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5 Attorney for Plaintiff

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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

EDL

11
12 WILDEARTH GUARDIANS

CV 09

2453

13 Plaintiff,

14 v.

COMPLAINT

15 LISA JACKSON, in her official capacity as
16 Administrator of the Environmental Protection
17 Agency

17 Defendant.

18
19 INTRODUCTION

20 1. Soot and smog, scientifically called fine particulate matter and ground level ozone
21 respectively, cause death, disease, and both ecological and economic harm. The Clean Air Act
22 ("CAA"), 42 U.S.C. §§ 7401 *et seq.*, requires that all states create "good neighbor" plans to keep
23 soot and smog emitted from sources in one state from impacting "downwind" states. If a state
24 fails to prepare a good neighbor plan, then the CAA requires that the U.S. Environmental
25 Protection Agency ("EPA") step in and prepare a federal good neighbor plan for that state.

26 2. Plaintiff, WildEarth Guardians ("Guardians") brings this action against Lisa
27 Jackson, Administrator of the EPA, in her official capacity (hereinafter Ms. Jackson is referred to

28 Complaint

1 as "EPA") in order to compel EPA to create federal good neighbor plans for soot and smog for
2 California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon. These federal
3 plans were due on May 25, 2007. See 70 Fed. Reg. 21,147 (April 25, 2005). EPA is two years
4 late in fulfilling its mandatory duty to prepare federal good neighbor plans protecting the public
5 from interstate soot and smog.

6 JURISDICTION

7 3. Guardians brings this action under the CAA citizen suit provision, 42 U.S.C. §
8 7604(a)(2), which authorizes civil actions for EPA's failure to perform non-discretionary duties.

9 This case raises a federal question. The Court has subject matter jurisdiction over Guardians'
10 claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). The requested relief is
11 authorized by 28 U.S.C. §§ 2201-02 (declaratory and injunctive relief).

12 4. On March 11, 2009, Guardians mailed a letter by certified mail, return receipt
13 requested, to EPA stating that Guardians intended to sue EPA for its failure to promulgate
14 Federal Implementation Plans with two years after making a finding that the states of California,
15 Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon had failed to submit State
16 Implementation Plans required to address interstate transport of ozone air pollution and
17 particulate matter less than 2.5 microns in diameter ("PM-2.5") as required under Section
18 110(a)(2)(D)(i) of the CAA. EPA received Guardians' March 11th letter on March 16, 2009.
19 More than 60 days have passed since EPA received Guardians' letter announcing its intention to
20 file suit. EPA has not remedied its violations of law by preparing the overdue Federal
21 Implementation Plans. An actual controversy exists between the parties within the meaning of
22 the Declaratory Judgment Act. 28 U.S.C. § 2201.

23 VENUE

24 5. Venue is proper in this judicial district under 28 U.S.C. § 1391(e) because EPA
25 maintains a major regional office in this district and because a substantial part of the events and
26 omissions alleged in this complaint occurred in this district.

27 INTRADISTRICT ASSIGNMENT

28 6. Pursuant to Local Civil Rule 3-2(c) this case should be assigned to the San
Francisco division because EPA's Pacific Southwest Regional Headquarters are located in San

1 Francisco and a substantial part of the events and omissions alleged in this complaint occurred in
2 this judicial division.

3 PARTIES

4 7. Plaintiff, WildEarth Guardians (“Guardians”) is a non-profit environmental
5 organization with offices in California, Colorado, and New Mexico. Guardians’ members and
6 staff live, work, recreate, and engage in environmental protection and economic activities
7 throughout the western U.S., including areas that are adversely affected by ground level ozone
8 and particulate matter from sources in California, Colorado, Idaho, New Mexico, North Dakota,
9 Oklahoma, and Oregon. Guardians’ members and staff intend to continue living, working,
10 recreating and engaging in environmental protection and economic activities in these areas in
11 both the immediate and indefinite future. Guardians’ members and staff are concerned about air
12 quality in the American West and its effects of the health of both people and the natural
13 environment. EPA’s failure to promulgate the Federal Implementation Plans at issue in this case
14 increases the risk and likelihood that Guardians’ members and staff and the plants and animals
15 Guardians strives to protect are being exposed to levels of particulate matter and ozone in excess
16 of federal standards. The injuries suffered by Guardians’ members and staff are traceable to
17 EPA’s failure to promulgate the Federal Implementation Plans at issue in this case, and would be
18 remedied by promulgation of these plans.

