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CENTRAL DIST. OF CALIF.  
BY RT

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CITY OF RIVERSIDE; CITY OF  
SAN BERNARDINO; THE REGIONAL  
ANTI-POLLUTION AUTHORITY, a  
joint-powers agency; DESERT  
PEOPLE UNITED, a non-profit  
corporation; EDWARD MEHREN,  
CHRISTOPHER J. DIEBENKORN;

Plaintiffs

vs.

WILLIAM D. RUCKELSHAUS, as  
Administrator, Environmen-  
tal Protection Agency.

Defendant.

CIVIL NO. 72-2122-1H

COMPLAINT FOR  
PRELIMINARY AND PERMANENT  
INJUNCTION AND RELIEF IN  
THE NATURE OF MANDAMUS IN  
CONNECTION WITH THE  
CLEAN AIR ACT OF 1970

INTRODUCTION

1. This is an action to compel the Administrator of the federal Environmental Protection Agency (hereinafter "EPA") to comply with the statutory mandate of the Clean Air Act 42 USC §1857 et seq, as amended (1970). Plaintiffs are residents of, or concerned with, the South Coast Air Basin, an air quality region in the State of California, designated by the Administrator pursuant to the Clean Air Act of 1970. The South Coast Air Basin encompasses all of Ventura and Orange Counties and parts of Riverside, Los Angeles, San Bernardino and Santa Barbara Counties 40 C.F.R. 172 (1972). Plaintiffs seek a preliminary and permanent injunction, or in the alternative relief in the nature of mandamus pursuant to 28 USC §1361.

1 JURISDICTION

2 2. The jurisdiction of this court is invoked  
3 pursuant to 28 USC §1331, §1337, §1361, and 5 USC §702. The  
4 amount in controversy exceeds \$10,000.

5 PLAINTIFFS

6 3. The City of Riverside is a municipal corporation  
7 organized pursuant to charter. It is within the South Coast  
8 Air Basin. It has a population of 144,000 and severe air pollu-  
9 tion problems. Air pollution in Riverside exceeded standards  
10 set by the State of California based on known danger to public  
11 health and safety on 192 days in 1970 and on 241 days in 1971.  
12 The estimated cost of pollution to residents of Riverside is  
13 about \$8 million annually, primarily in added medical expenses  
14 and decreased property values. Polluted air has been linked to  
15 increasing frequencies of respiratory diseases, including  
16 emphysema and bronchitis, in Riverside, On July 4, 1972, the  
17 Riverside County Air Pollution Control District called two  
18 separate smog alerts in the City. Smog alerts are called when-  
19 ever the oxidant in the air reaches a level of .27 of a part  
20 oxidant per million parts of air. The federal ambient air  
21 quality standard for oxidant is .08 parts per million for one  
22 hour.

23 4. The City of San Bernardino is also a municipal  
24 corporation organized pursuant to charter. It is the County  
25 seat of San Bernardino County and has approximately 112,000  
26 residents. San Bernardino has experienced increasing air  
27 pollution problems in the past decade. Visibility has been so  
28 reduced by smog in this sea-level desert city that on most  
29 summer days residents cannot see the 5,000 foot-high San Bernar-  
30 dino mountains less than five miles away.

31 5. The Regional Anti-Pollution Authority (R.A.P.A.)  
32 is a joint-powers agency formed by the four cities of the

1 Coachella Valley-Palm Springs, Indio, Indian Wells, and Desert  
2 Hot Springs, for the purpose of preventing further deteriora-  
3 tion of air quality in the Coachella Valley. The bulk of noxious  
4 pollutants now found in the air in this region are driven by pre-  
5 vailing winds from the South Coast Air Basin. R.A.P.A.'s mem-  
6 ber cities are threatened by imminent losses to the region's  
7 two main economic bases, agriculture and tourism, resulting from  
8 the notable increase in photochemical smog in the Coachella  
9 Valley since 1970.

