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

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

1

1 associated with Defendant's [a] failure to promulgate Federal Implementation Plans ("FIPs") for
 2 New Mexico, Oklahoma, Guam, American Samoa and the Northern Mariana Islands and [b]
 3 failure to take action on the 1997 8-hour Infrastructure SIP submittal for Washington, D.C., West
 4 Virginia and Delaware as well as [2] adding claims for Defendant's failure to take action on the
 5 1997 8-hour Infrastructure SIP submittal for Tennessee (under 42 U.S.C. § 7410(a)(2)(C) and
 6 (J)) and for Arizona (under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (E), (F), and (H) – (M). Plaintiffs'
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 8 Second Amended Complaint states as follows:

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 10 1. Plaintiffs SIERRA CLUB and WILDEARTH GUARDIANS bring this Clean Air
 11 Act citizen suit to compel the United States Environmental Protection Agency ("EPA") to
 12 undertake long-overdue nondiscretionary duties. Specifically, Sierra Club challenges the failure
 13 of Defendant, LISA P. JACKSON, in her official capacity as Administrator of the EPA, to
 14 perform certain mandatory duties required by the Clean Air Act, 42 U.S.C. §§ 7401-7671q
 15 (2010), including the failure to: [1] promulgate Federal Implementation Plans pursuant to 42
 16 U.S.C. § 7410(c)(1) (2010) and [2] take final action on State Implementation Plan submittals
 17 within 12 months as required by 42 U.S.C. § 7410(k)(2) (2010).
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19 **JURISDICTION, VENUE AND NOTICE**

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 21 2. This action is brought pursuant to the Clean Air Act, 42 §7410 *et seq.* Thus, this
 22 Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to 42
 23 U.S.C. §7604(a) (2010). This Court also has subject matter jurisdiction over this action pursuant
 24 to 28 U.S.C. §1331 (2010) (federal question). An actual controversy exists between the parties.
 25 This case does not concern federal taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146
 26 (2010), and does not involve the Tariff Act of 1930. This Court has authority to order the
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1 declaratory relief requested under 28 U.S.C. §2201 (2010). If the Court orders declaratory relief,
 2 28 U.S.C. §2202 authorizes this Court to issue injunctive relief.

3 **3. Intradistrict Assignment.** U.S. EPA Region 9 is headquartered in San
 4 Francisco. U.S. EPA Region 9 includes Arizona and Hawaii. Thus, a substantial part of the
 5 alleged events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of
 6 California. Venue is therefore proper in this Court pursuant to 28 U.S.C. §1391(e) (2010).
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8 **4.** On June 22, 2010, Plaintiffs mailed a sixty-day notice of intent to sue letter via
 9 certified mail, return receipt requested to Defendant Lisa P. Jackson. The notice letter stated, in
 10 relevant part, that Plaintiffs intended to sue Defendant for failure to: [1] promulgate Federal
 11 Implementation Plans under 42 U.S.C. § 7410(c)(1) (2010) for the 1997 8-hour ozone NAAQS
 12 for nine states¹ – North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington; [2] promulgate
 13 Federal Implementation Plans under 42 U.S.C. § 7410(c)(1) (2010) to address certain elements
 14 required by 42 U.S.C. § 7410(a)(2) (2010) for Maryland, Virginia, Arkansas, Arizona, Florida
 15 and Georgia; [3] take final action on provisions of the 1997 8-hour ozone Infrastructure SIP
 16 submittals for Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, and Tennessee and [4]
 17 take final action on 1997 8-hour Infrastructure SIP submittals for Nevada and North Carolina.
 18 Defendant received the sixty day notice of intent to sue letter no later than June 28, 2010.
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22 **5.** On December 24, 2010, Plaintiffs mailed another sixty-day notice of intent to sue
 23 letter via certified mail, return receipt requested to Defendant Lisa P. Jackson. The notice letter
 24 stated that Plaintiffs intended to sue Defendant for failure to take final action on 1997 8-hour
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 27 ¹ The term "state" is used in this complaint as it is defined in the Clean Air Act, 42 U.S.C. §
 28 7602(d) (2010).

1 Infrastructure SIP submittal for 42 U.S.C. § 7410(a)(2)(C) & (J) for Tennessee. Defendant
2 received the sixty day notice of intent to sue letter no later than December 29, 2010.

