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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

\_\_\_\_\_  
17 )  
18 WILDEARTH GUARDIANS and )  
19 SIERRA CLUB, )

20 Plaintiffs, )

21 v. )

22 LISA P. JACKSON, )  
23 in her official capacity as Administrator of the )  
24 United States Environmental Protection Agency, )

25 Defendant. )  
\_\_\_\_\_ )

) Case No. 3:11-cv-11-00190 WHA

) **AMENDED COMPLAINT FOR**  
) **DECLARATORY AND INJUNCTIVE**  
) **RELIEF**

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

## INTRODUCTION

1. Particulate matter less than 2.5 microns in diameter (“PM2.5”), sometimes referred to as fine particulate, is a major cause of serious air quality problems in many parts of the United States. Exposure to PM2.5 causes numerous human respiratory problems, including decreased lung function, asthma and bronchitis, and is also associated with premature mortality, hospital admissions, cardiopulmonary disease and lung cancer. The detrimental effects of PM2.5 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.

2. To better protect the public from the damage caused by PM2.5, the United States Environmental Protection Agency (“EPA”) promulgated a revision to the PM2.5 National Ambient Air Quality Standard in 2006. Under the Clean Air Act, each state and territory of the United States is required to submit a plan, within three years of the promulgation or revision of a new National Ambient Air Quality Standard, which addresses specific requirements to provide for the implementation, maintenance and enforcement of the new PM2.5 standard. These are known as “Infrastructure” state implementation plans (“SIPs”). Without Infrastructure plans, citizens are not afforded full protection against the harmful effects of PM2.5.

3. EPA is required to take final action on a state’s Infrastructure 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. Furthermore, if a state failed to submit their Infrastructure state implementation plan by the required date, EPA is required to issue a finding stating so, known as a “finding of failure to submit.” EPA has failed to take final action on at least 20 states’ Infrastructure state implementation plan submittals. Additionally, EPA has failed to issue a finding of failure to submit a sufficient Infrastructure state implementation plan for at least 14 states and territories. Accordingly, Plaintiffs WILDEARTH GUARDIANS and SIERRA CLUB bring 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 these PM2.5 Infrastructure state implementation plans.

**JURISDICTION**

4. 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).

**NOTICE**

5. WildEarth Guardians and 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 notice letter on October 13, 2010. More than sixty days have passed since EPA received the notice letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists between the parties.

**VENUE**

6. Defendant EPA resides in this judicial district. This civil action is brought against an officer of the United States acting in her official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. One of the claims in this Complaint concerns EPA's failure to perform mandatory duties with regard to Hawaii. EPA Region 9, whose jurisdiction includes Hawaii, is headquartered in San Francisco. Thus several of the events and omissions at issue in this action occurred at EPA's Region 9 headquarters in San Francisco. In addition, Plaintiff Sierra Club is headquartered in San Francisco and Sierra Club's counsel is located in San Francisco. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**INTRADISTRICT ASSIGNMENT**

7. A substantial part of the events and omissions giving rise to the claims in this case occurred in the County of San Francisco. Accordingly, assignment to the San Francisco Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

**PARTIES**

8. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization with offices in Arizona, Colorado, and New Mexico. WildEarth Guardians protects and restores wild rivers, wildlife and wild places in the American West. A critical component of this work is

1 helping to foster an ethic of appreciation by allowing people to enjoy such wildlife, wild rivers  
2 and wild places.

3 9. Members and volunteers of WildEarth Guardians live, work, study, recreate, engage in  
4 other economic activities and obtain spiritual benefits, and will continue to do so regularly, in  
5 and around areas impacted by air pollution from Alaska, Idaho, Nebraska, Oregon, Washington  
6 Arizona, New Mexico and Wyoming.

7 10. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization  
8 formed in 1892. Sierra Club's purpose includes practicing and promoting the responsible use of  
9 earth's ecosystems and resources, and protecting and restoring the quality of the natural and  
10 human environment.

11 11. Sierra Club has over 750,000 members nationally. Members and staff of Sierra Club  
12 live, work, recreate, and travel throughout the areas at issue in this case and will continue to do  
13 so on a regular basis. PM2.5 in the affected states and territories threatens, and will continue to  
14 threaten, the health and welfare of the Sierra Club's staff and members. Sierra Club staff's and  
15 members', as well as the public's, ability to enjoy the aesthetic qualities and recreational  
16 opportunities is diminished in the respective areas impacted by PM2.5.

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

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

24 14. Defendant LISA P. JACKSON is the Administrator of the United States Environmental  
25 Protection Agency. In that role Administrator Jackson has been charged by Congress with the  
26 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.  
27  
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**LEGAL BACKGROUND**

15. 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 PM<sub>2.5</sub>. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of these pollutants.

16. 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.

17. The Clean Air Act requires each state to submit a state implementation plan for every promulgation or revision of a National Ambient Air Quality Standard, within three years of that standard’s promulgation or revision, that provides for the “implementation, maintenance, and enforcement” of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as “infrastructure” state implementation plans.

18. An infrastructure state implementation plan submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). *See* 42 U.S.C. §§ 7410(a)(2)(A)-(M).

19. 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.*

20. EPA has a mandatory duty to take final action on any 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) and (3).

21. If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to submit.”

#### STATE IMPLEMENTATION PLAN SUBMITTALS

22. On October 17, 2006, EPA promulgated a revision to the PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard. 71 Fed. Reg. 61144 (Oct. 17, 2006). The effective date of the new standard is December 18, 2006. *Id.*

23. On March 23, 2010 either EPA or operation of law deemed Alabama’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Alabama (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

24. EPA has proposed to disapprove the portions of Alabama’s infrastructure state implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I), *see* 76 Fed. Reg. 4588 (Jan. 26, 2011), but such proposals do not have any legal effect.

