

FILED

10 AUG 12 PM 1:41

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY:

1 DAVID PETTIT (SBN 067128)  
2 MELISSA LIN PERRELLA (SBN 205019)  
3 ADRIANO MARTINEZ (SBN 237152)  
4 MORGAN JOCELYN WYENN (SBN 270593)  
5 NATURAL RESOURCES DEFENSE COUNCIL  
6 1314 Second Street  
7 Santa Monica, CA 90401  
8 Telephone: (310) 434-2300  
9 Facsimile: (310) 434-2399  
10 Email: amartinez@nrdc.org

11 Attorneys for Plaintiffs  
12 Natural Resources Defense Council, Inc., and  
13 Coalition for a Safe Environment

14 ANGELA JOHNSON MESZAROS (SBN 174130)  
15 LAW OFFICES OF ANGELA JOHNSON MESZAROS  
16 1107 Fair Oaks Avenue, #246  
17 South Pasadena, CA 91030  
18 Telephone: (323) 341-5868  
19 Facsimile: (323) 872-5212  
20 Email: angela@cleanairmatters.net

21 Attorney for Plaintiff  
22 Coalition for a Safe Environment

23 UNITED STATES DISTRICT COURT  
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25 NATURAL RESOURCES DEFENSE  
26 COUNCIL, INC., and COALITION FOR A  
27 SAFE ENVIRONMENT, a California non-profit  
28 corporation,

Plaintiffs,

v.

29 UNITED STATES ENVIRONMENTAL  
30 PROTECTION AGENCY, LISA JACKSON, in  
31 her official capacity as Administrator of the  
32 United States Environmental Protection Agency,  
33 and JARED BLUMENFELD, in his official  
34 capacity as Regional Administrator for Region  
35 IX of the United States Environmental Protection  
36 Agency,

Defendants.

CV10 6029 <sup>MMM</sup> (AGR<sub>x</sub>)  
CASE NO:

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

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

1 **INTRODUCTION**

2 1. The South Coast Air Basin is the smoggiest region in the nation. The backbone for  
3 improving air quality in this region is California’s State Implementation Plan (“SIP”) under the  
4 Clean Air Act (“CAA”).

5 2. Plaintiffs Natural Resources Defense Council and Coalition for a Safe Environment  
6 (collectively “NRDC”) bring this CAA citizen enforcement action to compel the U.S.  
7 Environmental Protection Agency (“EPA”) to undertake its statutory, non-discretionary duty to  
8 either approve or disapprove the SIP so that the South Coast Air Basin and the State of  
9 California can move forward to reduce dangerous levels of air pollution and achieve healthy air  
10 for their citizens.

11 3. The CAA is a model of cooperative federalism, whereby the EPA sets health-based  
12 National Ambient Air Quality Standards (“NAAQS”) and individual states develop plans to  
13 achieve those standards. States submit these plans to EPA, which reviews them to ensure they  
14 meet the minimum requirements of the CAA. If satisfactory, EPA approves the plans, or plan  
15 revisions, as part of the overall SIP. If the plans do not meet the CAA’s minimum  
16 requirements, then EPA must disapprove the plans, triggering mandatory sanctions and an EPA-  
17 promulgated plan (“Federal Implementation Plan”) if the state fails to correct the deficiencies  
18 within 18 months. 42 U.S.C. § 7509(a)-(b).

19 4. Specifically, the CAA requires EPA to have acted by deadlines long past due to approve  
20 or disapprove two proposed revisions to the California SIP. These revisions include the State  
21 Strategy for the 2007 State Implementation Plan to attain the 8-hour ozone and fine particulate  
22 matter (“PM<sub>2.5</sub>”) NAAQS (“2007 State SIP”) and the 2007 Air Quality Management Plan for  
23 the South Coast Air Quality Management District (“2007 South Coast SIP”).

24 5. Had EPA approved these plan revisions on time, EPA and citizens would already be able  
25 to enforce the strategies in these plans to ensure that the South Coast Air Basin would attain  
26 health-based NAAQS by the deadlines in the CAA. Had EPA disapproved the plan revisions as  
27  
28

1 inconsistent with the CAA, California would have already made changes to ensure that the  
2 plans meet the minimum requirements of the CAA.

3 6. Instead, EPA has failed to act on these plan revisions, ignoring EPA's role to ensure that  
4 California's plans attain NAAQS and accordingly comply with the CAA.

