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5 *Attorneys for Plaintiffs Sierra Club*
6 *and Physicians for Social Responsibility – Los Angeles*

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10
11 SIERRA CLUB and PHYSICIANS FOR SOCIAL)
RESPONSIBILITY – LOS ANGELES,)

Case No: 2:15-cv-3798

12 Plaintiffs,)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

13 v.)

(Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*)

14 UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY; GINA MCCARTHY, in)
15 her official capacity as Administrator of the United)
States Environmental Protection Agency; and)
16 JARED BLUMENFELD, in his official capacity as)
Regional Administrator of the United States)
17 Environmental Protection Agency,)

18 Defendants.)
19)

1 **INTRODUCTION**

2 1. One of the most dangerous forms of air pollution is fine particulate matter pollution.
3 Fine particulate matter pollution consists of tiny, dirty particles that come from sources like diesel
4 exhaust, agricultural activities, and heavy industry. These tiny particles can be easily inhaled and
5 lodged deep into the lungs and even absorbed into the bloodstream where they can cause a host of
6 negative health impacts.

7 2. Under the Clean Air Act, the Environmental Protection Agency (EPA) sets national
8 health based standards for the amount of fine particulate matter pollution that can be in the air. To
9 meet these standards, the Clean Air Act requires states to submit attainment plans to EPA, and gives
10 EPA a limited time period to approve or disapprove these plans.

11 3. One of the most polluted areas of the country for fine particulate matter pollution is
12 California’s South Coast air basin (South Coast). The degraded state of the South Coast’s air means
13 that South Coast residents suffer from high levels of asthma and other health ailments.

14 4. On February 13, 2013, the California Air Resources Board submitted the South
15 Coast’s 2012 Air Quality Management Plan for meeting EPA’s 2006 standard for fine particulate
16 matter pollution for the South Coast. Under the Clean Air Act, EPA had 18 months, or until August
17 13, 2014, to approve, disapprove, or approve in part and disapprove in part the plan.

18 5. EPA has failed to complete its nondiscretionary duty to act on the South Coast’s 2012
19 fine particulate matter Air Quality Management Plan. This is an action to compel the Administrator
20 of the EPA to fulfill this mandatory duty under the Clean Air Act, to ensure that Plaintiffs’ members
21 receive the pollution protections that the Clean Air Act requires.

22 **JURISDICTION AND VENUE**

23 6. The instant action arises under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* This
24 Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1331 and
25 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C.
26 §§ 2201, 2202, and 1361.

27 7. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs notified
28 the Administrator of the violations alleged herein, and of Plaintiffs’ intent to initiate the present

1 action. This notice was provided via certified mail on March 12, 2015, and addressed to the
2 Administrator. More than 60 days have passed since notice was served, and the violations
3 complained of are continuing.

4 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) since: (i) a substantial
5 part of the events and omissions giving rise to this claim have occurred in this district because the
6 South Coast's 2012 Fine Particulate Matter Air Quality Management Plan was prepared in this
7 district and the air quality impacts governed by the Plan will be felt by this district; and (ii) Plaintiff
8 Physicians for Social Responsibility-Los Angeles resides in this district.

9 **PARTIES**

10 9. Plaintiff Sierra Club, a corporation organized and existing under the laws of the State of
11 California, is a national nonprofit organization of approximately 630,000 members, roughly 147,000 of
12 whom live in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild
13 places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and
14 resources; to educating and encouraging humanity to protect and restore the quality of the natural
15 and human environment; and to using all lawful means to carry out these objectives.

16 10. Plaintiff Physicians for Social Responsibility – Los Angeles, a corporation organized
17 and existing under the laws of the State of California, is a California nonprofit organization
18 dedicated to advocating for policies and practices that improve public health, eliminate
19 environmental threats, and address health inequalities.

20 11. Plaintiffs' members live, work, recreate and conduct other activities in areas where
21 their health and welfare are adversely affected or threatened by fine particulate matter pollution.

22 12. The acts and omissions of EPA complained of herein cause injury to Plaintiffs and
23 their members by delaying finalization of the South Coast's 2012 Fine Particulate Matter Air Quality
24 Management Plan to comply with fine particulate matter standards. This delay injures Plaintiffs'
25 members by allowing air quality conditions to persist that impair or threaten members' health and
26 welfare, and by nullifying or delaying measures mandated by the Act to protect members' health and
27 welfare from fine particulate matter pollution. The health, recreational, aesthetic, and environmental
28

1 interests of Plaintiffs' members have been and continue to be adversely affected by the acts and
2 omissions of EPA.

