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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WHA

WHA

CV11 0190
) Case No.

WILDEARTH GUARDIANS, and
SIERRA CLUB

Plaintiffs,

v.

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

Defendant.

)
)
) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF**
)
) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

INTRODUCTION

1
2 1. Particulate matter less than 2.5 microns in diameter (“PM2.5”), sometimes referred to as
3 fine particulate, is a major cause of serious air quality problems in many parts of the United
4 States. Exposure to PM2.5 causes numerous human respiratory problems, including decreased
5 lung function, asthma and bronchitis, and is also associated with premature mortality, hospital
6 admissions, cardiopulmonary disease and lung cancer. The detrimental effects of PM2.5 are not
7 limited to human health; PM2.5 also contributes to regional haze, thereby contributing to the
8 visibility range limitations in some of our Nation’s most treasured areas.

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

17 3. EPA is required to take final action on a state’s Infrastructure state implementation plan
18 submittal by approving in full, disapproving in full, or approving in part and disapproving in part
19 within 12 months of the date a submittal is deemed administratively complete. Furthermore, if a
20 state failed to submit their Infrastructure state implementation plan by the required date, EPA is
21 required to issue a finding stating so, known as a “finding of failure to submit.” EPA has failed
22 to take final action on at least six states’ Infrastructure state implementation plan submittals.
23 Additionally, EPA has failed to issue a finding of failure to submit a sufficient Infrastructure
24 state implementation plan for at least 32 states and territories. Accordingly, Plaintiffs
25 WILDEARTH GUARDIANS and SIERRA CLUB bring this action against Defendant LISA P.
26 JACKSON, in her official capacity as EPA Administrator, to compel her to perform her
27 mandatory duty with respect to these PM2.5 Infrastructure state implementation plans.
28

JURISDICTION

1
2 4. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this
3 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2)
4 (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

NOTICE

5
6 5. WildEarth Guardians and Sierra Club mailed to EPA by certified mail, return receipt
7 requested, written notice of intent to sue regarding the violations alleged in this Complaint. EPA
8 received the notice letter on October 13, 2010. More than sixty days have passed since EPA
9 received the notice letter. EPA has not remedied the violations alleged in this Complaint.
10 Therefore, a present and actual controversy exists between the parties.

VENUE

11
12 6. Defendant EPA resides in this judicial district. This civil action is brought against an
13 officer of the United States acting in her official capacity and a substantial part of the events or
14 omissions giving rise to the claims in this case occurred in the Northern District of California.
15 One of the claims in this Complaint concerns EPA's failure to perform mandatory duties with
16 regard to Hawaii. EPA Region 9, whose jurisdiction includes Hawaii, is headquartered in San
17 Francisco. Thus several of the events and omissions at issue in this action occurred at EPA's
18 Region 9 headquarters in San Francisco. In addition, Plaintiff Sierra Club is headquartered in
19 San Francisco and Sierra Club's counsel is located in San Francisco. Therefore, venue is proper
20 in this Court pursuant to 28 U.S.C. § 1391(e).

INTRADISTRICT ASSIGNMENT

21
22 7. A substantial part of the events and omissions giving rise to the claims in this case
23 occurred in the County of San Francisco. Accordingly, assignment to the San Francisco Division
24 or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

PARTIES

25
26 8. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization with
27 offices in Arizona, Colorado, and New Mexico. WildEarth Guardians protects and restores wild
28 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, Colorado, Idaho, Kansas, Montana,
6 Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming.

7 10. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization
8 formed in 1872. 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
28

LEGAL BACKGROUND

1
2 15. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against
3 air pollution in the United States with a view to assuring that the air we breathe throughout the
4 Nation is wholesome once again.” H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code
5 Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National
6 Ambient Air Quality Standards for certain pollutants, including PM_{2.5}. National Ambient Air
7 Quality Standards establish maximum allowable concentrations in the air of these pollutants.

8 16. Each National Ambient Air Quality Standard must be stringent enough to protect public
9 health and welfare. Effects on welfare include, but are not limited to, effects on soils, water,
10 vegetation, manmade materials, wildlife, visibility (i.e., haze), climate, damage to property,
11 economic impacts and effects on personal comfort and well-being.