### 5 **JURISDICTION**

6 7. This Court has jurisdiction over this action to compel the performance of non-  
7 discretionary duties by EPA pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the  
8 CAA) and 28 U.S.C. § 1331 (federal question jurisdiction).

9 8. The relief NRDC requests is authorized by 28 U.S.C. §§ 2201(a) and 2202, and 42 U.S.C.  
10 § 7604.

11 9. On May 6, 2010, NRDC provided EPA written notice of the claims stated in this action  
12 which was at least sixty days before commencing this action, as required by CAA § 304(b)(2),  
13 42 U.S.C. § 7604(b)(2), and 40 C.F.R. §§ 54.2 and 54.3. A copy of the notice letter, sent by  
14 certified mail, return receipt requested, is attached as Exhibit 1. Although more than 60 days  
15 have elapsed since NRDC gave notice, EPA remains in violation of the CAA.

### 16 **VENUE**

17 10. Venue is proper in the Central District of California under 28 U.S.C. § 1391(e) as this  
18 civil action is brought against an agency of the United States and its officers and employees of  
19 the United States acting in their official capacities and under the color of legal authority, at least  
20 one Plaintiff resides in the Central District of California, and as no real property is involved in  
21 this action. *See* 28 U.S.C. § 1391(e)(3).

22 11. Moreover, venue is proper because "a substantial part of the events or omissions giving  
23 rise to the claim occurred" in the Central District of California. *See* 28 U.S.C. § 1391(e)(2).

### 24 **PARTIES**

25 12. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL, INC. ("NRDC") is a  
26 national, non-profit organization with two offices in California, and over 447,000 members  
27 dedicated to the protection of the environment, 83,561 of whom live in California. Through  
28

1 education, advocacy, litigation and other efforts, NRDC works to protect its members, and the  
2 environment, from environmental threats, including threats from poor air quality.

3 13. Plaintiff COALITION FOR A SAFE ENVIRONMENT (“CFASE”) is a not-for-profit  
4 membership corporation organized under the laws of the State of California. CFASE advocates  
5 for environmental justice, public health, public safety, and effective implementation and  
6 enforcement of air quality laws and regulations in southern California. Members of CFASE  
7 reside in the South Coast Air Basin and suffer the effects of air pollution that defendants allow  
8 to be emitted.

9 14. COALITION FOR A SAFE ENVIRONMENT and NATURAL RESOURCES  
10 DEFENSE COUNCIL are “persons” within the meaning of section 302(e) of the CAA, 42  
11 U.S.C. § 7602(e), and may commence a civil action under section 304(a) of the Act, 42 U.S.C.  
12 § 7604(a).

13 15. Members of plaintiff organizations live, raise their families, work (including treating  
14 patients suffering adverse health effects from air pollution), recreate and conduct educational,  
15 research, advocacy and other activities in the South Coast Air Basin. They are adversely  
16 affected by exposure to levels of air pollution that exceed the health-based ozone and fine  
17 particulate matter NAAQS. The adverse effects of such pollution include actual or threatened  
18 harm to their health, their families’ health, their patients’ health, their professional, educational  
19 and economic interests, and their aesthetic and recreational enjoyment of the environment in the  
20 State of California.

21 16. The CAA violations alleged in this Complaint also deprive members of plaintiff  
22 organizations of certain procedural rights associated with EPA’s required action on the 2007  
23 State SIP and the 2007 South Coast SIP, including notice and opportunity to comment.

24 17. The CAA violations alleged in this Complaint have injured and continue to injure the  
25 interests of the plaintiff organizations and their members. Granting the relief requested in this  
26 lawsuit would redress these injuries by compelling EPA action that Congress determined to be  
27

1 an integral part of the regulatory scheme for improving air quality in areas violating NAAQS,  
2 such as the South Coast Air Basin.

3 18. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the  
4 federal agency charged with implementation and enforcement of the CAA. As described below,  
5 the CAA assigns to EPA certain non-discretionary duties.

6 19. Defendant LISA JACKSON is sued in her official capacity as the Administrator of the  
7 EPA. She is charged in that role with taking various actions to implement and enforce the  
8 CAA, including the actions sought in this Complaint.

9 20. Defendant JARED BLUMENFELD is sued in his official capacity as EPA Regional  
10 Administrator for Region IX. He is responsible for implementing and enforcing the CAA in  
11 Region IX, which includes the South Coast Air Basin.