19 8. Defendant, Lisa Jackson, is the Administrator of the EPA. As Administrator, Ms.
20 Jackson is responsible for insuring EPA’s compliance with the Clean Air Act. Section 110(c)(1)
21 of the CAA, 42 U.S.C. § 7410(c)(1), requires EPA to promulgate Federal Implementation Plans
22 within two years of finding that a state has failed to make the required submission of a State
23 Implementation Plan or revision. Ms. Jackson is sued in her official capacity. If ordered by a
24 Court, the Administrator of EPA has the authority and ability to remedy the harm alleged in this
25 complaint by providing the requested relief.

26 GOVERNING LAW AND FACTUAL BACKGROUND

27 9. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war
28 against air pollution in the United States with a view to assuring that the air we breathe
throughout the Nation is wholesome once again.” H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1,

1 1970 U.S. Code Cong. & Admin. News 5356, 5356.

2 10. Towards this end, the CAA employs a model of cooperative federalism whereby
3 EPA sets health-based National Ambient Air Quality Standards ("NAAQS") and individual
4 states develop plans, according to strict deadlines, to comply with the NAAQS. States submit
5 these State Implementation Plans ("SIP") and plan revisions to EPA. EPA reviews these
6 submissions to ensure that the SIP or SIP revision meets the minimum requirements of the Clean
7 Air Act. If satisfactory, EPA approves the plan or plan revision as part of the SIP. A State
8 Implementation Plan is federally enforceable by EPA as well as the public. If the plans or plan
9 revisions do not meet the Clean Air Act's minimum requirements or a State fails to submit a plan
10 or a plan revision, then EPA must develop a Federal Implementation Plan ("FIP") for the state to
11 meet the minimum requirements of the CAA.

12 11. On July 18, 1997, EPA issued a new 8-hour ozone NAAQS. This new standard
13 changed the 1 hour averaging standard to an 8-hour average and reduced the allowed level of
14 ozone from 0.12 parts per million to 0.08 parts per million. Additionally, EPA issued a new
15 particulate matter NAAQS by adding a new 24-hour standard and a new annual standard of
16 particulate matter that is less than 2.5 microns in size ("PM 2.5").

17 12. Section 110(a)(1) of the CAA requires States to submit new SIPs that provide for
18 the implementation, maintenance, and enforcement of a new or revised NAAQS within three
19 years after promulgation of such NAAQS, or with a shorter time-period if EPA so prescribes. 42
20 U.S.C. § 7410(a)(1). For the 1997 8-hour ozone and PM 2.5 NAAQS the states were required to
21 submit their SIPs by July 18, 2000. Within six months of this date (by January 18, 2001), EPA
22 was required to determine if the states had submitted complete SIPs for the 8-hour ozone and PM
23 2.5 NAAQS. See 42 U.S.C. § 7410(k)(2)(B).

24 13. CAA Section 110(a)(2) lists the elements that new SIPs must address, including
25 Section 110(a)(2)(D)(i) which applies to interstate transport of emissions. 42 U.S.C. §
26 7410(a)(2). Section 110(a)(2)(D)(i) has four separate requirements. The SIP must contain
27 provisions that prohibit any source in any state from emitting pollution in an amount that will:

- 28
- (1) contribute significantly to nonattainment in another state;
 - (2) interfere with maintenance by another state with any NAAQS;

1 (3) interfere with measures in another state to prevent significant deterioration
2 of air quality in that state; or

3 (4) interfere with measures to protect visibility in another state.

4 See 42 U.S.C. § 7410(a)(2)(D)(i).

5 14. EPA failed to make a timely determination as to whether states had submitted
6 SIPs to meet their obligation under 42 U.S.C. § 7410(a)(2)(D)(i) for the 1997 8-hour ozone and
7 PM 2.5 NAAQS. Environmental organizations sued EPA for missing this mandatory deadline.