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

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

19 19. The Clean Air Act requires EPA to determine whether any state implementation plan
20 submittal is administratively complete. See 42 U.S.C. 7410(k)(1)(B). If, six months after a state
21 submits a state implementation plan, EPA has not made the completeness finding and has not
22 found the submittal to be incomplete, the submittal is deemed administratively complete by
23 operation of law. Id.

24 20. EPA has a mandatory duty to take final action on any administratively complete state
25 implementation plan submittal by approving in full, disapproving in full or approving in part and
26 disapproving in part within 12 months of the date it is deemed administratively complete. 42
27 U.S.C. § 7410(k)(2).
28

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_{2.5} 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 January 15, 2009, either EPA or operation of law deemed Alabama’s 2006 PM_{2.5} infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Alabama (available at http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html) (as viewed Oct. 7, 2010).¹

24. On May 18, 2009, either EPA or operation of law deemed Connecticut’s 2006 PM_{2.5} infrastructure state implementation plan submittal addressing the prevention of significant deterioration (“PSD”) element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html) (last viewed Dec. 6, 2010).

25. On January 6, 2008, either EPA or operation of law deemed Florida’s 2006 PM_{2.5} infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—

¹ It appears that Alabama made another submittal that either EPA or operation of law deemed administratively complete on March 23, 2010. *See* EPA, Status of State SIP Infrastructure Requirements—Alabama (available at http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA’s existing mandatory duty to take final action on Alabama’s prior 2006 PM_{2.5} Infrastructure submittal.

1 Florida (available at http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html) (as
2 viewed Oct. 7, 2010).²

3 26. On May 28, 2008, either EPA or operation of law deemed Mississippi's 2006 PM2.5
4 infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. §
5 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
6 Mississippi (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)
7 (as viewed Oct. 7, 2010).³

8 27. Additionally, on March 22, 2009, either EPA or operation of law deemed Mississippi's
9 2006 PM2.5 infrastructure state implementation plan submittal addressing the visibility element
10 of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. Id.

11 28. On June 17, 2007, either EPA or operation of law deemed North Carolina's 2006 PM2.5
12 infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C.
13 § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
14 North Carolina (available at
15 http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html) (as viewed Oct. 7, 2010).⁴
16
17

18
19 ² It appears that Florida made another submittal that either EPA or operation of law deemed
20 administratively complete on March 23, 2010. See EPA, Status of State SIP Infrastructure
21 Requirements—Florida (available at
22 http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html) (last viewed Dec. 7, 2010).
23 However, the new submittal does not obviate EPA's existing mandatory duty to take final action
24 on Florida's prior 2006 PM2.5 Infrastructure submittal.

25 ³ It appears that Mississippi made another submittal that either EPA or operation of law deemed
26 administratively complete on April 6, 2010. See EPA, Status of State SIP Infrastructure
27 Requirements—Mississippi (available at
28 http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html) (last viewed Dec. 7,
2010). However, the new submittal does not obviate EPA's existing mandatory duty to take
final action on Mississippi's prior 2006 PM2.5 Infrastructure submittals.

⁴ It appears that North Carolina made another submittal that either EPA or operation of law
deemed administratively complete on March 21, 2010. See EPA, Status of State SIP
Infrastructure Requirements—North Carolina (available at
http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html) (last viewed Dec. 7,
2010). However, the new submittal does not obviate EPA's existing mandatory duty to take
final action on North Carolina's prior 2006 PM2.5 Infrastructure submittal.

29. On October 4, 2008, either EPA or operation of law deemed Tennessee's infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html) (as viewed Oct. 7, 2010).⁵

CLAIMS FOR RELIEF

CLAIM ONE

(EPA's Failure to Take Final Action on Six States' 2006 PM_{2.5} Infrastructure State Implementation Plan Submittals)

30. Plaintiffs incorporate by reference paragraphs 1 through 29.

31. 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).

32. 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.

33. 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).

