

1 necessary (taking into account developments in practices, processes, and control technologies)”
2 the emission standards for hazardous air pollutants promulgated under section 112(d) not later
3 than eight years after such standards are initially promulgated. *Id.* § 7412(d)(6). In addition,
4 eight years after promulgating section 112(d) standards, the Administrator either must
5 promulgate additional standards under section 112(f)(2) due to the residual risk remaining after
6 the application of the section 112(d) standards or must determine that residual risk standards are
7 not required to protect human health or the environment. *Id.* § 7412(f). Yet the Administrator
8 has not taken the actions required by sections 112(d)(6) and 112(f)(2) for any of the following
9 categories of sources of hazardous air pollutants:
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- 12 (1) Aerospace Manufacturing and Rework Facilities, 60 Fed. Reg. 45,948 (Sept. 1, 1995);
- 13 (2) Chromium Electroplating and Anodizing, 60 Fed. Reg. 4948 (Jan. 25, 1995);
- 14 (3) Ferroalloys Production, 64 Fed. Reg. 27,450 (May 20, 1999);
- 15 (4) Flexible Polyurethane Foam Production, 63 Fed. Reg. 53,980 (Oct. 7, 1998);
- 16 (5) Generic MACT - Polycarbonates and Acrylic/Modacrylic Fibers Production, 64 Fed.
17 Reg. 34,854 (June 29, 1999);
- 18 (6) Marine Vessel Loading Operations, 60 Fed. Reg. 48,388 (Sept. 19, 1995);
- 19 (7) Mineral Wool Production, 64 Fed. Reg. 29,490 (June 1, 1999);
- 20 (8) Off-Site Waste Recovery Operations, 61 Fed. Reg. 34,140 (July 1, 1996);
- 21 (9) Pesticide Active Ingredient Production, 64 Fed. Reg. 33,550 (June 23, 1999);
- 22 (10) Pharmaceuticals Production, 63 Fed. Reg. 50,280 (Sept. 21, 1998);
- 23 (11) Phosphoric Acid/Phosphate Fertilizers, 64 Fed. Reg. 31,358 (June 10, 1999);
- 24 (12) Polyether Polyols Production, 64 Fed. Reg. 29,420 (June 1, 1999);
- 25 (13) Polymers and Resins I, 61 Fed. Reg. 46,906 (Sept. 5, 1996);

- 1 (14) Polymers and Resins III, 65 Fed. Reg. 3276 (Jan. 20, 2000);
- 2 (15) Polymers and Resins IV, 61 Fed. Reg. 48,208 (Sept. 12, 1996);
- 3 (16) Portland Cement Manufacturing, 64 Fed. Reg. 31,898 (June 14, 1999);
- 4 (17) Primary Aluminum, 62 Fed. Reg. 52,384 (Oct. 7, 1997);
- 5 (18) Primary Lead Smelting, 64 Fed. Reg. 30,194 (June 4, 1999);
- 6 (19) Printing and Publishing, 61 Fed. Reg. 27,132 (May 30, 1996);
- 7 (20) Pulp and Paper Production, 63 Fed. Reg. 18,504 (Apr. 15, 1998);
- 8 (21) Secondary Aluminum, 65 Fed. Reg. 15,690 (Mar. 23,2000);
- 9 (22) Secondary Lead Smelters, 60 Fed. Reg. 32,587 (June 23,1995);
- 10 (23) Shipbuilding and Ship Repair, 60 Fed. Reg. 64,330 (Dec. 15, 1995);
- 11 (24) Steel Pickling Process, 64 Fed. Reg. 33,202 (June 22, 1999);
- 12 (25) Wood Furniture Manufacturing, 60 Fed. Reg. 62,930 (Dec. 7, 1995); and,
- 13 (26) Wool Fiberglass Manufacturing, 64 Fed. Reg. 31,695 (June 14, 1999).

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16
17 Consequently, for each category of source enumerated above, Plaintiff Sierra Club seeks both a
18 determination that the Administrator's failure to perform each action required by sections
19 112(d)(6) and 112(f)(2) violates the Clean Air Act and an order to compel the Administrator to
20 take each required action in accordance with an expeditious deadline set by this Court.
21

22 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

23 2. This action arises under sections 112(d)(6) and 112(f) of the Clean Air Act
24 ("CAA"), 42 U.S.C. §§ 7412(d)(6), 7412(f)(2). This Court has jurisdiction over this action
25 pursuant to section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2), and 28 U.S.C. § 1331. This
26 Court may order the Administrator to perform the requisite acts and duties, may issue a
27 declaratory judgment and may grant further relief pursuant to section 304(a), 42 U.S.C. §
28

1 7604(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. Plaintiff has a right to bring
2 this action pursuant to section 304(a)(2) of the CAA, 42 U.S.C. § 7604(a)(2), and the
3 Administrative Procedure Act, 5 U.S.C. §§ 701-06.
4

5 3. By certified letter to the Administrator posted on November 13, 2008, Plaintiff
6 gave notice of this action as required by section 304(b)(2) of the CAA, 42 U.S.C. § 7604(b)(2),
7 and 40 C.F.R. Part 54.

8 4. Venue is vested in this Court under 28 U.S.C. § 1391(e) because Plaintiff Sierra
9 Club is headquartered in this district.
10

11 5. This case is properly assigned to the San Francisco/Oakland Division of this
12 Court under Civil L.R. 3-2(c)-(d) because Plaintiff maintains its headquarters in San Francisco,
13 CA.
14

15 **PARTIES**

16 6. Plaintiff Sierra Club is a nonprofit corporation organized and existing under the
17 laws of the State of California, with its headquarters located in San Francisco, CA. A national
18 organization dedicated to the protection of public health and the environment, including clean
19 air, Sierra Club has more than 700,000 members who reside in all fifty states and the District of
20 Columbia.
21

22 7. Defendant Stephen Johnson is the Administrator (“Administrator”) of the
23 Environmental Protection Agency (“EPA”), and in that role is charged with the duty to uphold
24 the Clean Air Act and to take required regulatory actions according to the schedules established
25 therein.
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27
28

1 **BACKGROUND**

2 8. A “primary goal” of the Clean Air Act is to encourage or promote governmental
3 actions for the prevention of air pollution. 42 U.S.C. § 7401(c). Congress found the Clean Air
4 Act to be necessary in part because “the growth in the amount and complexity of air pollution
5 brought about by urbanization, industrial development, and the increasing use of motor vehicles,
6 has resulted in mounting dangers to the public health and welfare, including injury to agricultural
7 crops and livestock, damage to and the deterioration of property, and hazards to air and ground
8 transportation.” *Id.* § 7401(a)(2). Subchapter I of the CAA thus aims “to protect and enhance
9 the quality of the Nation’s air resources so as to promote the public health and welfare and the
10 productive capacity of its population.” *Id.* § 7401(b)(1). To accomplish these objectives, the
11 CAA prescribes a regulatory framework within which EPA is required to set technology and
12 risk-based standards by specific deadlines to reduce emissions of hazardous air pollutants
13 (“HAP”) and resulting harm to health and the environment.¹

14 9. The Clean Air Act directs the Administrator of EPA to promulgate emission
15 standards for each category or subcategory of major sources of hazardous air pollutants. *Id.* §
16 7412(d)(1); *see also id.* § 7412(c) (list of source categories).² Such standards, known as the
17 “maximum achievable control technology” or “MACT” standards, “require the maximum degree
18 of reduction in emissions of the hazardous air pollutants subject to this section (including a
19 prohibition on such emissions, where achievable) that the Administrator, taking into
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25 ¹ The term “hazardous air pollutant” is defined as “any air pollutant listed pursuant to [section
26 112(b)].” 42 U.S.C. § 7412(a)(6) (citing § 7412(b)).

27 ² A “major source” is defined as “any stationary source or group of stationary sources located
28 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).