25. On March 18, 2010 either EPA or operation of law deemed Connecticut’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete. *See* EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ct\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (last viewed July 5, 2011).

26. On March 23, 2010, either EPA or operation of law deemed Florida’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), complete. *See* EPA, Status of State SIP Infrastructure Requirements—Florida (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/fl\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html#x110_a_2_pm-2.5_2006)  
2 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

3 27. On April 6, 2010, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub>  
4 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
5 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—  
6 Mississippi (available at

7 [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a_2_pm-2.5_2006)  
8 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

9 28. On March 21, 2010, either EPA or operation of law deemed North Carolina's 2006  
10 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42  
11 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure  
12 Requirements—North Carolina (available at

13 [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a_2_pm-2.5_2006)  
14 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

15 29. EPA has proposed to disapprove the portions of North Carolina's infrastructure state  
16 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
17 *see* 76 Fed. Reg. 4592 (Jan. 26, 2011), but such proposals do not have any legal effect.

18 30. On April 19, 2010, either EPA or operation of law deemed Tennessee's infrastructure  
19 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
20 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete.  
21 *See* EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at

22 [http://www.epa.gov/air/urbanair/sipstatus/reports/tn\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_pm-2.5_2006)  
23 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

24 31. On April 20, 2010, either EPA or operation of law deemed Indiana's infrastructure state  
25 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
26 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Indiana (available at  
27 [http://www.epa.gov/air/urbanair/sipstatus/reports/in\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html#x110_a_2_pm-2.5_2006)  
28 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

1 32. EPA has proposed to disapprove the portion of Indiana's infrastructure state  
2 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
3 *see* 76 Fed. Reg. 6376 (Feb. 4, 2011), but such proposals do not have any legal effect.

4 33. On January 27, 2010, either EPA or operation of law deemed Maine's infrastructure state  
5 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
6 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Maine (available at  
7 [http://www.epa.gov/air/urbanair/sipstatus/reports/me\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
8 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

9 34. On March 4, 2010, either EPA or operation of law deemed Ohio's infrastructure state  
10 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
11 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Ohio (available at  
12 [http://www.epa.gov/air/urbanair/sipstatus/reports/oh\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
13 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

14 35. EPA has proposed to disapprove the portion of Ohio's infrastructure state  
15 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
16 *see* 76 Fed. Reg. 6376 (Feb. 4, 2011), but such proposals do not have any legal effect.

17 36. On February 17, 2010, either EPA or operation of law deemed New Mexico's  
18 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
19 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—New  
20 Mexico (available at  
21 [http://www.epa.gov/air/urbanair/sipstatus/reports/nm\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nm_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
22 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/nm_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

23 37. On September 16, 2009, Delaware made an infrastructure state implementation plan  
24 submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the  
25 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I). *See* 75 Fed. Reg. 31340, 31342 (June 3,  
26 2010). Thus, pursuant to the Clean Air Act, either EPA or operation of law deemed Delaware's  
27 September 16, 2009 submittal administratively complete by no later than March 16, 2010. *See*  
28 42 U.S.C. § 7410(k)(1)(B).



38. EPA has proposed to approve the portions of Delaware's infrastructure state implementation plan submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(ii), (E)-(M), *see* 75 Fed. Reg. 31340 (June 3, 2010) and to approve, and in the alternative disapprove, a submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I), *see* 76 Fed. Reg. 2853 (Jan. 18, 2011), but such proposals do not have any legal effect.

39. On March 8, 2010, either EPA or operation of law deemed Kentucky's infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the the portion addressing prevention of significant deterioration ("PSD") requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), complete. *See* EPA, Status of State SIP Infrastructure Requirements—Kentucky (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ky\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ky_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

40. EPA has proposed to disapprove the portions of Kentucky's infrastructure state implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I), *see* 76 Fed. Reg. 4597 (Jan. 26, 2011), but such proposals do not have any legal effect.

41. On March 15, 2010, either EPA or operation of law deemed Nevada's infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Nevada (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nv\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/nv_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

42. On March 21, 2010, either EPA or operation of law deemed Arkansas' infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Arkansas (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ar\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ar_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

43. On March 18, 2010, either EPA or operation of law deemed New Hampshire's infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §

1 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—New  
 2 Hampshire (available at  
 3 [http://www.epa.gov/air/urbanair/sipstatus/reports/nh\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 4 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

5 44. On March 18, 2010, either EPA or operation of law deemed South Carolina's  
 6 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 7 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—South  
 8 Carolina (available at  
 9 [http://www.epa.gov/air/urbanair/sipstatus/reports/sc\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/sc_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 10 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/sc_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

11 45. On March 21, 2010 either EPA or operation of law deemed Massachusetts' infrastructure  
 12 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 13 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete.  
 14 *See* EPA, Status of State SIP Infrastructure Requirements— Massachusetts (available at  
 15 [http://www.epa.gov/air/urbanair/sipstatus/reports/ma\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ma_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 16 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ma_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

17 46. On April 14, 2010, either EPA or operation of law deemed Arizona's infrastructure state  
 18 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 19 (M), except for the requirements under 42 U.S.C. § 7410(a)(2)(G), complete. *See* EPA, Status of  
 20 State SIP Infrastructure Requirements—Arizona (available at  
 21 [http://www.epa.gov/air/urbanair/sipstatus/reports/az\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 22 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

23 47. On April 21, 2010, either EPA or operation of law deemed Georgia's infrastructure state  
 24 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 25 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Georgia (available at  
 26 [http://www.epa.gov/air/urbanair/sipstatus/reports/ga\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ga_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 27 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ga_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).  
 28

48. EPA has proposed to disapprove the portions of Georgia's infrastructure state implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I), *see* 75 Fed. Reg. 4584 (Jan. 26, 2011), but such proposals do not have any legal effect.

