

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE,

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, MICHAEL REGAN, in his official capacity as Administrator of the United States Environmental Protection Agency, and MARTHA GUZMAN, in her official capacity as Regional Administrator for Region 9 of the United States Environmental Protection Agency,

Defendant(s)

Civil Action No. 3:22-cv-04191

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

U.S. ENVIRONMENTAL PROTECTION AGENCY
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

(Additional Defendants to be served pursuant to Fed. R. Civ. P. 4(i)(1) & (2) listed on Continuation Page)

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brent J. Newell
Law Offices of Brent J. Newell
245 Kentucky Street, Suite A4
Petaluma, CA 94952

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

**SUMMONS IN A CIVIL ACTION**  
**Continuation Page**

**To: (Names and addresses of additional defendants and representatives) (continued)**

MICHAEL REGAN, in his official capacity as Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, D.C. 20460  
(Served Pursuant to Fed. R. Civ. P. 4(i)(2))

MARTHA GUZMAN, in her official capacity as Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
Mail Code ORA-1  
San Francisco, CA 94105  
(Served Pursuant to Fed. R. Civ. P. 4(i)(2))

Merrick B. Garland  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001  
(Served Pursuant to Fed. R. Civ. P. 4(i)(1))

Stephanie M. Hinds  
United States Attorney for the Northern District of California  
c/o Civil Process Clerk  
Federal Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102  
(Served Pursuant to Fed. R. Civ. P. 4(i)(1))

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Center for Community Action and Environmental Justice

(b) County of Residence of First Listed Plaintiff San Bernardino (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brent Newell, Law Offices of Brent J. Newell, 245 Kentucky Street, Suite A4, Petaluma, CA 94952, (661) 586-3724

DEFENDANTS

U.S. Environmental Protection Agency, Michael Regan, and Martha Guzman

County of Residence of First Listed Defendant San Francisco (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 7604(a)(2)

Brief description of cause:

Clean Air Act citizen suit to compel the performance of a non-discretionary duty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

X SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 07/19/2022

SIGNATURE OF ATTORNEY OF RECORD

s/ Brent J. Newell

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

BRENT J. NEWELL (State Bar No. 210312)  
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Petaluma, CA 94952  
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brentjnewell@outlook.com

Attorney for Plaintiff  
Center for Community Action  
and Environmental Justice

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR COMMUNITY ACTION AND )  
ENVIRONMENTAL JUSTICE, a nonprofit )  
corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, MICHAEL )  
REGAN, in his official capacity as )  
Administrator of the United States )  
Environmental Protection Agency, and )  
MARTHA GUZMAN, in her official capacity )  
as Regional Administrator for Region 9 of the )  
United States Environmental Protection )  
Agency, )  
Defendants. )

Case No.

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

**INTRODUCTION**

1  
2 1. Plaintiff Center for Community Action and Environmental Justice (“CCA EJ”) files this  
3 Clean Air Act citizen suit to compel Defendants United States Environmental Protection Agency  
4 (“EPA”), Michael Regan, and Martha Guzman to approve, disapprove, or partially approve/disapprove  
5 the Innovative Clean Transit regulation (“ICT regulation”).

6 2. Fine particulate matter (“PM2.5”) and ozone air pollution in the South Coast air basin has  
7 caused, and continues to cause, a public health crisis. According to the American Lung Association’s  
8 State of the Air 2022 report, counties in the South Coast Air Basin rank among the worst in the United  
9 States for ozone and PM2.5. San Bernardino, Riverside, and Los Angeles counties are the first, second,  
10 and third most ozone-polluted counties in the United States, respectively. For long-term exposure to  
11 PM2.5, San Bernardino, Riverside, and Los Angeles counties rank as the ninth, eleventh, and sixteenth  
12 most polluted counties in the United States, respectively.

13 3. The Clean Air Act is a model of cooperative federalism, whereby the EPA sets health-  
14 based National Ambient Air Quality Standards (“NAAQS” or “standards”) and the states develop the  
15 plans and strategies to achieve those standards. States submit their plans and strategies to EPA for  
16 review and approval. EPA shall approve a submission if it meets the Act’s minimum requirements. EPA  
17 and citizens may enforce the EPA-approved State Implementation Plan as a matter of federal law to hold  
18 states and regulated entities accountable.

