INTRODUCTION

1. More than 30 years after Congress adopted the Clean Air Act, unsafe levels of ozone persist in the San Francisco Bay Area, threatening the health of its residents. Over these three decades, the local agencies responsible for protecting our air quality have devised one inadequate plan after another in their unsuccessful efforts to eliminate this public health risk. Compounding the inadequacy of these plans is the failure of local agencies to implement them. Not surprisingly, the San Francisco Bay Area (or "Bay Area") has yet to meet a single deadline set under the Clean Air Act for attainment of the National Ambient Air Quality Standard for ozone ("national ozone standard" or "ozone standard"), including the most recent deadline of November 15, 2000.

2. This citizen enforcement suit, brought under Section 304(a) of the Clean Air Act (or "Act"), 42 U.S.C. § 7604(a), addresses the second prong of this cycle of failure – *i.e.*, the consistent and ongoing failure of the local agencies to implement even those emissions control measures contained in their own plans. Specifically, plaintiffs seek to compel the Metropolitan Transportation Commission ("MTC") to carry out a transportation control measure the agency itself developed to reduce emissions of ozone precursors from mobile sources, such as cars and trucks.

3. Unfortunately, this is not the first time citizen enforcement action against MTC has become necessary. Communities for a Better Environment ("CBE") and the Sierra Club – which for decades have fought, in and out of the courts, for cleaner air in the Bay Area – initially turned to this Court in 1989 to compel MTC to comply with the Clean Air Act. That case involved, among other matters, MTC's obligations under the 1982 Bay Area Air Quality Plan adopted by MTC and other responsible agencies to achieve the national ozone standard. As a

result of that suit, the Court ordered MTC to adopt additional transportation control measures. *See Citizens for a Better Environment et a. v. Deukmejian; Sierra Club v. Metropolitan Transportation Commission, et al.*, 731 F. Supp. 1448 (N.D. Cal. 1990).

4. Nearly twelve years later, CBE and the Sierra Club – now joined by Bayview Hunters Point Community Advocates, Latino Issues Forum, Our Children's Earth Foundation, the Transportation Solutions Defense and Education Fund and the Urban Habitat Program (a project of the Tides Foundation) – return to this Court. This time, they seek to compel MTC to implement a key transportation control measure the agency originally adopted as part of the 1982 plan and has retained in all subsequent plan revisions.

5. That measure sought to ease the region's air pollution woes by requiring MTC and transit operators to achieve by 1987 a 15 percent increase in Bay Area transit ridership from 1983 levels. The goal was to improve the viability of transit as an alternative to automobile use, in order to shift people from cars onto public transit and thereby reduce motor vehicle emissions. Eighteen years later, the measure has yet to be implemented, and the 15 percent ridership increase has yet to be realized. Despite a 30 percent increase in population, roughly the same number of people ride transit today as in 1983. The coalition of environmental, environmental justice and community groups bringing this suit believe that the long overdue enforcement of this measure will improve air quality, reduce public health problems caused by both ozone and particulate matter, offer those residents with cars a choice to use transit instead and afford those residents without vehicles a viable, affordable public transit system.

JURISDICTION

6. This Court has jurisdiction over this action to secure the enforcement of an emissions standard or limitation pursuant to 42 U.S.C. § 7604(a) (citizen suit provision of the Act) and 28 U.S.C. § 1331 (federal question jurisdiction).

7. Plaintiffs have provided defendants with written notice of the claims stated in this action at least 60 days before commencing this action, as required by Section 304(b)(1), 42 U.S.C. § 7604 (b)(1). *See* Exhibits A and B (Letters from Deborah S. Reames, counsel for plaintiffs, to Lawrence D. Dahms, then-Executive Director of MTC, Michael Burns, General Manager of San Francisco Municipal Railway, and Richard Fernandez, General Manager of the Alameda-Contra Costa County Transit District, dated November 15, 2000 and December 14, 2000).