34. On January 15, 2009, either EPA or operation of law deemed Alabama's 2006 PM_{2.5} infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Alabama (available at http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html) (as viewed Oct. 7, 2010).

⁵ It appears that Tennessee made another submittal that either EPA or operation of law deemed administratively complete on March 21, 2010. See EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA's existing mandatory duty to take final action on Tennessee's prior 2006 PM_{2.5} Infrastructure submittal.

1 35. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
2 on Alabama's 2006 PM2.5 Infrastructure state implementation plan submittal addressing the
3 visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than January 15, 2010.

4 36. 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 Alabama's 2006 PM2.5 Infrastructure state
6 implementation plan submittal addressing the visibility element of 42 U.S.C. §
7 7410(a)(2)(D)(i)(II) by January 15, 2010.

8 37. On May 18, 2009, either EPA or operation of law deemed Connecticut's 2006 PM2.5
9 infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. §
10 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
11 Connecticut (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html)
12 (last viewed Dec. 6, 2010).

13 38. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
14 on Connecticut's 2006 PM2.5 Infrastructure state implementation plan submittal addressing the
15 PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than May 18, 2010.

16 39. EPA has failed to perform this mandatory duty by not approving in full, disapproving in
17 full, or approving in part and disapproving in part Connecticut's 2006 PM2.5 Infrastructure state
18 implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II)
19 by May 18, 2010.

20 40. On January 6, 2008, either EPA or operation of law deemed Florida's 2006 PM2.5
21 infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. §
22 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
23 Florida (available at http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html) (as
24 viewed Oct. 7, 2010).

25 41. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
26 on Florida's 2006 PM2.5 Infrastructure state implementation plan submittal addressing the PSD
27 element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than January 6, 2009.

1 42. EPA has failed to perform this mandatory duty by not approving in full, disapproving in
2 full, or approving in part and disapproving in part Florida's 2006 PM2.5 Infrastructure state
3 implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II)
4 by January 6, 2009.

5 43. On May 28, 2008, either EPA or operation of law deemed Mississippi's 2006 PM2.5
6 infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. §
7 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
8 Mississippi (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)
9 (as viewed Oct. 7, 2010)..

10 44. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
11 on Mississippi's 2006 PM2.5 Infrastructure state implementation plan submittal addressing the
12 PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than May 28, 2009.

13 45. EPA has failed to perform this mandatory duty by not approving in full, disapproving in
14 full, or approving in part and disapproving in part Mississippi's 2006 PM2.5 Infrastructure state
15 implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II)
16 by May 28, 2009.

17 46. On March 22, 2009, either EPA or operation of law deemed Mississippi's 2006 PM2.5
18 infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C.
19 § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
20 Mississippi (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)
21 (as viewed Oct. 7, 2010).

22 47. EPA has a mandatory duty to take final action on Mississippi's 2006 PM2.5
23 Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C.
24 § 7410(a)(2)(D)(i)(II) by no later than March 22, 2010.

25 48. 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 Mississippi's 2006 PM2.5 Infrastructure state
27 implementation plan submittal addressing the visibility element of 42 U.S.C. §
28 7410(a)(2)(D)(i)(II) by March 22, 2010.

1 49. Either EPA or operation of law deemed North Carolina's infrastructure state
2 implementation plan submittal addressing the visibility element of 42 U.S.C. §
3 7410(a)(2)(D)(i)(II) complete on June 17, 2007. See EPA, Status of State SIP Infrastructure
4 Requirements—North Carolina (available at
5 http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html) (as viewed Oct. 7, 2010).

6 50. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
7 on North Carolina's 2006 PM2.5 Infrastructure state implementation plan submittal addressing
8 the visibility component of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than June 17, 2008.

9 51. 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 North Carolina's 2006 PM2.5 Infrastructure
11 state implementation plan submittal addressing the visibility element of 42 U.S.C. §
12 7410(a)(2)(D)(i)(II) by June 17, 2008.

13 52. On October 4, 2008, either EPA or operation of law deemed Tennessee's infrastructure
14 state implementation plan submittal addressing the visibility element of 42 U.S.C. §
15 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—
16 Tennessee (available at http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html)
17 (as viewed Oct. 7, 2010).

