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9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11

12 STATE OF CALIFORNIA, STATE OF NEW
 YORK, STATE OF CONNECTICUT, STATE
 13 OF ILLINOIS, STATE OF IOWA, STATE OF
 MAINE, STATE OF MARYLAND,
 14 COMMONWEALTH OF MASSACHUSETTS,
 STATE OF MINNESOTA, BY AND
 15 THROUGH ITS MINNESOTA POLLUTION
 CONTROL AGENCY, STATE OF OREGON,
 16 COMMONWEALTH OF PENNSYLVANIA,
 STATE OF RHODE ISLAND, STATE OF
 17 VERMONT, STATE OF WASHINGTON, and
 DISTRICT OF COLUMBIA,

18 Plaintiffs,

19 v.

20
 21 SCOTT PRUITT, as Administrator of the
 United States Environmental Protection
 22 Agency, and the UNITED STATES
 ENVIRONMENTAL PROTECTION
 23 AGENCY,

24 Defendants.
 25

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

(Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*)

26 Plaintiffs California, New York, Connecticut, Illinois, Iowa, Maine, Maryland,
 27 Massachusetts, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of
 28 Columbia, by their respective Attorneys General, and Minnesota, by and through its Minnesota

1 Pollution Control Agency, (collectively, the “States”), allege as follows:

2 **NATURE OF THE ACTION**

3 1. The States bring this action to compel E. Scott Pruitt, in his official capacity as
4 Administrator of the United States Environmental Protection Agency, and the United States
5 Environmental Protection Agency (together, “EPA”), to fulfill their mandatory duty under the
6 Clean Air Act to designate all areas of the country as in or out of compliance with health and
7 welfare standards, referred to as the National Ambient Air Quality Standards (“NAAQS”), for
8 ozone. These designations trigger the steps necessary to protect the public from the various health
9 effects—such as heart disease, bronchitis, and asthma—this pollution causes or exacerbates.
10 Section 107(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B), requires the Administrator
11 to promulgate designations of “attainment,” “nonattainment,” or “unclassifiable” for the NAAQS
12 for all areas of the country as expeditiously as practicable, but in no case later than two years
13 from the date EPA promulgates a new NAAQS. EPA promulgated a new NAAQS for ozone on
14 October 1, 2015, and, more than two years later, EPA has not promulgated designations for all
15 areas. Indeed, EPA has not promulgated designations for *any* nonattainment areas, which are the
16 areas with the highest concentrations of ozone and so most in need of the corrective plans that
17 designation triggers. Therefore, the States seek both declaratory relief and an injunction requiring
18 EPA to promptly promulgate all overdue designations by a date certain.

19 **JURISDICTION**

20 2. This Court has jurisdiction over this action pursuant to section 304(a)(2) of the
21 Clean Air Act, 42 U.S.C. § 7604(a)(2), which authorizes any person, after duly giving notice, to
22 commence a citizen suit in district court against the EPA Administrator for failing to perform a
23 nondiscretionary duty under the Clean Air Act. The Court also has jurisdiction to hear this civil
24 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1361 (action
25 to compel officer or agency to perform a duty owed to plaintiffs).

26 **VENUE**

27 3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) because a substantial
28 part of the events or omissions giving rise to the States’ claim occur in this judicial district. The

1 Administrator's failure to perform his nondiscretionary duty to designate areas as in or out of
2 attainment with the ozone NAAQS is adversely impacting areas within this judicial district,
3 which experiences elevated levels of ozone pollution. Indeed, California, as a result of its unique
4 topography, contains some of the worst ozone pollution in the country, and is sorely in need of
5 protection and planning.

6 4. In addition, EPA has failed to issue a designation for the San Francisco Bay Area.
7 Despite the recommendation of the California Air Resources Board, EPA has not made a
8 nonattainment designation for the San Francisco Bay Area (comprising the counties of Marin,
9 Napa, Contra Costa, Alameda, Santa Clara, San Francisco, and San Mateo, and portions of the
10 counties of Solano and Sonoma). The lack of a nonattainment designation for the Bay Area
11 undermines the ability of state and local regulators to improve the region's air quality, by
12 depriving them of crucial regulatory tools that are not readily available otherwise.

