

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLUE RIDGE ENVIRONMENTAL
DEFENSE LEAGUE
P.O. Box 88
Glendale Springs, NC 28629;

CLEAN WISCONSIN
634 W. Main St. #300
Madison, WI 53703;

MIDWEST ENVIRONMENTAL DEFENSE
CENTER
P.O. Box 2443
Madison, WI 53701;

and

SIERRA CLUB
85 Second Street, 2d Floor
San Francisco, CA 94105;

Plaintiffs,

v.

GINA McCARTHY, Administrator, U.S.
Environmental Protection Agency, in her
official capacity,
1200 Pennsylvania Ave., NW
Washington, DC 20460,

Defendant.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a suit to compel the Administrator of the United States Environmental Protection Agency (“EPA”) to take actions mandated by the Clean Air Act, 42 U.S.C. §§ 7401-7671q (“the Act”) to protect public health and the environment from major industrial sources of highly toxic air pollutants. The Act requires the Administrator to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies)” the emission standards for hazardous air pollutants promulgated under § 7412(d) no later than eight years after such standards are initially promulgated. *Id.* § 7412(d)(6). In addition, eight years after promulgating § 7412(d) standards, the Administrator either must promulgate additional “residual risk” standards under § 7412(f)(2), due to the risk remaining after the application of the § 7412(d) standards, or must determine that residual risk standards are not required to protect human health or the environment. *Id.* § 7412(f)(2). Yet the Administrator has missed the statutory deadlines to complete the required regulatory duties for the 13 categories of sources of toxic air pollution that are the subject of this complaint. The Administrator has not taken the actions required by § 7412(d)(6) and § 7412(f)(2) for each of the categories of sources of hazardous air pollutants enumerated in Table A, below (column entitled “Source Category”) (collectively, the “Source Categories”):

Table A: Source Categories Covered By This Complaint		
Source Category	Date Of Promulgation	Deadline For Action Pursuant To § 7412(d)(6) And § 7412(f)(2)
1. Leather Finishing Operations, 67 Fed. Reg. 9156 (codified at 40 C.F.R. Part 63 Subpart TTTT)	Feb. 27, 2002	Feb. 27, 2010
2. Wet-Formed Fiberglass Mat Production, 67 Fed. Reg. 17,824 (codified at 40 C.F.R. Part 63 Subpart HHHH)	Apr. 11, 2002	Apr. 11, 2010

Table A: Source Categories Covered By This Complaint		
Source Category	Date Of Promulgation	Deadline For Action Pursuant To § 7412(d)(6) And § 7412(f)(2)
3. Rubber Tire Manufacturing, 67 Fed. Reg. 45,588 (codified at 40 C.F.R. Part 63 Subpart XXXX)	July 9, 2002	July 9, 2010
4. Surface Coating of Large Appliances, 67 Fed. Reg. 48,254 (codified at 40 C.F.R. Part 63 Subpart NNNN)	July 23, 2002	July 23, 2010
5. Friction Materials Manufacturing Facilities, 67 Fed. Reg. 64,498 (codified at 40 C.F.R. Part 63 Subpart QQQQ)	Oct. 18, 2002	Oct. 18, 2010
6. Surface Coating of Metal Furniture, 68 Fed. Reg. 28,606 (codified at 40 C.F.R. Part 63 Subpart RRRR)	May 23, 2003	May 23, 2011
7. Surface Coating of Wood Building Products, 68 Fed. Reg. 31,746 (codified at 40 C.F.R. Part 63 Subpart QQQQ)	May 28, 2003	May 28, 2011
8. Printing, Coating, and Dyeing of Fabrics and Other Textiles, 68 Fed. Reg. 32,172 (codified at 40 C.F.R. Part 63, Subpart OOOO)	May 29, 2003	May 29, 2011
9. Taconite Iron Ore Processing, 68 Fed. Reg. 61,868 (codified at 40 C.F.R. Part 63 Subpart RRRRR)	Oct. 30, 2003	Oct. 30, 2011
10. Miscellaneous Coating Manufacturing, 68 Fed. Reg. 69,164 (codified at 40 C.F.R. Part 63 Subpart HHHHH)	Dec. 11, 2003	Dec. 11, 2011
11. Lime Manufacturing Plants, 69 Fed. Reg. 394 (codified at 40 C.F.R. Part 63 Subpart AAAAA)	Jan. 5, 2004	Jan. 5, 2012
12. Iron and Steel Foundries, 69 Fed. Reg. 21,906 (codified at 40 C.F.R. Part 63 Subpart EEEEE)	Apr. 22, 2004	Apr. 22, 2012
13. Plywood and Composite Wood Products, 69 Fed. Reg. 45,944 (codified at 40 C.F.R. Part 63 Subpart DDDD)	July 30, 2004	July 30, 2012

