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

CENTER FOR BIOLOGICAL DIVERSITY, )  
CENTER FOR ENVIRONMENTAL )  
HEALTH, AND SIERRA CLUB, )

Plaintiffs, )

Civil Action No. 3:20-cv-5436-EMC

v. )

ANDREW R. WHEELER, )  
in his official capacity as Administrator, )  
United States Environmental Protection )  
Agency, )

**AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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

Defendant. )

**INTRODUCTION**

1  
2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.

3 This is a Clean Air Act “deadline” suit against Andrew R. Wheeler, Administrator of the United  
4 States Environmental Protection Agency (EPA), for his failure to protect people, ecosystems,  
5 and wildlife from dangerous exposure to sulfur oxides (SO<sub>x</sub>) air pollution. Plaintiffs file this  
6 Amended Complaint to add additional claims to Plaintiffs’ original Complaint.

7 2. SO<sub>x</sub>, which is formed primarily from the combustion of fuel with sulfur, such as coal and  
8 diesel, harms human health and the environment. Even short-term exposure to SO<sub>x</sub> has  
9 significant health impacts, including decrements in lung function, aggravation of asthma, and  
10 respiratory and cardiovascular morbidity. SO<sub>x</sub> also contributes to the formation of acid rain,  
11 which damages trees, crops, historic buildings, and monuments, and alters the acidity of both  
12 soils and water bodies.

13 3. The Clean Air Act requires EPA to establish health- and welfare-protective National  
14 Ambient Air Quality Standards (NAAQS) to limit the amount of SO<sub>x</sub> in the outdoor air. Areas  
15 with SO<sub>x</sub> pollution levels that exceed the standards must clean up their air.

16 4. To better protect the public from SO<sub>x</sub>, the EPA promulgated a new sulfur dioxide (SO<sub>2</sub>)  
17 NAAQS in 2010. In response to the 2010 NAAQS, EPA designated several areas that are at  
18 issue here as nonattainment, meaning that the air quality in these areas has SO<sub>2</sub> pollution that  
19 violates the standard. More than 1.45 million people live and work in these areas with air  
20 pollution that exceeds the SO<sub>2</sub> NAAQS.

21 5. EPA has failed to meet several deadlines that Congress prescribed in the Clean Air Act.  
22 The congressionally mandated deadline has passed for four states and territories to submit to  
23 EPA plans, called State Implementation Plans (SIPs), to clean up the SO<sub>x</sub> pollution in the

1 following nonattainment areas: Piti-Cabras, Guam; Huntington, Indiana; Evangeline Parish,  
2 Louisiana; and Guyama-Salinas and San Juan, Puerto Rico. EPA has a mandatory duty to make  
3 a finding that a state has failed to submit a SIP to reduce air pollution within six months after a  
4 SIP submittal is due. 42 U.S.C. § 7410(k)(1)(B). This deadline has passed as well. Yet EPA  
5 has not published the required findings.

6 6. When a state does submit a SIP to EPA, the Clean Air Act requires that EPA review it  
7 within specified time frames. Illinois submitted a SIP to EPA for the Alton Township  
8 nonattainment area, but EPA has not met the deadline to review the SIP and determine whether it  
9 meets the requirements of the Clean Air Act. *See* 42 U.S.C. § 7410(k)(2)-(4).

10 7. Last, all nonattainment areas must attain the NAAQS within a specified time. No later  
11 than six months after the attainment date for a nonattainment area, EPA has a mandatory duty to  
12 determine whether an area has attained the NAAQS and publish notice of that determination. 42  
13 U.S.C. § 7509(c). EPA has failed to perform this mandatory duty for the following nine areas:  
14 Hayden and Miami, Arizona; Southwest Indiana (parts of Daviess and Pike Counties);  
15 Muscatine, Iowa; St. Bernard Parish, Louisiana; Detroit, Michigan; Jackson County, Missouri;  
16 Sullivan County, Tennessee; and Rhinelander, Wisconsin.

### 17 JURISDICTION AND NOTICE

18 8. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction over this  
19 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)  
20 (Clean Air Act citizen suits).

21 9. This case does not concern federal taxes, is not a proceeding under 11 U.S.C. § 505 or  
22 1146 of Title 11, and does not involve the Tariff Act of 1930. Thus, this Court has jurisdiction to

1 order declaratory relief under 28 U.S.C. § 2201. If the Court orders declaratory relief, 28 U.S.C.  
2 § 2202 authorizes this Court to issue injunctive relief.