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4 6. On April 15, 2011, Plaintiffs mailed a third sixty-day notice of intent to sue letter
5 via certified mail, return receipt requested to Defendant Lisa P. Jackson. The notice letter
6 informed Defendant that Plaintiffs intended to sue Defendant for failure to perform non-
7 discretionary duty – failure to take final action on Arizona’s 1997 8-hour ozone Infrastructure
8 SIP submittal for 42 U.S.C. §§7410(a)(2)(A)-(C),(E),(F) and (H)-(M). Defendant received the
9 sixty day notice of intent to sue letter.
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11 7. More than 60 days have passed since Defendant received Plaintiffs’ notice of
12 intent to sue letters. To date, Defendant has not remedied the violations alleged in the Notice
13 Letters which are also set forth in this Second Amended Complaint. Therefore, an actual
14 controversy exists between the parties.
15

16 PARTIES

17 8. Plaintiff **SIERRA CLUB** brings this action on behalf of itself and its adversely
18 impacted members. Sierra Club, founded in 1892, is a nonprofit public-benefit corporation
19 organized and existing under the laws of California with more than 600,000 members in the
20 United States and with one or more chapters in every state. The Sierra Club’s purposes include
21 “to practice and promote responsible use of the earth’s ecosystem and resources; to enlist and to
22 educate humanity to protect and restore the quality of the natural and human environment, and to
23 use all lawful means to carry out these objectives.” Sierra Club activities include hiking,
24 canoeing, caving, swimming, fishing, nature study, and advocacy for the improvement and
25 protection of water quality and air quality across the country.
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1 9. Plaintiff **WILDEARTH GUARDIANS** (“Guardians”) brings this action on
2 behalf of itself and its adversely impacted members. Guardians is a non-profit organization
3 dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West.
4 Guardians currently has four programmatic areas of focus - wildlife, wild places, wild rivers, and
5 climate and energy. The organization has over 4,500 members.

7 10. Sierra Club and Guardians members live, work, raise families, recreate and
8 engage in economic and other activities in and around North Dakota, Hawaii, Alaska, Idaho,
9 Oregon, Washington, Maryland, Virginia, Arkansas, Oklahoma, Arizona, Florida, Georgia,
10 Tennessee, Nevada, North Carolina and Washington, D.C. They are adversely affected by
11 exposure to ozone. The adverse effects of such pollution include actual and/or threatened harm
12 to their health, their families’ health, their professional well being, their educational and
13 economic interests, and their aesthetic and recreational enjoyment of the environment in these
14 areas.

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17 11. The Clean Air Act violations alleged in this Complaint also deprive Sierra Club,
18 Guardians and their members of certain procedural rights, including notice and opportunity to
19 comment, associated with EPA’s failure to perform certain mandatory duties: failure to
20 promulgate Federal Implementation Plans and failure to take final action on Infrastructure SIP
21 submittals. The Clean Air Act violations alleged in this Complaint also deprive Sierra Club,
22 Guardians and their members of certain information including but not limited to ambient
23 monitoring data gathered in accordance with applicable regulations, public notice of exceedances
24 of National Ambient Air Quality Standards and emission inventories.

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27 12. Because Defendant has not (1) promulgated Infrastructure Federal
28 Implementation Plans to address the 1997 8-hour ozone NAAQS for certain states and (2) taken

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1 final action on 1997 8-hour ozone Infrastructure SIP submittals for certain states by the
2 applicable deadlines, Sierra Club, Guardians and their members cannot be certain that the 1997
3 8-hour ozone NAAQS for the affected states conforms with the requirements of the Clean Air
4 Act. Similarly, Defendant's failure to promulgate Federal Implementation Plans and to take final
5 action on SIP submittals prevents Sierra Club and WildEarth Guardians' members from being
6 certain that they are protected by the 1997 8-hour ozone NAAQS.
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8 13. The Clean Air Act violations alleged in this Complaint have injured and will
9 continue to injure the interests of Plaintiffs' organizations and their members, unless and until this
10 Court grants the requested relief. Granting the relief requested in this lawsuit would address these
11 injuries by compelling EPA action to perform its mandatory duties, thereby improving air quality
12 and reducing the risk of exposure to air pollution and the uncertainty regarding that exposure.
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14 14. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ("EPA") is
15 the federal agency charged with implementation and enforcement of the Clean Air Act. As
16 described below, the Clean Air Act assigns to EPA certain non-discretionary duties. In this case,
17 EPA has failed to perform certain non-discretionary duties.
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19 15. Defendant **LISA P. JACKSON** is sued in her official capacity as the
20 Administrator of the EPA. She is charged in that role with taking various actions to implement
21 and enforce the Clean Air Act, including the requirement to promulgate Infrastructure Federal
22 Implementation Plans for the 1997 8-hour ozone NAAQS for certain states and to take final
23 action on 1997 8-hour ozone Infrastructure SIP submittals for certain states.
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STATUTORY FRAMEWORK