49. On October 1, 2009, West Virginia made a infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete. *See* 75 Fed. Reg. 27510, 27511, (May 17, 2010). Thus, pursuant to the Clean Air Act, either EPA or operation of law deemed West Virginia's October 1, 2009 submittal administratively complete by no later than April 1, 2010. *See* 42 U.S.C. § 7410(k)(1)(B).

50. EPA has proposed to approve the portions of West Virginia's infrastructure state implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(A)-(C), (E)-(M), *see* 75 Fed. Reg. 27510 (May 17, 2010), but such proposals do not have any legal effect.

## CLAIMS FOR RELIEF

### CLAIM ONE

(EPA's Failure to Take Final Action on 20 States' 2006 PM<sub>2.5</sub> Infrastructure State Implementation Plan Submittals)

51. Plaintiffs incorporate by reference paragraphs 1 through 50.

52. 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).

53. 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.*

54. EPA must take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date of the submittal's completeness finding. 42 U.S.C. § 7410(k)(2) and (3).

1 55. For the purposes of this claim only, nothing in this claim alleges that EPA has a  
2 mandatory duty to address the visibility portion of the requirements under 42 U.S.C. §  
3 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) or the  
4 requirements under 42 U.S.C. § 7410(a)(2)(I), even if EPA has deemed those submittals  
5 complete.

6 56. On March 23, 2010 either EPA or operation of law deemed Alabama's 2006 PM<sub>2.5</sub>  
7 infrastructure state implementation plan submittal addressing the requirements of 42 U.S.C. §  
8 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—  
9 Alabama (available at  
10 [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a_2_pm-2.5_2006)  
11 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html#x110_a_2_pm-2.5_2006) ) (as viewed July 5, 2011).

12 57. EPA has proposed to disapprove the portions of Alabama's infrastructure state  
13 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
14 *see* 76 Fed. Reg. 4588 (Jan. 26, 2011), but such proposals do not have any legal effect.

15 58. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
16 action on Alabama's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
17 the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility requirement under  
18 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. §  
19 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I), by no later than March 23,  
20 2011.

21 59. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
22 full, or approving in part and disapproving in part Alabama's 2006 PM<sub>2.5</sub> infrastructure state  
23 implementation plan submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M),  
24 except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the  
25 nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
26 U.S.C. § 7410(a)(2)(I) by no later than March 23, 2011.

27 60. On March 18, 2010 either EPA or operation of law deemed Connecticut's 2006 PM<sub>2.5</sub>  
28 infrastructure state implementation plan submittal addressing the requirements of 42 U.S.C. §

1 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete.  
 2 *See* EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at  
 3 [http://www.epa.gov/air/urbanair/sipstatus/reports/ct\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 4 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html#x110_a_2_pm-2.5_2006)) (last viewed July 5, 2011).

5 61. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 6 action on Connecticut's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
 7 addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements  
 8 under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of the requirements under 42 U.S.C.  
 9 § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 10 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 18, 2011.

11 62. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 12 full, or approving in part and disapproving in part Connecticut's 2006 PM<sub>2.5</sub> infrastructure state  
 13 implementation plan submittal addressing the requirements of 42 U.S.C. § 7410(a)(2)(A)-(M),  
 14 except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of the  
 15 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
 16 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
 17 March 18, 2011.

18 63. On March 23, 2010, either EPA or operation of law deemed Florida's 2006 PM<sub>2.5</sub>  
 19 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 20 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. §  
 21 7410(a)(2)(D)(i)(II), complete. *See* EPA, Status of State SIP Infrastructure Requirements—  
 22 Florida (available at  
 23 [http://www.epa.gov/air/urbanair/sipstatus/reports/fl\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 24 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

25 64. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 26 action on Florida's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the  
 27 requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
 28 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42

1 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
2 March 23, 2011.

3 65. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
4 full, or approving in part and disapproving in part Florida's 2006 PM<sub>2.5</sub> infrastructure state  
5 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
6 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
7 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
8 U.S.C. § 7410(a)(2)(I) by March 23, 2011.

9 66. On April 6, 2010, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub>  
10 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
11 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—  
12 Mississippi (available at  
13 [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a_2_pm-2.5_2006)  
14 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

15 67. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
16 action on Mississippi's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
17 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility  
18 portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
19 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
20 7410(a)(2)(I) by no later than April 6, 2011.

21 68. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
22 full, or approving in part and disapproving in part Mississippi's 2006 PM<sub>2.5</sub> infrastructure state  
23 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
24 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
25 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
26 U.S.C. § 7410(a)(2)(I) by no later than April 6, 2011.

27 69. On March 21, 2010, either EPA or operation of law deemed North Carolina's 2006  
28 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42

1 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure  
 2 Requirements—North Carolina (available at  
 3 [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 4 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

5 70. EPA has proposed to disapprove the portions of North Carolina's infrastructure state  
 6 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
 7 *see* 76 Fed. Reg. 4592 (Jan. 26, 2011), but such proposals do not have any legal effect.