18 53. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action
19 on Tennessee's 2006 PM2.5 Infrastructure state implementation plan submittal addressing the
20 visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than October 4, 2009.

21 54. 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 Tennessee's 2006 PM2.5 Infrastructure state
23 implementation plan submittal addressing the visibility element of 42 U.S.C. §
24 7410(a)(2)(D)(i)(II) by October 4, 2009.

25 55. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) to
26 take final action on Infrastructure state implementation plan submittals by Alabama,
27 Connecticut, Florida, Mississippi, North Carolina and Tennessee. This violation of a mandatory
28 duty is ongoing.

CLAIM TWO

(EPA's Failure to Make Findings of Failure to Submit Sufficient Infrastructure State Implementation Plans for the 2006 PM2.5 National Ambient Air Quality Standard)

56. Plaintiffs incorporate by reference paragraphs 1 through 55.

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

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

59. 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. See 42 U.S.C. § 7410(k)(1)(B). This is referred to as a "finding of failure to submit."

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

61. EPA promulgated a revision to the PM2.5 24-hour National Ambient Air Quality Standard on October 17, 2006. 71 Fed. Reg. 61144 (Oct. 17, 2006).

62. The effective date of the 2006 PM2.5 standard is December 18, 2006. Id.

63. Thus, states and territories are required to submit Infrastructure state implementation plans for the 2006 PM2.5 24-hour National Ambient Air Quality Standard by no later than December 18, 2009. See 42 U.S.C. § 7410(a)(1).

64. Alaska has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Alaska (available at http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html) (last viewed Dec. 6,

1 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
2 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
3 for Alaska’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
4 listed as “Submission” for certain Pennsylvania requirements).

5 65. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
6 finding of failure to submit for Alaska regarding the 2006 PM_{2.5} 24-hour National Ambient Air
7 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
8 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

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

10 67. Colorado has failed to submit an Infrastructure state implementation plan or revision
11 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
12 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Colorado (available
13 at http://www.epa.gov/air/urbanair/sipstatus/reports/co_infrabypoll.html) (last viewed Dec. 6,
14 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
15 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
16 for Colorado’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
17 and listed as “Submission” for certain Pennsylvania requirements).

18 68. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
19 finding of failure to submit for Colorado regarding the 2006 PM_{2.5} 24-hour National Ambient
20 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
21 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

22 69. EPA has failed, and continues to fail, to make this finding of failure to submit for
23 Colorado.

24 70. Hawaii has failed to submit an Infrastructure state implementation plan or revision
25 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
26 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Hawaii (available at
27 http://www.epa.gov/air/urbanair/sipstatus/reports/hi_infrabypoll.html) (last viewed Dec. 6, 2010)
28 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
2 for Hawaii’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
3 listed as “Submission” for certain Pennsylvania requirements).

4 71. 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 Hawaii regarding the 2006 PM2.5 24-hour National Ambient Air
6 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
7 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

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

9 73. Iowa has failed to submit an Infrastructure state implementation plan or revision
10 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
11 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Iowa (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/ia_infrabypoll.html) (last viewed Dec. 6, 2010)
13 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
14 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
15 for Iowa’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
16 listed as “Submission” for certain Pennsylvania requirements).

17 74. 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 Iowa regarding the 2006 PM2.5 24-hour National Ambient Air
19 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
20 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

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

22 76. Idaho has failed to submit an Infrastructure state implementation plan or revision
23 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
24 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Idaho (available at
25 http://www.epa.gov/air/urbanair/sipstatus/reports/id_infrabypoll.html) (last viewed Dec. 6, 2010)
26 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
27 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
28

1 for Idaho's 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
2 listed as "Submission" for certain Pennsylvania requirements).

3 77. 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 Idaho regarding the 2006 PM_{2.5} 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) and (E)-(M).