16. The Clean Air Act aims “to protect and enhance the quality of the Nation’s air resources.” 42 U.S.C. § 7401(b)(1) (2010). Congress intended the Clean Air Act in part 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. 91-1146, at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356.

17. In order to achieve this goal, the Clean Air Act, including the 1990 amendments, establishes a partnership between EPA and the states for attainment and maintenance of national air quality goals. *See* 42 U.S.C. § 7401-7515 (2010).

18. Pursuant to the Clean Air Act, EPA sets NAAQS to limit levels of “criteria pollutants,” including carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide. *See* 40 C.F.R. part 50.4-50.13 (2010).

19. The NAAQS are designed to protect the public from being exposed to levels of air pollutants that EPA has found to have significant adverse health and welfare impacts.

20. The Clean Air Act requires all areas of the country to meet NAAQS. 42 U.S.C. §§ 7409-7410 (2010).

21. In order to achieve this goal, states, or regions within a state, must adopt a pollution control plan, known as a State Implementation Plan (“SIP”), that contains enforceable emissions limitations necessary to attain the NAAQS and meet applicable requirements of the Clean Air Act, including ensuring attainment, maintenance and enforcement of NAAQS. 42 U.S.C. §§ 7410(a)(1) (2010), (a)(2)(A) (2010); § 7401(a)(1),(k) (2010).

22. Pursuant to the Clean Air Act states are required to submit SIPs that provide for the “implementation, maintenance and enforcement” of any new or revised NAAQS within three

years of a NAAQS' promulgation. 42 U.S.C. § 7410(a)(1) (2010). EPA is then required to make a finding as to whether a SIP submittal administratively complies with the requirements of 42 U.S.C. § 7410(a)(2) (2010) within six months of the submittal; a determination known as the completeness finding. 42 U.S.C. §7410(k)(1)(B) (2010).

23. If EPA determines that a state has failed to submit a complete SIP, that determination triggers a 24-month period after which EPA has a mandatory duty to step in and promulgate a Federal Implementation Plan. 42 U.S.C. §7410(c)(1) (2010).

24. In situations where states make a SIP submittal and EPA either does not make (1) a completeness finding or (2) a finding that the submittal failed to meet the minimum criteria, the submittal is deemed administratively complete by operation of law six months after the submittal. 42 U.S.C. §7410(k)(1)(B) (2010).

25. Once a submittal is deemed complete, either by operation of law or a completeness finding, EPA has a mandatory duty to take final action on the submittal within twelve (12) months by approving it in full, disapproving it in full or approving part of it and disapproving part of it. 42 U.S.C. § 7410(k)(2) (2010).

STATEMENT OF FACTS

26. EPA has failed to perform certain mandatory duties required by the Clean Air Act, including the failure to: [1] promulgate Federal Implementation Plans pursuant to 42 U.S.C. § 7410(c)(1) (2010) for part or all of 12 states within twenty-four (24) months after it issued a finding of failure to submit all or part of the 42 U.S.C. § 7410(a) (2010) ("Infrastructure") SIP requirements for the 1997 8-hour ozone NAAQS and [2] take final action on State Implementation Plan submittals as required by 42 U.S.C. § 7410(k)(2) (2010) for 10 states within 12 months after these submittals were found or deemed complete.

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1 27. On July 18, 1997, EPA promulgated an 8-hour NAAQS for ozone. 62 Fed. Reg.
2 38856 (July 18, 1997).