3 10. Plaintiffs mailed to EPA by certified mail, return receipt requested, written notice of  
4 intent to sue regarding the violations alleged herein. The notice letter for the violations alleged  
5 in the original Complaint was postmarked May 28, 2020. EPA received it no later than June 5,  
6 2020. More than 60 days have passed since Plaintiffs mailed this notice letter. EPA has not  
7 remedied the violations alleged in the original Complaint. On August 11, 2020, Plaintiffs mailed  
8 to EPA by certified mail, return receipt request, a second written notice of intent to sue regarding  
9 the additional violations that are included in this Amended Complaint. EPA received this second  
10 notice letter no later than August 17, 2020. More than 60 days have passed since Plaintiffs  
11 mailed this second notice letter. EPA has not remedied the violations alleged in this Amended  
12 Complaint. Therefore, a present and actual controversy exists between the parties.

### 13 VENUE

14 11. Venue is proper in this Court under 28 U.S.C. § 1391(e) for several reasons. First,  
15 Plaintiffs Center for Environmental Health and Sierra Club reside in the district with their  
16 headquarters in Oakland. Second, Defendant EPA resides and performs its official duties in this  
17 district. Third, a substantial part of the events or omissions giving rise to the claims in this case  
18 occurred in the Northern District of California. One of the claims in the original Complaint  
19 concerns EPA's failure to perform mandatory duties related to Guam. One of the claims  
20 included this Amended Complaint concerns EPA's failure to perform mandatory duties related to  
21 Arizona. EPA Region 9, which is responsible for both Guam and Arizona, is headquartered in  
22 San Francisco. Thus, a substantial part of the events and omissions at issue in this action  
23 occurred at EPA's Region 9 headquarters in San Francisco.

1 12. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or  
2 Oakland Division of this Court because a substantial part of the events and omissions giving rise  
3 to the claims in this case occurred in the County of San Francisco.

4 **PARTIES**

5 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
6 corporation incorporated and existing under the laws of the State of California, with its main  
7 California office in Oakland. The Center for Biological Diversity has over 81,000 members  
8 throughout the United States and the world. The Center for Biological Diversity's mission is to  
9 ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems,  
10 public lands and waters, and public health through science, policy, and environmental law.

11 Based on the understanding that the health and vigor of human societies and the integrity and  
12 wildness of the natural environment are closely linked, the Center for Biological Diversity is  
13 working to secure a future for animals and plants hovering on the brink of extinction, for the  
14 ecosystems they need to survive, and for a healthy, livable future for all of us.

15 14. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a nonprofit corporation  
16 organized and existing under the laws of the State of California, with its headquarters located in  
17 Oakland. The Center for Environmental Health protects the public from toxic chemicals by  
18 working with communities, consumers, workers, government, and the private sector to demand  
19 and support business practices that are safe for public health and the environment. The Center  
20 for Environmental Health works in pursuit of a world in which all people live, work, learn, and  
21 play in healthy environments.

22 15. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws  
23 of the State of California, with its headquarters located in Oakland. Sierra Club is the oldest and

1 largest grassroots environmental organization in the United States, with more than 795,000  
2 members nationally. Sierra Club's mission is to explore, enjoy, and protect the wild places of  
3 the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems;  
4 to educate and enlist humanity to protect and restore the quality of the natural and human  
5 environment; and to use all lawful means to carry out these objectives. Sierra Club performs this  
6 mission through advocacy, litigation, and educational outreach to its members and state chapters.  
7 Sierra Club and its members are greatly concerned about the effects of air pollution on human  
8 health and the environment and have a long history of involvement in activities related to air  
9 quality.

10 16. Plaintiffs' members live, work, recreate, travel, and engage in other activities throughout  
11 the areas at issue in this Amended Complaint and will continue to do so on a regular basis.

12 Pollution in the affected areas threatens and damages, and will continue to threaten and damage,  
13 the health and welfare of Plaintiffs' members, as well as their ability to engage in and enjoy their  
14 other activities. Pollution diminishes Plaintiffs' members' ability to enjoy the aesthetic qualities  
15 and recreational opportunities of the affected areas.

16 17. The acts and omissions of EPA alleged here harm Plaintiffs' members by prolonging  
17 poor air quality conditions that adversely affect or threaten their health, and by nullifying or  
18 delaying measures and procedures mandated by the Act to protect their health from SO<sub>x</sub>  
19 pollution in places where they live, work, travel, and recreate.