1 consideration the cost of achieving such emission reduction, and any non-air quality health and
2 environmental impacts and energy requirements, determines is achievable.” *Id.* § 7412(d)(2).
3 Regardless of what EPA determines is achievable, MACT standards for new sources “shall not
4 be less stringent than the emission control that is achieved in practice by the best controlled
5 similar source,” and MACT standards for existing sources must not be less stringent than either
6 “the average emission limitation achieved by the best performing 12 percent of the existing
7 sources . . . in the category or subcategory for categories and subcategories with 30 or more
8 sources” or “the average emission limitation achieved by the best performing 5 sources . . . in the
9 category or subcategory for categories or subcategories with fewer than 30 sources.” *Id.* §
10 7412(d)(3). For area sources, the Administrator may promulgate either MACT emission
11 standards under § 112(d)(2) or alternative emission standards which “provide for the use of
12 generally available control technologies,” known as “GACT” standards. *Id.* § 7412(d)(5).³

13
14
15
16 10. Once the Administrator has promulgated emission standards pursuant to section
17 112(d) for a source category, then section 112(d)(6) requires that “the Administrator shall
18 review, and revise as necessary (taking into account developments in practices, processes, and
19 control technologies), emission standards promulgated under this section no less often than every
20 8 years.” *Id.* § 7412(d)(6). This provision requires the Administrator to either revise the existing
21 section 112(d) standards or to issue a final determination not to revise them based upon a
22 published finding that revision is not “necessary.” *Id.*

23
24 11. Section 112(f) of the Act requires that EPA submit a report to Congress regarding
25 residual risk or “the risk to public health remaining, or likely to remain” after the application of
26

27
28 ³ An “area source” is defined as “any stationary source of hazardous air pollutants that is not a
major source.” 42 U.S.C. § 7412(a)(2).

1 section 112(d) standards. *Id.* § 7412(f)(1). In 1999, EPA submitted a report to Congress
2 pursuant to section 112(f)(1), 42 U.S.C. § 7412(f)(1). *See* EPA, RESIDUAL RISK REPORT TO
3 CONGRESS, EPA-453/R-99-001 (Mar. 1999), *available at*
4 http://www.epa.gov/ttncaaa1/t3/reports/risk_rep.pdf. Because that report did not include any
5 recommendations as to legislation regarding residual risk, Congress did not take action regarding
6 any recommendation.
7

8 12. Congressional inaction triggered the duty of the Administrator to determine
9 whether or not to promulgate residual risk standards under section 112(f)(2) for those sources for
10 which EPA had promulgated section 112(d) standards. 42 U.S.C. § 7412(f)(2). Section
11 112(f)(2) directs that:
12

13 (A) If Congress does not act on any recommendation submitted under paragraph (1),
14 the Administrator shall, within 8 years after promulgation of standards for each category
15 or subcategory of sources pursuant to section [112(d)] . . . , promulgate standards for such
16 category or subcategory if promulgation of such standards is required in order to provide
17 an ample margin of safety to protect public health in accordance with this section . . . or
18 to prevent, taking into consideration costs, energy, safety, and other relevant factors, an
19 adverse environmental effect. Emission standards promulgated under this subsection
20 shall provide an ample margin of safety to protect public health in accordance with this
21 subsection If standards promulgated pursuant to section [112(d)] . . . and applicable
22 to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a
23 known, probable or possible human carcinogen do not reduce lifetime excess cancer risks
24 to the individual most exposed to emissions from a source in the category or subcategory
25
26
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1 to less than one in one million, the Administrator shall promulgate standards under this
2 subsection for such source category.

3 . . .

4
5 (C) The Administrator shall determine whether or not to promulgate such standards
6 and, if the Administrator decides to promulgate such standards, shall promulgate the
7 standards 8 years after promulgation of [section 112(d) standards] . . . for each source
8 category or subcategory concerned.

9
10 *Id.* § 7412(f)(2). If residual risk standards are “required in order to provide an ample margin of
11 safety to protect public health” or “to prevent . . . an adverse environmental effect,” then the
12 Administrator is directed to promulgate these standards within eight years of the section 112(d)
13 standards. *Id.*

14 **GENERAL ALLEGATIONS**

15
16 13. Pursuant to section 112(d), EPA has promulgated national emission standards for
17 hazardous air pollutants emitted by the following source categories:

18 (1) Aerospace Manufacturing and Rework Facilities

19 a. On September 1, 1995, EPA promulgated national emission standards for
20 hazardous air pollutants for aerospace manufacturing and rework facilities. Final Rule,
21 National Emission Standards for Hazardous Air Pollutants for Source Categories:
22 Aerospace Manufacturing and Rework Facilities, 60 Fed. Reg. 45,948 (Sept. 1, 1995)
23 (“Aerospace NESHAP”); *see* 40 C.F.R. pt. 63 subpt. GG.

24
25 b. Aerospace facilities emit hazardous air pollutants including chromium,
26 cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol and
27 glycol ethers which may cause toxic effects including cancer, other chronic health
28

1 disorders, such as aplastic anemia, pancytopenia, pernicious anemia, and lung changes,
2 other acute health disorders, such as difficulty in breathing, upper respiratory tract
3 irritation with cough, conjunctivitis, and neurotoxic effects (e.g., visual blurring, tremors,
4 delirium, unconsciousness, coma, convulsions). *Id.* at 45,952.

5
6 c. By September 1, 2003, the Clean Air Act required the Administrator to
7 review and revise or determine that it is not necessary to revise the Aerospace NESHAP.
8 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
9 reviewed, revised, or determined not to revise this NESHAP. The Administrator thereby
10 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
11 U.S.C. § 7604(a)(2).

12
13 d. By September 1, 2003, the Clean Air Act required the Administrator to
14 promulgate residual risk standards or determine that they are not required for sources
15 regulated by the Aerospace NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline has
16 expired, but the Administrator has neither promulgated nor determined not to promulgate
17 residual risk standards for these sources. The Administrator thereby has failed to perform
18 a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

19
20 (2) Chromium Electroplating and Anodizing Facilities

21
22 a. On January 25, 1995, EPA promulgated national emission standards for
23 hazardous air pollutants for chromium electroplating and chromium anodizing tanks.
24 Final Rule, National Emission Standards for Chromium Emissions From Hard and
25 Decorative Chromium Electroplating and Chromium Anodizing Tanks, 60 Fed. Reg.
26 4948 (Jan. 25, 1995) (“Chromium NESHAP”); *see* 40 C.F.R. pt. 63 subpt. N.
27
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1 b. Hexavalent chromium compounds cause lung cancer in humans and
2 trivalent chromium can accumulate in the lungs, which may result in decreased lung
3 function. Proposed Rule, National Emission Standards for Hazardous Air Pollutants;
4 Proposed Standards for Chromium Emissions From Hard and Decorative Chromium
5 Electroplating and Chromium Anodizing Tanks, 58 Fed. Reg. 65,768, 65,768-69 (Dec.
6 16, 1993).

7
8 c. By January 25, 2003, the Clean Air Act required the Administrator to
9 review and revise or determine that it is not necessary to revise the Chromium NESHAP.
10 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
11 reviewed, revised, or determined not to revise this NESHAP. The Administrator thereby
12 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
13 U.S.C. § 7604(a)(2).

14
15 d. By January 25, 2003, the Clean Air Act required the Administrator to
16 promulgate residual risk standards or determine that they are not required for sources
17 regulated by the Chromium NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline has
18 expired, but the Administrator has neither promulgated nor determined not to promulgate
19 residual risk standards for these sources. The Administrator thereby has failed to perform
20 a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

21
22 (3) Ferrous Alloys Production

23
24 a. On May 20, 1999, EPA promulgated national emission standards for
25 hazardous air pollutants for ferrous alloys production facilities. Final Rule, National
26 Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production:
27
28

1 Ferromanganese and Silicomanganese, 64 Fed. Reg. 27,450 (May 20, 1999)

2 (“Ferroalloys NESHAP”); *see* 40 C.F.R. pt. 63 subpt. XXX.

3 b. Affected facilities emit manganese which is a hazardous air pollutant
4 associated with adverse health effects, including harm to the central nervous system, slow
5 visual reaction time, loss of eye-hand coordination, and imprecise hand movements
6 caused by small tremors. *Id.* at 27,450.

7
8 c. By May 20, 2007, the Clean Air Act required the Administrator to review
9 and revise or determine that it is not necessary to revise the Ferroalloys NESHAP. 42
10 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
11 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
12 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
13 7604(a)(2).

14
15 d. By May 20, 2007, the Clean Air Act required the Administrator to
16 promulgate residual risk standards or determine that they are not required for sources
17 regulated by the Ferroalloys NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
18 has expired, but the Administrator has neither promulgated nor determined not to
19 promulgate residual risk standards for these sources. The Administrator thereby has
20 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
21 U.S.C. § 7604(a)(2).