3 13. For all the foregoing reasons, the failures complained of herein cause Plaintiffs and
4 their members injuries for which they have no adequate remedy at law. Granting the requested relief
5 would redress these injuries.

6 14. Defendant EPA is the federal agency charged with implementation of the Clean Air
7 Act.

8 15. Defendant Gina McCarthy is the Administrator of EPA, and is responsible for
9 implementation and enforcement of the Clean Air Act. Defendant McCarthy is sued in her official
10 capacity, and officially resides in Washington, D.C.

11 16. Defendant Jared Blumenfeld is the Regional Administrator of EPA for the Pacific
12 Southwest (Region 9), and is responsible for implementation and enforcement of the Clean Air Act
13 within California. Defendant Blumenfeld is sued in his official capacity, and officially resides in San
14 Francisco, CA.

15 **BACKGROUND AND FACTS**

16 **PM2.5 Pollution**

17 17. Particulate matter pollution, or PM, refers to particles suspended in the air. Particles
18 less than 10 micrometers in diameter (PM10) pose a health threat because they are respirable, and
19 are regulated under the Clean Air Act.

20 18. Particles less than 2.5 micrometers (PM2.5 or fine particulate matter) are considered
21 by EPA to pose the greatest health risks. Finer particles are typically composed of more toxic
22 materials, like heavy metals and carcinogenic organic compounds, than larger particles. And these
23 tiny particles—less than 1/30 the width of a human hair—can be easily inhaled deep into the lungs,
24 where they can remain embedded or absorbed into the bloodstream. These lighter particles also stay
25 in the air longer and travel further than larger particles; whereas larger particles can stay in the air for
26 minutes or hours and travel up to thirty miles, PM2.5 can stay in the air for days or weeks and travel
27 hundreds of miles.

1 19. According to EPA, exposure to PM2.5 has been linked to premature death, heart
2 attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased
3 respiratory symptoms. Many of these impacts are suffered most acutely by our most vulnerable,
4 including people with heart or lung disease, children, and the elderly.

5 20. PM2.5 also adversely impacts wildlife and ecosystems. Numerous studies have linked
6 negative health effects in animals with high concentrations of numerous fine particle components.
7 As EPA has explained, the impacts of PM2.5 on terrestrial ecosystems are “profound and adverse.”
8 Compounds associated with PM2.5 change the nutrient and acidifying characteristics of water bodies
9 and soil, increasing plant mortality and decreasing ecosystem biodiversity. Moreover, PM2.5
10 adversely affects the visibility and aesthetics of our natural surroundings by contributing to visibility
11 impairment.

12 21. One of the most polluted areas in the country for PM2.5 is California’s South Coast
13 air basin. This area is particularly burdened by PM2.5 sources like cars, trucks, and heavy industry,
14 and air pollution is trapped in place by surrounding mountains. As a result, people living in the
15 South Coast suffer from high rates of asthma and other health ailments and experience regular
16 impairment of natural visibility. The wildlife and ecosystems in the South Coast is also adversely
17 affected by the ongoing PM2.5 violations.

18 **The Clean Air Act’s Requirements for PM2.5**

19 22. The Clean Air Act establishes a comprehensive scheme “to protect and enhance the
20 quality of the Nation’s air resources so as to promote the public health and welfare and the
21 productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

22 23. As one of its central features, the Clean Air Act requires the Administrator of EPA to
23 set national ambient air quality standards for certain air pollutants, including particulate matter, at a
24 level “requisite to protect the public health” with “an adequate margin of safety.” 42 U.S.C.
25 § 7409(b)(1). EPA is required to designate those areas failing to meet these standards as
26 “nonattainment” areas. 42 U.S.C. § 7407.

27 24. The Clean Air Act requires that areas designated as nonattainment for particulate
28 matter submit an attainment plan to EPA within 18 months of designation as nonattainment. 42

1 U.S.C. § 7513a(a)(2). The plan must include a permit program for new sources of particulate matter;
2 a demonstration that the plan will provide for attainment by the applicable attainment date; and a
3 provision assuring that reasonably available control measures are implemented. 42 U.S.C.

4 § 7513a(a)(1).

