinois. 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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Dated: December 28, 2010