### 12 **STATUTORY FRAMEWORK**

13 21. The CAA establishes a partnership between EPA and the states for the attainment and  
14 maintenance of national air quality goals. *See* 42 U.S.C. §§ 7401-7515. Under the CAA, EPA  
15 has set health-based primary NAAQS for six pollutants. *See* 40 C.F.R. part 50.4-50.13.

16 22. EPA has established NAAQS for annual average, and 24-hour average, levels of PM<sub>2.5</sub>.  
17 40 C.F.R. § 50.13.

18 23. EPA has established NAAQS for the eight-hour ozone standard. 40 C.F.R. § 50.10(a).

19 24. The CAA requires states to designate areas that do not meet the NAAQS as  
20 “nonattainment” areas. 42 U.S.C. § 7407(d). States, or regions within a state, must adopt a  
21 pollution control plan that contains enforceable emissions limitations necessary to attain the  
22 NAAQS and meet applicable requirements of the CAA, including ensuring attainment,  
23 maintenance, and enforcement of the NAAQS. 42 U.S.C. §§ 7410(a)(1), (a)(2)(A); 7502(c)(6).  
24 All such plans must be submitted to, and are subject to approval by, EPA. 42 U.S.C. §  
25 7410(a)(1), (k).

26 25. Within sixty days of EPA’s receipt of a proposed SIP revision, the CAA requires EPA to  
27 determine whether the submission is sufficient to meet the minimum criteria established by  
28

1 EPA for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make such a  
2 “completeness” finding, the proposed SIP revision is deemed complete by operation of law six  
3 months after submission. *Id.* If EPA determines that the proposed SIP revision does not meet  
4 the minimum criteria, the state is considered not to have made the submission. 42 U.S.C. §  
5 7410(k)(1)(C).

6 26. Within twelve months of finding that a proposed SIP revision is complete (or deemed  
7 complete by operation of law), EPA must act to approve, disapprove, or approve in part and  
8 disapprove in part, the submission. 42 U.S.C. § 7410(k)(2)-(3).

9 27. If EPA disapproves the revision, then the CAA requires EPA to impose sanctions against  
10 the offending state or region, including increased offsets for new and modified major stationary  
11 sources or a prohibition on the use of federal highway funds, unless the State submits revisions  
12 within 18 months. 42 U.S.C. § 7509(a), (b). EPA must impose both offsets and highway  
13 funding sanctions unless the state has corrected the deficiency within 24 months. *Id.* Moreover,  
14 the CAA requires EPA to promulgate a Federal Implementation Plan within 24 months of  
15 disapproval unless the state has corrected the deficiency and EPA has approved the revision. 42  
16 U.S.C. § 7410(c).

17 28. Once EPA approves a SIP or SIP revision, the region must comply with any and all  
18 emission standards and limitations contained in the SIP, and all such standards and limitations  
19 become federal law and are enforceable by EPA and citizens in federal courts. *See* 42 U.S.C. §§  
20 7413; 7604(a), (f).

21 29. If EPA fails to comply with a non-discretionary duty, such as acting on a proposed SIP  
22 revision within the CAA deadlines, the CAA allows citizens to bring suit to compel EPA to  
23 perform its duty. 42 U.S.C. § 7604(a)(2).

## 24 **FACTUAL BACKGROUND**

### 25 Ozone and Particulate Matter Pollution in California

26 30. Ground-level ozone is formed by a photochemical reaction between oxides of nitrogen  
27 (called NO<sub>x</sub>) and hydrocarbons (sometimes referred to as Volatile Organic Compounds or  
28

1 “VOCs”) in the lower atmosphere. Unlike ozone in the upper atmosphere, which is formed  
2 naturally and shields the earth from harmful levels of ultraviolet radiation, ozone at ground level  
3 is primarily formed from anthropogenic pollution and has a variety of adverse effects on  
4 vegetation, crops, and materials, in addition to serious impacts on human health.

5 31. The health effects of ozone at levels even below the national ozone standard include the  
6 exacerbation of asthma and emphysema and adverse effects on children and the elderly. Persons  
7 with respiratory illnesses, children who engage in outdoor activities, and adults who perform  
8 heavy manual labor or exercise vigorously are particularly vulnerable to adverse health effects  
9 from ozone exposure.

10 32. Ozone is also toxic to plants, reducing crop yields and damaging trees.