2. Due to the Defendant Administrator's failures to act, Plaintiffs Blue Ridge Environmental Defense League, Clean Wisconsin, Midwest Environmental Defense Center, and Sierra Club (collectively, "Plaintiffs") seek both a determination that the Defendant Administrator's failures to perform each action required by 42 U.S.C. § 7412(d)(6) and § 7412(f)(2) violate the Clean Air Act, and an order to compel the Administrator to take each required action in accordance with an expeditious deadline set by this Court.

JURISDICTION AND VENUE

3. This action arises under the Clean Air Act, 42 U.S.C. § 7412(d)(6), (f)(2). This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1331, and 28 U.S.C. § 1361. This Court may order the Administrator to perform the requisite acts and duties, may issue a declaratory judgment, and may grant further relief pursuant to 42 U.S.C. § 7604(a), the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 28 U.S.C. § 1361. Plaintiffs have a right to bring this action pursuant to the Clean Air Act, 42 U.S.C. § 7604(a)(2), 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4. By certified letters to the Administrator posted on August 23, 2013 and December 23, 2015, Plaintiffs gave notice of this action as required by 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, §§ 54.1-.3 (Dec. 9, 1971).

5. Venue is vested in this Court under 28 U.S.C. § 1391(e) because the Defendant, EPA Administrator Gina McCarthy, resides in this district.

PARTIES

6. Plaintiff Blue Ridge Environmental Defense League ("BREDL") is a non-profit public interest organization incorporated under North Carolina law with member chapters and individual members in North Carolina, as well as Alabama, Georgia, Mississippi, South

Carolina, Tennessee, and Virginia. Founded in 1984, BREDL's mission is the protection of the natural environment and public health. BREDL brings this action on behalf of itself, its chapters, and its members.

7. Plaintiff Clean Wisconsin is a non-profit environmental advocacy organization with 40,000 members and Action Network supporters statewide. Formed in 1970 as Wisconsin's Environmental Decade, the organization has led the state in policy and legal work that protects Wisconsin's clean air and water for over forty-five years. Clean Wisconsin brings this action on behalf of itself and its members and supporters. Clean Wisconsin educates and informs its members and the public about the health impacts of air pollution, advocates in state agency proceedings to protect air quality, and takes legal action to enforce state and federal air permit laws.

8. Plaintiff Midwest Environmental Defense Center is a public interest environmental organization based in Madison, Wisconsin. Midwest Environmental Defense Center's mission is to protect and restore the environment, natural resources, and public health of the upper Midwest by ensuring that laws designed to protect the public are applied and enforced as they were intended. Midwest Environmental Defense Center brings this action on behalf of itself and its members.

9. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the laws of the State of California, with its headquarters located in San Francisco, California. Sierra Club brings this action on behalf of itself and its members. A national organization dedicated to the protection of public health and the environment, including clean air, Sierra Club has more than 635,000 members who reside in all 50 states and the District of Columbia.

10. Defendant Gina McCarthy is the Administrator of the EPA. In that role she is charged with the duty to uphold the Clean Air Act and to take required regulatory actions according to the schedules established therein.

LEGAL FRAMEWORK

11. The Clean Air Act has the purpose “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

12. A “primary goal” of the Act is “pollution prevention.” *Id.* § 7401(c). Congress found the Act to be necessary in part because “the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation.” *Id.* § 7401(a)(2).

13. To accomplish its objectives, the Act prescribes a regulatory framework within which EPA is required to set technology and risk-based standards by specific deadlines to reduce emissions of hazardous air pollutants¹ and harm to health and the environment. *Id.* § 7412.