8. The Alameda-Contra Costa Transit District was responsive to plaintiffs' 60-day notice, entering into a Consent Decree with plaintiffs which has been lodged with the Court along with this Complaint. Settlement negotiations with the San Francisco Municipal Railway ceased when it refused to develop a plan detailing improvements which, if funded by MTC, would increase its ridership from present levels to those it reported in 1983. MTC has denied any responsibility for implementing the transportation control measure at issue here.

VENUE AND INTRADISTRICT ASSIGNMENT

9. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e) because all of the plaintiffs and defendants maintain offices in the San Francisco Bay Area, and members of each plaintiff organization reside within San Francisco.

10. Assignment to the San Francisco Division of this Court is proper under Civil Local Rule 3-2 (c)-(d) because many of plaintiffs and defendant MUNI maintain offices in San

Francisco, because members of each of the plaintiffs reside within San Francisco, because San Francisco County significantly contributes to and is affected by the ozone problem which will be addressed in part by successful resolution of this suit, and because, as MUNI carries half of all transit riders in the Bay Area, San Francisco residents will be particularly affected by the implementation of the transportation control measure at issue here. Therefore, a substantial part of the events and omissions giving rise to this action occurred in San Francisco County.

PARTIES

11. Plaintiff BAYVIEW HUNTERS POINT COMMUNITY ADVOCATES, INC. is a non-profit California corporation whose principal place of business is San Francisco, California. Bayview Hunters Point Community Advocates works within the Bayview Hunters Point neighborhood of San Francisco to ensure environmental justice, to promote economic alternatives that contribute to the development of environmentally safe neighborhoods and livelihoods, and to secure the political, economic, cultural, and social liberation of this community. Original and current board members of this group include many longtime activists from the Bayview Hunters Point neighborhood. Since its founding in the early 1990s, Bayview Hunters Point Community Advocates has successfully undertaken local projects to both encourage greater economic development opportunities and benefit the environment, such as fighting the introduction of new industrial activities that would further pollute their community. Specific projects in which Bayview Hunters Point Community Advocates has been pivotal include working with San Francisco State University and students at George Washington Carver Elementary School to take air quality readings at several sites in the neighborhood pursuant to an grant from the U.S. Environmental Protection Agency ("EPA") and advocating for the elimination of diesel buses used by MUNI.

12. Plaintiff CBE is a non-profit, statewide, multiracial, urban environmental health and justice organization headquartered in Oakland, California, with 20,000 members statewide, of whom over 2,500 reside in the San Francisco Bay Area. CBE works with ethnically and economically diverse residents, community groups, labor organizations and other environmental groups to prevent air and water pollution, eliminate toxic hazards and improve public health. CBE has been extremely active in air quality issues in the Bay Area for over two decades. With the Sierra Club, it brought successful litigation in 1989 to enforce measures contained in the 1982 Bay Area Air Quality Plan to attain national standards for ozone and carbon monoxide. *See Communities for a Better Environment, et al. v. Deukemejian, et al.* (No. C-89-2044-TEH) and *Sierra Club, et al. v. Metropolitan Transportation Commission, et al.* (No. C-89-2064-TEH) filed June 13, 1989 ("*CBE/Sierra Club*"). Among other things, this case forced adoption of contingency transportation control measures and a quantitative process for assessing "transportation conformity" – i.e., for calculating whether the motor vehicle emissions expected to result from new transportation projects in the Bay Area will fit within the emissions limitations of the applicable air quality plan. It also led to the adoption by the Bay Area Air Quality Management District ("Air District") of additional control measures to reduce emissions from stationary sources. In 1998, CBE joined the Sierra Club and other organizations in successfully petitioning EPA to reverse its 1995 determination that ozone levels in the Bay Area were safe and to re-designate the Bay Area as a nonattainment area for ozone.