8 71. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 9 action on North Carolina's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
 10 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the  
 11 visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 12 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 13 7410(a)(2)(I) by no later than March 21, 2011.

14 72. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 15 full, or approving in part and disapproving in part North Carolina's 2006 PM<sub>2.5</sub> infrastructure  
 16 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 17 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. §  
 18 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 19 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 21, 2011.

20 73. On April 19, 2010, either EPA or operation of law deemed Tennessee's infrastructure  
 21 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 22 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete.  
 23 *See* EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at  
 24 [http://www.epa.gov/air/urbanair/sipstatus/reports/tn\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 25 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

26 74. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 27 action on Tennessee's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
 28 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements under 42



1 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of the requirements under 42 U.S.C. §  
 2 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 3 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than April 19, 2011.

4 75. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 5 full, or approving in part and disapproving in part Tennessee's 2006 PM<sub>2.5</sub> infrastructure state  
 6 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 7 (M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of  
 8 the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under  
 9 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
 10 April 19, 2011.

11 76. On April 20, 2010, either EPA or operation of law deemed Indiana's infrastructure state  
 12 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 13 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Indiana (available at  
 14 [http://www.epa.gov/air/urbanair/sipstatus/reports/in\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 15 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

16 77. EPA has proposed to disapprove the portion of Indiana's infrastructure state  
 17 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
 18 *see* 76 Fed. Reg. 6376 (Feb. 4, 2011), but such proposals do not have any legal effect.

19 78. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take  
 20 final action on Indiana's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
 21 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility  
 22 portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 23 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 24 7410(a)(2)(I) by no later than April 20, 2011.

25 79. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 26 full, or approving in part and disapproving in part Indiana's 2006 PM<sub>2.5</sub> infrastructure state  
 27 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 28 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),



1 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
2 U.S.C. § 7410(a)(2)(I) by no later than April 20, 2011.

3 80. On January 27, 2010, either EPA or operation of law deemed Maine's infrastructure state  
4 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
5 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Maine (available at  
6 [http://www.epa.gov/air/urbanair/sipstatus/reports/me\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
7 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

8 81. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
9 action on Maine's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the  
10 requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
11 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
12 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
13 January 27, 2011.

14 82. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
15 full, or approving in part and disapproving in part Maine's 2006 PM<sub>2.5</sub> infrastructure state  
16 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
17 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
18 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
19 U.S.C. § 7410(a)(2)(I) by no later than January 27, 2011.

20 83. On March 4, 2010, either EPA or operation of law deemed Ohio's infrastructure state  
21 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
22 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Ohio (available at  
23 [http://www.epa.gov/air/urbanair/sipstatus/reports/oh\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
24 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

25 84. EPA has proposed to disapprove the portion of Ohio's infrastructure state  
26 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
27 *see* 76 Fed. Reg. 6376 (Feb. 4, 2011), but such proposals do not have any legal effect.  
28

1 85. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
2 action on Ohio's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the  
3 requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
4 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
5 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
6 March 4, 2011.

7 86. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
8 full, or approving in part and disapproving in part Ohio's 2006 PM<sub>2.5</sub> infrastructure state  
9 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
10 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
11 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
12 U.S.C. § 7410(a)(2)(I) by no later than March 4, 2011.

13 87. On February 17, 2010, either EPA or operation of law deemed New Mexico's  
14 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
15 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—New  
16 Mexico (available at  
17 [http://www.epa.gov/air/urbanair/sipstatus/reports/nm\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nm_infrabypoll.html#x110_a_2_pm-2.5_2006)  
18 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/nm_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

19 88. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
20 action on New Mexico's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
21 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility  
22 portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
23 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
24 7410(a)(2)(I) by no later than February 17, 2011.

25 89. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
26 full, or approving in part and disapproving in part New Mexico's 2006 PM<sub>2.5</sub> infrastructure state  
27 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
28 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),

1 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
2 U.S.C. § 7410(a)(2)(I) by no later than February 17, 2011.

3 90. On September 16, 2009, Delaware made an infrastructure state implementation plan  
4 submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M). *See* 75 Fed. Reg.  
5 31340, 31342 (June 3, 2010). Thus, pursuant to the Clean Air Act, either EPA or operation of  
6 law deemed Delaware's September 16, 2009 submittal administratively complete by no later  
7 than March 16, 2010. *See* 42 U.S.C. § 7410(k)(1)(B).

8 91. EPA has proposed to approve the portions of Delaware's infrastructure state  
9 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(A)-(C),  
10 (D)(ii), (E)-(M), *see* 75 Fed. Reg. 31340 (June 3, 2010) and 42 U.S.C. § 7410(a)(2)(D)(i)(I), *see*  
11 76 Fed. Reg. 2853 (Jan. 18, 2011), but such proposals do not have any legal effect.

12 92. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
13 action on Delaware's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
14 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
15 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
16 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
17 March 16, 2011.

18 93. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
19 full, or approving in part and disapproving in part Delaware's 2006 PM<sub>2.5</sub> infrastructure state  
20 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
21 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
22 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
23 U.S.C. § 7410(a)(2)(I) by no later than March 16, 2011.

24 94. On March 8, 2010, either EPA or operation of law deemed Kentucky's infrastructure  
25 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
26 7410(a)(2)(A)-(M), except for the portion addressing PSD requirements under 42 U.S.C. §  
27 7410(a)(2)(D)(i)(II), complete. *See* EPA, Status of State SIP Infrastructure Requirements—  
28 Kentucky (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/ky\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ky_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 2 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ky_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

3 95. EPA has proposed to disapprove the portions of Kentucky's infrastructure state  
 4 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
 5 *see* 76 Fed. Reg. 4597 (Jan. 26, 2011), but such proposals do not have any legal effect.