20 18. The acts and omissions of EPA alleged here further harm Plaintiffs' members' welfare  
21 interest in using and enjoying the natural environment. Elevated levels of SO<sub>x</sub> damage plant life,  
22 aquatic life, and natural ecosystems, thus harming Plaintiffs' members' recreational and aesthetic  
23 interests.

1 19. EPA's failure to timely perform the mandatory duties described herein also adversely  
2 affects Plaintiffs, as well as their members, by depriving them of procedural protections and  
3 opportunities, as well as information that they are entitled to under the Clean Air Act.

4 20. The above injuries will continue until the Court grants the relief requested herein. A  
5 court order requiring EPA to promptly undertake its mandatory duties would redress Plaintiffs'  
6 and Plaintiffs' members' injuries.

7 21. Defendant ANDREW R. WHEELER is the Administrator of the EPA. Administrator  
8 Wheeler is charged with the duty to implement the Clean Air Act and to take required regulatory  
9 actions according to the schedules established by the Act, including the mandatory duties at issue  
10 in this case. Administrator Wheeler is sued in his official capacity.

11 **FACTUAL BACKGROUND: SULFUR DIOXIDE**

12 22. Sulfur pollution consists of sulfur oxide (SO<sub>x</sub>) gases. Of the SO<sub>x</sub> gases, sulfur dioxide  
13 (SO<sub>2</sub>) is the most common. *See* Sulfur Dioxide (SO<sub>2</sub>) Pollution: Sulfur Dioxide Basics, EPA,  
14 <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited Oct. 28, 2020).

15 The largest source of SO<sub>2</sub> originates from the combustion of fossil fuels containing sulfur by  
16 power plants and other industrial facilities. *Id.* SO<sub>2</sub> is also produced during certain industrial  
17 processes, such as extracting metal from ore and in some oil refining processes, and by ships and  
18 other vehicles and heavy equipment that burn fuel with a sulfur content. *Id.*; Primary NAAQS  
19 for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,524 (June 22, 2010).

20 23. Human health can be dangerously impacted by SO<sub>x</sub> emissions in as little as five minutes.  
21 Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,525. SO<sub>x</sub> pollution contributes to  
22 respiratory problems by impacting lung function and aggravating asthma, particularly for

1 children and the elderly. *Id.* at 35,525-29. SO<sub>x</sub> emissions can also aggravate existing heart and  
2 lung diseases, and cause respiratory and cardiovascular morbidity. *Id.*

3 24. SO<sub>x</sub> emissions also impact the environment. Acute and chronic exposures to SO<sub>x</sub> lead to  
4 foliar injury, decreased photosynthesis, and decreased vegetation growth. Secondary NAAQS  
5 for Oxides of Nitrogen and Sulfur, 77 Fed. Reg. 20,218, 20,224 (Apr. 3, 2012). In addition,  
6 because SO<sub>x</sub> emissions may be transmitted long distances, they contribute to visibility  
7 impairment problems in many national parks and wilderness areas. *See* Sulfur Dioxide (SO<sub>2</sub>)  
8 Pollution: Sulfur Dioxide Basics, EPA, [https://www.epa.gov/so2-pollution/sulfur-dioxide-](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects)  
9 [basics#effects](https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects) (last visited Oct. 28, 2020). Furthermore, SO<sub>x</sub> emissions have the potential to  
10 negatively affect endangered species. *See* Secondary NAAQS for Oxides of Nitrogen and  
11 Sulfur, 77 Fed. Reg. at 20,234. Finally, SO<sub>x</sub> emissions contribute to the formation of acid rain,  
12 which in turn impacts both the human and natural environment. Sulfur Dioxide (SO<sub>2</sub>) Pollution:  
13 Sulfur Dioxide Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects>  
14 (last visited Oct. 28, 2020). For example, acid rain damages trees, crops, historic buildings, and  
15 monuments, and alters the acidity of both soils and water bodies. Effects of Acid Rain, EPA,  
16 <https://www.epa.gov/acidrain/effects-acid-rain> (last visited Oct. 28, 2020).

17 25. SO<sub>x</sub> can also react with other compounds in the atmosphere to form small particles,  
18 which contribute to particulate matter (PM) pollution. Secondary NAAQS for Oxides of  
19 Nitrogen and Sulfur, 77 Fed. Reg. at 20,222. PM can penetrate deeply into the lungs and can  
20 contribute to health problems and death. *See* Sulfur Dioxide (SO<sub>2</sub>) Pollution: Sulfur Dioxide  
21 Basics, EPA, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics#effects> (last visited Oct.  
22 28, 2020). SO<sub>x</sub> also facilitates mercury methylation, which results in a form of mercury that is  
23 especially dangerous to humans and wildlife. EPA, Integrated Science Assessment for Oxides of



1 Nitrogen, Oxides of Sulfur, and Particulate Matter – Ecological Criteria, Executive Summary at  
2 19 (2020), available at <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=349473>.