13 **INTRADISTRICT ASSIGNMENT**

14 5. Intradistrict assignment of this matter to the San Francisco Division of the Court is
15 appropriate pursuant to Civil Local Rule 3-2(e) because a substantial part of the events or
16 omissions giving rise to the claims in this case occurred in the County of San Francisco.

17 **PARTIES**

18 6. Plaintiff State of California is a sovereign entity that brings this action on behalf of
19 its citizens and residents to protect their health and well-being, and on its own behalf to protect its
20 interests as administrator of healthcare programs and schools, its interests as an employer, and its
21 interests in protecting and preserving the natural resources held in trust by the State.

22 7. Plaintiff State of New York is a sovereign entity that brings this action on behalf of
23 its citizens and residents to protect their health and well-being, and on its own behalf to protect its
24 interests as administrator of healthcare programs and schools, its interests as an employer, and its
25 interests in protecting and preserving the natural resources held in trust by the State.

26 8. Plaintiff State of Connecticut is a sovereign entity that brings this action on behalf
27 of its citizens and residents to protect their health and well-being, and on its own behalf to protect
28

1 its interests as administrator of healthcare programs and schools, its interests as an employer, and
2 its interests in protecting and preserving the natural resources held in trust by the State.

3 9. Plaintiff State of Illinois is a sovereign entity that brings this action on behalf of its
4 citizens and residents to protect their health and well-being, and on its own behalf to protect its
5 interests as administrator of healthcare programs and schools, its interests as an employer, and its
6 interests in protecting and preserving the natural resources held in trust by the State.

7 10. Plaintiff State of Iowa is a sovereign entity that brings this action on behalf of its
8 citizens and residents to protect their health and well-being, and on its own behalf to protect its
9 interests as administrator of healthcare programs and schools, its interests as an employer, and its
10 interests in protecting and preserving the natural resources held in trust by the State.

11 11. Plaintiff State of Maine is a sovereign entity that brings this action on behalf of its
12 citizens and residents to protect their health and well-being, and on its own behalf to protect its
13 interests as administrator of healthcare programs and schools, its interests as an employer, and its
14 interests in protecting and preserving the natural resources held in trust by the State.

15 12. Plaintiff State of Maryland is a sovereign entity that brings this action on behalf of
16 its citizens and residents to protect their health and well-being, and on its own behalf to protect its
17 interests as administrator of healthcare programs and schools, its interests as an employer, and its
18 interests in protecting and preserving the natural resources held in trust by the State.

19 13. Plaintiff Commonwealth of Massachusetts is a sovereign entity that brings this
20 action on behalf of its citizens and residents to protect their health and well-being, and on its own
21 behalf to protect its interests as administrator of healthcare programs and schools, its interests as
22 an employer, and its interests in protecting and preserving the natural resources held in trust by
23 the State.

24 14. Plaintiff State of Minnesota, by and through its Minnesota Pollution Control
25 Agency (“MPCA”), brings this action to protect the health and well-being of its citizens and
26 residents, and to preserve its interest in providing environmental protection to the State. The
27 MPCA is Minnesota’s lead agency for enforcing environmental regulations and is responsible for
28 reducing the amount of air pollution that is emitted in the State. Minn. Stat. § 116.07.

1 15. Plaintiff State of Oregon is a sovereign entity that brings this action on behalf of its
2 citizens and residents to protect their health and well-being, and on its own behalf to protect its
3 interests as administrator of healthcare programs and schools, its interests as an employer, and its
4 interests in protecting and preserving the natural resources held in trust by the State.

5 16. Plaintiff Commonwealth of Pennsylvania is a sovereign entity that brings this
6 action on behalf of its citizens and residents to protect their health and well-being, and on its own
7 behalf to protect its interests as administrator of healthcare programs and schools, its interests as
8 an employer, and its interests in protecting and preserving the natural resources held in trust by
9 the State.