13. Plaintiff LATINO ISSUES FORUM is a non-profit public policy and advocacy institute based in San Francisco that addresses public policy issues, including air quality, from the perspective of California's Latino community. Its mission is to empower Latinos to participate more fully and effectively in public policy issues through advocacy, coalition

building, policy analysis and development, community education and training, and media resources. Latino Issues Forum has published the reports "Confronting Asthma in California's Latino Communities" and "Forging New Alliances: Building a Common Vision for California's Environment," both of which delve into air quality issues statewide. In addition, the Latino Issues Forum participates in MTC's Minority Citizens Advisory Committee, which seeks to involve minority communities in the transportation planning process for the Bay Area and to ensure that the views and needs of minority communities are adequately reflected in MTC policies, which have significant implications for regional air quality.

14. Plaintiff OUR CHILDREN'S EARTH FOUNDATION ("OCE") is a non-profit public benefit corporation organized under the laws of the State of California with its principal place of business in San Francisco, California. OCE is dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to empower communities affected by pollution to take action for its reduction. OCE has worked with a coalition of community, environmental and public health groups to advocate for the elimination of diesel buses used by schools and Bay Area transit agencies, including Golden Gate Transit and MUNI. In addition, OCE has been particularly active in air quality issues in the Bay Area, participating in proceedings before the Bay Area Air Quality Management District, including providing public comments on federal operating permits proposed to be issued under the Clean Air Act.

15. Plaintiff SIERRA CLUB is a national conservation organization headquartered in San Francisco with over 600,000 members nationwide, including more than 30,000 members in the San Francisco Bay Area. Sierra Club's mission includes protection and restoration of the natural and human environment, and its activities include public education, advocacy, and

litigation to enforce environmental laws. For over three decades, the Sierra Club has worked to enact, strengthen, and enforce the Clean Air Act and its regulations to reduce air pollution in the United States – at the national, State of California and Bay Area levels. At the local level, as described above, the Sierra Club joined CBE in the 1989 *CBE/Sierra Club* lawsuit and the 1998 petition to EPA seeking re-designation of the Bay Area as a nonattainment area for ozone. The Sierra Club was also a plaintiff in a 1992 lawsuit to enforce the EPA Administrator's non-discretionary duty to promulgate transportation conformity regulations within a specified time period as required by the Clean Air Act. *See Environmental Defense Fund, Inc., Sierra Club, et al. v. Reilly, Administrator of the United States Environmental Protection Agency, et al.* (No. C-92-1636-TEH) filed May 12, 1992. In addition, the Sierra Club is represented on the Advisory Council of the Air District, as well as both the Regional Alliance For Transit and the Bay Area Transportation And Land Use Coalition, which advocate for transit decisions in the Bay Area that will improve air quality.

16. Plaintiff TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND ("TRANSDEF"), a public benefit, non-profit California corporation headquartered in the Bay Area, was established as a regional advocate to promote transportation solutions favoring transit over new highway capacity, development around transit lines rather than sprawl into the Bay Area's open spaces, and more market-oriented pricing of private motor vehicle travel. Since its founding in 1994, TRANSDEF has advocated for effective regional planning, smart growth, improved transit service, and cleaner air. Specifically, TRANSDEF has been actively engaged in numerous agency proceedings that involve transportation and air quality issues relevant to this action, including the development and submittal of the most recent plan for attaining the national

ozone standard, submitted by local agencies to EPA in 1999. It also participates in the Bay Area Air Quality Conformity Task Force.

17. Plaintiff URBAN HABITAT PROGRAM ("Urban Habitat") is a project of the Tides Center, which is a non-profit corporation headquartered in San Francisco. Urban Habitat is dedicated to building multicultural urban environmental leadership for socially just, ecologically sustainable communities in the Bay Area. Through its activities, newsletters and reports, Urban Habitat has focused on transportation justice and its relationship to air quality. Its 1999 publication, *Crash Course in Bay Area Transportation Investment*, broadened and accelerated public discourse on transportation investments and their impacts on air quality, equity, and land-use planning. Urban Habitat actively participates in the Environmental Justice Air Quality Coalition, which has helped the Air District develop and implement environmental justice principles into its planning and programs. In addition, it plays a leadership role in the Bay Area Transportation And Land Use Coalition.