### 3 STATUTORY AND REGULATORY BACKGROUND

4 26. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s  
5 air resources so as to promote the public health and welfare and the productive capacity of its  
6 population.” 42 U.S.C. § 7401(b)(1). In so enacting, Congress wanted to “**speed up**, expand, and  
7 intensify the war against air pollution in the United States with a view to assuring that the air we  
8 breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess.  
9 1,1, 1970 U.S. Code Cong. & Admin. News 5356, 5356 (emphasis added).

10 27. Central to the Act is the requirement that EPA establish national ambient air quality  
11 standards (NAAQS) for certain widespread air pollutants that endanger public health and  
12 welfare, referred to as “criteria pollutants.” 42 U.S.C. §§ 7408-7409. One criteria pollutant is  
13 sulfur dioxide. *See* 40 C.F.R. §§ 50.4, 50.5, 50.17.

14 28. The NAAQS establish allowable concentrations of criteria pollutants in ambient air, *i.e.*  
15 outdoor air. Primary standards must be stringent enough to protect public health. 42 U.S.C.  
16 § 7409(b)(1). Secondary standards must be stringent enough to protect public welfare, including,  
17 but not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*,  
18 haze), climate, damage to property, economic impacts, and effects on personal comfort and well-  
19 being. *Id.* §§ 7409(b)(2), 7602(h).

20 29. After EPA sets or revises a standard, the Clean Air Act requires EPA to take steps to  
21 implement the standard. Within two years of revising a standard, EPA must “designate” areas as  
22 not meeting the standard, known as “nonattainment,” or meeting the standard, known as  
23 “attainment.” 42 U.S.C. § 7407(d)(1)(A)-(B).

1 30. For each area designated nonattainment, states must develop a plan to attain the NAAQS.  
2 These plans, which must be submitted to EPA, are called State Implementation Plans (SIPs). *See*  
3 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a, 7514 – 7514a. Under the Clean Air Act, the term  
4 “State” includes Guam and Puerto Rico. 42 U.S.C. § 7602(d).

5 31. EPA is required to determine whether a SIP submittal is administratively complete. 42  
6 U.S.C. § 7410(k)(1)(B). If, six months after a submittal is due, a state has not complied by  
7 providing the required documentation, there is no submittal that can be deemed administratively  
8 complete, and EPA must make a determination stating that the state failed to submit the required  
9 state implementation plan. *Id.* This determination is referred to as a “finding of failure to  
10 submit.”

11 32. A finding of failure to submit is critical because it triggers a two-year clock for EPA to  
12 step into the void left by the state’s failure to submit a SIP by promulgating a federal  
13 implementation plan (FIP) to reduce SO<sub>x</sub> levels to below the NAAQS. 42 U.S.C. § 7410(c).

14 33. If and when a state does submit a SIP to EPA, EPA has six months to determine whether  
15 the submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). If EPA does not make  
16 such a finding, the SIP submittal is “deemed by operation of law” to meet the minimum  
17 requirements of the Clean Air Act. *Id.* EPA then has one year from either an affirmative  
18 determination or a determination deemed by operation of law to approve or disapprove the SIP  
19 submittal in full or in part. 42 U.S.C. § 7410(k)(2)-(4).

20 34. EPA must also determine whether the air quality in nonattainment areas is improving.  
21 The Clean Air Act requires that SO<sub>2</sub> nonattainment areas achieve attainment within five years of  
22 the nonattainment designation. 42 U.S.C. § 7514a(a). No later than six months after the

1 attainment date for a nonattainment area, EPA must determine whether the area has attained the  
 2 NAAQS and publish a notice in the Federal Register of that determination. 42 U.S.C. § 7509(c).