10 17. Plaintiff State of Rhode Island is a sovereign entity that brings this action on
11 behalf of its citizens and residents to protect their health and well-being, and on its own behalf to
12 protect its interests as administrator of healthcare programs and schools, its interests as an
13 employer, and its interests in protecting and preserving the natural resources held in trust by the
14 State.

15 18. Plaintiff State of Vermont is a sovereign entity that brings this action on behalf of
16 its citizens and residents to protect their health and well-being, and on its own behalf to protect its
17 interests as administrator of healthcare programs and schools, its interests as an employer, and its
18 interests in protecting and preserving the natural resources held in trust by the State.

19 19. Plaintiff State of Washington is a sovereign entity that brings this action on behalf
20 of its citizens and residents to protect their health and well-being, and on its own behalf to protect
21 its interests as administrator of healthcare programs and schools, its interests as an employer, and
22 its interests in protecting and preserving the natural resources held in trust by the State.

23 20. Plaintiff District of Columbia is a municipal corporation created by an act of
24 Congress, and is the local government for the territory constituting the permanent seat of the
25 government of the United States, and is empowered, through its Office of the Attorney General,
26 to bring this action on behalf of its citizens and residents.

27 21. Each of the states is a “person” as defined in the applicable provision of the Clean
28 Air Act, 42 U.S.C. § 7602(e).

1 22. Defendant E. Scott Pruitt is Administrator of the EPA and is sued in his official
2 capacity. The Administrator is charged with implementation and enforcement of the Clean Air
3 Act, including the requirement to timely promulgate nonattainment area designations for the
4 ozone NAAQS set forth in section 107(d)(1)(B) of the Clean Air Act.

5 23. Defendant United States Environmental Protection Agency is the federal agency
6 charged by Congress with implementing and enforcing the Clean Air Act, including the
7 requirement to timely promulgate nonattainment area designations for the ozone NAAQS.

8 STATUTORY AND REGULATORY FRAMEWORK

9 24. The Clean Air Act requires EPA to promulgate a health-based (primary) NAAQS
10 for criteria pollutants, such as ozone, at a level that is requisite to protect public health with an
11 adequate margin of safety. 42 U.S.C. § 7409(b)(1). EPA also must promulgate welfare-based
12 (secondary) NAAQS at a level that is requisite to protect public welfare. *Id.* § 7409(b)(2).
13 Pursuant to the statute, EPA is required to review and revise the NAAQS for criteria pollutants
14 every five years. *Id.* § 7409(d)(1).

15 25. EPA's promulgation of a NAAQS sets in motion a multiyear process under the
16 statute that is designed to result in cleaner air for the public. *See* 42 U.S.C. §§ 7407(d)(1)(A), (B)
17 (setting forth deadlines for state and EPA designations based on date the NAAQS was
18 promulgated) and 7410(a)(1) (deadline for states to submit implementation plan revisions tied to
19 NAAQS promulgation date).

20 26. Once EPA promulgates a NAAQS, within one year each State must recommend
21 designations of areas within its borders as either (1) "attainment," meaning the area attains the
22 NAAQS and does not contribute to another area's inability to attain the NAAQS;
23 (2) "nonattainment," meaning the area does not attain the NAAQS or contributes to another area's
24 inability to meet the NAAQS; or (3) "unclassifiable," which means the area cannot be classified
25 as attainment or nonattainment and will be treated, for regulatory purposes, as in attainment. 42
26 U.S.C. § 7407(d)(1)(A). After evaluating the recommended designations and making any
27 necessary changes, EPA must issue all designations "as expeditiously as practicable, but in no
28 case later than 2 years from the date of promulgation of the new or revised [NAAQS]." *Id.*

1 § 7407(d)(1)(B)(i). EPA may extend its deadline to issue the designations by up to one year only
2 in the event that it has “insufficient information” to issue them. *Id.* If EPA intends to modify a
3 recommended designation for an area, it must give at least 120-day advance notice of the
4 proposed change to the state. 42 U.S.C. § 7407(d)(B)(ii).

5 27. The Clean Air Act’s anti-backsliding provision locks in protections for
6 nonattainment areas once they are designated as nonattainment, even if a NAAQS is later
7 weakened. 42 U.S.C. § 7502(e).