10 6. Desert Peoples United, Inc. (DPU) is a non-  
11 profit corporation founded in 1971 to educate the public about  
12 the danger of air pollution and means of combatting it. DPU  
13 has a paid membership of 700 persons residing in the Palm Springs  
14 area, many of whom are retired. Fresh air and sunshine brought  
15 the members of DPU to Palm Springs to settle; now the State Air  
16 Resources Board reports that Palm Springs in 1972 exceeds the  
17 federal carbon monoxide standards on more days than any other  
18 city in the state. The city has endured three air-pollution  
19 emergency alerts in 1972 requiring restricted activity as a result  
20 of dangerous concentrations of oxidants in the air. The health  
21 of DPU's members is directly threatened by the growing air pol-  
22 lution problem, as is their emotional security and their aesthe--  
23 tic interest in living in a clean desert environment:

24 7. Edward Mehren is a resident of Palm Springs.  
25 He moved to Palm Springs from Beverly Hills in 1965 on the advice  
26 of his physician, who had diagnosed emphysema. Although for a  
27 few years his condition improved in the clean desert air, he  
28 now suffers as badly as he did before the move. On many days  
29 he must stay inside a specially equipped room with charcoal-  
30 filtered air to avoid serious coughing attacks.

31 ///

32 ///



1 tions prescribing national primary and secondary ambient air  
 2 quality standards for each pollutant for which air quality  
 3 criteria had then been issued. On January 31, 1970, air qua-  
 4 lity criteria had been issued for carbon monoxide, sulfur dio-  
 5 xide, nitrogen oxides, particulates, and photochemical oxi-  
 6 dants.

7 (b) Within 90 days after publication of the  
 8 proposed regulations, the Administrator of EPA was required  
 9 to promulgate by regulation the proposed primary and secondary  
 10 ambient air quality standards, "with such modifications as he  
 11 deems appropriate." 42 U.S.C. §1857c-4(a)(1)(B).

12 (c) Within 9 months after promulgation of  
 13 the standards, each state was required to submit to the Adminis-  
 14 trator an "implementation plan" providing for achieving the  
 15 national primary ambient air quality standards in each air qua-  
 16 lity region. 42 U.S.C. §1857c-5(a)(1)

17 (d) Within 4 months after the date of submis-  
 18 sion of such an "implementation plan," the Administrator was  
 19 required to approve or disapprove it. 42 U.S.C. §1857c-5(a)(2)

20 (e) The Administrator was entitled to approve  
 21 a state implementation plan only if he found that it provided  
 22 for the achievement of national primary ambient air quality  
 23 standards as expeditiously as possible, and "in no case later  
 24 than three years from the date of approval of such plan." In  
 25 order to meet the statutory target date, the state plans were  
 26 required include emission limitations, schedules, and time-  
 27 tables for compliance, and "such other measures as may be nec-  
 28 essary to insure attainment and maintenance of such primary  
 29 or secondary standard, including, but not limited to, land-  
 30 use and transportation controls." 42 U.S.C. §1857c-5(a)(2)(B)  
 31 (emphasis added).

32 ///

VIOLATION OF THE STATUTE

1  
2 12. Pursuant to the Act, the Administrator of  
3 EPA, on January 31, 1971, published proposed primary and  
4 secondary air quality standards for the five pollutants men-  
5 tioned in paragraph 11(a), supra. On April 30, 1971, the  
6 Administrator promulgated final national primary and secondary  
7 ambient air quality standards for each of the said pollutants.

8 13. On February 1, 1972, the State of California  
9 submitted to the Administrator of EPA a proposed implementation  
10 plan. This plan showed on its face that by June 1, 1975, the  
11 national primary ambient air quality standards for carbon  
12 monoxide and sulfur dioxide would be met in the South Coast Air  
13 Basin. The plan further showed on its face that by June 1, 1975,  
14 the national primary ambient air quality standard for nitrogen  
15 dioxides, for photochemical oxidants, for particulates, and  
16 for each of them, would not be met in the South Coast Air Basin.