14. In the 1990 Clean Air Act Amendments, Congress established new requirements for EPA to control toxic air pollution. *Id.* By statute, Congress listed 189 hazardous air pollutants for regulation, and required EPA to list every other compound “known to cause or [that] may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.” *Id.* § 7412(b)(1), (b)(3)(B); *see also id.* § 7412(c)(6).² Pursuant to the

¹ The term “hazardous air pollutant” is defined as “any air pollutant listed pursuant to [§ 112(b)].” 42 U.S.C. § 7412(a)(6) (citing *id.* § 7412(b)).

² Currently, 187 hazardous air pollutants are listed for regulation. EPA, *Technology Transfer*

Act's requirement that EPA "identify not less than 30 hazardous air pollutants which ... present the greatest threat to public health in the largest number of urban areas," *id.* § 7412(k)(3)(B)(i), EPA published an "Integrated Urban Air Toxics Strategy" that listed 33 pollutants, including arsenic compounds, benzene, formaldehyde, mercury compounds, and nickel compounds. National Air Toxics Program: The Integrated Urban Strategy, 64 Fed. Reg. 38,706, 38,715 tbl.1 (July 19, 1999).

15. The Act requires EPA to list categories of major sources of hazardous air pollutants. 42 U.S.C. § 7412(c)(1). A "major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." *Id.* § 7412(a)(1).

16. EPA must then promulgate emission standards for each listed category or subcategory of major sources of hazardous air pollutants. *Id.* § 7412(d). These standards are often referred to as "maximum achievable control technology" or "MACT" standards.

17. Once the Administrator has promulgated emission standards pursuant to § 7412(d) for a source category, "[t]he Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years." *Id.* § 7412(d)(6). This provision requires the Administrator either to promulgate revised § 7412(d) standards or to issue a final determination not to revise the existing standards based upon a published finding that revision is not "necessary" to ensure the emission standards satisfy § 7412(d) of the Act. *Id.*

Network – Air Toxics Web Site: Modifications to the 112(b)1 Hazardous Air Pollutants, <http://www.epa.gov/ttn/atw/pollutants/atwsmod.html> (last updated Feb. 23, 2016).

18. Section 7412(f) of the Act requires further action “to protect health and environment.” It mandates that EPA first submit a report to Congress regarding residual risk or “the risk to public health remaining, or likely to remain” after the application of § 7412(d) standards. *Id.* § 7412(f)(1). In 1999, EPA submitted a report to Congress pursuant to § 7412(f)(1). *See* EPA, EPA-453/R-99-001, *Residual Risk Report to Congress* (Mar. 1999), *available at* http://www.epa.gov/airtoxics/rrisk/risk_rep.pdf. Congress did not act on that report’s recommendations.

19. Congressional inaction triggered the duty of the Administrator to determine whether to promulgate residual risk standards under §7412(f)(2) for those source categories for which EPA had promulgated § 7412(d) standards. 42 U.S.C. § 7412(f)(2). Section 7412(f)(2) directs that:

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to [§ 7412(d)], promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section ... or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) If standards promulgated pursuant to [§ 7412(d)] and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

...

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years

after promulgation of the [§ 7412(d) standards] for each source category or subcategory concerned.

Id. Thus, if residual risk standards are “required in order to provide an ample margin of safety to protect public health” or “to prevent ... an adverse environmental effect,” then the Administrator is directed to promulgate these standards within eight years of the promulgation of § 7412(d) standards. *Id.* § 7412(f)(2)(A). Under § 7412(f)(2), EPA is therefore required either to set new standards that will protect the public with an ample margin of safety or to determine that such standards are not necessary.

20. The Act guarantees citizens a right to present their views and information to EPA and have them considered by the agency. The Act applies § 7607(d) rulemaking requirements to “the promulgation or revision of any ... emission standard or limitation under section 7412(d) of this title” and “any standard under section 7412(f) of this title,” among others. *Id.* § 7607(d)(1)(C). Section 7607(d) requires EPA to provide public notice of proposed rulemaking accompanied by a statement of its basis and purpose, which must include the factual data on which the proposed rule is based and the methodology used in obtaining and analyzing the data. *Id.* § 7607(d)(3). Section 7607(d) also requires EPA to allow any person to submit written comments, data, or documentary information, and to present data, views, or arguments orally. *Id.* § 7607(d)(5). EPA must consider such comments, data, and arguments submitted, and respond to each of the significant comments, criticisms, and new data when promulgating the final rule. *Id.* § 7607(d)(6)(B).