8 28. A delay in any of the steps in this process delays when the public receives the air
9 quality benefits of a stronger air-quality standard.

10 **STATEMENT OF FACTS**

11 **A. Ozone Pollution**

12 29. Ozone—commonly referred to at ground level as “smog”—is a colorless, odorless
13 gas that forms when other pollutants, emerging from tailpipes and smokestacks, such as nitrogen
14 oxide and volatile organic compounds (known as ozone “precursors”) react in the presence of
15 sunlight. EPA has found significant health effects associated with exposure to ozone, including
16 aggravation of existing conditions like asthma, bronchitis, heart disease, and emphysema, as well
17 as coughing, throat irritation, and lung tissue damage. Exposure to ozone also has been linked to
18 early deaths. Children, the elderly, and people who already have lung diseases are particularly at
19 risk from exposure to ozone pollution.

20 30. Ozone pollution is a particular problem in major metropolitan areas such as the
21 San Francisco Bay Area, Sacramento, Los Angeles, and the New York City area, as well as in
22 California’s Central Valley. Ozone is not only a result of local pollution; many northeastern states
23 have high levels of ozone pollution because, in part, they are located downwind of numerous
24 coal-fired power plants in the Midwest. Other stationary and mobile sources can also contribute to
25 high ozone levels. Additionally, health effects can result from both long-term and short-term
26 exposure to ozone pollution. Therefore, interstate or upwind ozone pollution can harm public
27 health not only within nonattainment areas, but also in downwind areas within states that
28 experience short-term elevated ozone levels.

1 31. The pollution reductions EPA expects to result from attainment of the 2015 ozone
2 NAAQS in California will—each year—save between 115 and 218 lives, prevent many hundreds
3 of hospital visits for asthma and other respiratory problems, and enable children to attend 120,000
4 days of school they would otherwise be forced to miss. EPA, Regulatory Impact Analysis of the
5 Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, ES-18,
6 tbl. ES-10, *available at* [https://www.epa.gov/sites/production/files/2016-](https://www.epa.gov/sites/production/files/2016-02/documents/20151001ria.pdf)
7 [02/documents/20151001ria.pdf](https://www.epa.gov/sites/production/files/2016-02/documents/20151001ria.pdf). All told, EPA projects that attainment in California alone will
8 lead to net annual health benefits of up to \$1.3 billion, a result of avoided health care costs, lost
9 work days, and school absences. *Id.*, tbl. ES-9. Similar health and economic benefits are projected
10 by EPA to result from attainment of the NAAQS throughout the rest of the country each year,
11 including 316 to 660 lives saved, nearly 900 prevented hospital visits for asthma and other
12 respiratory problems, and 160,000 avoided school absences, culminating in net annual health
13 benefits of up to \$4.5 billion. *Id.*, ES-15 & 16, tbls. ES-5 & 6.

14 **B. Failure of the Defendants to Promulgate Nonattainment Designations**

15 32. Acting upon the advice of its objective scientific committee and on the basis of
16 extensive studies showing that prior federal standards were set too high to protect public health
17 and welfare, EPA promulgated revisions to the primary and secondary standards for ozone
18 NAAQS on October 1, 2015, in a rule that was subsequently published in the Federal Register.
19 *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65,292 (Oct. 26, 2015), *codified*
20 *at* 40 C.F.R. § 50.15 (“2015 ozone NAAQS”). The 2015 ozone NAAQS lowered the primary and
21 secondary standard to 0.070 parts per million (ppm), strengthening the previous standard of 0.075
22 ppm set in 2008.

23 33. Upon information and belief, as required under section 107(d)(1)(A) of the Clean
24 Air Act, 42 U.S.C. § 7407(d)(1)(A), all states have submitted their recommended area
25 designations to EPA.

26 34. Under section 107(d)(1)(B), 42 U.S.C. § 7407(d)(1)(B), EPA was required to issue
27 designations for all areas pursuant to the new, more protective standard by no later than October
28 1, 2017.