17 14. On May 31, 1972, the Administrator of EPA  
18 approved the California implementation plan insofar as it  
19 related to carbon monoxide and sulfur dioxide. He disapproved  
20 that plan insofar as it related to nitrogen dioxide, particulates,  
21 and photochemical oxidants.

22 15. Section 110(c) of the Clean Air Act Amendments  
23 of 1970, 42 U.S.C. §1857c-5 (c), provides in pertinent part  
24 as follows:

25 "The Administrator shall, after consideration  
26 of any State hearing record, promptly prepare and  
27 publish proposed regulations setting forth an imple-  
28 mentation plan, or portion thereof, for a State if--  
29 ...

30 (2) the plan, or any portion thereof,  
31 submitted for such State is determined by the  
32 Administrator not to be in accordance with the

1 requirements of this section,

2 The Administrator shall, within six months  
3 after the date required for submission of such plan...,  
4 promulgate any such regulations unless, prior to such  
5 promulgation, such State has adopted a plan...which the  
6 Administrator determines to be in accordance with the  
7 requirements of this section." (emphasis added)

8 16. In the Report of the Committee on Public  
9 Works, which accompanied the Clean Air Act Amendments of 1970  
10 as they were introduced in the Senate, is the following:

11 "The bill would provide that the  
12 [Administrator] must approve or reject  
13 any implementation plan submitted by  
14 a state within four months of the date  
15 required for its submission. If he  
16 rejected the plan or any portion of it  
17 he would have to promulgate an alternative  
18 plan or portion thereof within an addi-  
19 tional two months."

20 S. Rep. No. 91-1196, 91st Cong., 2nd Sess. at 14 (1970).

21 17. Six months from the date of submission  
22 of the California implementation plan was August 1, 1972.

23 18. As of August 1, 1972, and at the present  
24 time, the Administrator of EPA has not promulgated a plan for  
25 achieving the national primary ambient air quality standards  
26 within the South Coast Air Basin within the deadline imposed  
27 by the Clean Air Act Amendments of 1970.

28 19. The Administrator's refusal to promulgate  
29 a plan in accordance with the statutory mandate seriously  
30 jeopardizes the likelihood that the national primary ambient  
31 air quality standards will be met within the time provided  
32 by law, and threatens irreparable injury to the plaintiffs

1 herein, who suffer continuing damage from smog and air pollution  
2 in the South Coast Air Basin, and will continue to suffer such  
3 damage until the national primary ambient air quality standards  
4 are met.

5 20. Plaintiffs have no adequate remedy at law,  
6 except insofar as they may secure relief in the nature of man-  
7 damus as prayed for herein.

8 PRAYER

9 WHEREFORE, plaintiffs pray that this Court  
10 render its judgment

11 (a) ordering the defendant, William D. Ruckel-  
12 shaus, as Administrator of the Environmental Protection Agency,  
13 to comply with the statutory mandate by at once preparing and  
14 publishing an implementation plan for the South Coast Air Basin  
15 showing that the national primary ambient air quality standards  
16 for nitrogen oxides, particulates, and photochemical oxidants  
17 will be met in the Basin within the time prescribed by law;

18 (b) preliminarily and permanently enjoining  
19 the defendant, William D. Ruckelshaus, from failing at once to  
20 prepare and publish an implementation plan for the South Coast  
21 Air Basin showing that the national primary ambient air quality  
22 standards for nitrogen oxides, particulates, and photochemical  
23 oxidants will be met in the Basin within the time prescribed by  
24 law;

25 (c) awarding reasonable attorneys' fees

26 (d) granting plaintiffs herein such other, fur-  
27 ther and different relief as may seem to this Court just and  
28 proper.

29 ///

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32 ///

DATED: September 6, 1972

MARY D. NICHOLS

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BRENT N. RUSHFORTH

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By *Mary D. Nichols*  
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Attorneys for Plaintiffs

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Prepared under the direction  
of Professor Ralph d'Arge by the  
Staff of the Department of Economics,  
University of California (Riverside).  
August 1972.