22 (4) Flexible Polyurethane Foam Production

23
24 a. On October 7, 1998, EPA promulgated national emission standards for
25 hazardous air pollutants for facilities producing flexible polyurethane foam. Final Rule,
26 National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane
27
28

1 Foam Production, 63 Fed. Reg. 53,980 (Oct. 7, 1998) (“Flexible Polyurethane Foam
2 NESHAP”); *see* 40 C.F.R. pt. 63 subpt. III.

3 b. Hazardous air pollutants emitted by these facilities include methylene
4 chloride, 2,4- toluene diisocyanate, methyl chloroform, methylene diphenyl diisocyanate,
5 propylene oxide, diethanolamine, methyl ethyl ketone, methanol, and toluene.

6 Methylene chloride is associated with harm to the human central nervous system,
7 headaches, dizziness, nausea, and memory loss. Animal studies have found harm to the
8 liver, kidney, cardiovascular, and reproductive systems, and an increased risk of liver and
9 lung cancer and mammary tumors. *Id.* at 53,980.

10 c. By October 7, 2006, the Clean Air Act required the Administrator to
11 review and revise or determine that it is not necessary to revise the Flexible Polyurethane
12 Foam NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the
13 Administrator has not reviewed, revised, or determined not to revise this NESHAP. The
14 Administrator thereby has failed to perform a nondiscretionary duty within the meaning
15 of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

16 d. By October 7, 2006, the Clean Air Act required the Administrator to
17 promulgate residual risk standards or determine that they are not required for sources
18 regulated by the Flexible Polyurethane Foam NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C).
19 This deadline has expired, but the Administrator has neither promulgated nor determined
20 not to promulgate residual risk standards for these sources. The Administrator thereby
21 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
22 U.S.C. § 7604(a)(2).

1 (5) Generic MACT: Polycarbonates and Acrylic/Modacrylic Fibers

2 Production

3 a. On June 29, 1999, EPA promulgated national emission standards for
4 hazardous air pollutants for the production of polycarbonates and acrylic or modacrylic
5 fibers. Final Rule, National Emission Standards for Hazardous Air Pollutants: Generic
6 Maximum Achievable Control Technology (Generic MACT), 64 Fed. Reg. 34,854 (June
7 29, 1999) (“Generic MACT NESHAP”); *see* 40 C.F.R. pt. 63 subpt. SS.

8
9 b. Hazardous air pollutants emitted by these sources may cause adverse
10 health effects including chronic health disorders (e.g., cancer, aplastic anemia, lung
11 structural changes), acute health disorders (e.g., dyspnea or difficulty in breathing), and
12 neurotoxic effects. *Id.* at 34,856.

13
14 c. By June 29, 2007, the Clean Air Act required the Administrator to review
15 and revise or determine that it is not necessary to revise the Generic MACT NESHAP.
16 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
17 reviewed, revised, or determined not to revise this NESHAP for all affected sources.⁴
18 The Administrator thereby has failed to perform a nondiscretionary duty within the
19 meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).
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24 ⁴ On December 16, 2008, EPA published a final determination under sections 112(d)(6) and
25 112(f)(2) after stating that it had performed a risk and technology review for certain sources
26 covered by the Generic MACT NESHAP. *See* National Emission Standards for Hazardous Air
27 Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
28 (Acetal Resins Production and Hydrogen Fluoride Production) (Risk and Technology Review),
73 Fed. Reg. 76,220 (Dec. 16, 2008). Plaintiff’s allegations address only those categories of
sources not covered by the December 2008 action such as polycarbonates and acrylic/modacrylic
fibers production.

1 d. By June 29, 2007, the Clean Air Act required the Administrator to
2 promulgate residual risk standards or determine that they are not required for sources
3 regulated by the Generic MACT NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
4 deadline has expired, but the Administrator has neither promulgated nor determined not
5 to promulgate residual risk standards for all of these sources. *See supra*, note 4. The
6 Administrator thereby has failed to perform a nondiscretionary duty within the meaning
7 of section 304(a)(2), 42 U.S.C. § 7604(a)(2).
8

9 (6) Marine Vessel Loading Operations
10

11 a. On September 19, 1995, EPA promulgated national emission standards for
12 hazardous air pollutants for marine tank vessel loading operations. Final Rule, Federal
13 Standards for Marine Tank Vessel Loading Operations and National Emission Standards
14 for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations, 60 Fed. Reg.
15 48,388 (Sept. 19, 1995) (“Marine Vessel Loading NESHAP”); *see* 40 C.F.R. pt. 63 subpt.
16 Y.
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18 b. These sources emit benzene, toluene, hexane, xylene, and ethylbenzene
19 from gasoline and crude oil loading as well as approximately 60 hazardous air pollutants
20 from alcohols and specialty chemicals. Proposed Rule, Marine Vessel Loading
21 NESHAP, 59 Fed. Reg. 25,004, 25,013 (May 13, 1994). In addition to adverse health
22 effects associated with the other hazardous air pollutants, benzene is a known human
23 carcinogen that has been demonstrated to increase the incidence of nonlymphocytic
24 leukemia, is linked to other leukemias as well as lymphomas and other tumor types and is
25 associated with other adverse effects to the blood and immune systems. The other
26 hazardous air pollutants emitted may induce adverse health effects such as depression of
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1 the central nervous system, upper respiratory tract and eye irritation, skeletal
2 abnormalities, anemia, cataracts, kidney damage and liver damage. *Id.* at 25,009.

3 c. By September 19, 2003, the Clean Air Act required the Administrator to
4 review and revise or determine that it is not necessary to revise the Marine Vessel
5 Loading NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the
6 Administrator has not reviewed, revised, or determined not to revise this NESHAP. The
7 Administrator thereby has failed to perform a nondiscretionary duty within the meaning
8 of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

9
10
11 d. By September 19, 2003, the Clean Air Act required the Administrator to
12 promulgate residual risk standards or determine that they are not required for sources
13 regulated by the Marine Vessel Loading NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
14 deadline has expired, but the Administrator has neither promulgated nor determined not
15 to promulgate residual risk standards for these sources. The Administrator thereby has
16 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
17 U.S.C. § 7604(a)(2).

18
19 (7) Mineral Wool Production

20 a. On June 1, 1999, EPA promulgated national emission standards for
21 hazardous air pollutants for mineral wool production facilities. Final Rule, National
22 Emission Standards for Hazardous Air Pollutants for Source Categories; National
23 Emission Standards for Hazardous Air Pollutants for Mineral Wool Production, 64 Fed.
24 Reg. 29,490 (June 1, 1999) (“Mineral Wool NESHAP”); *see* 40 C.F.R. pt. 63 subpt.
25 DDD.
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1 b. The hazardous air pollutants emitted by these facilities include carbonyl
2 sulfide, nine hazardous metals, formaldehyde, and phenol. Exposure is associated with
3 adverse carcinogenic, respiratory, nervous system, dermal, developmental, and
4 reproductive health effects. *Id.* at 29,490.

5
6 c. By June 1, 2007, the Clean Air Act required the Administrator to review
7 and revise or determine that it is not necessary to revise the Mineral Wool NESHAP. 42
8 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
9 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
10 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
11 7604(a)(2).
12

13 d. By June 1, 2007, the Clean Air Act required the Administrator to
14 promulgate residual risk standards or determine that they are not required for sources
15 regulated by the Mineral Wool NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
16 has expired, but the Administrator has neither promulgated nor determined not to
17 promulgate residual risk standards for these sources. The Administrator thereby has
18 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
19 U.S.C. § 7604(a)(2).
20

21 (8) Off-Site Waste Recovery Operations

22 a. On July 1, 1996, EPA promulgated national emission standards for
23 hazardous air pollutants for operations that receive certain wastes, used oil, and used
24 solvents from off-site locations for storage, treatment, recovery, or disposal, including
25 from industrial, commercial, mining, or agricultural activities. Final Rule, National
26 Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery
27
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1 Operations, 61 Fed. Reg. 34,140 (July 1, 1996) (“Off-Site Waste NESHAP); *see* 40
2 C.F.R. pt. 63 subpt. DD.