1 35. On June 21, 2017, EPA announced without notice and comment that it was giving
2 itself a one-year extension to issue the designations, extending the deadline to October 1, 2018.
3 *Extensions of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air*
4 *Quality Standards*, 82 Fed. Reg. 29,246 (June 21, 2017) (the “Deadline Extension”). Various
5 states and non-profit organizations petitioned the United States Court of Appeals for the District
6 of Columbia Circuit for review of the Deadline Extension. *See* D.C. Cir. Case Nos. 17-1172, 17-
7 1185, 17-1187.

8 36. After being sued, EPA purported to reverse course by issuing a notice withdrawing
9 the Deadline Extension. *See Withdrawal of Extension of Deadline for Promulgating Designations*
10 *for the 2015 Ozone National Ambient Air Quality Standards*, 82 Fed. Reg. 37,318 (Aug. 10,
11 2017) (the “Withdrawal Notice”). EPA admitted in the Withdrawal Notice that the October 1,
12 2017, deadline once again applied. *See id.* at 37,319 (“[T]he EPA is withdrawing its prior
13 announced 1-year extension of the deadline for promulgating initial area designations for the
14 2015 ozone NAAQS, and the 2-year deadline for promulgating designations provided in section
15 107(d)(1)(B) of the CAA applies.”). Notwithstanding EPA’s withdrawal of the extension, the
16 October 1, 2017 deadline passed without EPA’s having made any of the required designations.

17 37. On November 6, 2017, EPA issued designations for some areas of the country. *See*
18 *Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards*, 82 Fed.
19 Reg. 54,232 (Nov. 16, 2017). Notably, EPA’s designations were all for “attainment” or
20 “attainment/unclassifiable” areas. *Id.* at 54,232. EPA made no “nonattainment” designations.
21 “Nonattainment” designations typically trigger state implementation planning to adopt ozone
22 reduction measures to improve air quality and comply with new standards. Regarding the overdue
23 designations, EPA stated “[f]or other areas not addressed in this final rule, the EPA is not
24 extending the time provided under section 107(d)(1)(B) of the Clean Air Act but is not yet
25 prepared to issue designations. The agency intends to address these areas in a separate future
26 action.” *Id.* EPA was silent as to how far in the “future” such action could be expected. The areas
27 EPA failed to designate include many densely populated areas, in plaintiff States and elsewhere,
28 that suffer from the highest levels of ozone. In fact, more than half of the U.S. population lives in

1 the undesignated areas. In some Plaintiff States, such as Connecticut, the entirety of the state
2 remains undesignated. The Clean Air Act contains no provision authorizing EPA to selectively
3 designate only areas that are in attainment with the ozone NAAQS, while indefinitely delaying
4 issuance of other areas that may also be in attainment as well as the crucial nonattainment
5 designations that necessitate remedial action.

6 38. EPA's failure to timely designate nonattainment areas delays the Clean Air Act's
7 requirements for measures to reduce pollution in these areas, thus resulting in further harm to
8 public health. Such delay leads to additional health care expenses, including for the States as
9 administrators of healthcare programs for low-income people and seniors. Premature deaths and
10 missed work and school days resulting from ozone-related health problems also harms the States'
11 interests as administrators of schools and as employers.

12 39. EPA has still not issued all area designations for the 2015 ozone NAAQS. The
13 agency's failure to issue the designations constitutes a violation of a nondiscretionary duty under
14 section 107(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B), to promulgate timely area
15 designations for the 2015 ozone NAAQS, subjecting the agency to suit under section 304(a)(2) of
16 the Clean Air Act, 42 U.S.C. § 7604(a)(2). The result is that planning to attain the new standards
17 is not required to begin in nonattainment areas that are without a designation, anti-backsliding
18 protections are not in place, and many millions of people continue to suffer from unhealthy air,
19 contrary to the Clean Air Act's fundamental mandates.

20 **C. Notice of Violation**

21 40. On October 5 and 6, 2017, the States sent citizen-suit notice letters by certified
22 mail to the EPA Administrator notifying him of the violation of section 107(d)(1)(B) and of the
23 States' intention to commence a lawsuit if EPA did not correct the violation within 60 days
24 (attached).