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Rough estimates of minimum social damages associated  
with air pollution in the city of Riverside  
(1971 prices in millions of dollars  
per year)

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Health damages	1.5
Commercial building cleaning costs	0.5
Aesthetic damages	1.0
Residential property value losses	3.7
Productivity losses	0.9
Other damages	0.5
	<hr/>
Total	<u>8.1</u>

EXHIBIT A

### Explanation of Damage Estimates

#### Health damages

Lave and Seskin (Science, August 1970) estimate air pollution related health damages for respiratory diseases at \$7 billion in 1970 prices. Total tonnage of gaseous residuals (carbon monoxide, hydrocarbons, sulfur dioxide, nitrogen oxides, and suspended particulates) from energy conversion was estimated at 133 million tons for 1965 (Kneese, Ayres, d'Arge, Economics and the Environment, 1970). Using a medical services price index to convert costs to 1971 prices, health damages per ton can be crudely estimated at \$7.5 billion/133 million tons or \$56.50 per ton. Total health damages in Riverside for 1971 are the product of this factor and Riverside's share of 1971 airshed emissions.

The estimate is most likely biased downwards. Though air pollution emissions have increased since 1965 (making the damage per ton smaller than estimated), the Lave and Seskin data include only medical, burial, and employment losses of air pollution related respiratory diseases, ignoring costs associated with stress or other emotional problems of illness. The estimate is also low for urban areas. Finally, the Lave and Seskin data related only to sulfur dioxide and suspended particulates. We assume that CO, NO<sub>x</sub>, and HC are equally damaging, pound for pound. While no medical evidence is yet available on this point, certain UC Project Clean Air studies have indicated that CO, NO<sub>x</sub> and HC may be more damaging to health, particularly at low concentrations.

#### Building cleaning costs

Commercial building cleaning costs were estimated using Ridker, Economic Costs of Air Pollution. Using data on suspended particulate concentrations

and average cleaning costs per home-size commercial building in high and low pollution cities in 1961, we concluded that cleaning costs rise by about 14¢ per unit increase in suspended particulates. Using Riverside 1966 figures for total number of commercial units, we assumed that each unit was the equivalent of five private homes. Adjusting for 1971 prices, we then multiplied by 1971 particulate readings to get total building cleaning costs.

This is undoubtedly an underestimate since precise commercial building floor space figures were not available.

#### Aesthetic damages

Aesthetic damages are impossible to estimate accurately since they require extensive surveys of human perceptions and an adequate research design which would separate aesthetic losses from health and productivity related damages. A poll of 100 students at UCR and UCLA indicated a willingness to pay for visibility improvements of about 3¢ per day. Our estimate derived from assuming this number accurately measures the aesthetic enjoyment foregone by each person in Riverside every day the oxidant level reaches or exceeds 0.10 ppm.

#### Residential property value losses

Using 1970 figures on the number of single family dwellings and median value of residential units, we computed the total value of residential property in Riverside. A poll of Riverside realtors revealed 5-10% of the homes on the market represent families leaving the area because of smog. Another 50-55% are for sale, citing smog as a major contributing reason. We therefore took 10% as a lower bound for smog-induced home sales. Since homes appreciate about 5% per year, the costs of smog must be at least equal to this value. Assuming those who did not sell their homes would have to sustain the same loss due to smog, we developed our estimate.

Productivity damages

This value measures losses in productivity in workers out of doors due to smog. There were 2605 construction workers in Riverside in 1971. This number underestimates the total of outdoor workers in Riverside. We assume their productivity was curtailed 20% for each day the oxidant level was over 0.27 ppm. Our estimate resulted assuming an average daily wage of \$32.

Other damages

There are a substantial number of other potential damages. We have no immediate measures of smog damage to rubber and exterior paint or to city agriculture. We have no measure of the contribution of smog to automobile accidents or restricted outdoor activity. We have no measure of the possibly extensive personal psychic costs (e.g., increased irritability or depression) due to the presence of smog. For the many costs which have not been considered, this is a crude estimate.

1 MARY D. NICHOLS  
2 JOHN R. PHILLIPS  
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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.

