

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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)	
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. Plaintiff Sierra Club brings this Clean Air Act citizen suit to compel the United States Environmental Protection Agency (“EPA”) to undertake an overdue mandatory duty. Specifically, Defendant, Lisa P. Jackson, in her official capacity as Administrator of the EPA, has failed to take final action under 42 U.S.C. § 7410(k)(2) and (3) on an Oklahoma State Implementation Plan submittal addressing excess emissions reporting requirements within the 18 month period allowed under the Clean Air Act. Accordingly, Plaintiff SIERRA CLUB brings this action against Defendant LISA P. JACKSON, in her official capacity as EPA Administrator,

to compel her to perform her mandatory duty with respect to this Oklahoma state implementation plan submittal.

II. JURISDICTION

2. This 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).

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

3. 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 February 21, 2012. 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

4. 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

5. 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.

6. Sierra Club has over 600,000 members nationally. Members and staff of Sierra Club live, work, recreate, engage in economic activities and travel throughout the areas at issue in this case and will continue to do so on a regular basis. Air pollutants in the affected areas threaten and injure, and will continue to threaten and injure, the health and welfare of Sierra Club's members. Sierra Club members' ability to enjoy the aesthetic qualities and recreational and economic opportunities in the areas at issue is diminished by air pollution.

7. 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.

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

9. 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. LEGAL BACKGROUND

10. 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. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

11. 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, that visibility in special places like national parks and wilderness areas will not be degraded by air pollution and 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.

12. 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.

13. 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. 42 U.S.C. § 7410(k)(1)(B). 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. *Id.*

14. 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. CLAIM FOR RELIEF

(EPA’s Failure to Take Final Action on Oklahoma State Implementation Plan Submittal)

15. Plaintiff incorporates by reference paragraphs 1 through 14.

16. On July 16, 2010 Oklahoma submitted a state implementation plan, OAC 252:100-9, Excess Emissions Reporting Requirements. *See Oklahoma State Implementation Plan, Subchapter 9, Excess Emissions Reporting Requirements*, letter from J.D. Strong, Secretary of Environment, State of Oklahoma, Office of the Secretary of the Environment, to Dr. Alfredo Armendariz, Regional Administrator, EPA Region 6, July 16, 2010 (“Oklahoma’s Excess Emissions Reporting Requirements submittal”).

17. Pursuant to the Clean Air Act, either EPA or operation of law deemed Oklahoma’s Excess Emissions Reporting Requirement submittal administratively complete by no later than January 16, 2011. 42 U.S.C. § 7410(k)(1)(B).

18. Thus EPA has a mandatory duty to take final action on Oklahoma’s Excess Emissions Reporting Requirements submittal by no later than January 16, 2012. 42 U.S.C. § 410(k)(2) and (3).

19. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Oklahoma’s Excess Emissions Reporting Requirements submittal by no later than January 16, 2012.

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,

s/ Robert Ukeiley
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Counsel for Sierra Club

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