3 b. Various hazardous air pollutants and volatile organic compounds emitted
4 from these facilities may cause human cancer, aplastic anemia, lung structural changes,
5 dyspnea, upper respiratory tract irritation with cough, conjunctivitis, and neurotoxic
6 effects (e.g., visual blurring, tremors, delirium, unconsciousness, coma, convulsions), as
7 well as harm to agricultural crops, trees, other plants, and natural ecosystems. *Id.* at
8 34,143.
9

10 c. By July 1, 2004, the Clean Air Act required the Administrator to review
11 and revise or determine that it is not necessary to revise the Off-Site Waste NESHAP. 42
12 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
13 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
14 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
15 7604(a)(2).
16

17 d. By July 1, 2004, the Clean Air Act required the Administrator to
18 promulgate residual risk standards or determine that they are not required for sources
19 regulated by the Off-Site Waste NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
20 deadline has expired, but the Administrator has neither promulgated nor determined not
21 to promulgate residual risk standards for these sources. The Administrator thereby has
22 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
23 U.S.C. § 7604(a)(2).
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1 (9) Pesticide Active Ingredient Production

2 a. On June 23, 1999, EPA promulgated national emission standards for
3 hazardous air pollutants for pesticide active ingredient production facilities. Final Rule,
4 National Emission Standards for Hazardous Air Pollutants: Pesticide Active Ingredient
5 Production, 64 Fed. Reg. 33,550 (June 23, 1999) (“Pesticide NESHAP”); *see* 40 C.F.R.
6 pt. 63 subpt. MMM.
7

8 b. The hazardous air pollutants emitted by these sources include toluene,
9 methanol, methyl chloride, and hydrogen chloride, each of which may cause toxic effects
10 such as respiratory and skin irritation, neurological disorders (e.g., dizziness, headache,
11 and narcosis), effects on the eye (including blindness), damage to organs (e.g., liver,
12 kidney, and testes), and in extreme cases, death. *Id.* at 33,553. The volatile organic
13 compounds emitted may cause alterations in lung function and structure, and aggravation
14 of existing respiratory disease, as well as harm to human welfare due to agricultural and
15 other plant and environmental harm. *Id.* at 33,555.
16
17

18 c. By June 23, 2007, the Clean Air Act required the Administrator to review
19 and revise or determine that it is not necessary to revise the Pesticide NESHAP. 42
20 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
21 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
22 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
23 7604(a)(2).
24

25 d. By June 23, 2007, the Clean Air Act required the Administrator to
26 promulgate residual risk standards or determine that they are not required for sources
27 regulated by the Pesticide NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline has
28

1 expired, but the Administrator has neither promulgated nor determined not to promulgate
2 residual risk standards for these sources. The Administrator thereby has failed to perform
3 a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).
4

5 (10) Pharmaceuticals Production

6 a. On September 21, 1998, EPA promulgated national emission standards for
7 hazardous air pollutants for pharmaceutical manufacturing facilities. Final Rule, National
8 Emission Standards for Hazardous Air Pollutants for Source Categories: Pharmaceuticals
9 Production, 63 Fed. Reg. 50,280 (Sept. 21, 1998) (“Pharmaceuticals NESHAP”); *see* 40
10 C.F.R. pt. 63 subpt. GGG.
11

12 b. Hazardous air pollutants regulated by the Pharmaceuticals NESHAP
13 include methylene chloride, methanol, toluene, and hydrogen chloride. Methylene
14 chloride is a probable human carcinogen and the other pollutants can cause other toxic
15 effects on human health. *Id.* at 50,280.
16

17 c. By September 21, 2006, the Clean Air Act required the Administrator to
18 review and revise or determine that it is not necessary to revise the Pharmaceuticals
19 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
20 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
21 thereby has failed to perform a nondiscretionary duty within the meaning of section
22 304(a)(2), 42 U.S.C. § 7604(a)(2).
23

24 d. By September 21, 2006, the Clean Air Act required the Administrator to
25 promulgate residual risk standards or determine that they are not required for sources
26 regulated by the Pharmaceuticals NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
27 deadline has expired, but the Administrator has neither promulgated nor determined not
28

1 to promulgate residual risk standards for these sources. The Administrator thereby has
2 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
3 U.S.C. § 7604(a)(2).
4

5 (11) Phosphoric Acid and Phosphate Fertilizers

6 a. On June 10, 1999, EPA promulgated national emission standards for
7 hazardous air pollutants for phosphoric acid and phosphate fertilizers production. Final
8 Rule, National Emission Standards for Hazardous Air Pollutants Phosphoric Acid
9 Manufacturing and Phosphate Fertilizers Production, 64 Fed. Reg. 31,358 (June 10,
10 1999) (“Phosphoric and Phosphate NESHAP”); *see* 40 C.F.R. pt. 63 subpt. AA.
11

12 b. Hazardous air pollutants emitted by covered facilities include hydrogen
13 fluoride, HAP metals (arsenic, beryllium, cadmium, chromium, manganese, mercury, and
14 nickel), and methyl isobutyl ketone. These hazardous air pollutants may be associated
15 with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and
16 reproductive health effects. *Id.* at 31,358.
17

18 c. By June 10, 2007, the Clean Air Act required the Administrator to review
19 and revise or determine that it is not necessary to revise the Phosphoric and Phosphate
20 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
21 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
22 thereby has failed to perform a nondiscretionary duty within the meaning of section
23 304(a)(2), 42 U.S.C. § 7604(a)(2).
24

25 d. By June 10, 2007, the Clean Air Act required the Administrator to
26 promulgate residual risk standards or determine that they are not required for sources
27 regulated by the Phosphoric and Phosphate NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C).
28

1 This deadline has expired, but the Administrator has neither promulgated nor determined
2 not to promulgate residual risk standards for these sources. The Administrator thereby
3 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
4 U.S.C. § 7604(a)(2).
5

6 (12) Polyether Polyols Production

7 a. On June 1, 1999, EPA promulgated national emission standards for
8 hazardous air pollutants for polyether polyol production. Final Rule, National Emission
9 Standards for Hazardous Air Pollutants for Polyether Polyols Production, 64 Fed. Reg.
10 29,420 (June 1, 1999) (“Polyether NESHAP”); *see* 40 C.F.R. pt. 63 subpt. PPP.
11

12 b. The regulated facilities emit hazardous air pollutants including ethylene
13 oxide, propylene oxide, hexane, and toluene. Some of these HAPs are considered to be
14 probable human carcinogens and can cause other toxic effects. The regulated facilities
15 also emit VOCs. *Id.* at 29,420.
16

17 c. By June 1, 2007, the Clean Air Act required the Administrator to review
18 and revise or determine that it is not necessary to revise the Polyether NESHAP. 42
19 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
20 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
21 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
22 7604(a)(2).
23

24 d. By June 1, 2007, the Clean Air Act required the Administrator to
25 promulgate residual risk standards or determine that they are not required for sources
26 regulated by the Polyether NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline has
27 expired, but the Administrator has neither promulgated nor determined not to promulgate
28

1 residual risk standards for these sources. The Administrator thereby has failed to perform
2 a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

3 (13) Polymers and Resins I

4 a. On September 5, 1996, EPA promulgated national emission standards for
5 hazardous pollutants for elastomer production. Final Rule, National Emission Standards
6 for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, 61 Fed. Reg.
7 46,906 (Sept. 5, 1996) (“Polymers I NESHAP”); *see* 40 C.F.R. pt. 63 subpt. U.

8 b. Hazardous air pollutants emitted by the affected facilities include styrene,
9 n-hexane, 1,3-butadiene, acrylonitrile, methyl chloride, hydrogen chloride, carbon
10 tetrachloride, chloroprene, and toluene. Potential toxic effects of these pollutants include
11 cancer, eye, nose, throat, and skin irritation, liver and kidney toxicity, and neurotoxicity.
12 *Id.* at 46,906.

13 c. By September 5, 2004, the Clean Air Act required the Administrator to
14 review and revise or determine that it is not necessary to revise the Polymers I NESHAP.
15 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
16 reviewed, revised, or determined not to revise this NESHAP for all affected sources.⁵

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23 ⁵ On December 16, 2008, EPA published a final determination under sections 112(d)(6) and
24 112(f)(2) after stating that it had performed a risk and technology review for certain sources
25 covered by the Group I Polymers and Resins NESHAP. *See* National Emission Standards for
26 Hazardous Air Pollutant Emissions: Group I Polymers and Resins (Polysulfide Rubber
27 Production, Ethylene Propylene Rubber Production, Butyl Rubber Production, Neoprene
28 Production) (Risk and Technology Review), 73 Fed. Reg. 76,220 (Dec. 16, 2008). Plaintiff’s
allegations address only those sources not covered by the December 2008 action, such as
Epichlorohydrin Elastomers Production, Hypalon TM Production, Nitrile Butadiene Rubber
Production, Polybutadiene Rubber Production, and Styrene Butadiene Rubber and Latex
Production. *See* Polymers I NESHAP, 61 Fed. Reg. at 46,906 (providing non-exhaustive list of
regulated sources).