19 4. The California Air Resources Board (“Board”) adopted the ICT regulation as part of  
20 California’s strategy to reduce PM2.5 and ozone-forming air pollution, and the Board submitted the ICT  
21 regulation to the EPA for review and approval as part of the State Implementation Plan.

22 5. EPA’s review and approval of the ICT regulation, with public notice and opportunity to  
23 comment, ensures that the ICT regulation meets minimum Clean Air Act requirements, including but not  
24 limited to ensuring the regulation is enforceable by citizens and the EPA.

25 6. To date, EPA has failed to take final action on the ICT regulation. §

**JURISDICTION**

26  
27 7. This Court has jurisdiction over this action to compel the performance of a  
28

1 nondiscretionary duty pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act)  
2 and 28 U.S.C. § 1331 (federal question jurisdiction).

3 8. The declaratory and injunctive relief CCAEJ requests is authorized by 28 U.S.C. §§  
4 2801(a) and 2202, and 42 U.S.C. § 7604.

5 9. On May 16, 2022, CCAEJ provided EPA, Regan, and Guzman written notice of the  
6 claims stated in this action at least 60 days before commencing this action, as required by Clean Air Act  
7 section 304(b)(2), 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2 and 54.3. A copy of the notice letter,  
8 sent by certified mail, return receipt requested, is attached as Exhibit 1. Although more than 60 days  
9 have elapsed since CCAEJ provided written notice, EPA has failed to take action and remains in  
10 violation of the Clean Air Act.

### 11 **VENUE**

12 10. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1),  
13 because the Regional Administrator for Region 9 is located in San Francisco County and because EPA's  
14 alleged violations relate to the duties of the Regional Administrator in San Francisco.

### 15 **INTRADISTRICT ASSIGNMENT**

16 11. Because the failure to perform a nondiscretionary duty alleged in this Complaint relates  
17 to the duties of the Regional Administrator located in San Francisco County, assignment to the San  
18 Francisco Division of this Court is proper under Civil L.R. 3-2(c) and (d).

### 19 **PARTIES**

20 12. Plaintiff CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE  
21 is a progressive, base-building, non-profit corporation that brings communities together to find  
22 opportunities for cooperation, agreement, and problem solving to improve their social and natural  
23 environment. CCAEJ uses the lens of environmental health to achieve social change, and works within  
24 communities to develop and sustain democratically based, participatory decision-making that promotes  
25 the involvement of a diverse segment of the community in ways that empower communities. CCAEJ  
26 prioritizes air quality and water quality advocacy to secure environmental justice and improve public  
27 health and welfare in the Inland Empire and South Coast Air Basin. Members of CENTER FOR

1 COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE reside in Riverside and San Bernardino  
2 counties and in the South Coast Air Basin.

3 13. Plaintiff CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE  
4 is a person within the meaning of section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and may  
5 commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a).

6 14. Members of CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL  
7 JUSTICE live, raise their families, work, and recreate in Riverside and San Bernardino counties and the  
8 South Coast Air Basin. They are adversely affected by exposure to levels of PM2.5 and ozone air  
9 pollution that exceed the health-based National Ambient Air Quality Standards. The adverse effects of  
10 such pollution include actual or threatened harm to their health, their families' health, their professional,  
11 educational, and economic interests, and their aesthetic and recreational enjoyment of the environment  
12 in the Inland Empire and South Coast Air Basin.

13 15. The Clean Air Act violation alleged in this Complaint also deprives CENTER FOR  
14 COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE members of certain procedural rights  
15 associated with EPA's required action on the ICT regulation, including notice of, and opportunity to  
16 comment on, EPA's action and the capacity to enforce the ICT regulation.

17 16. The Clean Air Act violation alleged in this Complaint has injured and continues to injure  
18 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE members. Granting the  
19 relief requested in this lawsuit would redress these injuries by compelling EPA action that Congress  
20 required as an integral part of the regulatory scheme for improving air quality in areas violating the  
21 National Ambient Air Quality Standards.