18. On November 15, 2000, Plaintiffs petitioned EPA to: (1) partially disapprove the most recent air quality plan submitted by the local agencies to EPA for approval over 18 months ago ("1999 Attainment Plan"); (2) make a determination that the Bay Area has failed to attain the ozone standard by the November 15, 2000; and (3) make a finding that the transportation control measure challenged herein, along with another transportation control measure adopted as a result of the *CBE/Sierra Club* litigation, have not been implemented. On January 8, 2001, Plaintiffs filed suit to address EPA's failure to take any action whatsoever with respect to the 1999 Attainment Plan. That case is now pending before this Court.

19. Plaintiffs' members live, work, recreate and breathe in the Bay Area. Plaintiffs' members are adversely affected by exposure to air in the Bay Area that does not meet the

national ozone standard established under the Act to protect public health and, indeed, are adversely affected by ozone levels below that standard. Adverse effects suffered by Plaintiffs' members include, but are not limited to, actual or threatened harm to their health and to their aesthetic enjoyment of the environment in the Bay Area. Plaintiffs' members, particularly those who rely exclusively on public transit and/or who live in highway corridors, are further adversely affected by inadequate and/or unaffordable public transit services needed to access schools, jobs and essential service, as well as by the unhealthful emissions of ozone precursors and other pollutants, including particulates, from cars, trucks, and other vehicles utilizing the highway corridors in their neighborhoods. Defendants' compliance with the 1982 plan for attaining the national ozone standard, and specifically with the transportation control measure at issue here, would necessarily include actions to improve public transit service and affordability, which in turn would reduce vehicle emissions by shifting drivers out of cars and onto transit.

20. These health, aesthetic, environmental and economic interests of Plaintiffs' members have and continue to be adversely affected by the acts and omissions of Defendants alleged herein. Granting the requested relief would redress the injuries described above.

21. Defendant MTC is responsible for taking various actions to implement and enforce the Clean Air Act, including the actions sought herein.

22. Defendant SAN FRANCISCO MUNICIPAL RAILWAY ("MUNI") is responsible for taking various actions to implement and enforce the Clean Air Act, including the actions sought herein.

23. Defendant ALAMEDA-CONTRA COSTA TRANSIT DISTRICT ("AC Transit") is responsible for taking various actions to implement and enforce the Clean Air Act, including the actions sought herein.

BACKGROUND

24. The Clean Air Act requires states to submit for EPA approval State Implementation Plans ("SIPs") containing enforceable measures that will ensure that each state attains by the applicable attainment deadline the national standards (*i.e.,* the National Ambient Air Quality Standards) promulgated by EPA to protect public health. *See* CAA § 110(a), 42 U.S.C. § 7410(a). One of these standards sets maximum acceptable limits for ozone.

25. Ground-level ozone is formed when emissions of nitrogen oxides ("NOx") and volatile organic compounds ("VOCs") mix in heat and sunlight. The health effects of ozone at levels above the national ozone standard include coughing, throat irritation, shortness of breath, chest pain, inflammation of and damage to the lining of the lung and increased frequency and severity of asthma attacks. Lung damage caused by exposure to ozone may be permanent. While asthmatics, children, the elderly and persons with respiratory illnesses are particularly vulnerable, even healthy adults who exercise or work vigorously outdoors are susceptible to adverse health effects from ozone exposure.