1 The Administrator thereby has failed to perform a nondiscretionary duty within the
2 meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

3 d. By September 5, 2004, the Clean Air Act required the Administrator to
4 promulgate residual risk standards or determine that they are not required for sources
5 regulated by the Polymers I NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
6 has expired, but the Administrator has neither promulgated nor determined not to
7 promulgate residual risk standards for all affected sources. *See supra*, note 5. The
8 Administrator thereby has failed to perform a nondiscretionary duty within the meaning
9 of section 304(a)(2), 42 U.S.C. § 7604(a)(2).
10
11

12 (14) Polymers and Resins III

13 a. On January 20, 2000, EPA promulgated national emission standards for
14 hazardous air pollutants for amino or phenolic resins production. Final Rule, National
15 Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production,
16 65 Fed. Reg. 3276 (Jan. 20, 2000) (“Polymers III NESHAP”); *see* 40 C.F.R. pt. 63 subpt.
17 OOO.
18

19 b. Facilities covered by the Polymers III NESHAP emit hazardous air
20 pollutants including formaldehyde, methanol, phenol, xylene, and toluene, which may
21 cause eye, nose, throat, and gastric irritation, blindness, damage to the nervous system,
22 muscle weakness, tremors, loss of coordination, paralysis, convulsions, coma, respiratory
23 problems, reproductive and pregnancy problems, birth defects, liver, kidney, and heart
24 effects. Formaldehyde is also a probable human carcinogen (for lung and
25 nasopharyngeal cancer). *Id.* at 3277.
26
27
28

1 c. By January 20, 2008, the Clean Air Act required the Administrator to
2 review and revise or determine that it is not necessary to revise the Polymers III
3 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
4 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
5 thereby has failed to perform a nondiscretionary duty within the meaning of section
6 304(a)(2), 42 U.S.C. § 7604(a)(2).
7

8 d. By January 20, 2008, the Clean Air Act required the Administrator to
9 promulgate residual risk standards or determine that they are not required for sources
10 regulated by the Polymers III NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
11 has expired, but the Administrator has neither promulgated nor determined not to
12 promulgate residual risk standards for these sources. The Administrator thereby has
13 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
14 U.S.C. § 7604(a)(2).
15

16
17 (15) Polymers and Resins IV

18 a. On September 12, 1996, EPA promulgated national emission standards for
19 hazardous air pollutants for thermoplastic production. Final Rule, National Emission
20 Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, 61
21 Fed. Reg. 48,208 (Sept. 12, 1996) (“Polymers IV NESHAP”); *see* 40 C.F.R. pt. 63 subpt.
22 JJJ.
23

24 b. Some of the toxic effects of the hazardous air pollutants whose emissions
25 are regulated by the Polymers IV NESHAP may include central nervous system effects
26 (e.g., drowsiness, dizziness, headaches, impairment of vision, peripheral nervous system
27 effects expressed as numbness of the extremities, fatigue, and coma and death at lethal
28

1 levels), respiratory irritation expressed as labored breathing and impaired lung function,
2 eye irritation, reproductive and developmental effects, gastrointestinal effects, blood
3 effects (e.g., anemia and leukocytosis), and liver and kidney toxicity. In addition,
4 butadiene exposure to humans has been associated with increased risk of cardiovascular
5 disease and effects on the blood. Some of the organic hazardous air pollutants regulated
6 by the Polymers IV NESHAP are either probable (i.e., acetaldehyde, dioxane,
7 acrylonitrile, and butadiene) or possible (i.e., styrene) human carcinogens. *Id.* at 48,209.

8
9 c. By September 12, 2004, the Clean Air Act required the Administrator to
10 review and revise or determine that it is not necessary to revise the Polymers IV
11 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
12 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
13 thereby has failed to perform a nondiscretionary duty within the meaning of section
14 304(a)(2), 42 U.S.C. § 7604(a)(2).
15
16

17 d. By September 12, 2004, the Clean Air Act required the Administrator to
18 promulgate residual risk standards or determine that they are not required for sources
19 regulated by the Polymers IV NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
20 has expired, but the Administrator has neither promulgated nor determined not to
21 promulgate residual risk standards for these sources. The Administrator thereby has
22 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
23 U.S.C. § 7604(a)(2).
24

25 (16) Portland Cement Manufacturing

26 a. On June 14, 1999, EPA promulgated national emission standards for
27 hazardous air pollutants for portland cement manufacturing. Final Rule, National
28

1 Emission Standards for Hazardous Air Pollutants for Source Categories; Portland Cement
2 Manufacturing Industry, 64 Fed. Reg. 31,898 (June 14, 1999) (“Portland Cement
3 NESHAP”); *see* 40 C.F.R. pt. 63 subpt. LLL.
4

5 b. Affected facilities emit hazardous air pollutants including acetaldehyde,
6 arsenic, benzene, cadmium, chromium, chlorobenzene, dibenzofurans, formaldehyde,
7 hexane, hydrogen chloride, lead, manganese, mercury, naphthalene, nickel, phenol,
8 polycyclic organic matter, selenium, styrene, 2,3,7,8- tetrachlorodibenzo-p-dioxin,
9 toluene, and xylenes. Exposure to these hazardous air pollutants can cause carcinogenic,
10 respiratory, nervous system, developmental, reproductive and dermal health effects. *Id.*
11 at 31,898.
12

13 c. By June 14, 2007, the Clean Air Act required the Administrator to review
14 and revise or determine that it is not necessary to revise the Portland Cement NESHAP.
15 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
16 reviewed, revised, or determined not to revise this NESHAP. The Administrator thereby
17 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
18 U.S.C. § 7604(a)(2).
19

20 d. By June 14, 2007, the Clean Air Act required the Administrator to
21 promulgate residual risk standards or determine that they are not required for sources
22 regulated by the Portland Cement NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
23 deadline has expired, but the Administrator has neither promulgated nor determined not
24 to promulgate residual risk standards for these sources. The Administrator thereby has
25 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
26 U.S.C. § 7604(a)(2).
27
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1 (17) Primary Aluminum

2 a. On October 7, 1997, EPA promulgated national emission standards for
3 hazardous air pollutants for primary aluminum production and reduction plants. Final
4 Rule, National Emission Standards for Hazardous Air Pollutants for Source Categories;
5 National Emission Standards for Hazardous Air Pollutants for Primary Aluminum
6 Reduction Plants, 62 Fed. Reg. 52,384 (Oct. 7, 1997) (“Primary Aluminum NESHAP”);
7
8 *see* 40 C.F.R. pt. 63 subpt. LL.

9 b. The hazardous air pollutants emitted by these facilities include hydrogen
10 fluoride and polycyclic organic matter (including polycyclic aromatic hydrocarbons),
11 which have been found to cause reproductive, and developmental effects as well as toxic
12 effects on blood, the liver, the eye, and the immune system. *Id.* at 52,384.

13 c. By October 7, 2005, the Clean Air Act required the Administrator to
14 review and revise or determine that it is not necessary to revise the Primary Aluminum
15 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
16 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
17 thereby has failed to perform a nondiscretionary duty within the meaning of section
18 304(a)(2), 42 U.S.C. § 7604(a)(2).

19 d. By October 7, 2005, the Clean Air Act required the Administrator to
20 promulgate residual risk standards or determine that they are not required for sources
21 regulated by the Primary Aluminum NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
22 deadline has expired, but the Administrator has neither promulgated nor determined not
23 to promulgate residual risk standards for these sources. The Administrator thereby has
24
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1 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
2 U.S.C. § 7604(a)(2).

3 (18) Primary Lead Smelting

4 a. On June 4, 1999, EPA promulgated national emission standards for
5 hazardous air pollutants for primary lead smelting. Final Rule, National Emission
6 Standards for Hazardous Air Pollutants for Primary Lead Smelting, 64 Fed. Reg. 30,194
7 (June 4, 1999) (“Primary Lead NESHAP”); *see* 40 C.F.R. pt. 63 subpt. TTT.
8

9 b. These facilities emit hazardous air pollutants such as lead compounds, and
10 other metals, including arsenic, antimony, and cadmium. Lead exposure may cause
11 adverse effects on the blood, central nervous system and kidneys, and arsenic exposure is
12 associated with skin, bladder, liver and lung cancer and other developmental and
13 reproductive effects. *Id.* at 30,194.
14

15 c. By June 4, 2007 the Clean Air Act required the Administrator to review
16 and revise or determine that it is not necessary to revise the Primary Lead NESHAP. 42
17 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
18 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
19 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
20 7604(a)(2).
21

22 d. By June 4, 2007, the Clean Air Act required the Administrator to
23 promulgate residual risk standards or determine that they are not required for sources
24 regulated by the Primary Lead NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
25 has expired, but the Administrator has neither promulgated nor determined not to
26 promulgate residual risk standards for these sources. The Administrator thereby has
27
28

1 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
2 U.S.C. § 7604(a)(2).