CLERK, U. S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BY [Signature] DEPUTY

Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 CITY OF RIVERSIDE; CITY OF	)	
11 SAN BERNARDINO: THE REGIONAL	)	
12 ANTI-POLLUTION AUTHORITY, a	)	Civil No. 72-2122-IH
13 joint-powers agency; DESERT PEOPLE	)	
14 UNITED, a non-profit corporation;	)	
15 EDWARD MEHREN, CHRISTOPHER J.	)	FINDINGS OF FACT AND
16 DIEBENKORN;	)	CONCLUSIONS OF LAW;
17	)	JUDGMENT
18 Plaintiffs	)	
19	)	
20 vs.	)	
21	)	
22 WILLIAM D. RUCKELSHAUS, as	)	
23 Administrator, Environmental	)	
24 Protection Agency.	)	
25	)	
26 Defendant.	)	
27	)	

28 The above cause came on regularly for hearing on  
29 October 30, 1972 and November 6, 1972, upon plaintiffs' Motion  
30 for Preliminary Injunction and defendant's Motion to Dismiss and  
31 Motion to Stay; the Court, with the agreement of counsel for  
32 all parties, invoked Rule 65(a)(2) of the Federal Rules of Civil  
Procedure; and the Court after hearing the evidence and having  
considered said motions, affidavits and memoranda with respect  
thereto, and having heard the arguments of counsel, now makes  
the following findings of fact and conclusions of law:

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FINDINGS OF FACT

1. Plaintiffs filed a Complaint on September 6, 1972, for a preliminary and permanent injunction and a mandamus order pursuant to Title 5, United States Code, Section 702 and Title 28, United States Code, Sections 1331, 1337 and 1361 claiming that defendant, William D. Ruckelshaus, as Administrator of the Environmental Protection Agency, had breached a nondiscretionary duty imposed upon him by Section 110 of the Clean Air Act of 1970, 42 U.S.C. §1857c-5, and seeking to have this Court order the defendant to prepare and publish an implementation plan for the South Coast Air Basin showing that the national primary ambient air quality standards for nitrogen oxides, particulates and photochemical oxidants will be met in the Basin within the time prescribed by law. The Complaint also sought reasonable attorneys' fees.

2. Plaintiffs filed a Motion for Preliminary Injunction on September 6, 1972, requesting that the defendant, Administrator, be enjoined immediately to prepare and publish such an implementation plan for the South Coast Air Basin.

3. Attached by plaintiffs to the Motion for Preliminary Injunction were the affidavits of eight residents of the South Coast Air Basin, including medical doctors, indicating that air pollution in the Basin is presently a severe problem, that adverse health effects have resulted therefrom, and that plaintiffs had actively sought solutions to the problem and were injured by the Administrator's failure to propose an implementation plan.

4. On October 6, 1972, the United States, on behalf of the Administrator, moved to dismiss the action on the ground

1 that the Court lacks jurisdiction because the plaintiffs did  
 2 not give notice to the Administrator 60 days prior to initiating  
 3 the action, as required by Section 304(b)(2) of the Clean  
 4 Air Act of 1970, 42 U.S.C. §1857h-2(b)(2), and regulations  
 5 pursuant thereto.

6  
 7 5. The United States, on behalf of the Administrator,  
 8 moved on October 13, 1972, to stay the action on the grounds that  
 9 the Administrator had already fulfilled many of the responsibi-  
 10 lities to which the Complaint was directed and had publicly  
 11 committed himself to fulfill the balance of those responsibili-  
 12 ties by February 15, <sup>1973</sup>~~1972~~; attached to the motion of defendant  
 13 to stay the action was the affidavit of Mr. Irwin Auerbach,  
 14 Director of Program Planning and Review, Office of Air and Water  
 15 Programs, United States Environmental Protection Agency.