3 28. In 2008, EPA issued a determination as to whether each state had submitted a
4 complete 1997 8-hour Infrastructure SIP. 73 Fed. Reg. 16205 (March 27, 2008). While EPA
5 determined that certain states did submit a complete Infrastructure SIP, it also determined that
6 numerous states either did not submit Infrastructure SIPs, or failed to submit certain elements
7 that were required as part of the Infrastructure SIP, thereby triggering the twenty-four (24) month
8 period after which EPA must promulgate a Federal Implementation Plan to address the
9 deficiencies. 73 Fed. Reg. 16205 (March 27, 2008).

12 **Failure to Promulgate Federal Implementation Plans**
13 **Pursuant to 42 U.S.C. § 7410(c)(1)**

14 29. EPA has failed to promulgate Federal Implementation Plans pursuant to 42 U.S.C.
15 §7410(c)(1) (2010) to address the 42 U.S. §7410(a) (2010) Infrastructure SIP for the 1997 8-
16 hour ozone NAAQS within two years after it issued a finding of failure to submit for several
17 states: North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington.

18 **North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington**

19 30. On March 27, 2008, EPA found that the following states and territories “failed to
20 make a complete (Infrastructure SIP) submittal to satisfy the requirements of [42 U.S.C. §
21 7410(a)(2) (2010)]” for the 1997 8-hour ozone NAAQS by the applicable date: North Dakota,
22 Hawaii, Alaska, Idaho, Oregon and Washington. 73 Fed. Reg. 16205, 16207 (March 27, 2008).
23 The effective date of this finding was April 28, 2008. *Id.*

24 31. It has now been over two years since EPA made its finding. Since this finding, EPA
25 has not approved a 1997 8-hour ozone Infrastructure SIP that meets the requirements of 42
26 U.S.C. § 7410(a)(2) (2010) for any of these areas.

27 SECOND AMENDED COMPLAINT: 3:10-cv-04060-CRB
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32. Pursuant to the Clean Air Act, EPA was required to promulgate Federal Implementation Plans for the 1997 8-hour ozone NAAQS for North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington upon the expiration of the two year period, that is by April 28, 2010. EPA has failed to do so, in violation of its mandatory duty.

33. Similarly, EPA has failed to promulgate Federal Implementation Plans for several states that failed to submit certain elements of the Infrastructure SIP for 1997 8-hour ozone NAAQS required by 42 U.S.C. §7410(a)(2) (2010): Maryland, Virginia, Arkansas, Arizona, Florida and Georgia.

Maryland, Virginia, and Arkansas

34. On March 27, 2008, EPA found that Maryland, Virginia, and Arkansas “failed to submit a [SIP] addressing changes to [their] part C [Prevention of Significant Deterioration] permit program required by the November 29, 2005 ...final rule that made NO_x a precursor for ozone” by the applicable date as required to do so by 42 U.S.C. §§ 7410(a)(2)(C) and (J) (2010). 73 Fed. Reg. 16205, 16207-08 (March 27, 2008). The effective date for this finding is April 28, 2008. *Id.*

35. It has now been over two years since EPA made its finding. Since this finding, EPA has not approved an Infrastructure SIP that meets the requirements of 42 U.S.C. § 7410(a)(2)(C) and (J) (2010) for any of these areas.

36. Pursuant to the Clean Air Act, EPA was required to promulgate Federal Implementation Plans to address these Infrastructure SIP requirements for Maryland, Virginia, and Arkansas upon the expiration of the two year period, that is by April 28, 2010. EPA has failed to do so, in violation of its mandatory duty.

Arizona

37. On March 27, 2008, EPA found that Arizona “failed to make a complete submittal to satisfy the requirements of [42 U.S.C. § 7410(a)(2) (2010)]” for the 1997 8-hour ozone NAAQS by the applicable date. 73 Fed. Reg. 16205, 16208 (March 27, 2008). The effective date of this finding was April 28, 2008. *Id.*

38. Since this finding, Arizona submitted an Infrastructure SIP for all elements except 42 U.S.C. § 7410(a)(2)(G) (2010). It has now been over two years since EPA made its finding.

39. Pursuant to the Clean Air Act, EPA was required to promulgate a Federal Implementation Plan addressing this Infrastructure SIP requirement for Arizona upon the expiration of the two year period or by April 28, 2010. EPA has failed to do so, in violation of its mandatory duty.