26. Since the passage of the Clean Air Act in 1970, MTC and the other responsible local agencies have adopted, the California Air Resources Board (CARB") has approved and submitted to EPA, and EPA has in turn approved, a series of plans designed to bring the Bay Area into attainment with the national ozone standard. Not one of these plans has proven adequate to achieve and maintain that standard, first set by EPA in 1971. Instead, the Bay Area has exceeded the national ozone standard in 29 of the last 30 years and has never met a single deadline for attaining the national ozone standard. On November 15, 2000, the Bay Area missed its fourth consecutive deadline for ozone attainment.

27. After the Bay Area missed its first attainment deadline in 1975, amendments to the Act extended the region's attainment deadline to 1982, a deadline further extended by EPA by the maximum five additional years authorized under those amendments to 1987. In 1982, MTC and the other local and state agencies adopted and submitted to EPA, a SIP purportedly designed to attain that 1987 deadline. This 1982 Bay Area Air Quality Plan ("1982 SIP"), approved by EPA in December 1983, contained a variety of measures to control emissions from both stationary and mobile sources of air pollution. Transportation control measures ("TCMs") were and have remained an important component of this and subsequent SIP strategies for controlling pollution from mobile sources.

28. One of the TCMs included in the 1982 SIP, TCM 2, is at issue in this case. It required a 15 percent increase in transit ridership in the Bay Area, in order to reduce vehicular air pollution by shifting people out of cars and onto public transit.

29. The 1982 SIP failed to bring the Bay Area into attainment, and the region was still exceeding the national ozone standard in 1987.

30. In 1989, in the absence of any enforcement efforts by EPA, CBE and the Sierra Club, plaintiffs herein, were forced to sue MTC, along with the Air District, ABAG and CARB, to address the failure of MTC and the Air District to implement the provisions of the 1982 SIP. *Communities for a Better Environment, et al. v. Deukemejian, et al.* (No. C-89-2044 TEH) and *Sierra Club, et al. v. Metropolitan Transportation Commission, et al.* (No. C-89-2064 TEH) (consolidated actions). Among other things, CBE and the Sierra Club sought enforcement of the SIP requirement that MTC develop contingency TCMs as soon as it became aware that the measures included in the SIP itself were not proving sufficient to bring the Bay Area into attainment with the national standards for both ozone and carbon monoxide. The Sierra Club

and CBE were successful in that litigation, forcing MTC to adopt a set of 16 contingency TCMs to compensate for the regional emissions reduction shortfall.

31. In 1990, Congress again amended the Act to provide new deadlines, incentives, and sanctions to encourage state compliance with national standards for ozone and other pollutants. The attainment deadline for the Bay Area was extended by those amendments to November 15, 1996.

32. In 1993, MTC and the other local and state agencies claimed that the Bay Area had reached attainment with the national ozone standard and requested that EPA re-designate the region as an attainment area. In June 1995, EPA acquiesced and simultaneously approved the ozone maintenance plan – *i.e.*, a plan to ensure that an attainment area remains in attainment –submitted in 1994 by the local agencies in lieu of an attainment plan. That 1994 Maintenance Plan had been in effect since the local agencies had originally adopted it in 1993. TCM 2, which had yet to be implemented, was retained in the 1994 Maintenance Plan.

33. Two days after the re-designation became final, the Bay Area again exceeded the national ozone standard. Indeed, that summer, 15 different monitoring stations recorded a total of 32 exceedances of the national standard and one such station at Livermore recorded seven exceedances. The re-designation was obviously in error, the 1994 Maintenance Plan had clearly failed and the Bay Area was not in attainment with the national ozone standard as of the November 15, 1996 deadline.

34. In 1997, CBE and the Sierra Club, with the support of some of the other plaintiffs herein, formally petitioned EPA to re-designate the Bay Area back to a nonattainment area. EPA granted the petition, re-designating the Bay Area to non-attainment for ozone in the summer of 1998. At the same time, EPA demanded that the local agencies and CARB adopt and submit by

June 15, 1999 a plan for the Bay Area to attain the national ozone standard by November 15, 2000.