22 17. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the  
23 federal agency Congress charged with implementation and enforcement of the Clean Air Act. As  
24 described below, the Act assigns to the UNITED STATES ENVIRONMENTAL PROTECTION  
25 AGENCY certain nondiscretionary duties.

26 18. Defendant MICHAEL REGAN is sued in his official capacity as Administrator of the  
27 United States Environmental Protection Agency. He is charged in that role with taking various actions to  
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1 implement and enforce the Clean Air Act, including the actions sought in this Complaint.

2 19. Defendant MARTHA GUZMAN is sued in her official capacity as Regional  
3 Administrator for Region 9 of the United States Environmental Protection Agency. She is responsible  
4 for implementing and enforcing the Clean Air Act in Region 9, which includes California and the South  
5 Coast Air Basin.

#### 6 **STATUTORY FRAMEWORK**

7 20. The Clean Air Act establishes a partnership between EPA and the states for the  
8 attainment and maintenance of the National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C.  
9 §§ 7401-7515. Under the Act, EPA has set health-based NAAQS for six pollutants, including ozone and  
10 PM<sub>2.5</sub>. States must adopt a State Implementation Plan (“SIP”) that contains enforceable emissions  
11 limitations necessary to attain the NAAQS and meet applicable requirements of the Act. 42 U.S.C. §§  
12 7401(a)(1), (a)(2)(A); 7502(c)(6). States must submit all such plans and plan revisions to the EPA. 42  
13 U.S.C. § 7410(a)(1).

14 21. Within 60 days of EPA’s receipt of a proposed SIP revision, the Clean Air Act requires  
15 EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA  
16 for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make this “completeness” finding, the  
17 proposed SIP revision becomes complete by operation of law six months after a state submits the  
18 revision. If EPA determines that the proposed SIP revision does not meet the minimum criteria, the state  
19 is considered to have not made the submission. 42 U.S.C. 7410(k)(1)(C).

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

23 23. If EPA disapproves the revision, in whole or in part, then the Clean Air Act requires EPA  
24 to impose sanctions against the offending state or region, including increased offsets for new and  
25 modified major stationary sources or a prohibition on the use of federal highway funds, unless the state  
26 submits revisions within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and  
27 highway funding sanctions within 24 months unless the state has corrected the deficiency. Moreover, the  
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1 Act requires EPA to promulgate a Federal Implementation Plan within 24 months of disapproval unless  
2 the state has corrected the deficiency and EPA has approved the revision. 42 U.S.C. § 7410(c).

3 24. Once EPA approves a SIP or SIP revision, the state and any regulated person must  
4 comply with emissions standards and limitations contained in the SIP, and all such standards and  
5 limitations become enforceable as a matter of federal law by the EPA and citizens. 42 U.S.C. § 7413;  
6 7604(a), (f).

7 25. If EPA fails to perform a non-discretionary duty, including acting on a proposed SIP or  
8 SIP revision by the Clean Air Act deadline, then the Act allows any person to bring suit to compel EPA  
9 to perform its duty. 42 U.S.C. § 7604(a)(2).

### 10 **FACTUAL BACKGROUND**

11 26. PM<sub>2.5</sub> is a directly emitted pollutant and forms secondarily in the atmosphere by the  
12 precursor pollutants nitrogen oxides (“NO<sub>x</sub>”), ammonia, sulfur oxides, and volatile organic compounds  
13 (“VOC”). Ground-level ozone is formed by a reaction between NO<sub>x</sub> and volatile organic compounds in  
14 the presence of heat and sunlight. Unlike ozone in the upper atmosphere which is formed naturally and  
15 protects the Earth from ultraviolet radiation, ozone at ground level is primarily formed from  
16 anthropogenic pollution.

17 27. Short-term exposure to PM<sub>2.5</sub> pollution causes premature death, causes decreased lung  
18 function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions.  
19 Long-term exposure causes development of asthma in children, causes decreased lung function growth  
20 in children, exacerbates respiratory disease such as asthma, increases the risk of death from  
21 cardiovascular disease, and increases the risk of death from heart attacks. Individuals particularly  
22 sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children.

23 28. Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates  
24 respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases  
25 susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased  
26 likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also  
27 increases the risk of premature death, especially among older adults. Long-term exposure to ozone  
28

1 causes asthma in children, decreases lung function, damages the airways, leads to development of  
2 COPD, and increases allergic responses.