21. Section 7412(d) and section 7412(f) standards become effective “upon promulgation.” *See id.* § 7412(d)(10), (f)(3); *see also id.* § 7412(f)(4) (setting compliance dates for § 7412(f) standards); *id.* § 7412(i) (setting compliance schedule for § 7412(d) standards).

FACTS

22. Breathing toxic air is a serious health problem in many communities across the country. According to EPA, more than 13.8 million people in America face lifetime cancer risks of above 100 in a million due to exposures to toxic air pollution. EPA, EPA-456/R-14-001, *Nat'l Air Toxics Program, The Second Integrated Urban Air Toxics Report to Congress* at xv, 3-17 (Aug. 2014), available at <http://www.epa.gov/sites/production/files/2014-08/documents/082114-urban-air-toxics-report-congress.pdf>. People of color and lower income people suffer disproportionate exposure to hazardous air pollutants and resulting harm to their health because they are more likely to live and work near sources of toxic pollution. See, e.g., Rachel Morello-Frosch *et al.*, *Understanding the Cumulative Impacts of Inequalities in Environmental Health: Implications for Policy*, 30:5 Health Affairs 879, 881 (2011) (citing studies), available at <http://content.healthaffairs.org/content/30/5/879.full.pdf+html>.

23. EPA has listed each of the Source Categories enumerated in Paragraph 1, Table A, above, as major sources of hazardous air pollutants. Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 31,576 (July 16, 1992); National Emission Standards for Hazardous Air Pollutants; Revision of Initial List of Categories of Sources and Schedule for Standards Under Sections 112(c) and (e) of the Clean Air Act Amendments of 1990, 61 Fed. Reg. 28,197 (June 4, 1996); National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List and Schedule for Standards Under Section 112 of the Clean Air Act, 64 Fed. Reg. 63,025 (Nov. 18, 1999).

24. Sources in the Source Categories emit hazardous air pollutants regulated under 42 U.S.C. § 7412. EPA has recognized that the pollutants emitted by sources in the Source Categories include metals, such as arsenic, lead, and nickel; organic compounds, such as

benzene, dioxins, formaldehyde, and styrene; and inorganic acid gases, such as hydrogen chloride, hydrogen fluoride, and chlorine. Congress determined these pollutants are hazardous when it listed them and required EPA to regulate sources that emit them. 42 U.S.C. § 7412(b)(1), (c)-(d).

25. EPA has recognized that the hazardous air pollutants emitted by sources in the Source Categories can cause serious acute and chronic human health effects. Breathing some of these pollutants can cause cancer. EPA has recognized that carcinogens have no safe level of human exposure. *Natural Res. Def. Council v. EPA*, 824 F.2d 1211, 1215 (D.C. Cir. 1987) (observing that EPA determined “that known and probable carcinogens have no safe threshold”); *see also* S. Rep. 101-228, at 175 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3560 (“Federal Government health policy since the mid-1950s has been premised on the principle that there is no safe level of exposure to a carcinogen”). Breathing some of these pollutants can cause chronic, long-term harm other than cancer, such as neurological harms; damage to the liver and kidneys; respiratory disorders; depression; and developmental and reproductive harms, including birth defects, spontaneous abortion in pregnant women, decreased fertility, impotence, sterility, and growth retardation. In addition, breathing some of these pollutants can cause severe or acute harm from short-term exposure.

26. Some people face greater health harms from exposure to hazardous air pollutants emitted from the sources in the Source Categories because they are not exposed only to one pollutant, to one source, or through one route of exposure. Instead, they face combined and synergistic effects from multiple pollutants, multiple pathways of exposure, and multiple sources, all at once.