35. In August 1999, CARB forwarded to EPA the attainment plan adopted by MTC, the Air District and ABAG that June. While that 1999 Attainment Plan has never been approved by EPA (the subject of another lawsuit currently pending before this Court), the stationary and mobile source control measures it contains are purported to have been in effect since June 1999. TCM 2 remains one of the plan's key transportation control measures.

36. Like all the plans before it, the 1999 Attainment Plan failed to bring the Bay Area into attainment by the November 15, 2000 deadline. Instead, 28 exceedances of the standard were recorded in the Bay Area over the three years prior to the deadline. In fact, the Bay Area experienced too many exceedances during the summer of 2000 for EPA even to consider granting the region yet another extension of its attainment deadline.

37. On November 15, 2000, Plaintiffs formally petitioned EPA to take several discretionary actions to address the ongoing ozone problem in the Bay Area, as it was clear that the responsible local agencies were failing to take effective action. Specifically, Plaintiffs requested that EPA disapprove in part the proposed 1999 Attainment Plan. They also sought a formal determination pursuant to Section 179 of the Act (42 U.S.C. § 7509(c)(1)) that the Bay Area has failed to attain the national ozone standard by the mandatory deadline. Finally, they requested EPA to make a formal finding pursuant to Sections 113 and 179 of the Act (42 U.S.C.§§ 7413(a), 7509(a)) that TCMs 2 has not been implemented.

38. On January 8, 2001, with no action from EPA on their petition or on the 1999 Attainment Plan, Plaintiffs filed a citizen enforcement action with this Court to compel EPA to take action on the Plan. Plaintiffs believe that, if forced to act, EPA can only disapprove the

plan, at least in part, thereby triggering the mandatory preparation of a plan to bring the Bay Area into attainment with the national ozone standard.

39. It is clear that MTC and the other local agencies cannot afford to ignore *any* reasonable measure to reduce emissions of VOCs and NOx if the Bay Area is ever to attain the national ozone standard set by EPA to protect public health. Certainly it cannot ignore TCM 2.

TRANSPORTATION CONTROL MEASURE 2

40. TCM 2 seeks to increase transit ridership. Its goal was and is to move people out of cars and onto public transit, thereby reducing emissions of ozone precursors from mobile sources.

41. TCM 2 was first adopted in the 1982 SIP. It requires that MTC ensure by 1987 a region-wide increase in transit ridership of 15 percent over 1983 levels. TCM 2 contains an implementation strategy that first requires the six major transit operators, including MUNI and AC Transit, to prepare five-year operating plans to increase ridership. As a starting point for regional planning, each operator was to specify the specific measures and associated costs by which it would achieve the 15 percent increase. MTC was then to review those plans and consult with the operators to determine the actual individual ridership increase target for each, such that the overall regional increase of 15 percent would be accomplished in the most cost-effective and sensible manner. Finally, MTC was to ensure the implementation of those plans through its Transportation Improvements Programs ("TIPs") and through its regional funding allocations.

42. TCMs 1, 2 and 3 are successive steps toward the goal of increasing transit ridership substantially over time. TCM 1, originally adopted in the 1979 Air Quality Plan, was

retained in the 1982 SIP as follows: "Reaffirm commitment to 28% transit ridership increase between 1978 and 1983." *Id*. at B-2.

43. TCM 2 was described by MTC as "basically an extension of TCM 1." 1982 SIP at B-3. TCM 2 requires MTC to: "Support post-1983 improvements identified in transit operators' 5-year plans; after consultation with operators, adopt ridership increase target for 1983-1987." *Id*. at B-3. The estimates of pollutant emission reductions to be achieved through implementation of TCM 2 are predicated on a 15 percent regional ridership increase. *Id*. Specifically, the implementation strategy for TCM 2 (*id.*) provides that:

44. 6 major transit operators adopt FY 1983-87 [operating] plans by July, 1982

45. MTC consults with operators on ridership targets by Jan., 1983

46. MTC, through implementation of the TIP and allocation of regional funds seeks to ensure operators' 5-year plans are implemented

47. Ridership gains are monitored through annual RFP [Reasonable Further Progress] reports.

48. TCM 3 directed MTC to "[s]eek to expand and improve public transit beyond committed levels" – *i.e.*, "if funding exists, transit operators [were to] implement plans to expand services" beyond the levels of increased service TCMs 1 and 2 committed to provide. *Id.* at B-4.