3 (19) Printing and Publishing

4 a. On May 30, 1996, EPA promulgated national emission standards for
5 hazardous pollutants for printing and publishing facilities. Final Rule, National Emission
6 Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant
7 Emissions From the Printing and Publishing Industry, 61 Fed. Reg. 27,132 (May 30,
8 1996) (“Printing and Publishing NESHAP”); *see* 40 C.F.R. pt. 63 subpt. KK.

9 b. The covered facilities emit hazardous air pollutants including xylene,
10 toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, ethylene
11 glycol, and certain glycol ethers, each of which may cause toxic effects following
12 exposure, such as eye, nose, throat, and skin irritation, and damage to the heart, liver,
13 kidneys, and blood cells. *Id.* at 27,132.

14 c. By May 30, 2004, the Clean Air Act required the Administrator to review
15 and revise or determine that it is not necessary to revise the Printing and Publishing
16 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
17 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
18 thereby has failed to perform a nondiscretionary duty within the meaning of section
19 304(a)(2), 42 U.S.C. § 7604(a)(2).

20 d. By May 30, 2004, the Clean Air Act required the Administrator to
21 promulgate residual risk standards or determine that they are not required for sources
22 regulated by the Printing and Publishing NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
23 deadline has expired, but the Administrator has neither promulgated nor determined not
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1 to promulgate residual risk standards for these sources. The Administrator thereby has
2 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
3 U.S.C. § 7604(a)(2).
4

5 (20) Pulp and Paper Production

6 a. On April 15, 1998, EPA promulgated national emission standards for
7 hazardous air pollutants for pulp and paper mills. Final Rule, National Emission
8 Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production;
9 Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance
10 Standards: Pulp, Paper, and Paperboard Category, 63 Fed. Reg. 18,504 (Apr. 15, 1998)
11 (“Pulp and Paper NESHAP”); *see* 40 C.F.R. pt. 63 subpt. S.
12

13 b. The hazardous air pollutants emitted by covered facilities include such
14 compounds as methanol, chlorinated compounds, formaldehyde, benzene, and xylene,
15 which may cause cancer, respiratory irritation, and damage to the nervous system. *Id.* at
16 18,504.
17

18 c. By April 15, 2006, the Clean Air Act required the Administrator to review
19 and revise or determine that it is not necessary to revise the Pulp and Paper NESHAP. 42
20 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
21 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
22 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
23 7604(a)(2).
24

25 d. By April 15, 2006, the Clean Air Act required the Administrator to
26 promulgate residual risk standards or determine that they are not required for sources
27 regulated by the Pulp and Paper NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
28

1 deadline has expired, but the Administrator has neither promulgated nor determined not
2 to promulgate residual risk standards for these sources. The Administrator thereby has
3 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
4 U.S.C. § 7604(a)(2).
5

6 (21) Secondary Aluminum

7 a. On March 23, 2000, EPA promulgated national emission standards for
8 hazardous air pollutants for secondary aluminum production. Final Rule, National
9 Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production,
10 65 Fed. Reg. 15,690 (Mar. 23, 2000) (“Secondary Aluminum NESHAP”); *see* 40 C.F.R.
11 pt. 63 subpt. RRR.
12

13 b. The Secondary Aluminum NESHAP limits organic hazardous air
14 pollutants, inorganic gaseous hazardous air pollutants (hydrogen chloride, hydrogen
15 fluoride, and chlorine), and particulate HAP metals, some of which are carcinogens and
16 each of which can cause toxic effects to human beings. *Id.* at 15,690.
17

18 c. By March 23, 2008, the Clean Air Act required the Administrator to
19 review and revise or determine that it is not necessary to revise the Secondary Aluminum
20 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
21 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
22 thereby has failed to perform a nondiscretionary duty within the meaning of section
23 304(a)(2), 42 U.S.C. § 7604(a)(2).
24

25 d. By March 23, 2008, the Clean Air Act required the Administrator to
26 promulgate residual risk standards or determine that they are not required for sources
27 regulated by the Secondary Aluminum NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
28

1 deadline has expired, but the Administrator has neither promulgated nor determined not
2 to promulgate residual risk standards for these sources. The Administrator thereby has
3 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
4 U.S.C. § 7604(a)(2).
5

6 (22) Secondary Lead Smelters

7 a. On June 23, 1995, EPA promulgated national emission standards for
8 hazardous air pollutants for secondary lead smelters. Final Rule, National Emission
9 Standards for Hazardous Air Pollutants From Secondary Lead Smelting, 60 Fed. Reg.
10 32,587 (June 23, 1995) (“Secondary Lead NESHAP”); *see* 40 C.F.R. pt. 63 subpt. X.
11

12 b. Hazardous air pollutants emitted by these sources include lead
13 compounds, arsenic compounds, and 1,3-butadiene. Exposure to arsenic and 1,3-
14 butadiene is associated with skin, bladder, liver and lung cancer and other developmental
15 and reproductive effects. Exposure to lead compounds may result in adverse effects on
16 the blood, central nervous system and kidneys. Children are particularly sensitive and
17 exposure to lead compounds can also result in reduced cognitive development and
18 reduced growth. *Id.* at 32,587.
19

20 c. By June 23, 2003, the Clean Air Act required the Administrator to review
21 and revise or determine that it is not necessary to revise the Secondary Lead NESHAP.
22 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
23 reviewed, revised, or determined not to revise this NESHAP. The Administrator thereby
24 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
25 U.S.C. § 7604(a)(2).
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1 d. By June 23, 2003, the Clean Air Act required the Administrator to
2 promulgate residual risk standards or determine that they are not required for sources
3 regulated by the Secondary Lead NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
4 deadline has expired, but the Administrator has neither promulgated nor determined not
5 to promulgate residual risk standards for these sources. The Administrator thereby has
6 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
7 U.S.C. § 7604(a)(2).
8

9 (23) Shipbuilding and Ship Repair
10

11 a. On December 15, 1995, EPA promulgated national emission standards for
12 hazardous air pollutants for shipbuilding and ship repair (surface coating) operations.
13 Final Rule, National Emission Standards for Hazardous Air Pollutants for Shipbuilding
14 and Ship Repair (Surface Coating) Operations, 60 Fed. Reg. 64,330 (Dec. 15, 1995)
15 (“Shipbuilding NESHAP”); *see* 40 C.F.R. pt. 63 subpt. II.
16

17 b. The hazardous air pollutants emitted by the facilities covered by the
18 Shipbuilding NESHAP include xylene, toluene, ethylbenzene, methyl ethyl ketone,
19 methyl isobutyl ketone, ethylene glycol, and glycol ethers, each of which can cause toxic
20 effects such as irritation of the eye, nose, throat, and skin and damage to the blood cells,
21 heart, liver, and kidneys. *Id.* at 64,330.
22

23 c. By December 15, 2003, the Clean Air Act required the Administrator to
24 review and revise or determine that it is not necessary to revise the Shipbuilding
25 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
26 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
27
28

1 thereby has failed to perform a nondiscretionary duty within the meaning of section
2 304(a)(2), 42 U.S.C. § 7604(a)(2).

3 d. By December 15, 2003, the Clean Air Act required the Administrator to
4 promulgate residual risk standards or determine that they are not required for sources
5 regulated by the Shipbuilding NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
6 has expired, but the Administrator has neither promulgated nor determined not to
7 promulgate residual risk standards for these sources. The Administrator thereby has
8 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
9 U.S.C. § 7604(a)(2).

10 (24) Steel Pickling Process

11 a. On June 22, 1999, EPA promulgated national emission standards for
12 hazardous air pollutants for hydrochloric acid process steel pickling facilities and
13 hydrochloric acid regeneration plants. Final Rule, National Emission Standards for
14 Hazardous Air Pollutants for Steel Pickling--HCl Process Facilities and Hydrochloric
15 Acid Regeneration Plants, 64 Fed. Reg. 33,202 (June 22, 1999) (“Steel Pickling
16 NESHAP”); *see* 40 C.F.R. pt. 63 subpt. CCC.