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

8 79. Illinois has failed to submit an Infrastructure state implementation plan or revision
9 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
10 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Illinois (available at
11 http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html) (last viewed Dec. 6, 2010)
12 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
13 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) ("Latest Action" is blank
14 for Illinois' 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
15 listed as "Submission" for certain Pennsylvania requirements).

16 80. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
17 finding of failure to submit for Illinois regarding the 2006 PM_{2.5} 24-hour National Ambient Air
18 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
19 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

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

21 82. Louisiana has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Louisiana (available
24 at http://www.epa.gov/air/urbanair/sipstatus/reports/la_infrabypoll.html) (last viewed Dec. 6,
25 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
26 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) ("Latest Action" is blank
27 for Louisiana's 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
28 and listed as "Submission" for certain Pennsylvania requirements).

1 83. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Louisiana regarding the 2006 PM_{2.5} 24-hour National Ambient
3 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
4 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 84. EPA has failed, and continues to fail, to make this finding of failure to submit for
6 Louisiana.

7 85. Maryland has failed to submit an Infrastructure state implementation plan or revision
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Maryland (available
10 at http://www.epa.gov/air/urbanair/sipstatus/reports/md_infrabypoll.html) (last viewed Dec. 6,
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
13 for Maryland’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
14 and listed as “Submission” for certain Pennsylvania requirements).

15 86. 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 Maryland regarding the 2006 PM_{2.5} 24-hour National Ambient
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 87. EPA has failed, and continues to fail, to make this finding of failure to submit for
20 Maryland.

21 88. Montana has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Montana (available at
24 http://www.epa.gov/air/urbanair/sipstatus/reports/mt_infrabypoll.html) (last viewed Dec. 6,
25 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
26 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
27 for Montana’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
28 and listed as “Submission” for certain Pennsylvania requirements).

1 89. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Montana regarding the 2006 PM_{2.5} 24-hour National Ambient
3 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
4 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 90. EPA has failed, and continues to fail, to make this finding of failure to submit for
6 Montana.

7 91. Nebraska has failed to submit an Infrastructure state implementation plan or revision
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Nebraska (available
10 at http://www.epa.gov/air/urbanair/sipstatus/reports/ne_infrabypoll.html) (last viewed Dec. 6,
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
13 for Nebraska’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
14 and listed as “Submission” for certain Pennsylvania requirements).

15 92. 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 Nebraska regarding the 2006 PM_{2.5} 24-hour National Ambient
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 93. EPA has failed, and continues to fail, to make this finding of failure to submit for
20 Nebraska.

21 94. North Dakota has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— North Dakota
24 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/nd_infrabypoll.html) (last viewed
25 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania
26 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest
27 Action” is blank for North Dakota’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)
28 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

1 95. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for North Dakota regarding the 2006 PM_{2.5} 24-hour National
3 Ambient Air Quality Standard Infrastructure state implementation plan addressing the
4 requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 96. EPA has failed, and continues to fail, to make this finding of failure to submit for North
6 Dakota.

7 97. Oklahoma has failed to submit an Infrastructure state implementation plan or revision
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Oklahoma (available
10 at http://www.epa.gov/air/urbanair/sipstatus/reports/ok_infrabypoll.html) (last viewed Dec. 6,
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
13 for Oklahoma’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
14 and listed as “Submission” for certain Pennsylvania requirements).

15 98. 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 Oklahoma regarding the 2006 PM_{2.5} 24-hour National Ambient
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 99. EPA has failed, and continues to fail, to make this finding of failure to submit for
20 Oklahoma.

21 100. Oregon has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Oregon (available at
24 http://www.epa.gov/air/urbanair/sipstatus/reports/or_infrabypoll.html) (last viewed Dec: 6, 2010)
25 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
26 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
27 for Oregon’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
28 listed as “Submission” for certain Pennsylvania requirements).

1 101. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Oregon regarding the 2006 PM_{2.5} 24-hour National Ambient Air
3 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
4 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 102. EPA has failed, and continues to fail, to make this finding of failure to submit for
6 Oregon.