27. Some of the hazardous air pollutants emitted from the sources in the Source Categories persist in the environment or bioaccumulate. For example, EPA has determined that lead is a persistent, bioaccumulative, and toxic chemical that threatens the neurological development of children and is likely to cause cancer. Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting, 66 Fed. Reg. 4500, 4501-04 (Jan. 17, 2001); EPA, *Lead Compounds, Hazard Summary*, <http://www3.epa.gov/airtoxics/hlthef/lead.html> (last updated Feb. 23, 2016). There is no safe level of human exposure to lead. Nat'l Inst. of Env'tl. Health Scis., *Lead*, www.niehs.nih.gov/health/topics/agents/lead/ (last updated Feb. 4, 2016); World Health Org., *Lead poisoning and health*, www.who.int/mediacentre/factsheets/fs379/en/ (last updated Aug. 2015). In another example, mercury, which is emitted by sources in the Source Categories, is deposited in water and accumulates in the aquatic food chain. EPA, *Basic Information about Mercury*, <http://www.epa.gov/mercury/basic-information-about-mercury> (last updated Oct. 19, 2015). EPA has determined that pregnant women and developing fetuses and young children are particularly vulnerable to mercury exposure. *Id.*; National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, 76 Fed. Reg. 24,976, 24,977-78 (May 3, 2011). Pollutants that persist or bioaccumulate in the environment can harm human health when people are exposed through routes other than breathing the pollution, such as after pollutants fall on the soil and children are exposed through playing in the soil, or when people eat fish, shellfish, breast-milk, or other food in which such pollutants have accumulated. *See, e.g.,* EPA, *Basic Information about Mercury*. In addition, EPA has found that such pollutants

can harm fish and plants. *See, e.g., id.*; EPA, EPA-452/R-97-008, *Mercury Study Report to Congress*, Vol. VI at 2-26 to 2-27 (Dec. 1997), *available at*

<http://www.epa.gov/sites/production/files/2015-09/documents/volume6.pdf>.

28. Sources in the Source Categories also emit other types of pollutants, including particulate matter, volatile organic compounds, carbon monoxide, sulfur dioxide, and nitrogen oxides. EPA has found that volatile organic compounds and nitrogen oxides are precursors to the formation of ozone in the ambient air. EPA, *Air Emissions Sources: Basic Information*, <http://www3.epa.gov/air/emissions/basic.htm> (last updated Feb. 23, 2016). EPA has found that ambient ozone can cause reduction of lung function, respiratory symptoms (*e.g.*, cough, chest pain, throat and nose irritation), increased lung inflammation, increased lung permeability, and airway hyperresponsiveness. EPA, EPA 600/R-10/076F, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* at 6-1 to 6-3 (Feb. 2013), *available at* http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=511347. EPA has found that ozone can also damage vegetation including forests, commercial trees, and agricultural crops, and result in damage to ecosystems. *See, e.g., id.* at 9-3, fig.9-1.

29. The Administrator promulgated national emission standards for hazardous air pollutants for each of the Source Categories on the dates specified in Paragraph 1, Table A (column entitled “Date Of Promulgation”), above.

30. The Administrator was required to take final action to fulfill its 42 U.S.C. § 7412(f)(2) and § 7412(d)(6) duties for each of the Source Categories by the dates specified in Paragraph 1, Table A (column entitled “Deadline For Action Pursuant To § 7412(d)(6) And § 7412(f)(2)”), above, *i.e.*, “within 8 years after promulgation” and “no less often than every 8 years.”

31. Leather Finishing Operations

a. More than eight years have passed since the Administrator promulgated emission standards under 42 U.S.C. § 7412 for Leather Finishing Operations.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Leather Finishing Operations.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Leather Finishing Operations.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Leather Finishing Operations.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Leather Finishing Operations is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Leather Finishing Operations.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Leather Finishing Operations is currently effective.

32. Wet-Formed Fiberglass Mat Production

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Wet-Formed Fiberglass Mat Production.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Wet-Formed Fiberglass Mat Production.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Wet-Formed Fiberglass Mat Production.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Wet-Formed Fiberglass Mat Production.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Wet-Formed Fiberglass Mat Production is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Wet-Formed Fiberglass Mat Production.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Wet-Formed Fiberglass Mat Production is currently effective.

33. Rubber Tire Manufacturing

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Rubber Tire Manufacturing.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Rubber Tire Manufacturing.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Rubber Tire Manufacturing.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Rubber Tire Manufacturing.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Rubber Tire Manufacturing is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Rubber Tire Manufacturing.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Rubber Tire Manufacturing is currently effective.

34. Surface Coating of Large Appliances

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Surface Coating of Large Appliances.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Large Appliances.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Large Appliances.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Surface Coating of Large Appliances.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Surface Coating of Large Appliances is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Surface Coating of Large Appliances.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Surface Coating of Large Appliances is currently effective.