6 96. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 7 action on Kentucky's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
 8 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the portion addressing  
 9 visibility and PSD requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 10 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 11 7410(a)(2)(I) by no later than March 8, 2011.

12 97. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 13 full, or approving in part and disapproving in part Kentucky's 2006 PM<sub>2.5</sub> infrastructure state  
 14 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 15 (M), except for the portion addressing visibility and PSD requirements under 42 U.S.C. §  
 16 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 17 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 8, 2011.

18 98. On March 15, 2010, either EPA or operation of law deemed Nevada's infrastructure state  
 19 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 20 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Nevada (available at  
 21 [http://www.epa.gov/air/urbanair/sipstatus/reports/nv\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nv_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 22 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/nv_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

23 99. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 24 action on Nevada's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
 25 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
 26 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
 27 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
 28 March 15, 2011.

100. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Nevada's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 15, 2011.

101. On March 21, 2010, either EPA or operation of law deemed Arkansas' infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Arkansas (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ar\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ar_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

102. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final action on Arkansas' 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 21, 2011.

103. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Arkansas' 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 21, 2011.

104. On March 18, 2010, either EPA or operation of law deemed New Hampshire's infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—New Hampshire (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/nh\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 2 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/nh_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

3 105. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 4 action on New Hampshire's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
 5 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility  
 6 portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 7 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 8 7410(a)(2)(I) by no later than March 18, 2011.

9 106. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 10 full, or approving in part and disapproving in part New Hampshire's 2006 PM<sub>2.5</sub> infrastructure  
 11 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 12 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. §  
 13 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 14 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 18, 2011.

15 107. On March 18, 2010, either EPA or operation of law deemed South Carolina's  
 16 infrastructure state implementation plan submittal addressing the requirements under 42 U.S.C. §  
 17 7410(a)(2)(A)-(M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—South  
 18 Carolina (available at  
 19 [http://www.epa.gov/air/urbanair/sipstatus/reports/sc\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/sc_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 20 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/sc_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

21 108. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 22 action on South Carolina's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
 23 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility  
 24 portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 25 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 26 7410(a)(2)(I) by no later than March 18, 2011.

27 109. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 28 full, or approving in part and disapproving in part South Carolina's 2006 PM<sub>2.5</sub> infrastructure

1 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
2 7410(a)(2)(A)-(M), except for the visibility portion of the requirements under 42 U.S.C. §  
3 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
4 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 18, 2011.

5 110. On March 21, 2010 either EPA or operation of law deemed Massachusetts' infrastructure  
6 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
7 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete.  
8 *See* EPA, Status of State SIP Infrastructure Requirements—Massachusetts (available at  
9 [http://www.epa.gov/air/urbanair/sipstatus/reports/ma\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ma_infrabypoll.html#x110_a_2_pm-2.5_2006)  
10 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ma_infrabypoll.html#x110_a_2_pm-2.5_2006)) (as viewed July 5, 2011).

11 111. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
12 action on Massachusetts' 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
13 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements  
14 under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of the requirements under 42 U.S.C.  
15 § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
16 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than March 21, 2011.

17 112. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
18 full, or approving in part and disapproving in part Massachusetts' 2006 PM<sub>2.5</sub> infrastructure  
19 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
20 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the  
21 visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
22 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
23 7410(a)(2)(I) by no later than March 21, 2011.

24 113. On April 14, 2010, either EPA or operation of law deemed Arizona's infrastructure state  
25 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
26 (M), except for the requirements under 42 U.S.C. § 7410(a)(2)(G), complete. *See* EPA, Status of  
27 State SIP Infrastructure Requirements—Arizona (available at  
28



1 [http://www.epa.gov/air/urbanair/sipstatus/reports/az\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 2 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

3 114. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 4 action on Arizona's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
 5 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements under 42  
 6 U.S.C. § 7410(a)(2)(G), the visibility portion of the requirements under 42 U.S.C. §  
 7 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
 8 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than April 14, 2011.

9 115. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
 10 full, or approving in part and disapproving in part Arizona's 2006 PM<sub>2.5</sub> infrastructure state  
 11 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 12 (M), except for the requirements under 42 U.S.C. § 7410(a)(2)(G), the visibility portion of the  
 13 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
 14 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
 15 April 14, 2011.

16 116. On April 21, 2010, either EPA or operation of law deemed Georgia's infrastructure state  
 17 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
 18 (M) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Georgia (available at  
 19 [http://www.epa.gov/air/urbanair/sipstatus/reports/ga\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ga_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 20 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ga_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (as viewed July 5, 2011).

21 117. EPA has proposed to disapprove the portions of Georgia's infrastructure state  
 22 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I),  
 23 *see* 75 Fed. Reg. 4584 (Jan. 26, 2011), but such proposals do not have any legal effect.

24 118. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
 25 action on Georgia's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing  
 26 the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the visibility portion of the  
 27 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42  
 28



1 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than  
2 April 21, 2011.

3 119. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
4 full, or approving in part and disapproving in part Georgia's 2006 PM<sub>2.5</sub> infrastructure state  
5 implementation plan submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-  
6 (M), except for the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II),  
7 the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42  
8 U.S.C. § 7410(a)(2)(I) by no later than April 21, 2011.