Florida and Georgia

40. On March 27, 2008, EPA found both Florida and Georgia “failed to submit a SIP addressing the emergency episode plan requirement of [42 U.S.C. § 7410(a)(2)(G) (2010)].” 73 Fed. Reg. 16205 (March 27, 2008). The effective date of this finding was April 28, 2008. *Id.*

41. Since this finding, EPA has not approved an Infrastructure SIP for either Florida or Georgia addressing this requirement. It has now been over two years since EPA made its finding.

42. Pursuant to the Clean Air Act, EPA was required to promulgate Federal Implementation Plans addressing this Infrastructure SIP requirement for both Florida and Georgia upon the expiration of the two year period, which is by April 28, 2010. EPA has failed to do so, in violation of its mandatory duty.

Failure to Take Final Action on State Implementation Plan Submittals
Pursuant to 42 U.S.C. § 7410(k)(2)

Maryland, Virginia, Arkansas and Oklahoma:

43. EPA has failed to take final action on provisions of the 1997 8-hour ozone Infrastructure SIP submittals for Maryland, Virginia, Arkansas, and Oklahoma and publish notice of its action.

44. As previously set forth, on March 27, 2008, EPA made a completeness finding for all elements of the Infrastructure SIP submittals for these four states except as it pertains to the requirements of 42 U.S.C. §7410(a)(2)(C) and (J) (2010). 73 Fed. Reg. at 16207-08 (the elements for which EPA did not find a failure to submit are deemed complete under 42 U.S.C. §7410(k)(1)(B) (2010)). The effective date of this finding was April 28, 2008. *Id.*

45. Pursuant to 42 U.S.C. § 7410(k)(2) (2010), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part all elements of the Infrastructure SIP submittals except the requirements of 42 U.S.C. §§7410(a)(2)(C) and (J) (2010) for these states within 12 months of its completeness finding on these submittals or by April 28, 2009. 42 U.S.C. § 7410(k)(2) (2010). EPA has failed to do so, in violation of its mandatory duty.

Florida and Georgia:

46. EPA has failed to take final action on provisions of the 1997 8-hour ozone Infrastructure SIP submittals for Florida and Georgia.

47. As previously set forth, on March 27, 2008, EPA made a completeness finding for all elements of the Infrastructure SIP submittals for Florida and Georgia except as it pertains to the requirements of 42 U.S.C. §7410(a)(2)(G) (2010). 73 Fed. Reg. at 16208 (the elements for

1 which EPA did not find a failure to submit are deemed complete under 42 U.S.C. §7410(k)(1)(B)
2 (2010)). The effective date of this finding was April 28, 2008. *Id.*

3 48. Pursuant to U.S.C. § 7410(k)(2) (2010), EPA was required to take final action by
4 approving in full, disapproving in full, or approving in part and disapproving in part all elements
5 of the Florida and Georgia Infrastructure SIP submittals except the requirements of 42 U.S.C.
6 §7410(a)(2)(G) (2010) within 12 months of its completeness finding on these submittals which is
7 by April 28, 2009. 42 U.S.C. § 7410(k)(2) (2010). EPA has failed to do so, in violation of its
8 mandatory duty.
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11 **Nevada:**

12 49. EPA has failed to take final action on the 1997 8-hour ozone Infrastructure SIP
13 submittal for Nevada.

14 50. Nevada submitted its 1997 8-hour ozone Infrastructure SIP on February 1, 2008.
15 Pursuant to 42 U.S.C. §7410(k)(1)(B) (2010), the submittal was deemed complete by no later
16 than August 1, 2008.