3 29. On July 18, 1997, the EPA established a 24-hour PM<sub>2.5</sub> standard of 65 µg/m<sup>3</sup> and an  
4 annual PM<sub>2.5</sub> standard of 15 µg/m<sup>3</sup> after considering evidence from “numerous health studies  
5 demonstrating that serious health effects” occur from exposures to PM<sub>2.5</sub>. *See* 81 Fed. Reg. 6936  
6 (February 9, 2016); *see also* 62 Fed. Reg. 38652 (July 18, 1997); 40 C.F.R. § 50.7.

7 30. On October 17, 2006, EPA strengthened the short-term 24-hour PM<sub>2.5</sub> standard by  
8 lowering it to 35 µg/m<sup>3</sup>. 70 Fed. Reg. 61144 (Oct. 17, 2006); 40 C.F.R. § 50.13.

9 31. Effective March 18, 2013, the EPA strengthened the primary annual PM<sub>2.5</sub> standard by  
10 lowering the level from 15 to 12 µg/m<sup>3</sup> while retaining the secondary annual PM<sub>2.5</sub> NAAQS at the level  
11 of 15.0 µg/m<sup>3</sup>. 78 Fed. Reg. 3086 (January 15, 2013); 40 C.F.R. § 50.18.

12 32. EPA classified the South Coast Air Basin as a moderate nonattainment area for the 1997  
13 PM<sub>2.5</sub> standards, a serious nonattainment area for the 2006 PM<sub>2.5</sub> standard, and a serious  
14 nonattainment area for the 2012 PM<sub>2.5</sub> standard.

15 33. On July 18, 1997, EPA promulgated the 8-hour ozone standard to replace the less  
16 stringent 1-hour ozone standard. 62 Fed. Reg. 38856 (July 18, 1997); 40 C.F.R. § 50.9(b) (2003).

17 34. In 2008, EPA completed a review of the 8-hour ozone standard and found it necessary to  
18 lower the ambient concentration of ozone to 0.075 parts per million as the 2008 Standard. 73 Fed. Reg.  
19 16436 (March. 27, 2008); 40 C.F.R. § 50.15. The EPA based this decision on its findings that “(1) the  
20 strong body of clinical evidence in healthy people at exposure levels of 0.080 and above of lung function  
21 decrements, respiratory symptoms, pulmonary inflammation, and other medically significant airway  
22 responses, as well as some indication of lung function decrements and respiratory symptoms at lower  
23 levels; (2) the substantial body of clinical and epidemiological evidence indicating that people with  
24 asthma are likely to experience larger and more serious effects than healthy people; and (3) the body of  
25 epidemiological evidence indicating associations are observed for a wide range of serious health effects,  
26 including respiratory emergency department visits, hospital admissions, and premature mortality, at and  
27 below 0.080 ppm.” 73 Fed. Reg. at 16476.

1 35. On October 26, 2015, EPA revised “the level of the standard to 0.070 ppm to provide  
2 increased public health protection against health effects associated with long- and short-term exposures.  
3 80 Fed. Reg. 65292, 65294 (Oct. 26, 2015); 40 C.F.R. § 50.19.

4 36. EPA classified the South Coast Air Basin as an extreme nonattainment area for the 2008  
5 8-hour ozone standard and an extreme nonattainment area for the 2015 8-hour ozone standard.

6  
7 **FIRST CLAIM FOR RELIEF**

8 **Failure to Perform a Non-Discretionary Duty to Act on the Innovative Clean Transit Regulation**  
9 **(42 U.S.C. § 7410(k)(2))**

10 37. CCAEJ re-alleges and incorporates by reference the allegations set forth in paragraphs 1-  
11 36.

12 38. On December 18, 2018, the California Air Resources Board adopted the ICT Regulation.

13 39. According to the Board, the ICT regulation would result in thirty avoided deaths in the  
14 South Coast Air Basin and would reduce PM2.5 and oxides of nitrogen emissions from buses to zero by  
15 2045.

16 40. On February 12, 2020, the Board submitted the ICT regulation to EPA for inclusion in  
17 the State Implementation Plan.