16  
 17 6. At a hearing on the motion of plaintiffs for  
 18 a preliminary injunction and on the motions of defendant to  
 19 dismiss or, alternatively, to stay this action, the Court re-  
 20 ceived the testimony of Mr. David Souten, an employee of Region  
 21 IX of the United States Environmental Protection in San Fran-  
 22 cisco, California, whose work responsibility is to review and  
 23 propose necessary modifications to the implementation plan  
 24 submitted by the State of California to the Environmental  
 25 Protection Agency pursuant to Section 110 of the Clean Air Act  
 26 of 1970, 42 U.S.C. §1857c-5; Mr. Souten is an engineer with  
 27 considerable experience in the field of air pollution control.

28  
 29 7. On or about February 23, 1972, the Administrator  
 30 received from the State of California an implementation plan to  
 31 achieve the Federal national ambient air quality standards  
 32 within the various air quality control regions in California.

1           8.    On May 31, 1972, the Administrator announced  
2 his disapproval of large portions of the California plan.

3  
4           9.    Certain regulations proposed by the Administrator  
5 on September 22, 1972, to correct deficiencies in the California  
6 implementation plan (37 Fed. Reg. 19812-19815, 19829-19835)  
7 apparently completed the plan with respect to the South Coast  
8 Air Basin (i.e., the Metropolitan Los Angeles Intrastate Air  
9 Quality Control Region) for meeting the particulate and nitrogen  
10 oxide Federal national ambient primary standards by July of 1975,  
11 but did not set forth the necessary transportation controls to  
12 meet the photochemical oxidant standard.

13  
14           10. The Administrator subsequently announced, in  
15 the Federal Register of September 22, 1972, that he would pro-  
16 pose appropriate transportation controls for the Metropolitan  
17 Los Angeles region by February 15, 1973.

18  
19                   THE CLEAN AIR ACT OF 1970

20           11. The Clean Air Act of 1970 created a new federal  
21 program "to protect and enhance the quality of the nation's  
22 air resources so as to promote the public health and welfare and  
23 the productive capacity of its population..." 42 U.S.C. §1857(b)  
24 (1). The Act requires each state to adopt an implementation  
25 plan specifying the manner in which national primary and second-  
26 ary ambient air quality standards will be achieved and main-  
27 tained within each air quality control region in such state  
28 within three years from the approval of such plan. If a state  
29 fails to submit a satisfactory implementation plan, the Act  
30 requires the Administrator to develop such a plan, and he has  
31 broad authority to enforce an implementation plan with civil  
32 and criminal penalties.

1           12. The Clean Air Act establishes firm deadlines for  
2 actions to be taken by a state and by the Administrator in  
3 furtherance of the goal of clean air.

4           (a) Within 30 days after December 31, 1970,  
5 the Administrator of EPA was required to publish proposed  
6 regulations prescribing national primary and secondary  
7 ambient air quality standards for each pollutant for which  
8 air quality criteria had been issued. On January 31, 1971  
9 air quality criteria had been issued for carbon monoxide,  
10 sulfur dioxide, nitrogen oxides, particulates and photo-  
11 chemical oxidants.

12           (b) Within 90 days after publication of the  
13 proposed regulations, the Administrator of EPA was required  
14 to promulgate by regulation the proposed primary and  
15 secondary air quality standards, "with such modifications  
16 as he deems appropriate." 42 U.S.C. §1857c-4(a)(1)(B).

17           (c) Within nine months after promulgation of  
18 the standards, each state was required to submit to the  
19 Administrator of EPA an implementation plan providing for  
20 achieving the national primary air quality standards in  
21 each air quality region. 42 U.S.C. §1857c-5(a)(1).

22           (d) Within four months after the date of  
23 submission of such an implementation plan, the Administrator  
24 was required to approve or disapprove it. 42 U.S.C. §1857c-  
25 5(a)(2).

26           (e) The Administrator was entitled to approve  
27 a state implementation plan only if he found that it pro-  
28 vided for the achievement of national primary ambient air  
29 quality standards "as expeditiously as possible, and in no  
30 case later than three years from the date of approval of  
31 such plan." In order to meet the statutory target date,  
32 the state plans were required to include emissions limi-

1 tations, schedules and timetables for compliance, and  
2 "such other measures as may be necessary to insure  
3 attainment and maintenance of such primary or secondary  
4 standard, including, but not limited to, land use and  
5 transportation controls."