35. Friction Materials Manufacturing Facilities

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Friction Materials Manufacturing Facilities.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Friction Materials Manufacturing Facilities.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Friction Materials Manufacturing Facilities.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Friction Materials Manufacturing Facilities.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Friction Materials Manufacturing Facilities is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Friction Materials Manufacturing Facilities.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Friction Materials Manufacturing Facilities is currently effective.

36. Surface Coating of Metal Furniture

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Surface Coating of Metal Furniture.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Metal Furniture.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Metal Furniture.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Surface Coating of Metal Furniture.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Surface Coating of Metal Furniture is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Surface Coating of Metal Furniture.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Surface Coating of Metal Furniture is currently effective.

37. Surface Coating of Wood Building Products

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Surface Coating of Wood Building Products.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Wood Building Products.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Surface Coating of Wood Building Products.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Surface Coating of Wood Building Products.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Surface Coating of Wood Building Products is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Surface Coating of Wood Building Products.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Surface Coating of Wood Building Products is currently effective.

38. Printing, Coating, and Dyeing of Fabrics and Other Textiles

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Printing, Coating, and Dyeing of Fabrics and Other Textiles.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Printing, Coating, and Dyeing of Fabrics and Other Textiles.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Printing, Coating, and Dyeing of Fabrics and Other Textiles.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Printing, Coating, and Dyeing of Fabrics and Other Textiles.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Printing, Coating, and Dyeing of Fabrics and Other Textiles is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Printing, Coating, and Dyeing of Fabrics and Other Textiles.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Printing, Coating, and Dyeing of Fabrics and Other Textiles is currently effective.

39. Taconite Iron Ore Processing

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Taconite Iron Ore Processing.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Taconite Iron Ore Processing.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Taconite Iron Ore Processing.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Taconite Iron Ore Processing.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Taconite Iron Ore Processing is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Taconite Iron Ore Processing.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Taconite Iron Ore Processing is currently effective.

40. Miscellaneous Coating Manufacturing

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Miscellaneous Coating Manufacturing.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Miscellaneous Coating Manufacturing.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Miscellaneous Coating Manufacturing.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Miscellaneous Coating Manufacturing.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Miscellaneous Coating Manufacturing is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Miscellaneous Coating Manufacturing.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Miscellaneous Coating Manufacturing is currently effective.

41. Lime Manufacturing Plants

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Lime Manufacturing Plants.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Lime Manufacturing Plants.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Lime Manufacturing Plants.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Lime Manufacturing Plants.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Lime Manufacturing Plants is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Lime Manufacturing Plants.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Lime Manufacturing Plants is currently effective.

42. Iron and Steel Foundries

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Iron and Steel Foundries.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Iron and Steel Foundries.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Iron and Steel Foundries.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Iron and Steel Foundries.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Iron and Steel Foundries is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Iron and Steel Foundries.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Iron and Steel Foundries is currently effective.

43. Plywood and Composite Wood Products

a. More than eight years have passed since the Administrator promulgated emission standards under § 7412 for Plywood and Composite Wood Products.

b. The Administrator has not completed the reviews required by § 7412(d)(6) and § 7412(f)(2) for Plywood and Composite Wood Products.

c. The Administrator has not published public notice of a proposed rule or determination, and has not accepted comments, data, or argument on a proposed rule or determination, nor has she responded to significant comments or new data, or issued a statement of basis and purpose for a final rule or determination for the reviews required by § 7412(d)(6) and § 7412(f)(2) for Plywood and Composite Wood Products.

d. The Administrator has not promulgated a final rule or determination pursuant to § 7412(f)(2) for Plywood and Composite Wood Products.

e. No rule or determination promulgated pursuant to § 7412(f)(2) for Plywood and Composite Wood Products is currently effective.

f. The Administrator has not promulgated a revised final rule or determination pursuant to § 7412(d)(6) for Plywood and Composite Wood Products.

g. No rule or determination promulgated pursuant to § 7412(d)(6) for Plywood and Composite Wood Products is currently effective.