9 120. On October 1, 2009, West Virginia made an infrastructure state implementation plan  
10 submittal addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the  
11 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), complete. *See* 75 Fed. Reg. 27510, 27511,  
12 (May 17, 2010). Thus, pursuant to the Clean Air Act, either EPA or operation of law deemed  
13 West Virginia's October 1, 2009 submittal administratively complete by no later than April 1,  
14 2010. *See* 42 U.S.C. § 7410(k)(1)(B).

15 121. EPA has proposed to approve the portions of West Virginia's infrastructure state  
16 implementation plan submittal that address the requirements of 42 U.S.C. § 7410(a)(2)(A)-(C),  
17 (E)-(M), *see* 75 Fed. Reg. 27510 (May 17, 2010), but such proposals do not have any legal  
18 effect.

19 122. Thus, pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA has a mandatory duty to take final  
20 action on West Virginia's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal  
21 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(M), except for the requirements  
22 under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the visibility portion of the requirements under 42 U.S.C.  
23 § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) and the  
24 requirements under 42 U.S.C. § 7410(a)(2)(I) by no later than April 1, 2011.

25 123. EPA has failed to perform this mandatory duty by not approving in full, disapproving in  
26 full, or approving in part and disapproving in part West Virginia's 2006 PM<sub>2.5</sub> infrastructure  
27 state implementation plan submittal addressing the requirements under 42 U.S.C. §  
28 7410(a)(2)(A)-(M), except for the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the

1 visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment  
 2 requirements under 42 U.S.C. § 7410(a)(2)(C) and the requirements under 42 U.S.C. §  
 3 7410(a)(2)(I) by no later than April 1, 2011.

4 124. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) and  
 5 (3) to take final action on infrastructure state implementation plan submittals by Alabama,  
 6 Connecticut, Florida, Mississippi, North Carolina, Tennessee, Indiana, Maine, Ohio, New  
 7 Mexico, Delaware, Kentucky, Nevada, Arkansas, New Hampshire, South Carolina,  
 8 Massachusetts, Arizona, Georgia and West Virginia. This violation of a mandatory duty is  
 9 ongoing.

## 10 CLAIM TWO

11 (EPA's Failure to Make Findings of Failure to Submit Sufficient Infrastructure State  
 12 Implementation Plans for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standard)

13 125. Plaintiffs incorporate by reference paragraphs 1 through 124.

14 126. Pursuant to the Clean Air Act, each state must submit an "infrastructure" state  
 15 implementation plan that provides for the "implementation, maintenance, and enforcement" of a  
 16 National Ambient Air Quality Standard within three years of a standard's promulgation or  
 17 revision. 42 U.S.C. § 7410(a)(1).

18 127. The Clean Air Act requires EPA to determine whether a state implementation plan  
 19 submittal is administratively complete. *See* 42 U.S.C. 7410(k)(1)(B).

20 128. If a state fails to submit any required state implementation plan, there is no submittal that  
 21 may be deemed administratively complete and EPA must make a determination stating that the  
 22 state failed to submit the required state implementation plan. *See* 42 U.S.C. § 7410(k)(1)(B).  
 23 This is referred to as a "finding of failure to submit."

24 129. Thus, if a state does not submit a state implementation plan, a finding of failure to submit  
 25 must be made no later than six months after the date by which the state implementation plan  
 26 submittal was due. *See* 42 U.S.C. § 7410(k)(1)(B).  
 27  
 28

130. EPA promulgated a revision to the PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard on October 17, 2006. 71 Fed. Reg. 61144 (Oct. 17, 2006).

131. The effective date of the 2006 PM<sub>2.5</sub> standard is December 18, 2006. *Id.*

132. Thus, states and territories are required to submit infrastructure state implementation plans for the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard by no later than December 18, 2009. *See* 42 U.S.C. § 7410(a)(1).

133. For the purposes of this claim only, nothing in this claim alleges that EPA has a mandatory duty to address the visibility portion of the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II), the nonattainment requirements under 42 U.S.C. § 7410(a)(2)(C) or the requirements under 42 U.S.C. § 7410(a)(2)(I).

134. Alaska has failed to submit an infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See* EPA, Status of State SIP Infrastructure Requirements—Alaska (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ak\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Alaska’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements) (last viewed July 5, 2011).

135. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Alaska regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

136. EPA has failed, and continues to fail, to make this finding of failure to submit for Alaska.

137. Hawaii has failed to submit an infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See* EPA, Status of State SIP Infrastructure Requirements—Hawaii (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/hi\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/hi_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Hawaii’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II)

1 and (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements)  
 2 (last viewed July 5, 2011).

3 138. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 4 finding of failure to submit for Hawaii regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
 5 Quality Standard infrastructure state implementation plan addressing the requirements under 42  
 6 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

7 139. EPA has failed, and continues to fail, to make this finding of failure to submit for Hawaii.

8 140. Iowa has failed to submit an infrastructure state implementation plan or revision  
 9 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*  
 10 EPA, Status of State SIP Infrastructure Requirements—Iowa (available at  
 11 [http://www.epa.gov/air/urbanair/sipstatus/reports/ia\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ia_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 12 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/ia_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (“Latest Action” is blank for Iowa’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and  
 13 (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements) (last  
 14 viewed July 5, 2011).

15 141. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 16 finding of failure to submit for Iowa regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
 17 Quality Standard infrastructure state implementation plan addressing the requirements under 42  
 18 U.S.C. § 7410(a)(2) (A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

19 142. EPA has failed, and continues to fail, to make this finding of failure to submit for Iowa.