17 51. Pursuant to 42 U.S.C. § 7410(k)(2) (2010), EPA was required to take final action
18 on Nevada's 1997 8-hour ozone Infrastructure SIP by approving in full, disapproving in full, or
19 approving in part and disapproving in part within 12 months of Nevada's 1997 8-hour ozone
20 Infrastructure SIP being deemed complete which is by August 1, 2009. 42 U.S.C. § 7410(k)(2)
21 (2010). EPA has failed to do so, in violation of its mandatory duty.
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24 **North Carolina:**

25 52. EPA has failed to take final action on the 1997 8-hour ozone Infrastructure SIP
26 submittal for North Carolina.
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53. On March 27, 2008, EPA made a completeness finding for all elements of the Infrastructure SIP submittal for North Carolina except as it pertains to the requirements of 42 U.S.C. §7410(a)(2)(C) and (J) (2010). 73 Fed. Reg. at 16208 (the elements for which EPA did not find a failure to submit are deemed complete under 42 U.S.C. §7410(k)(1)(B) (2010)). The effective date of this finding was April 28, 2008. *Id.*

54. Pursuant to 42 U.S.C. § 7410(k)(2) (2010), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part all elements of North Carolina's Infrastructure SIP submittal except the requirements of 42 U.S.C. §7410(a)(2)(C) and (J) (2010) within 12 months of its completeness finding on North Carolina's submittal which is by April 28, 2009. 42 U.S.C. § 7410(k)(2) (2010). EPA has failed to do so, in violation of its mandatory duty.

55. Since EPA's finding, North Carolina made a submittal addressing the 42 U.S.C. §7410(a)(2)(C) and (J) (2010) requirements which EPA deemed complete as of July 20, 2008.

56. Pursuant to CAA 42 U.S.C. § 7410(k)(2) (2010), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part these elements of North Carolina's Infrastructure SIP submittal within 12 months of the completeness finding on North Carolina's submittal or by July 20, 2009. 42 U.S.C. § 7410(k)(2) (2010). EPA has failed to do so, in violation of its mandatory duty.

Tennessee:

57. EPA has failed to take final action on provisions of the 1997 8-hour ozone Infrastructure SIP submittal for Tennessee.

58. On March 27, 2008, EPA made a completeness finding for all elements of the Infrastructure SIP submittal for Tennessee except as it pertains to the requirements of 42 U.S.C.

§7410(a)(2)(C) and (J) (2010). 73 Fed. Reg. at 16208 (the elements for which EPA did not find a failure to submit are deemed complete under 42 U.S.C. §7410(k)(1)(B) (2010)). The effective date of this finding was April 28, 2008. *Id.*

59. Pursuant to 42 U.S.C. § 7410(k)(2) (2010), EPA was required to take final action by approving in full, disapproving in full, or approving in part and disapproving in part all elements of the Infrastructure SIP submittal for Tennessee except as it pertains to the requirements of 42 U.S.C. §7410(a)(2)(C) and (J) (2010) within 12 months of its completeness finding on these provisions of Tennessee's submittal which is by April 28, 2009. 42 U.S.C. § 7410(k)(2) (2010). EPA has failed to do so, in violation of its mandatory duty.

60. On November 28, 2009, either EPA or operation of law deemed Tennessee's state implementation plan submittal addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(C) and (J)(2010) administratively complete.

61. Under the Clean Air Act, EPA is required to take final action on Tennessee's submittal addressing 42 U.S.C. §§ 7410(a)(2)(C) and (J)(2010) by approving in full, disapproving in full, or approving in part and disapproving in part by November 28, 2010. *See* 42 U.S.C. § 7410(k)(2). EPA has failed to do so and is therefore in violation of its mandatory duty.

Arizona

62. EPA has failed to take final action on provisions of the 1997 8-hour ozone Infrastructure SIP submittal for Arizona.

63. On April 14, 2010, either EPA or operation of law deemed Arizona's SIP submittal which included the infrastructure requirements under 42 U.S.C. §§7410(a)(2)(A)-(C), (E), (F), and (H)-(M) administratively complete.

64. Pursuant to 42 U.S.C. § 7410(k)(2) and (3), EPA was required to take final action on Arizona's SIP submittal by approving in full, disapproving in full, or approving in part and disapproving in part all elements of the submittal by April 14, 2011. EPA failed to do so in violation of its mandatory duty.

FIRST CLAIM FOR RELIEF

FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO PROMULGATE FEDERAL IMPLEMENTATION PLANS (CAA 42 U.S.C. § 7410(c)(1))

65. Each allegation set forth in the Complaint is incorporated herein by reference.

66. EPA has a mandatory duty to promulgate a Federal Implementation Plan within two years after EPA determines that a state has failed to submit a complete SIP. 42 U.S.C. § 7410(c)(1) (2010).