ALLEGATIONS OF INJURY

44. Plaintiffs and their members have been, are being, and will continue to be harmed by the Administrator's failures to take the actions required by 42 U.S.C. § 7412(d)(6) and § 7412(f)(2) for the Source Categories enumerated in Paragraph 1, Table A, above, as further explained herein.

45. Plaintiffs' members live, work, travel, recreate, and engage in a wide variety of other activities near sources in the Source Categories. Plaintiffs' members suffer exposure and other harm to their health, recreational, aesthetic, educational, professional, and other interests due to breathing the hazardous air pollutants emitted by sources in the Source Categories, by consuming food contaminated with pollutants from sources in the Source Categories, and by other pathways of exposure as described in paragraphs 25-27, above. Exposure to hazardous air pollutants emitted by sources in the Source Categories has adverse health effects which may include respiratory, neurological, developmental, and reproductive harm, damage to bodily organs and the central nervous system, and cancer, as well as other health effects described in paragraphs 25 and 27, above.

46. Plaintiffs' members are concerned that hazardous air pollutants are present in the locations where they live, work, travel, recreate, and engage in other activities. These reasonable concerns about their increased exposure from such activities and other resulting harms from such exposure diminish their enjoyment of activities and areas they previously enjoyed or would like to continue to engage in or use and thereby harm their recreational, aesthetic, educational, professional, and other interests.

47. Further, sources in the Source Categories emit hazardous air pollutants that can damage surrounding wildlife, plants, waters, land, communities, and ecosystems, and thus also harm Plaintiffs' members' recreational, aesthetic, educational, professional, and other interests in those wildlife, plants, waters, land, communities, or ecosystems. As detailed above, the hazardous air pollutants emitted by sources in the Source Categories include volatile organic compounds, which contribute to ambient ozone that can harm plant species and can result in changes in wildlife habitat. These changes can lead to wildlife avoidance of certain areas, as well as a reduction in biodiversity or other changes to a local community's ecosystem. Ecosystem changes make it more difficult for Plaintiffs' members to observe, fish, cultivate, study, research, or write about wildlife, plants, or ecosystems.

48. Plaintiffs and their members suffer additional harm because they do not have information, published findings, or determinations from the Administrator regarding the best available current pollution control methods, practices, and technologies to achieve emission reductions, the health and environmental risks that remain after application of the existing standards, or other information relevant to the need for stronger emission standards for the sources in the Source Categories. This information would be provided to Plaintiffs, their members, and all other interested members of the public as a result of the Administrator's

required actions pursuant to § 7412(d)(6) and § 7412(f)(2). *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(6) (describing notice and informational disclosures required as part of rulemakings under § 7412).

If Plaintiffs and their members had this information, they would use it to work for stronger health and environmental protections; to educate members, supporters, and the public pursuant to their organizational missions; and to protect themselves and their families from hazardous air pollutants and affected land, water, and food. The denial of this information impairs Plaintiffs' ability to provide information and services to their members to assist them in protecting their interests, hampers the ability of Plaintiffs and their members to take actions to protect their health and communities, and diminishes their enjoyment of activities in their daily life.

49. Plaintiffs and their members suffer harm because they are denied the opportunity to submit written comments, data, and documentary information to EPA and to present data, views, or arguments to EPA and have them considered by EPA and responded to as part of the overdue § 7412(d)(6) and § 7412(f)(2) rulemakings. The Administrator's failures to conduct the overdue rulemakings deny Plaintiffs and their members the opportunity to seek greater health protections and emissions reductions, and to have EPA consider and respond to such comments in taking the final actions required by § 7412(d)(6) and § 7412(f)(2). Deprivation of the ability to present comments and arguments and have them considered and addressed by EPA impairs Plaintiffs' and their members' ability to serve and protect their interests and fulfill their organizational missions.

50. Plaintiffs and their members suffer harm because the Administrator has not issued a final rule or determination under § 7412(d)(6) and § 7412(f)(2) addressing matters these provisions require, as discussed above. Any such rule or determination would be judicially reviewable. *See id.* § 7607(b); *see also id.* § 7607(d). Deprivation of the right of judicial review

harms the ability of Plaintiffs and their members to protect their interests and fulfill their organizational missions.