7 103. South Dakota has failed to submit an Infrastructure state implementation plan or revision
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—South Dakota
10 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/sd_infrabypoll.html) (last viewed
11 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania
12 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest
13 Action” is blank for South Dakota’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)
14 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

15 104. 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 South Dakota regarding the 2006 PM_{2.5} 24-hour National
17 Ambient Air Quality Standard Infrastructure state implementation plan addressing the
18 requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 105. EPA has failed, and continues to fail, to make this finding of failure to submit for South
20 Dakota.

21 106. Utah has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Utah (available at
24 http://www.epa.gov/air/urbanair/sipstatus/reports/ut_infrabypoll.html) (last viewed Dec. 6, 2010)
25 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
26 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
27 for Utah’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
28 listed as “Submission” for certain Pennsylvania requirements).

1 107. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Utah regarding the 2006 PM_{2.5} 24-hour National Ambient Air
3 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
4 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 108. EPA has failed, and continues to fail, to make this finding of failure to submit for Utah.

6 109. Virginia has failed to submit an Infrastructure state implementation plan or revision
7 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
8 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Virginia (available at
9 http://www.epa.gov/air/urbanair/sipstatus/reports/va_infrabypoll.html) (last viewed Dec. 6,
10 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
11 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
12 for Virginia’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
13 listed as “Submission” for certain Pennsylvania requirements).

14 110. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
15 finding of failure to submit for Virginia regarding the 2006 PM_{2.5} 24-hour National Ambient
16 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
17 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

18 111. EPA has failed, and continues to fail, to make this finding of failure to submit for
19 Virginia.

20 112. Washington has failed to submit an Infrastructure state implementation plan or revision
21 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
22 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Washington
23 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/wa_infrabypoll.html) (last viewed
24 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania
25 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest
26 Action” is blank for Washington’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)
27 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).
28

1 113. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Washington regarding the 2006 PM_{2.5} 24-hour National Ambient
3 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
4 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 114. EPA has failed, and continues to fail, to make this finding of failure to submit for
6 Washington.

7 115. Wyoming has failed to submit an Infrastructure state implementation plan or revision
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Wyoming (available
10 at http://www.epa.gov/air/urbanair/sipstatus/reports/wy_infrabypoll.html) (last viewed Dec. 6,
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
13 for Wyoming’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
14 and listed as “Submission” for certain Pennsylvania requirements).

15 116. 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 Wyoming regarding the 2006 PM_{2.5} 24-hour National Ambient
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 117. EPA has failed, and continues to fail, to make this finding of failure to submit for
20 Wyoming.

21 118. Puerto Rico has failed to submit an Infrastructure state implementation plan or revision
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Puerto Rico
24 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/pr_infrabypoll.html) (last viewed
25 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania
26 (available at http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest
27 Action” is blank for Puerto Rico’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)
28 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

1 119. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Puerto Rico regarding the 2006 PM_{2.5} 24-hour National Ambient
3 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
4 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 120. EPA has failed, and continues to fail, to make this finding of failure to submit for Puerto
6 Rico.

7 121. The District of Columbia has failed to submit an Infrastructure state implementation plan
8 or revision addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). Compare EPA,
9 Status of State SIP Infrastructure Requirements—District of Columbia (available at
10 http://www.epa.gov/air/urbanair/sipstatus/reports/dc_infrabypoll.html) (last viewed Dec. 6,
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
12 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
13 for the District of Columbia’s 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and listed
14 as “Submission” for certain Pennsylvania requirements).

15 122. Though EPA has issued a proposed approval of the District of Columbia’s submittal
16 addressing the requirements of 42 U.S.C. § 7410(a)(2) for the 2006 PM_{2.5} 24-hour National
17 Ambient Air Quality Standard, the proposed approval, and the District of Columbia’s submittal,
18 did not include the requirements of 42 U.S.C. § 7410(a)(2)(D)(i). See 75 Fed. Reg. 27512 (May
19 17, 2010).

20 123. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
21 finding of failure to submit for the District of Columbia regarding the 2006 PM_{2.5} 24-hour
22 National Ambient Air Quality Standard Infrastructure state implementation plan addressing the
23 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II).

24 124. EPA has failed, and continues to fail, to make this finding of failure to submit for the
25 District of Columbia.