6 42 U.S.C. §1857c-5(a)(2)(B)

7 (f) Section 110(c) of the Clean Air Act,  
8 42 U.S.C. §1857c-5(c), provides in pertinent part as  
9 follows:

10 "The Administrator shall, after consideration  
11 of any State hearing record, promptly prepare and  
12 publish proposed regulations setting forth an  
13 implementation plan, or portion thereof, for a  
14 State if--

15 ...

16 (2) the plan, or any portion  
17 thereof, submitted for such State is  
18 determined by the Administrator not  
19 to be in accordance with the require-  
20 ments of this section,

21 The Administrator shall, within six months after  
22 the date required for submission of such plan..., promul-  
23 gate any such regulations unless, prior to such promulgation  
24 such State has adopted a plan...which the Administrator  
25 determines to be in accordance with the requirements  
26 of this section."

27 Thus, the Act requires that the Administrator pro-  
28 mulgate regulations to replace any portion of a state  
29 plan he disapproves within two months of the date of  
30 disapproval. In this case by July 31, 1972.

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CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter.

2. Plaintiffs admittedly failed to give the Administrator 60 days notice before filing this action, as required by subsection 304(a)(2) of the Clean Air Act of 1970, 42 U.S.C. §1857h-2(a)(2). The Court concludes that the provisions of subsection (e) of that section do not apply in this case, since this is a suit against the Administrator to compel him to perform a non-discretionary duty under the Act and therefore covered by subsection (a)(2). Although this construction would give the Administrator an additional 60 days after each of the firm deadlines set by Congress in which to perform the various non-discretionary duties imposed under the Clean Air Act, the statutory language appears to require this result.

3. There has been substantial compliance and actual constructive compliance by plaintiffs with the sixty-day notice provision, 42 U.S.C. §1857h-2(b)(2), in that:

1) Filing of the complaint herein on September 6, 1972 and personal service of the complaint on the Administrator constituted actual notice of the plaintiffs' demand for action by the Administrator.

2) ~~This action ended sixty days before the~~ <sup>ELAPSED BETWEEN THE FILING DATE AND THE DATE</sup> hearing on plaintiffs' request for injunction was complete and this Court rendered its judgment.

3) During that sixty day period the Administrator had all the beneficial effect of the sixty day notice provision, so the purposes of the provision were fulfilled.

4) During the sixty day period in which this action has been pending, the Administrator not only failed

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THAT

ELAPSED BETWEEN THE FILING DATE AND THE DATE

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to promulgate the plan as requested by plaintiffs, he reiterated in the Federal Register of September 22, 1972 his intention not to do so until February 15, 1973.

4. By not publishing proposed regulations for transportation controls for the Metropolitan Los Angeles Intra-state Air Quality Control Region by July 31, 1972, the Administrator breached a non-discretionary duty under the Clean Air Act of 1970, 42 U.S.C. §1857c-5(c).

5. None of the justifications or excuses for delay alleged by the Administrator are valid under the statute.

6. Judgment for plaintiffs is granted on the merits, and the defendant is ordered to prepare and publish in the Federal Register by no later than January 15, 1973, regulations setting forth an implementation plan for attaining the national primary ambient air quality standard for photochemical oxidants in California, including all necessary transportation controls and land use controls. Such proposed regulations shall demonstrate that the national primary standard for photochemical oxidants shall be attained within three years of the date of final adoption, or, if a request for a two-year extension is made by the Governor of California and approved by the Administrator pursuant to §1857c-5(c)(1) of the Clean Air Act, no later than five years from the date of adoption.

*J.A.*

*OR HAS BEEN*

*THE COURT*

~~THE COURT DECLINES TO AWARD PLAINTIFFS~~

7. ~~Plaintiffs are awarded their costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1857h-2(d).~~

*SINCE THE ACTION IS ONE AGAINST THE U.S. GOVERNMENT.*

DATED: This 16th day of November, 1972

*J. Irving Hill*  
United States District Judge