### 3 **FACTUAL BACKGROUND: FINDINGS OF FAILURE TO SUBMIT**

4 35. SO<sub>2</sub> is the pollutant that EPA has used as an indicator for regulation of all SO<sub>x</sub> emissions  
 5 since first promulgating a NAAQS for SO<sub>2</sub> in 1971. *See* Nat'l Primary and Secondary Ambient  
 6 Air Quality Standards, 36 Fed. Reg. 8,186 (Apr. 30, 1971). Effective August 23, 2010, EPA  
 7 revised the primary SO<sub>2</sub> NAAQS. Primary NAAQS for Sulfur Dioxide, 75 Fed. Reg. at 35,520.  
 8 EPA estimated that 2,300 to 5,900 premature deaths and 54,000 asthma attacks **a year** will be  
 9 prevented by the 2010 SO<sub>2</sub> NAAQS. EPA, Final Regulatory Impact Analysis for the SO<sub>2</sub>  
 10 NAAQS, at 5-35 (2010), *available at* [https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf)  
 11 [so2\\_ria\\_final\\_2010-06.pdf](https://www3.epa.gov/ttn/ecas/docs/ria/naaqs-so2_ria_final_2010-06.pdf). However, these lives can only be saved and adverse health outcomes  
 12 avoided if EPA actually implements the 2010 SO<sub>2</sub> NAAQS. EPA is in violation of its mandatory  
 13 duty to issue a finding of failure to submit nonattainment SIPs for the nonattainment areas listed  
 14 in Table 1 below.

15 **TABLE 1**

	<b>AREA &amp; ELEMENT(S)</b>	<b>SUBMITTAL DEADLINE (No later than)</b>	<b>DEADLINE FOR FINDING OF FAILURE TO SUBMIT (No later than)</b>
a.	Piti-Cabras, Guam: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment New Source Review (NSR), Reasonably Available Control Measure/Reasonably Available Control Technology (RACM/RACT), Reasonable Further Progress (RFP)	10/9/2019	4/9/2020
b.	Huntington, IN: Attainment Demonstration, Contingency Measures, Emission Inventories,	10/9/2019	4/9/2020

	Nonattainment NSR, RACM/RACT, RFP		
c.	Evangeline Parish, (Partial), LA: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020
d.	Guayama-Salinas, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020
e.	San Juan, Puerto Rico: Attainment Demonstration, Contingency Measures, Emission Inventories, Nonattainment NSR, RACM/RACT, RFP	10/9/2019	4/9/2020

**FACTUAL BACKGROUND: FAILURE TO APPROVE OR DISAPPROVE SIP**

36. Illinois submitted a SIP to EPA for the Alton Township nonattainment area on December 3, 2018 with the following elements: Attainment Demonstration, Contingency Measures, Emission Inventory, RACM/RACT, and RFP. Because EPA did not determine by June 3, 2019 whether the SIP submittal met the minimum statutory criteria, Illinois's SIP submittal was "deemed by operation of law" to meet the minimum statutory criteria on June 3, 2019. As a result, EPA was required to approve or disapprove Illinois's SIP for Alton Township either in full or in part by June 3, 2020. EPA has failed to perform this mandatory duty.

**FACTUAL BACKGROUND: FAILURE TO DETERMINE WHETHER AREAS  
HAVE ATTAINED BY THEIR ATTAINMENT DATES**

37. EPA designated all of the areas listed in Table 2 below nonattainment for the 2010 SO<sub>2</sub> NAAQS effective October 4, 2013. Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary NAAQS, 78 Fed. Reg. 47,191, 47,197-47,205 (Aug. 5, 2013). Therefore, these areas had an attainment date of no later than October 4, 2018. As a result, EPA had a mandatory duty

1 to determine whether these areas attained by the attainment date and publish notice of such  
 2 finding by no later than April 4, 2019. EPA has failed to perform this mandatory duty for the  
 3 areas listed in Table 2.

4 Table 2

	STATE	DESIGNATED AREA
a.	Arizona	Hayden (parts of Gila County and Pinal County)
b.	Arizona	Miami (part of Gila County)
c.	Indiana	Southwest Indiana (parts of Daviess County and Pike County)
d.	Iowa	Muscatine (part of Muscatine County)
e.	Louisiana	St. Bernard Parish
f.	Michigan	Detroit (part of Wayne County)
g.	Missouri	Jackson County (part)
h.	Tennessee	Sullivan County (part)
i.	Wisconsin	Rhineland (part of Oneida County)

5  
6 **CLAIM ONE**

7 **(Failure to make Finding of Failure to Submit)**

8 38. Plaintiffs incorporate by reference all paragraphs listed above.