26 125. Indiana has failed to submit an Infrastructure state implementation plan or revision
27 addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

28 Compare EPA, Status of State SIP Infrastructure Requirements— Indiana (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html) (last viewed Dec. 6, 2010)
2 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
3 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
4 for Indiana’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and
5 listed as “Submission” for certain Pennsylvania requirements).

6 126. As previously stated, the Clean Air Act requires a state to submit a state implementation
7 plan providing for the “implementation, maintenance, and enforcement” of a new or revised
8 National Ambient Air Quality Standard within three years *after* the standard’s promulgation. 42
9 U.S.C. § 7410(a)(1) (emphasis added).

10 127. EPA claims to have approved Indiana’s submittal addressing the PSD element of 42
11 U.S.C. § 7410(a)(2)(D)(i)(II) on May 20, 2004. See EPA, Status of State SIP Infrastructure
12 Requirements—Indiana.

13 128. EPA cannot approve Indiana’s Infrastructure state implementation plan submittal
14 addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) *two years before* the
15 promulgation of the 2006 PM_{2.5} National Ambient Air Quality standard.

16 129. Thus, Indiana has failed to submit a state implementation plan addressing the PSD
17 element of 42 U.S.C. § 7410(a)(2)(D)(i)(II).

18 130. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
19 finding of failure to submit for Indiana regarding the 2006 PM_{2.5} 24-hour National Ambient Air
20 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
21 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

22 131. EPA has failed, and continues to fail, to make this finding of failure to submit for
23 Indiana.

24 132. Kansas has failed to submit an Infrastructure state implementation plan or revision
25 addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(M). Compare EPA, Status of
26 State SIP Infrastructure Requirements— Kansas (available at
27 http://www.epa.gov/air/urbanair/sipstatus/reports/ks_infrabypoll.html) (last viewed Dec. 6, 2010)
28 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
2 for Kansas’ 42 U.S.C. §§ 7410(a)(2)(A)-(M) submittal requirements and listed as “Submission”
3 for certain Pennsylvania requirements).

4 133. 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 Kansas regarding the 2006 PM_{2.5} 24-hour National Ambient Air
6 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
7 U.S.C. §§ 7410(a)(2)(A)-(M).

8 134. EPA has failed, and continues to fail, to make this finding of failure to submit for Kansas.

9 135. Maine has failed to submit an Infrastructure state implementation plan or revision
10 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). Compare EPA, Status of
11 State SIP Infrastructure Requirements— Maine (available at

12 http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html) (last viewed Dec. 6,
13 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
14 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
15 for Maine’s 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and listed as “Submission”
16 for certain Pennsylvania requirements).

17 136. 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 Maine regarding the 2006 PM_{2.5} 24-hour National Ambient Air
19 Quality Standard Infrastructure state implementation plan addressing the requirements 42 U.S.C.
20 § 7410(a)(2)(D)(i)(II).

21 137. EPA has failed, and continues to fail, to make this finding of failure to submit for Maine.

22 138. Pennsylvania has failed to submit an Infrastructure state implementation plan or revision
23 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). See EPA, Status of State

24 SIP Infrastructure Requirements— Pennsylvania (available at
25 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (last viewed Dec. 6,
26 2010) (“Latest Action” is blank for 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and
27 listed as “Submission” for other requirements).

1 139. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
2 finding of failure to submit for Pennsylvania regarding the 2006 PM_{2.5} 24-hour National
3 Ambient Air Quality Standard Infrastructure state implementation plan addressing the
4 requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II).

5 140. EPA has failed, and continues to fail, to make this finding of failure to submit for
6 Pennsylvania.

7 141. Michigan has failed to submit an Infrastructure state implementation plan or revision
8 addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion
9 addressing the visibility element) and (E)-(M). Compare EPA, Status of State SIP Infrastructure
10 Requirements—Michigan (available at
11 http://www.epa.gov/air/urbanair/sipstatus/reports/mi_infrabypoll.html) (last viewed Dec. 6,
12 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
13 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
14 for Michigan’s submittal requirements and listed as “Submission” for certain Pennsylvania
15 requirements).