20 143. Idaho has failed to submit an infrastructure state implementation plan or revision  
 21 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (E), (F) and (H)-(M). *See*  
 22 EPA, Status of State SIP Infrastructure Requirements—Idaho (available at  
 23 [http://www.epa.gov/air/urbanair/sipstatus/reports/id\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/id_infrabypoll.html#x110_a_2_pm-2.5_2006_)  
 24 [2.5\\_2006\\_](http://www.epa.gov/air/urbanair/sipstatus/reports/id_infrabypoll.html#x110_a_2_pm-2.5_2006_)) (“Latest Action” is blank for Idaho’s 42 U.S.C. § 7410(a)(2)(A)-(C), (E)-(F), and  
 25 (H)-(M) submittal requirements and listed as “Completeness” for the other requirements) (last  
 26 viewed July 5, 2011).

27 144. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 28 finding of failure to submit for Idaho regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air

1 Quality Standard infrastructure state implementation plan addressing the requirements under 42  
2 U.S.C. § 7410(a)(2)(A)-(C), (E), (F), (H) and (J)-(M).

3 145. EPA has failed, and continues to fail, to make this finding of failure to submit for Idaho.

4 146. Illinois has failed to submit an infrastructure state implementation plan or revision  
5 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*  
6 EPA, Status of State SIP Infrastructure Requirements—Illinois (available at  
7 [http://www.epa.gov/air/urbanair/sipstatus/reports/il\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a_2_pm-2.5_2006)  
8 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Illinois’ 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and  
9 (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements) (last  
10 viewed July 5, 2011).

11 147. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
12 finding of failure to submit for Illinois regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
13 Quality Standard infrastructure state implementation plan addressing the requirements under 42  
14 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

15 148. EPA has failed, and continues to fail, to make this finding of failure to submit for Illinois.

16 149. Montana has failed to submit an infrastructure state implementation plan or revision  
17 addressing the PSD requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). *See* EPA, Status of  
18 State SIP Infrastructure Requirements—Montana (available at  
19 [http://www.epa.gov/air/urbanair/sipstatus/reports/mt\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/mt_infrabypoll.html#x110_a_2_pm-2.5_2006)  
20 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/mt_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Montana’s 42 U.S.C. § 7410(a)(2)(D)(i)(II) PSD  
21 submittal requirement and listed as “Completeness” or “Failure to submit” for all other  
22 requirements) (last viewed July 5, 2011).

23 150. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
24 finding of failure to submit for Montana regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
25 Air Quality Standard infrastructure state implementation plan addressing the requirements under  
26 42 U.S.C. § 7410(a)(2)(D)(i)(II) (PSD prong only).

27 151. EPA has failed, and continues to fail, to make this finding of failure to submit for  
28 Montana.

1 152. Nebraska has failed to submit an infrastructure state implementation plan or revision  
2 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*  
3 EPA, Status of State SIP Infrastructure Requirements—Nebraska (available at  
4 [http://www.epa.gov/air/urbanair/sipstatus/reports/ne\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/ne_infrabypoll.html#x110_a_2_pm-2.5_2006)  
5 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/ne_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Nebraska’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II)  
6 and (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements)  
7 (last viewed July 5, 2011).

8 153. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
9 finding of failure to submit for Nebraska regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
10 Air Quality Standard infrastructure state implementation plan addressing the requirements under  
11 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

12 154. EPA has failed, and continues to fail, to make this finding of failure to submit for  
13 Nebraska.

14 155. Oregon has failed to submit an infrastructure state implementation plan or revision  
15 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C) and (E)-(M). *See* EPA, Status  
16 of State SIP Infrastructure Requirements— Oregon (available at  
17 [http://www.epa.gov/air/urbanair/sipstatus/reports/or\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/or_infrabypoll.html#x110_a_2_pm-2.5_2006)  
18 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/or_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Oregon’s 42 U.S.C. § 7410(a)(2)(A)-(C) and (E)-(M)  
19 submittal requirements and listed as “Completeness” for the other requirements) (last viewed  
20 July 5, 2011).

21 156. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
22 finding of failure to submit for Oregon regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
23 Quality Standard infrastructure state implementation plan addressing the requirements under 42  
24 U.S.C. § 7410(a)(2)(A)-(C), (E)-(H) & (J)-(M).

25 157. EPA has failed, and continues to fail, to make this finding of failure to submit for  
26 Oregon.

27 158. Washington has failed to submit an infrastructure state implementation plan or revision  
28 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*

1 EPA, Status of State SIP Infrastructure Requirements— Washington (available at  
 2 [http://www.epa.gov/air/urbanair/sipstatus/reports/wa\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/wa_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 3 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/wa_infrabypoll.html#x110_a_2_pm-2.5_2006) ) (“Latest Action” is blank for Washington’s 42 U.S.C. § 7410(a)(2)(A)-(C),  
 4 (D)(i)(II) and (E)-(M) submittal requirements and listed as “Failure to submit” for the other  
 5 requirements) (last viewed July 5, 2011).

6 159. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 7 finding of failure to submit for Washington regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
 8 Air Quality Standard infrastructure state implementation plan addressing the requirements under  
 9 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

10 160. EPA has failed, and continues to fail, to make this finding of failure to submit for  
 11 Washington.

12 161. Wyoming has failed to submit an infrastructure state implementation plan or revision  
 13 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*  
 14 EPA, Status of State SIP Infrastructure Requirements— Wyoming (available at  
 15 [http://www.epa.gov/air/urbanair/sipstatus/reports/wy\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/wy_infrabypoll.html#x110_a_2_pm-2.5_2006)  
 16 [2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/wy_infrabypoll.html#x110_a_2_pm-2.5_2006) ) (“Latest Action” is blank for Wyoming’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II)  
 17 and (E)-(M) submittal requirements and listed as “Failure to submit” for the other requirements)  
 18 (last viewed July 5, 2011).