18 41. The ICT regulation became complete by operation of law on August 13, 2020.

19 42. EPA has a mandatory duty to act on the 2018 PM2.5 Plan no later than August 13, 2021.  
20 42 U.S.C. § 7410(k)(2).

21 43. By failing to act on the ICT regulation, EPA has violated and continues to violate its  
22 nondiscretionary duty to act on the ICT regulation pursuant to Clean Air Act section 110(k)(2), 42  
23 U.S.C. § 7410(k)(2).

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

**PRAYER FOR RELIEF**

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

- A. DECLARE that the Defendants violated the Clean Air Act by failing to act on the ICT regulation;
- B. ISSUE preliminary and permanent injunctions directing the Defendants to finalize action on the ICT regulation;
- C. RETAIN jurisdiction over this matter until such time as the Defendants have complied with their nondiscretionary duty under the Clean Air Act;
- D. AWARD to Plaintiff its costs of litigation, including reasonable attorney and expert witness fees; and
- E. GRANT such additional relief as the Court may deem just and proper.

Dated: July 19, 2022

Respectfully Submitted,

LAW OFFICES OF BRENT J. NEWELL

By: /s/ Brent J. Newell

Brent J. Newell  
Attorney for Plaintiff  
CENTER FOR COMMUNITY ACTION AND  
ENVIRONMENTAL JUSTICE

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LAW OFFICES OF BRENT J. NEWELL

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May 16, 2022

*By Certified Mail, Return Receipt Requested*

Michael Regan, Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, D.C. 20460

Martha Guzman, Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
Mail Code ORA-1  
San Francisco, CA 94105

**Re: Clean Air Act Notice of Intent to Sue for Failure to Take Action on the Innovative Clean Transit Regulation.**

Dear Administrator Regan and Regional Administrator Guzman:

The Center for Community Action and Environmental Justice (CCAIEJ) gives notice to the Environmental Protection Agency, Michael Regan, and Martha Guzman (collectively “EPA”) of CCAIEJ’s intent to sue EPA for its failure to fulfill its mandatory duty to take final action to approve, disapprove, or partially approve/disapprove the Innovative Clean Transit regulation (“ICT regulation”). CCAIEJ sends this notice pursuant to section 304(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7604(b), and 40 C.F.R. §§ 54.2 and 54.3. At the conclusion of the 60-day notice period, CCAIEJ intends to file suit under section 304 of the Act, 42 U.S.C. § 7604, to prosecute EPA’s failure to perform a non-discretionary duty.

CCAIEJ is a progressive, base-building, non-profit organization bringing communities together to find opportunities for cooperation, agreement and problem solving in improving their social and natural environment. Using the lens of environmental health to achieve social change, CCAIEJ works within communities to develop and sustain democratically based, participatory decision-making that promotes involvement of a diverse segment of the community in ways that

empower the community. CCAEJ advocates for air quality in the South Coast Air Basin, and believes in a zero-emission future and in regenerative and sustainable communities.

Ozone and fine particulate matter (“PM2.5”) pollution remains a public health crisis in the South Coast Air Basin, which ranks among the most ozone and PM2.5-polluted air basins in the United States. With respect to ozone, the South Coast is classified as an extreme nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (“NAAQS” or “standard”), an extreme nonattainment area for the 2015 8-hour ozone standard, and has failed to attain either of the revoked ozone standards (the 1-hour and 1997 8-hour ozone standards). With respect to PM2.5, the South Coast is classified as a moderate nonattainment area for the 1997 PM2.5 standards, a serious nonattainment area for the 2006 PM2.5 standard, and a serious nonattainment area for the 2012 PM2.5 standard.

Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also increases the risk of premature death, especially among older adults. Long-term exposure to ozone causes asthma in children, decreases lung function, damages the airways, leads to development of COPD, and increases allergic responses.<sup>1</sup>

Short-term exposure to PM2.5 pollution causes premature death, decreases lung function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term exposure causes development of asthma in children, decreased lung function growth in children, increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.<sup>2</sup>

According to the American Lung Association, counties in the South Coast air basin rank among the worst in the United States for ozone and PM2.5. San Bernardino, Riverside, and Los Angeles counties are the first, second, and third most ozone-polluted counties in the United States.<sup>3</sup> With respect to long-term exposure to PM2.5, San Bernardino, Riverside, and Los Angeles counties rank as the ninth, eleventh, and sixteenth most polluted counties in the United States.<sup>4</sup>

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<sup>1</sup> AMERICAN LUNG ASSOCIATION STATE OF THE AIR 2022 at 24-25, available on the internet at <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf>.