5 25. Once a plan is submitted to EPA, EPA has six months to determine whether the plan
6 is complete. Failure by EPA to deem the plan complete within those six months renders the plan
7 complete by operation of law. Within twelve months from the completeness finding, EPA must
8 approve the plan, disapprove the plan, or approve the plan in part and disapprove in part. 42 U.S.C.
9 § 7410(k)(1)(B), (k)(2).

10 26. The design of the Clean Air Act thus ensures that the areas of the country out of
11 attainment with PM_{2.5} standards make progress towards cleaning up the air by having in place a
12 federally-approved plan to meet Clean Air Act goals.

13 **EPA's Duty to Take Action on the 2012 PM_{2.5} Plan for South Coast**

14 27. In 2006, EPA revised the NAAQS for fine particulate matter, setting a 35 µg/m³ 24-
15 hour standard for PM_{2.5}. 71 Fed. Reg. 61144 (Oct. 17, 2006); 40 C.F.R. § 50.13.

16 28. Effective December 14, 2009, EPA designated the South Coast as a nonattainment
17 area for this standard. 74 Fed. Reg. 58,688 (Nov. 13, 2009); 40 C.F.R. § 81.305.

18 29. On February 13, 2013, the California Air Resources Board submitted the South
19 Coast's 2012 Air Quality Management Plan to EPA. *See* Submittal from Mary Nichols to Jared
20 Blumenfeld (Feb. 13, 2013), *available at* [http://www.arb.ca.gov/planning/sip/planarea/scabsip/2012](http://www.arb.ca.gov/planning/sip/planarea/scabsip/2012%20AQMP%20Submittal%20Letter%20to%20U.S.%20EPA.pdf)
21 [%20AQMP%20Submittal%20Letter%20to%20U.S.%20EPA.pdf](http://www.arb.ca.gov/planning/sip/planarea/scabsip/2012%20AQMP%20Submittal%20Letter%20to%20U.S.%20EPA.pdf). Because EPA never determined
22 whether the South Coast's Plan was complete, it became complete by operation of law on August 13,
23 2014.

24 30. Pursuant to CAA section 110(k), EPA then had 12 months, or until August 13, 2014,
25 to approve the plan, disapprove the plan, or approve in part and disapprove in part. 42 U.S.C. §
26 7410(k)(1)(B), (k)(2).

1 31. To date, EPA has failed to complete its nondiscretionary duty to approve, disapprove,
2 or approve in part and disapprove in part the South Coast's 2012 Fine Particulate Matter Air Quality
3 Management Plan.

4 **CLAIM FOR RELIEF**
5 **(Failure to Act on the South Coast's 2012 Fine Particulate Matter Air Quality Management**
6 **Plan by the Deadline)**

7 32. Plaintiffs hereby incorporate all previous paragraphs by reference.

8 33. Defendants have failed to fulfill their mandatory duty under 42 U.S.C.
9 § 7410(k)(1)(B), (k)(2) to approve, disapprove, or approve in part and disapprove in part the South
10 Coast's 2012 Fine Particulate Matter Air Quality Management Plan by August 13, 2014.

11 34. Defendants' failure to timely complete this duty constitutes failure to perform an act
12 or duty that is not discretionary within the meaning of 42 U.S.C. § 7604(a)(2).

13 35. Defendants' failure to perform this nondiscretionary duty is ongoing. Plaintiffs are
14 informed and believe that the omissions complained of herein will continue unless enjoined by order
15 of this Court.

16 36. Accordingly, Plaintiffs are entitled to an order from this Court declaring that
17 Defendants have failed to perform the above-referenced nondiscretionary duty, and directing
18 Defendants to perform such duty immediately.

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiffs respectfully request that the Court:

21 (A) Declare that Defendants' failure to act as complained of herein constitutes a failure to
22 perform a nondiscretionary duty required by 42 U.S.C. § 7410(k)(1)(B), (k)(2), and within the
23 meaning of 42 U.S.C. § 7604(a)(2);

24 (B) Issue a mandatory injunction requiring EPA to immediately perform its mandatory
25 duty;

26 (C) Retain jurisdiction over this action to ensure compliance with the Court's orders;

27 (D) Award Plaintiffs their reasonable costs of litigation, including attorneys' fees,
28 pursuant to 42 U.S.C. § 7604(d); and

1 (E) Grant such other relief as the Court deems just and proper.

2
3 DATED: May 20, 2015

Respectfully submitted,

4
5 /s/Adriano L. Martinez

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