19 162. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 20 finding of failure to submit for Wyoming regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
 21 Air Quality Standard infrastructure state implementation plan addressing the requirements under  
 22 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

23 163. EPA has failed, and continues to fail, to make this finding of failure to submit for  
 24 Wyoming.

25 164. Puerto Rico has failed to submit an infrastructure state implementation plan or revision  
 26 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). *See*  
 27 EPA, Status of State SIP Infrastructure Requirements— Puerto Rico (available at  
 28 [http://www.epa.gov/air/urbanair/sipstatus/reports/pr\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/pr_infrabypoll.html#x110_a_2_pm-2.5_2006)



1 [2.5 2006](#)) (“Latest Action” is blank for Puerto Rico’s 42 U.S.C. § 7410(a)(2)(A)-(C),  
 2 (D)(i)(II) and (E)-(M) submittal requirements and listed as “Failure to submit” for the other  
 3 requirements) (last viewed July 5, 2011).

4 165. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 5 finding of failure to submit for Puerto Rico regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
 6 Air Quality Standard infrastructure state implementation plan addressing the requirements under  
 7 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) (PSD prong only), (E)-(H) & (J)-(M).

8 166. EPA has failed, and continues to fail, to make this finding of failure to submit for Puerto  
 9 Rico.

10 167. The District of Columbia has failed to submit an infrastructure state implementation plan  
 11 or revision addressing the PSD requirements under 42 US.C. § 7410(a)(2)(D)(i)(II). *See* EPA,  
 12 Status of State SIP Infrastructure Requirements—District of Columbia (available at  
 13 [http://www.epa.gov/air/urbanair/sipstatus/reports/dc\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/dc_infrabypoll.html#x110_a_2_pm-)

14 [2.5 2006](#)) (“Latest Action” is blank for the District of Columbia’s PSD requirements under 42  
 15 US.C. § 7410(a)(2)(D)(i)(II) submittal requirements and listed as “Approval” or “Failure to  
 16 submit” for all others) (last viewed July 5, 2011).

17 168. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 18 finding of failure to submit for the District of Columbia regarding the 2006 PM<sub>2.5</sub> 24-hour  
 19 National Ambient Air Quality Standard infrastructure state implementation plan addressing the  
 20 PSD requirements under 42 US.C. § 7410(a)(2)(D)(i)(II).

21 169. EPA has failed, and continues to fail, to make this finding of failure to submit for the  
 22 District of Columbia.

23 170. Michigan has failed to submit an infrastructure state implementation plan or revision  
 24 addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C) and (E)-(M). *See* EPA, Status  
 25 of State SIP Infrastructure Requirements—Michigan (available at  
 26 [http://www.epa.gov/air/urbanair/sipstatus/reports/mi\\_infrabypoll.html#x110\\_a\\_2\\_pm-](http://www.epa.gov/air/urbanair/sipstatus/reports/mi_infrabypoll.html#x110_a_2_pm-)

27 [2.5 2006](#)) (“Latest Action” is blank for Michigan’s submittal requirements for 42 U.S.C. §  
 28



7410(a)(2)(A)-(C) and (E)-(M) and listed as “Failure to submit,” “Approval” or “Completeness” for all others) (last viewed July 5, 2011).

171. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Michigan regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (E)-(H) & (J)-(M).

172. EPA has failed, and continues to fail, to make this finding of failure to submit for Michigan.

173. Arizona has failed to submit an infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. § 7410(a)(2)(G). *See* EPA, Status of State SIP Infrastructure Requirements— Arizona (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/az\\_infrabypoll.html#x110\\_a\\_2\\_pm-2.5\\_2006](http://www.epa.gov/air/urbanair/sipstatus/reports/az_infrabypoll.html#x110_a_2_pm-2.5_2006)) (“Latest Action” is blank for Arizona’s 42 U.S.C. § 7410(a)(2)(G) submittal requirements and listed as “Completeness” for all other requirements) (last viewed July 5, 2011).

174. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Arizona regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(G).

175. EPA has failed, and continues to fail, to make this finding of failure to submit for Arizona.

176. Accordingly, EPA is violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit sufficient infrastructure state implementation plans for the following states and territories: Alaska, Hawaii, Iowa, Idaho, Illinois, Montana, Nebraska, Oregon, Washington, Wyoming, Puerto Rico, the District of Columbia, Michigan and Arizona.

### **REQUEST FOR RELIEF**

WHEREFORE, WildEarth Guardians and Sierra Club respectfully request 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;

- 1 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory  
2 duties by certain dates;
- 3 C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's  
4 order;
- 5 D. Grant WildEarth Guardians and Sierra Club their reasonable costs of litigation, including  
6 attorneys' and expert fees; and
- 7 E. Grant such further relief as the Court deems just and proper.

8  
9 Respectfully submitted,

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15 Dated: July 6, 2011

/s/ Darin Schroeder  
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20  
21 COUNSEL FOR WILDEARTH GUARDIANS  
22 AND SIERRA CLUB  
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**CERTIFICATE OF SERVICE**

I certify that on July 6, 2011, a copy of the foregoing Amended Complaint was served electronically via the Court's e-filing system to Counsel of Record.

/s/ Darin Schroeder  
DARIN SCHROEDER