51. The Administrator's failures to take actions required by § 7412(d)(6) and § 7412(f)(2) deprive Plaintiffs' members of the cleaner air that would result from those actions. Consequently, Defendant prolongs and increases Plaintiffs' members' exposure to hazardous air pollutants and the related and resulting health, recreational, aesthetic, and other injuries as described above. Defendant also prolongs and increases the hazardous air pollutant exposure of wildlife, plant, water, land, local communities, and ecosystems, resulting in harm to Plaintiffs' members' interests, as described above. Emission reductions required under § 7412(d)(6) and § 7412(f)(2) would reduce these exposures, and would reduce the related health, recreational, aesthetic, and other harms suffered by Plaintiffs' members.

52. By not taking the actions required by § 7412(d)(6) and § 7412(f)(2), the Administrator deprives Plaintiffs and their members of information, published findings, and determinations, as described above. *See, e.g., id.* § 7607(d)(3)-(6). In addition, the Administrator's failures to take the actions required by § 7412(d)(6) and § 7412(f)(2) deprive Plaintiffs and their members of the opportunity to receive judicial review of the lawfulness of the final EPA actions. *See id.* § 7607(b). These failures make it more difficult for Plaintiffs and their members to seek health and environmental protections from hazardous air pollutants; to shield themselves, their families, and other community members from exposure to such pollutants; to protect their health, recreational, aesthetic, and other interests; and to be able to enjoy activities in their daily life without concerns about exposure to hazardous air pollutants. These failures also impair Plaintiffs' abilities to provide educational services to their members concerning hazardous air pollution from the sources in the Source Categories and hinder

Plaintiffs' ability to provide services and take actions vital to fulfilling their public health missions.

53. For all of the foregoing reasons, the failures complained of herein cause Plaintiffs and their members injuries for which they have no adequate remedy at law. Granting the requested relief would redress these injuries.

CLAIMS FOR RELIEF

54. The allegations of all foregoing paragraphs are hereby incorporated as if set forth fully herein.

Violations of § 7412(d)(6) of the Clean Air Act

55. Each of the Administrator's ongoing failures to review and either revise or issue a revision determination regarding the emission standards for each of the 13 Source Categories enumerated in Paragraph 1, Table A, above, in accordance with 42 U.S.C. § 7412(d)(6), constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary" within the meaning of § 7604(a)(2) of the Clean Air Act for each such source category.

56. Each day the Administrator fails to take these legally required actions, Defendant commits new, additional, and ongoing violations of its duties under § 7412(d)(6).

Violations of § 7412(f)(2) of the Clean Air Act

57. Each of the Administrator's ongoing failures either to promulgate § 7412(f)(2) residual risk standards or to issue a final determination not to promulgate such standards for each of the 13 Source Categories enumerated in Paragraph 1, Table A, above, constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary" within the meaning of § 7604(a)(2) of the Clean Air Act for each such source category.

58. Each day the Administrator fails to take these legally required actions, Defendant commits new, additional, and ongoing violations of its duties under § 7412(f)(2).

PRAYER FOR RELIEF

59. WHEREFORE, Plaintiffs respectfully request, for each of the Source Categories enumerated in Paragraph 1, Table A, above, that the Court:

(1) Declare that each of the Defendant Administrator's failures to review and either revise standards promulgated under § 7412(d) or issue a final determination that such revision is not necessary for each of the Source Categories pursuant to § 7412(d)(6) within eight years, constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of § 7604(a)(2);

(2) Order the Defendant Administrator to review and either to revise the emission standards or to issue a final determination that such revision is not necessary for each of the Source Categories pursuant to § 7412(d)(6) in accordance with an expeditious deadline specified by this Court;

(3) Declare that each of the Defendant Administrator's failures either to promulgate § 7412(f)(2) standards or to issue a final determination that such standards are not required for each of the Source Categories constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" within the meaning of § 7604(a)(2);

(4) Order the Defendant Administrator either to promulgate § 7412(f)(2) standards or to issue a final determination that such standards are not required for each of the Source Categories pursuant to § 7412(f)(2) in accordance with an expeditious deadline specified by this Court;

- (5) Retain jurisdiction to ensure compliance with this Court's decree;
- (6) Award Plaintiffs the costs of this action, including attorney's fees; and,
- (7) Grant such other relief as the Court deems just and proper.

DATED: February 24, 2016

Respectfully Submitted,

/s/ Nicholas Morales

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