67. EPA failed to promulgate Federal Implementation Plans for 1997 8-hour ozone Infrastructure NAAQS for North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington after determining more than two years ago that these states failed to submit a complete Infrastructure SIP for the 1997 8-hour ozone NAAQS.

68. EPA failed to promulgate Federal Implementation Plans to address certain elements identified above of the Infrastructure SIPs for the 1997 8-hour ozone NAAQS for Maryland, Virginia, Arkansas, Arizona, Florida and Georgia after determining, more than two years ago, that these states failed to submit portions of the Infrastructure SIP for the 1997 8-hour ozone NAAQS.

69. EPA has violated and remains in violation of its non-discretionary duty to promulgate Federal Implementation Plans for all or part of the states identified above.

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SECOND CLAIM FOR RELIEF

**FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO ACT
TO TAKE FINAL ACTION UNDER 42 U.S.C. §7410(k)(2) & (3)
ON STATE IMPLEMENTATION PLAN SUBMITTALS**

70. Each allegation set forth in the complaint is incorporated herein by reference.

71. Pursuant to 42 U.S.C. §7410(k)(2) & (3)(2010), EPA has a mandatory duty to take final action on a SIP submittal that has been deemed complete (either by operation of law or a completeness finding by EPA), within 12 months by approving it in full, disapproving it in full or approving part of it and disapproving part of it.

72. EPA has failed to take final action (and publish notice of that action) within 12 months of its completeness findings on Infrastructure SIP submittals or portions of Infrastructure SIP submittals for the 1997 8-hour ozone NAAQS for Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, Nevada, North Carolina, Tennessee, and Arizona.

73. EPA has violated and continues to violate CAA §110(k)(2)&(3), 42 U.S.C. §7410(k)(2)&(3) (2010).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

[A] DECLARE

[1] That Defendant's failure to promulgate Federal Implementation Plans for 1997 8-hour ozone Infrastructure NAAQS for North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington after determining more than two years ago that these states failed to submit a complete Infrastructure SIP for the 1997 8-hour ozone NAAQS constitutes a failure to perform an act or duty that is not discretionary for Defendant as required by 42 U.S.C. § 7410(c)(1) (2010);

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[2] That Defendant's failure to promulgate Federal Implementation Plans to address certain elements of the 1997 8-hour ozone Infrastructure NAAQS for Maryland, Virginia, Arkansas, Arizona, Florida and Georgia, after determining more than two years ago that these states failed to submit portions of an Infrastructure SIP for the 1997 8-hour ozone NAAQS constitutes a failure to perform an act or duty that is not discretionary for Defendant as required by 42 U.S.C. § 7410(c)(1) (2010);

[3] That Defendant's failure to take final action on all or portions of the Infrastructure SIP submittals for 1997 8-hour ozone NAAQS for Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, Nevada, North Carolina, Tennessee, and Arizona within 12 months after EPA made a completeness finding for these submittals constitutes a failure to perform an act or duty that is not discretionary for Defendant as required by 42 U.S.C. §7410(k)(2) (2010);

[B] ORDER

[1] Defendant to promulgate Infrastructure Federal Implementation Plans for 1997 8-hour ozone NAAQS for North Dakota, Hawaii, Alaska, Idaho, Oregon and Washington;

[2] Defendant to promulgate Infrastructure Federal Implementation Plans to address provisions of the 1997 8-hour ozone NAAQS for Maryland, Virginia, Arkansas, Arizona, Florida and Georgia;

[3] Defendant to take final action on all or portions of the Infrastructure SIP submittals for the 1997 8-hour ozone NAAQS for Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, Nevada, North Carolina, Tennessee, and Arizona;

1 [C] RETAIN jurisdiction of this action to ensure compliance with the Court's Order;

2 [D] AWARD Plaintiffs the costs of litigation, including reasonable attorneys' fees and
3 costs; and
4

5 [E] GRANT such other relief as the Court deems just and proper.

6 Respectfully submitted this 10th day of _August, 2011.

7
8 /s/ Kimberly Sturm

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CERTIFICATE OF SERVICE

I certify that on August 10, 2011, a copy of the foregoing Second Amended Complaint for Injunctive and Declaratory Relief was served electronically via the Court's e-filing system to Counsel of Record.

/s/ Kimberly Sturm

KIMBERLY A. STURM