<sup>2</sup> *Id.* at 21-23.

<sup>3</sup> *Id.* at 19.

<sup>4</sup> *Id.*

As part of the state's effort to reduce levels of ozone and PM<sub>2.5</sub> in the ambient air, the California Air Resources Board adopted the ICT regulation on December 18, 2018.<sup>5</sup> CARB describes the ICT regulation as follows:

The Innovative Clean Transit (ICT) regulation was adopted by CARB in 2019 and targets reductions in transit fleets by requiring transit agencies to gradually transition their buses to zero-emission technologies. ICT has helped to advance heavy-duty ZEV deployment, with buses acting as a beachhead in the heavy-duty sector. Based on the size of the transit agencies, they are categorized as small and large agencies. Starting calendar year 2023, large agencies follow the phase-in schedule to have a certain percentage of their new purchases as ZEB. For the small agencies, the start calendar year will be 2025. By 2030, all the agencies need to have 100 percent of their new purchases as ZEB. More details on the emissions benefit calculations can be found in Appendix L of the ICT's Staff Report.<sup>6</sup>

The ICT Regulation would result in eight avoided deaths in the Bay Area, five in the San Joaquin Valley, and thirty in the South Coast.<sup>7</sup> The ICT Regulation would achieve greenhouse gas, NO<sub>x</sub>, and PM<sub>2.5</sub> reductions statewide and emissions are projected to reach zero for NO<sub>x</sub> and PM<sub>2.5</sub> by 2045.<sup>8</sup>

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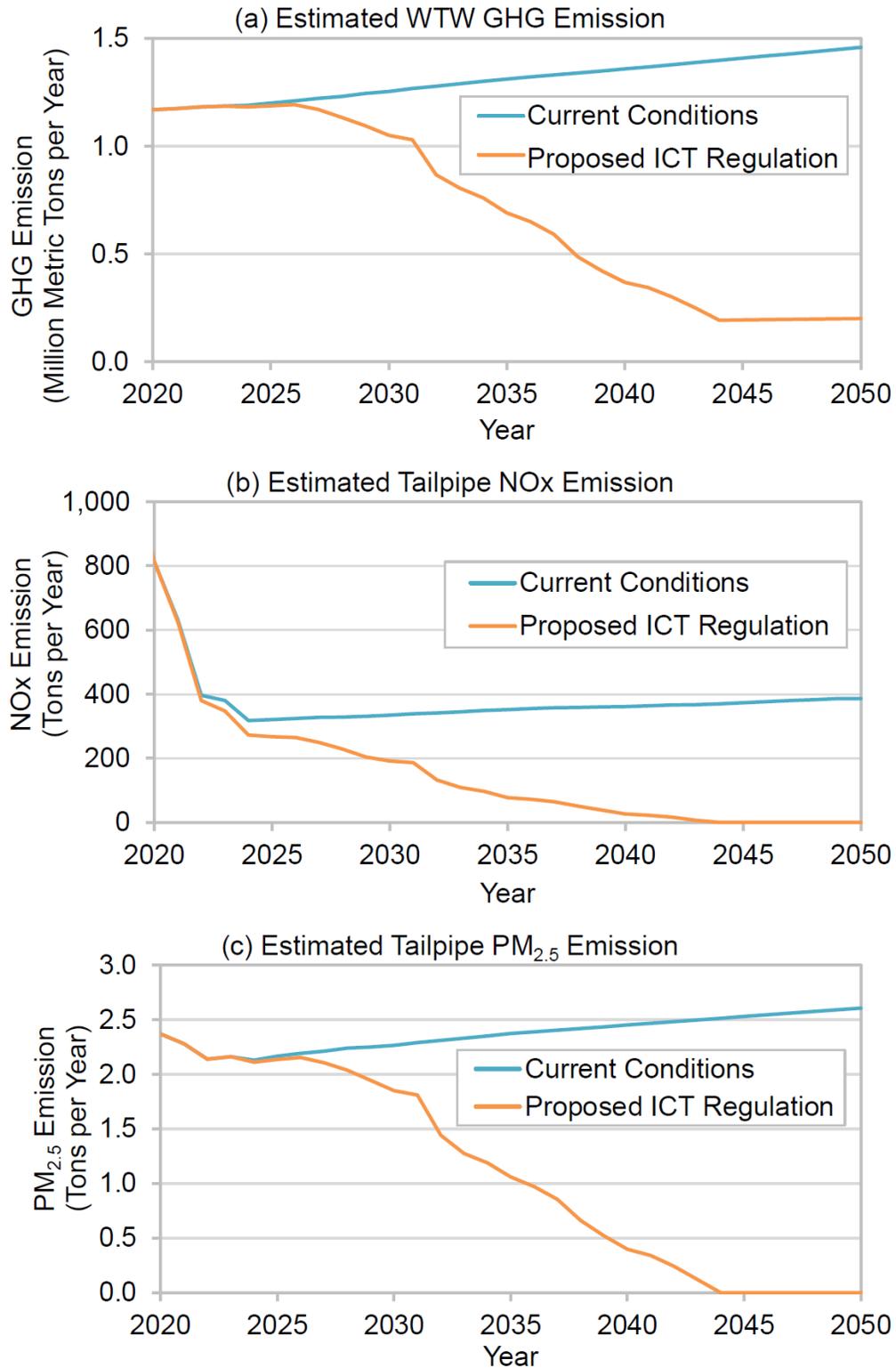
<sup>5</sup> CARB Resolution 18-60.