16 142. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
17 finding of failure to submit for Michigan regarding the 2006 PM_{2.5} 24-hour National Ambient
18 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
19 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion addressing the visibility element) and (E)-
20 (M).

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

23 144. Minnesota 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), (D)(i)(II) (the portion
25 addressing the PSD element) and (E)-(M). Compare EPA, Status of State SIP Infrastructure
26 Requirements— Minnesota (available at
27 http://www.epa.gov/air/urbanair/sipstatus/reports/mn_infrabypoll.html) (last viewed Dec. 8,
28 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

1 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
2 for certain Minnesota submittal requirements while listed as “Submission” for certain
3 Pennsylvania requirements).

4 145. 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 Minnesota regarding the 2006 PM_{2.5} 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) (the portion addressing the PSD element) and (E)-
8 (M).

9 146. EPA has failed, and continues to fail, to make this finding of failure to submit for
10 Minnesota.

11 147. Ohio has failed to submit an Infrastructure state implementation plan or revision
12 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D). Compare EPA, Status of State
13 SIP Infrastructure Requirements— Ohio (available at
14 http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html) (last viewed Dec. 6,
15 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
16 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
17 for Ohio’s 42 U.S.C. § 7410(a)(2)(D) submittal requirements and listed as “Submission” for
18 certain Pennsylvania requirements).

19 148. As previously stated, the Clean Air Act requires a state to submit a state implementation
20 plan providing for the “implementation, maintenance, and enforcement” of a new or revised
21 National Ambient Air Quality Standard within three years *after* the standard’s promulgation. 42
22 U.S.C. § 7410(a)(1) (emphasis added).

23 149. EPA claims to have approved Ohio’s submittal addressing the PSD element of the
24 requirement under 42 U.S.C. § 7410(a)(2)(D)(i)(II) on March 10, 2003. See 68 Fed. Reg. 2909
25 (March 10, 2003); EPA, Status of State SIP Infrastructure Requirements—Ohio.

26 150. EPA cannot approve Ohio’s Infrastructure state implementation plan submittal
27 addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) *three years before* the
28 promulgation of the 2006 PM_{2.5} National Ambient Air Quality standard.

1 151. Thus, Ohio has failed to submit a state implementation plan addressing the PSD element
2 of 42 U.S.C. § 7410(a)(2)(D)(i)(II).

3 152. 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 Ohio regarding the 2006 PM_{2.5} 24-hour National Ambient Air
5 Quality Standard Infrastructure state implementation plan addressing the requirements under 42
6 U.S.C. § 7410(a)(2)(D).

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

8 154. Wisconsin 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).

10 Compare EPA, Status of State SIP Infrastructure Requirements— Wisconsin (available at
11 http://www.epa.gov/air/urbanair/sipstatus/reports/wi_infrabypoll.html) (last viewed Dec. 6,
12 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at
13 http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html) (“Latest Action” is blank
14 for Wisconsin’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements
15 and listed as “Submission” for certain Pennsylvania requirements).

16 155. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a
17 finding of failure to submit for Wisconsin regarding the 2006 PM_{2.5} 24-hour National Ambient
18 Air Quality Standard Infrastructure state implementation plan addressing the requirements under
19 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

20 156. EPA has failed, and continues to fail, to make this finding of failure to submit for
21 Wisconsin.

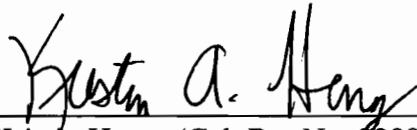
22 157. Accordingly, EPA is violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to
23 issue a finding of failure to submit sufficient Infrastructure state implementation plans for the
24 follow states and territories: Alaska, Colorado, Hawaii, Iowa, Idaho, Illinois, Louisiana,
25 Maryland, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Virginia,
26 Washington, Wyoming, Puerto Rico, the District of Columbia, Indiana, Kansas, Maine,
27 Pennsylvania, Michigan, Minnesota, Ohio and Wisconsin.
28

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

Respectfully submitted,



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