17 b. Affected facilities emit hazardous air pollutants hydrochloric acid (HCl)
18 and chlorine. Exposure to HCl has been reported to cause gastritis, chronic bronchitis,
19 dermatitis, and photosensitization, and may cause hoarseness, inflammation and
20 ulceration of the respiratory tract, chest pain, and pulmonary edema. Chlorine exposure
21 is associated with chest pain, vomiting, toxic pneumonitis, pulmonary edema, and other
22 problems, including eye and respiratory irritation. *Id.* at 33,202.

1 c. By June 22, 2007, the Clean Air Act required the Administrator to review
2 and revise or determine that it is not necessary to revise the Steel Pickling NESHAP. 42
3 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not reviewed,
4 revised, or determined not to revise this NESHAP. The Administrator thereby has failed
5 to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42 U.S.C. §
6 7604(a)(2).
7

8 d. By June 22, 2007, the Clean Air Act required the Administrator to
9 promulgate residual risk standards or determine that they are not required for sources
10 regulated by the Steel Pickling NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This deadline
11 has expired, but the Administrator has neither promulgated nor determined not to
12 promulgate residual risk standards for these sources. The Administrator thereby has
13 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
14 U.S.C. § 7604(a)(2).
15

16
17 (25) Wood Furniture Manufacturing

18 a. On December 7, 1995, EPA promulgated national emission standards for
19 hazardous air pollutants for wood furniture manufacturing. Final Rule, National
20 Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air
21 Pollutant Emissions From Wood Furniture Manufacturing Operations, 60 Fed. Reg.
22 62,930 (Dec. 7, 1995) (“Wood Furniture NESHAP”); *see* 40 C.F.R. pt. 63 subpt. JJ.
23

24 b. The covered facilities emit organic hazardous air pollutants, including
25 toluene, xylene, methanol, methyl ethyl ketone, methyl isobutyl ketone, glycol ethers,
26 and formaldehyde, each of which may cause toxic effects such as eye, nose, throat, and
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1 skin irritation and blood cell, heart, liver, and kidney damage, as well as reproductive
2 harm. *Id.* at 62,930.

3 c. By December 7, 2003, the Clean Air Act required the Administrator to
4 review and revise or determine that it is not necessary to revise the Wood Furniture
5 NESHAP. 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has
6 not reviewed, revised, or determined not to revise this NESHAP. The Administrator
7 thereby has failed to perform a nondiscretionary duty within the meaning of section
8 304(a)(2), 42 U.S.C. § 7604(a)(2).
9
10

11 d. By December 7, 2003, the Clean Air Act required the Administrator to
12 promulgate residual risk standards or determine that they are not required for sources
13 regulated by the Wood Furniture NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
14 deadline has expired, but the Administrator has neither promulgated nor determined not
15 to promulgate residual risk standards for these sources. The Administrator thereby has
16 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
17 U.S.C. § 7604(a)(2).
18

19 (26) Wool Fiberglass Manufacturing

20 a. On June 14, 1999, EPA promulgated national emission standards for
21 hazardous air pollutants for wool fiberglass manufacturing. Final Rule, National
22 Emission Standards for Hazardous Air Pollutants for Source Categories; Wool Fiberglass
23 Manufacturing, 64 Fed. Reg. 31,695 (June 14, 1999) (“Wool Fiberglass NESHAP”); *see*
24 40 C.F.R. pt. 63 subpt. NNN.
25

26 b. Facilities covered by the Wool Fiberglass NESHAP emit hazardous air
27 pollutants including compounds of three metals (arsenic, chromium, lead) and three
28

1 organic hazardous air pollutants (formaldehyde, phenol, and methanol). Exposure to
2 these hazardous air pollutants can cause carcinogenic, respiratory, nervous system,
3 developmental, reproductive, and dermal health effects. *Id.* at 31,695.

4
5 c. By June 14, 2007, the Clean Air Act required the Administrator to review
6 and revise or determine that it is not necessary to revise the Wool Fiberglass NESHAP.
7 42 U.S.C. § 7412(d)(6). This deadline has expired, but the Administrator has not
8 reviewed, revised, or determined not to revise this NESHAP. The Administrator thereby
9 has failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
10 U.S.C. § 7604(a)(2).

11
12 d. By June 14, 2007, the Clean Air Act required the Administrator to
13 promulgate residual risk standards or determine that they are not required for sources
14 regulated by the Wool Fiberglass NESHAP. 42 U.S.C. § 7412(f)(2)(A), (C). This
15 deadline has expired, but the Administrator has neither promulgated nor determined not
16 to promulgate residual risk standards for these sources. The Administrator thereby has
17 failed to perform a nondiscretionary duty within the meaning of section 304(a)(2), 42
18 U.S.C. § 7604(a)(2).

19
20 **ALLEGATIONS DESCRIBING PLAINTIFF'S INJURIES**

21
22 14. Sierra Club and its members have been and will continue to be harmed by the
23 Administrator's failures to take actions required by sections 112(d)(6) and 112(f)(2), 42 U.S.C.
24 §§ 7412(d)(6), 7412(f)(2), for the categories of sources enumerated and described in the above
25 paragraphs.

26
27 15. Plaintiff Sierra Club works to protect and promote natural ecosystems and
28 resources through education, citizen organizing and advocacy, including before EPA and other

1 federal agencies. As part of its mission, Sierra Club aims to protect the health and environmental
2 interests of its members and the public. Sierra Club's members join and associate with one
3 another through this organization to support these shared objectives.
4

5 16. Sierra Club's members live, work, travel, and recreate, including by fishing and
6 hunting, near sources in the categories enumerated in paragraph 1, above. Sierra Club's
7 members include active outdoor recreation enthusiasts and researchers who engage in a wide
8 variety of activities including but not limited to hiking, backpacking, birdwatching and other
9 wildlife observation and study, gardening, flower and plant identification and study, edible wild
10 plant gathering, boating, swimming, fishing, hunting, and camping. Members also enjoy using
11 their backyards, gardens, parks, playgrounds, and nature preserves, and walking or riding
12 bicycles along their neighborhood streets.
13

14 17. Sierra Club's members suffer harm to their health and environmental interests due
15 to exposure to the hazardous air pollutants emitted by the categories of sources enumerated in
16 paragraph 1, above. As a result of their activities, work, recreational, and residency locations,
17 Sierra Club's members breathe the pollutants emitted by sources located near them and have an
18 interest in reducing the emission of hazardous air pollutants from the sources enumerated in
19 paragraph 1, above. They also breathe pollutants emitted by sources not located near where they
20 reside, work, travel or recreate because these pollutants have been transported by air currents
21 from these facilities to their local communities. Because pollutants emitted by the sources
22 enumerated in paragraph 1, above, are deposited in the water and on land near such facilities and
23 taken by air and water currents to other land and water bodies not near such facilities, Plaintiff's
24 members are also exposed to hazardous air pollutants through eating fish, poultry, livestock,
25 dairy products, fruits, vegetables, grains, and other foods which have been affected by soil,
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1 water, or bioaccumulation. The health effects of exposure to pollutants emitted by sources in the
2 categories enumerated in paragraph 1, above, may include cancer, birth defects, reproductive
3 disorders, damage to the nervous, respiratory, and cardiovascular systems, damage to the liver,
4 kidneys, brain, skin, and eyes, as well as other health disorders described in paragraph 13, above.
5