9 39. Effective April 9, 2018, EPA designated the following areas nonattainment for the 2010  
 10 primary SO<sub>2</sub> NAAQS: Piti-Cabras, Guam; Huntington, Indiana; Evangeline Parish (partial),  
 11 Louisiana; and Guayama-Salinas and San Juan, Puerto Rico. Air Quality Designations for the  
 12 2010 Sulfur Dioxide (SO<sub>2</sub>) Primary NAAQS – Round 3, 83 Fed. Reg. 1,098, 1,171-72, 1,122,

1 1,130 (Jan. 9, 2018). These states and territories were required to submit a SIP to EPA for their  
2 nonattainment areas by October 9, 2019. *Id.* at 1,100.

3 40. The states and territories listed in Table 1 above have not submitted nonattainment SIP  
4 elements for the nonattainment areas listed in Table 1 above. *See* Nat'l Designated Area  
5 Reports, EPA, [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2\\_2010\\_en.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2_2010_en.html)  
6 (last visited Oct. 28, 2020).

7 41. It is more than six months after these nonattainment SIP submittals were due.

8 42. EPA had a mandatory duty to make findings of failure to submit for nonattainment SIP  
9 elements for the nonattainment areas listed in Table 1 by the dates listed in Table 1.

10 43. Yet, EPA has not issued findings of failure to submit for the nonattainment SIP elements  
11 in the nonattainment areas listed in Table 1 above.

12 44. Therefore, EPA is in violation of its mandatory duty to issue findings of failure to submit  
13 pursuant to 42 U.S.C. § 7410(k)(1)(B).

## 14 CLAIM TWO

### 15 (Failure to Approve or Disapprove SIP)

16 45. Plaintiffs incorporate by reference all paragraphs listed above.

17 46. Illinois submitted a SIP to EPA for the Alton Township nonattainment area on December  
18 3, 2018 with the following elements: Attainment Demonstration, Contingency Measures,  
19 Emission Inventory, RACM/RACT, and RFP. *See* Nat'l Designated Area Reports, EPA,  
20 [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2\\_2010\\_en.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/so2_2010_en.html) (last visited Oct.  
21 28, 2020).

22 47. Because EPA did not determine by June 3, 2019 whether the SIP submittal met the  
23 minimum statutory criteria, Illinois's SIP submittal was "deemed by operation of law" to meet  
24 the minimum statutory criteria on June 3, 2019. *Id.*; 42 U.S.C. § 7410(k)(1)(B).

1 48. It is more than one year since Illinois's SIP was deemed complete by operation of law.

2 49. EPA had a mandatory duty to approve or disapprove Illinois's SIP for Alton Township.

3 50. EPA has not approved or disapproved Illinois's SIP for Alton Township either in full or  
4 in part.

5 51. Therefore, EPA is in violation of its mandatory duty to approve or disapprove a SIP  
6 either in full or in part pursuant to 42 U.S.C. § 7410(k)(2)-(4).

7 **CLAIM THREE**

8 **(Failure to Determine Whether Areas Have Attained by Their Attainment Dates)**

9 52. Plaintiffs incorporate by reference all paragraphs listed above.

10 53. EPA designated all of the areas listed in Table 2 above nonattainment for the 2010 SO<sub>2</sub>  
11 NAAQS effective October 4, 2013. Air Quality Designations for the 2010 Sulfur Dioxide (SO<sub>2</sub>)  
12 Primary NAAQS, 78 Fed. Reg. at 47,197-47,205.

13 54. All of the areas listed in Table 2 above had an attainment date of no later than October 4,  
14 2018. *See* 42 U.S.C. § 7514a(a).

15 55. It is more than six months since the attainment date for all of the areas listed in Table 2  
16 above.

17 56. EPA has not determined whether the areas listed in Table 2 above attained by the  
18 attainment date and published notice of such finding in the Federal Register.

19 57. Therefore, EPA is in violation of its mandatory duty to make attainment findings and  
20 publish notice of such findings in the Federal Register. 42 U.S.C. § 7509(c).

21 **RELIEF REQUESTED**

22 Plaintiffs respectfully request that the Court:

- 23 (A) Declare that the Administrator is in violation of the Clean Air Act with regard to his  
24 failure to perform each mandatory duty listed above;  
25

1 (B) Issue a mandatory injunction requiring the Administrator to perform his mandatory duties  
2 by certain dates;

3 (C) Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's  
4 order;

5 (D) Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert fees;  
6 and

7 (E) Grant such further relief as the Court deems just and proper.

8  
9 Respectfully Submitted,

10  
11 /s/ Ashley Palomaki

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39 DATED: October 29, 2020  
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