8 15. In accordance with a Consent Decree, EPA published a finding that all states had
9 failed to submit new SIPs addressing interstate transport for the 8-hour ozone and PM 2.5
10 NAAQS, as required by CAA Section 110(a)(2)(D)(i).

11 16. That finding initiated a 2-year deadline for the promulgation of a Federal
12 Implementation Plan ("FIP") by EPA for each state, unless prior to that time, the state made a
13 submission to meet the requirements of Section 110(a)(2)(D)(i) and EPA approved such a
14 submission. See 42 U.S.C. § 7410(c)(1)(A).

15 17. Many states did make the SIP submittals required to satisfy Section
16 110(a)(2)(D)(i) concerning the 1997 8-hour ozone and PM 2.5 NAAQS.

17 18. EPA has neither approved SIPs, nor implemented FIPs, concerning the 1997 8-
18 hour ozone and PM 2.5 NAAQS as required by Section 110(a)(2)(D)(i) for California, Colorado,
19 Idaho, New Mexico, North Dakota, Oklahoma, and Oregon.

20 19. The two-year deadline from EPA's finding that California, Colorado, Idaho, New
21 Mexico, North Dakota, Oklahoma, and Oregon had failed to submit SIPs required to satisfy
22 Section 110(a)(2)(D)(i) regarding the 1997 8-hour ozone and PM 2.5 NAAQS passed
23 approximately 2 years ago. EPA has not promulgated FIPs for California, Colorado, Idaho, New
24 Mexico, North Dakota, Oklahoma, and Oregon as required to satisfy Section 110(a)(2)(D)(i) for
25 the 1997 8-hour ozone and PM 2.5 NAAQS.

26 **CLAIM FOR RELIEF**

27 20. All preceding paragraphs and allegations of this Complaint are incorporated
28 herein by reference.

29 21. The Clean Air Act imposes a mandatory duty on EPA to promulgate a Federal

1 Implementation Plan for any state that it finds has failed to submit a required Statement
2 Implementation Plan within two years of the EPA finding that the state has not meet its
3 obligations. 42 U.S.C. § 7410(c)(1)(A).

4 22. EPA issued a finding, effective May 25, 2005, that California, Colorado, Idaho,
5 New Mexico, North Dakota, Oklahoma, and Oregon failed to submit a State Implementation
6 Plan revision required to satisfy Section 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone
7 and PM 2.5 NAAQS.

8 23. More than two years has passed since EPA issued a finding that California,
9 Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon failed to submit a State
10 Implementation Plan revision required to satisfy Section 110(a)(2)(D)(i) with regard to the 1997
11 8-hour ozone and PM 2.5 NAAQS.

12 24. EPA has not approved a State Implementation Plan revision for California,
13 Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon required to satisfy Section
14 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and PM 2.5 NAAQS.

15 25. EPA is in violation of its mandatory duty to promulgate a Federal Implementation
16 Plan for California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon
17 required to satisfy Section 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and PM 2.5
18 NAAQS.

19 **REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiff respectfully requests the Court grant the following relief:

21 A. A declaratory judgment that EPA has violated and is in violation of its mandatory
22 duty under 42 U.S.C. § 7410(c)(1) to promulgate a Federal Implementation Plan for California,
23 Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon required to satisfy Section
24 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and PM 2.5 NAAQS;

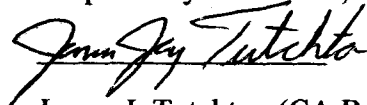
25 B. An injunction ordering EPA to promulgate Federal Implementation Plans for
26 California, Colorado, Idaho, New Mexico, North Dakota, Oklahoma, and Oregon required to
27 satisfy Section 110(a)(2)(D)(i) with regard to the 1997 8-hour ozone and PM 2.5 NAAQS;

28 C. An order retaining jurisdiction of this action to ensure compliance with the
Court's injunction;

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- D. An award of Plaintiff's costs of litigation, including attorneys' fees, to Plaintiff;
- E. Such other and further relief as this Court deems just and proper.

DATED: June 2, 2009

Respectfully Submitted,

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