49. The SIP has been revised on several occasions since 1982, but TCM 2 has been retained, intact, in all SIP revisions, including the 1999 Attainment Plan.

50. The transit operators, including MUNI and AC Transit, adopted their five-year operating plans in the fall of 1982, but neither of those plans, nor any subsequent plan adopted by MUNI or AC Transit, provided for a 15 percent ridership increase as required under TCM 2.

51. MTC never consulted with the transit operators to determine the individual ridership increase to be contributed by each operator in order to accomplish the 15 percent region-wide increase.

52. MTC never ensured that the five-year operating plans providing for the TCM 2 ridership increase were developed, let alone implemented through its TIPs and its regional funding allocations.

53. The TCM 2 ridership increase target was never achieved. Instead of increasing, public transit ridership in absolute numbers is currently approximately the same as in 1983, despite a population increase of 30 percent. Per capita, ridership has actually *decreased* by nearly 25 percent over that period.

54. While transit ridership in the region as a whole remains roughly at 1983 levels, ridership on the inner city transit systems has fared much worse. AC Transit in the East Bay has lost approximately eight million annual boardings since 1983, while MUNI boardings have dropped by tens of millions.

CLAIM FOR RELIEF

(Failure to Implement TCM 2)

55. Plaintiffs reallege, as if set forth fully herein, each and every allegation set forth in paragraphs 1 – 50 above.

56. TCM 2 is an "emissions standard or limitation" within the meaning of the Clean Air Act, which defines that term to include: "(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, . . . or (3) any condition or requirement under an applicable implementation plan relating to transportation control measures" 42 U.S.C. §7604(f).

57. The citizen suit provision of the Act authorizes citizen groups such as Plaintiffs to sue "any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter." 42 U.S.C. §7604(a).

58. The agencies identified in the 1982 SIP as responsible for implementing TCM 2 are MTC and the transit operators. 1982 SIP at 20.

59. Neither MUNI nor AC Transit has ever adopted the ridership increase plans required by TCM 2.

60. MTC has not required TCM 2 ridership increase plans to be submitted by any of the Bay Area transit operators. It has never consulted with the operators to set the individual ridership increase required by each. It has never ensured the implementation of TCM 2 ridership allocations. It has failed to accomplish the required ridership through its TIPs and funding allocations.

61. Accordingly, MUNI, AC Transit and MTC are each in continuing violation of an emissions standard or limitation contained in the 1982 SIP, and therefore each is in continuing violation of the Clean Air Act. Unless enjoined by this Court, MUNI, AC Transit and MTC will remain in violation of the Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court to:

1. Adjudge and declare that MTC, MUNI and AC Transit have violated and are in continuing violation of the Clean Air Act, 42 U.S.C. §7604(a), due to their failure to carry out their respective obligations under the 1982 and subsequent SIPs to implement TCM 2.

2. Enter a preliminary and permanent injunction directing that MTC, MUNI and AC Transit immediately implement TCM 2.

3. Order MTC, MUNI and AC Transit to pay appropriate civil penalties pursuant to 42 U.S.C. 7604(a).

4. Retain jurisdiction over this matter until such time as MUNI, AC Transit and MTC have complied with their duties under the 1982 SIP and the Clean Air Act.

5. Award Plaintiffs their costs of litigation, including reasonable attorney and expert witness fees.

6. Grant Plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted on this 21st day of February, 2001,

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