11 33. Fine particulate matter (“PM<sub>2.5</sub>”) pollution results primarily from the combustion  
12 associated with motor vehicle engines, utilities, and wood burning, and from chemical reactions  
13 between various gaseous pollutants in the atmosphere. Exposure to PM<sub>2.5</sub> is linked to  
14 exacerbated respiratory illnesses, increased hospitalizations, and premature death. PM<sub>2.5</sub>  
15 bypasses the immune system and becomes deeply embedded in the lungs, where it can disrupt  
16 cellular processes and permanently impair lung function, especially in young children.

17 34. The South Coast Air Basin is designated as a nonattainment area for the ozone  
18 (classification “extreme”) and PM<sub>2.5</sub> NAAQS. The 2007 State Implementation Plan to attain the  
19 8-hour ozone and PM<sub>2.5</sub> NAAQS (“2007 State SIP”) made a series of new State commitments to  
20 reduce the amount of ozone-forming and particulate matter pollution necessary to attain the  
21 ozone and PM<sub>2.5</sub> NAAQS. It also described feasible approaches to reduce emissions from  
22 sources under the jurisdiction of the federal government. The California Air Resources Board  
23 (“CARB”) adopted the 2007 State SIP on September 27, 2007. CARB submitted the State SIP to  
24 EPA on November 16, 2007.

25 35. The 2007 Air Quality Management Plan for the South Coast Air Quality Management  
26 District (“2007 South Coast SIP”) revised the previous 8-hour ozone and PM<sub>2.5</sub> plans for the  
27 South Coast Air Basin. The 2007 South Coast SIP revised the emission inventory and attainment

1 demonstration, and included additional control measures or commitments to adopt control  
2 measures necessary to attain the 8-hour ozone and PM<sub>2.5</sub> NAAQS. The South Coast Air Quality  
3 Management District (“SCAQMD”) approved the 2007 South Coast SIP on June 1, 2007.  
4 CARB approved the 2007 South Coast SIP on September 27, 2007. CARB submitted the 2007  
5 South Coast SIP to EPA on November 28, 2007.

6  
7 **FIRST CAUSE OF ACTION**  
8 **FAILURE TO PERFORM A NON-DISCRETIONARY DUTY TO ACT ON**  
9 **THE 2007 STATE SIP**  
10 **(42 U.S.C. § 7604(a)(2))**

11 36. NRDC re-alleges and incorporates by reference the allegations set forth in paragraphs 1  
12 to 35.

13 37. CARB submitted the 2007 State SIP to EPA on November 16, 2007.

14 38. On or about November 16, 2007, EPA received the 2007 State SIP.

15 39. By operation of law, the 2007 State SIP was deemed complete on or about May 16,  
16 2008, when EPA failed to make a completeness finding. *See* 42 U.S.C. § 7410(k)(1)(B).

17 40. The CAA requires EPA to act on (*i.e.* approve, disapprove, or approve in part and  
18 disapprove in part) the 2007 State SIP within 12 months of the date of the completeness finding.  
19 42 U.S.C. § 7410(k)(2). Thus, the deadline for EPA to act on the 2007 State SIP was on or  
20 about May 16, 2009.

21 41. EPA has failed to take the actions required by the CAA with regard to the 2007 State SIP.

22 42. Accordingly, EPA has violated and continues to violate CAA § 110(k)(2), 42 U.S.C. §  
23 7410(k)(2), since May 16, 2009.

24 43. This CAA violation constitutes a “failure of the Administrator to perform any act or duty  
25 under this chapter which is not discretionary with the Administrator,” within the meaning of the  
26 CAA’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation is ongoing and will  
27 continue unless remedied by this Court.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 2. ISSUE preliminary and permanent injunctions directing EPA to finalize action on the 2007 State SIP and the 2007 South Coast SIP;
- 3. RETAIN jurisdiction over this matter until such time as EPA has complied with its non-discretionary duties under the CAA;
- 4. AWARD to plaintiffs their costs of litigation, including reasonable attorney and expert witness fees; and
- 5. GRANT such additional relief as the Court may deem just and proper.

Respectfully submitted on this 12th day of August 2010.

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By: Adriano L. Martinez

Adriano L. Martinez  
Attorneys for Plaintiffs  
Natural Resources Defense Council, Inc.,  
and Coalition for a Safe Environment

LAW OFFICES OF ANGELA JOHNSON MESZAROS

By: Angela Johnson Meszaros

Angela Johnson Meszaros  
Attorneys for Plaintiff  
Coalition for a Safe Environment