6 18. Sierra Club's members also suffer harm to their recreational, aesthetic,
7 educational, and professional interests due to the exposure of surrounding wildlife, plants,
8 waters, land, and local communities to hazardous air pollutants emitted by the sources
9 enumerated in paragraph 1, above. Even where they experience no health effects, they can
10 smell, see, sense, or be otherwise aware that hazardous air pollutants are present in the locations
11 where they live, work, recreate, or engage in outdoor activities such as hiking, backpacking,
12 birdwatching and other wildlife observation and study, gardening, flower and plant identification
13 and study, edible wild plant gathering, boating, swimming, fishing, hunting, camping, using their
14 backyards or back porches, local parks, playgrounds or nature preserves, or walking or riding
15 bicycles along their neighborhood streets. Odor, low visibility, awareness, and concern about
16 exposure to hazardous air pollutants harm their recreational and aesthetic interests by
17 diminishing their enjoyment of outdoor areas that they have previously enjoyed, such as parks,
18 beaches, nature preserves, local playgrounds, gardens, hunting and fishing areas, or their own
19 backyards. Odor, low visibility, awareness, and concern also lead to their complete avoidance of
20 certain areas in order to avoid the odor, low visibility, or exposure, resulting in their inability to
21 enjoy these outdoor areas at all.
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25 19. The exposure of surrounding wildlife, plants, waters, land, and local communities
26 to hazardous air pollutants also harms Sierra Club's members' recreational, aesthetic,
27 professional, and educational interests in observing, fishing, hunting, cultivating, studying,
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1 researching, or writing about those wildlife, plants, or their ecosystems. The environmental
2 effects of exposure to pollutants emitted by sources in the categories enumerated in paragraph 1,
3 above, may include illness and death for individual wildlife and plants, harm to plant and
4 wildlife species resulting in reduced numbers or habitat changes, wildlife avoidance of certain
5 areas, as well as a reduction in biodiversity or other changes to a local community's ecosystem.
6 These types of exposure or harm to local wildlife, plants, waters, land, or ecosystems make it
7 more difficult for Sierra Club members to observe, fish, hunt, cultivate, study, research, or write
8 about wildlife, plants or ecosystems.
9
10

11 20. Sierra Club and its members suffer additional harm because they do not have
12 information or published findings or determinations from the Administrator regarding the status
13 of the existing emission standards, technological updates affecting those standards, the health
14 and environmental risks that remain after application of those standards, or the need for residual
15 risk standards for the categories of sources enumerated in paragraph 1, above. This information
16 would be provided as part of the Administrator's required actions pursuant to sections 112(d)(6)
17 and 112(f)(2). *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(6) (describing notice and informational
18 disclosures required as part of rulemakings under section 112). If Sierra Club and its members
19 had this information they would use it to advocate for stronger health and environmental
20 protections, to raise public awareness, and to protect themselves and their families from
21 hazardous air pollutants and affected land, water, and food. This lack of information from EPA
22 hampers the ability of Sierra Club and its members to take certain actions to protect their health
23 and communities, such as choosing safe locations for their homes, businesses, or children's
24 schools, or advocating for protection from hazardous air pollutants in order to advance their
25 recreational, aesthetic, health, and other interests.
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1 21. Sierra Club and its members suffer harm because the Administrator has not issued
2 a final determination regarding the status of the existing standards, technological updates
3 affecting those standards, the health and environmental risks that remain after application of
4 those standards, or the need for residual risk standards for the categories of sources enumerated
5 in paragraph 1, above. Any such determination would be judicially reviewable. *See id.* §
6 7607(b); *see also id.* § 7607(d) (describing procedural rights granted to interested parties in
7 section 112 rulemakings). Deprivation of the right of judicial review harms the ability of Sierra
8 Club and its members to protect their interests.
9
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11 22. The Administrator’s failures to take actions required by sections 112(d)(6) and
12 112(f)(2) for each of the categories of sources enumerated in paragraph 1, above, cause Sierra
13 Club and its members to suffer the injuries alleged.
14

15 23. Due to the Administrator’s failures to promulgate revised emission standards
16 under section 112(d)(6) and failures to promulgate residual risk standards under section 112(f)(2)
17 for the categories of sources enumerated in paragraph 1, above, Sierra Club and its members, and
18 the land, waters, wildlife, and plants in their local communities are exposed to hazardous air
19 pollutants and suffer the harms described above due to this exposure. For each source category,
20 by not revising the existing standards under section 112(d)(6) to take into account current
21 technology and by not promulgating residual risk standards under section 112(f)(2) to provide an
22 ample margin of safety or prevent an adverse environmental effect, the Administrator deprives
23 Sierra Club and its members of the emission reductions that would result. Consequently,
24 defendant prolongs and increases Sierra Club’s members’ exposure to hazardous air pollutants
25 and related adverse health, recreational, and aesthetic injuries as described above. Defendant
26 also prolongs and increases the HAP exposure of wildlife, plant, water, and land resources in
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1 Sierra Club's members' local communities to hazardous air pollutants, resulting in the harm to
2 their various interests as described above. Emission reductions taken under sections 112(d)(6)
3 and 112(f)(2) would reduce this exposure to hazardous air pollutants, and would reduce the
4 related health, environmental, recreational, aesthetic, and other harm suffered by the plaintiff and
5 its members.
6

7 24. Alternatively, by not reviewing the existing emission standards or issuing the
8 statutorily required final determinations regarding the emission standards under section 112(d)(6)
9 or regarding residual risk standards under section 112(f)(2), the Administrator deprives Sierra
10 Club and its members of information, published findings, and determinations regarding topics
11 such as technology that may be available to control hazardous air pollutants and the residual risk
12 of cancer or other toxic effects due to HAP emissions from each of the categories of sources
13 enumerated in paragraph 1, above. *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(6). In addition, these
14 failures deprive Sierra Club and its members of the opportunity to receive judicial review of the
15 lawfulness of final EPA actions regarding technology-based or residual risk standards. *See id.* §
16 7607(b). These failures make it more difficult for Sierra Club and its members to advocate for
17 health and environmental protection from hazardous air pollutants, to shield themselves, their
18 families, employees, and communities from exposure to such pollutants, and to protect their
19 health, recreational, aesthetic, and other interests.
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23 **CLAIMS FOR RELIEF**

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

26 26. Violations of Section 112(d)(6) of the Clean Air Act:
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1 The Administrator’s failure to review and either to revise or to issue a revision
2 determination regarding the emission standard for each source category enumerated in paragraph
3 1, above, in accordance with section 112(d)(6), 42 U.S.C. § 7412(d)(6), constitutes an
4 independent “failure of the Administrator to perform any act or duty under this chapter which is
5 not discretionary” within the meaning of section 304(a)(2) of the Clean Air Act, 42 U.S.C. §
6 7604(a)(2), for each source category.
7

8 27. Violations of Section 112(f)(2) of the Clean Air Act:

9 The Administrator’s failure either to promulgate section 112(f) residual risk standards or
10 to issue a final determination not to promulgate such standards for each category of source
11 enumerated in paragraph 1, above, constitutes a “failure of the Administrator to perform any act
12 or duty under this chapter which is not discretionary” within the meaning of section 304(a)(2) of
13 the Clean Air Act, 42 U.S.C. § 7604(a)(2), for each source category.
14
15

16 **PRAYER FOR RELIEF**

17 28. WHEREFORE, Plaintiff respectfully requests that the Court:

18 (1) Declare that each of the defendant Administrator’s failures to review and either to
19 revise standards promulgated under section 112(d) or to issue a final determination that such
20 revision is not necessary for each source category listed in paragraph 1, above, pursuant to
21 section 112(d)(6), 42 U.S.C. § 7412(d)(6), within eight years constitutes a separate count of the
22 “failure of the Administrator to perform any act or duty under this chapter which is not
23 discretionary with the Administrator” within the meaning of section 304(a)(2), 42 U.S.C. §
24 7604(a)(2).
25

26 (2) Order the defendant Administrator to review and either to revise the emission
27 standards or to issue a final determination that such revision is not necessary for each source
28

1 category listed in paragraph 1, above, pursuant to section 112(d)(6), 42 U.S.C. § 7412(d)(6), in
2 accordance with expeditious deadlines specified by this Court.

3 (3) Declare that each of the defendant Administrator's failures either to promulgate
4 section 112(f) standards or to issue a final determination that such standards are not required for
5 each source category listed in paragraph 1, above, constitutes a separate count of "failure of the
6 Administrator to perform any act or duty under this chapter which is not discretionary with the
7 Administrator" within the meaning of section 304(a)(2), 42 U.S.C. § 7604(a)(2).

8 (4) Order the defendant Administrator either to promulgate section 112(f) standards
9 or to issue a final determination that such standards are not required for each source category
10 listed in paragraph 1, above, pursuant to section 112(f)(2), 42 U.S.C. § 7412(f)(2), in accordance
11 with expeditious deadlines specified by this Court;
12

13 (5) Retain jurisdiction to ensure compliance with this Court's decree;

14 (6) Award Plaintiff the costs of this action, including attorney's fees; and,

15 (7) Grant such other relief as the Court deems just and proper.
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17

18
19 DATED: January 13, 2009

20
21 Respectfully Submitted,

22
23 _____
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