<sup>6</sup> Progress Report and Technical Submittal for the 2012 PM<sub>2.5</sub> Standard San Joaquin Valley (citing Appendix L, Emissions Inventory Methods and Results for the Proposed Innovative Clean Transit Regulation) (October 19, 2021); *see also* Innovative Clean Transit (ICT) Regulation Fact Sheet, available at <https://ww2.arb.ca.gov/resources/fact-sheets/innovative-clean-transit-ict-regulation-fact-sheet>.

<sup>7</sup> Staff Report and ISOR for the ICT regulation at Table V-1 (August 7, 2018).

<sup>8</sup> *Id.* at IV-2 and Figure IV-1 (excerpted on page 4 of this letter).

**Figure IV-1: Emission projections of WTW GHG, and tailpipe NOx and PM<sub>2.5</sub> under Current Conditions and Proposed ICT regulation**



On February 12, 2020, the California Air Resources Board submitted the ICT regulation to EPA for review and inclusion in the State Implementation Plan.<sup>9</sup>

EPA shall act on the ICT regulation, by full or partial approval or disapproval, within twelve months of a completeness finding. 42 U.S.C. § 7410(k)(2). Section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), requires that EPA shall make a completeness finding within 60 days of the date that EPA receives a plan or plan revision. A plan or plan revision shall be deemed complete by operation of law if EPA fails to make a completeness finding within 6 months of the date that EPA receives a plan or plan revision. 42 U.S.C. § 7410(k)(1)(B).

To date, EPA has failed to make a completeness finding and has not taken action on the ICT regulation. EPA has a non-discretionary duty to take final action to approve, disapprove, or partially approve/disapprove the ICT regulation no later than August 13, 2021. EPA's failure to perform its non-discretionary duty under section 110(k)(2) of the Act, 42 U.S.C. § 7410(k)(2), violates the Act.

#### **Identity of Noticing Parties and their Attorneys**

Center for Community Action and  
Environmental Justice

Attorney for CCAEJ

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#### **Conclusion**

Following the 60-day period, CCAIEJ will file suit in U.S. District Court to compel EPA to perform its nondiscretionary duty under the Clean Air Act. If you wish to discuss this matter short of litigation, please direct all future correspondence to CCAIEJ's attorney.

Sincerely,



Brent Newell

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<sup>9</sup> Letter from Richard Corey to John Busterud (February 12, 2020).

cc: Governor Gavin Newsom (By Certified Mail, Return Receipt Requested)  
1021 O Street, Suite 9000  
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