25 41. More than 60 days have passed since notice was provided and EPA has not issued
26 all of the ozone NAAQS designations required under section 107(d)(1)(B).

27 \\\

28 \\\

FIRST CAUSE OF ACTION
(Failure to Perform a Nondiscretionary Duty
to Issue Area Designations for 2015 Ozone NAAQS)

42. As set forth above, in light of the October 1, 2015 promulgation of the 2015 ozone NAAQS, EPA had a nondiscretionary duty, pursuant to section 107(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B), to issue all area designations for the NAAQS by no later than October 1, 2017.

43. EPA's failure to issue all area designations for the 2015 ozone NAAQS is a violation of 42 U.S.C. § 7407(d)(1)(B) that continues and is ongoing to this day.

44. This ongoing violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" under 42 U.S.C. § 7604(a)(2).

45. EPA's failure to perform its nondiscretionary duty has harmed and continues to harm the States by delaying the implementation of a more protective ozone standard that will lead to cleaner air in the States, benefitting the health and welfare of our citizens.

REQUESTED RELIEF

WHEREFORE, the States respectfully request that this Court enter judgment against defendants as follows:

- A. Declare that defendants are in violation of section 107(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(1)(B), for failing to issue designations for all areas for the 2015 ozone NAAQS;
- B. Enjoin defendants to promptly perform their mandatory duty to promulgate all area designations for the 2015 ozone NAAQS by a date certain;
- C. Award the States the costs of the litigation, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 7604(d);
- D. Retain jurisdiction over this matter until such time as defendants have fully complied with their nondiscretionary duty to promulgate area designations for the 2015 ozone NAAQS by a date certain; and
- E. Such other relief as the Court deems just and proper.

1 Dated: December 5, 2017

Respectfully submitted,

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6 /s/Jonathan Wiener
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* Application for admission *pro hac vice* to be
filed shortly after filing complaint

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filed shortly after filing complaint

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* Application for admission *pro hac vice* to be filed shortly after filing complaint

ATTACHMENT A

**ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, CONNECTICUT,
ILLINOIS, IOWA, MAINE, MASSACHUSETTS, MINNESOTA, BY AND THROUGH
ITS MINNESOTA POLLUTION CONTROL AGENCY, OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, WASHINGTON, AND DISTRICT OF COLUMBIA**

October 5, 2017

Via Certified Mail

E. Scott Pruitt, Administrator
Office of the Administrator (1101A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Notice of Intent to Sue for Failure to Issue Designations for 2015 Ozone National Ambient Air Quality Standards

Dear Administrator Pruitt:

The States of New York, California, Connecticut, Illinois, Iowa, Maine, Minnesota, by and through its Minnesota Pollution Control Agency, Oregon, Rhode Island, Vermont and Washington, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia (collectively, “States”) hereby provide notice pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), of our intent to commence litigation regarding EPA’s failure to timely issue nonattainment designations on the national ambient air quality standards (NAAQS) for ozone promulgated on October 1, 2015. See 65 Fed. Reg. 65,292 (Oct. 26, 2015).

As you are aware, EPA’s promulgation of NAAQS sets in motion a process under the statute that several years later results in air quality benefits. See 42 U.S.C. § 7407(d)(1)(A), (B) (setting forth deadlines for state and EPA designation of nonattainment areas based on date the NAAQS was promulgated) and § 7410(a)(1) (deadline for states to submit implementation plan revisions tied to NAAQS promulgation date). Once EPA promulgates a NAAQS, states must propose designations of nonattainment areas within their borders within a year. 42 U.S.C. § 7407(d)(1)(A). EPA must then promulgate the designations (after making any necessary changes) “as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised [NAAQS].” Id., § 7407(d)(1)(B). The agency may extend this deadline by up to one year in the event that it has “insufficient information” to promulgate the designations. Id. A delay in any of these steps in the process in turn delays when the public receives the air quality benefits of a stronger standard.

Here, EPA has failed to issue the designations for nonattainment areas for the 2015 ozone standards as required under 42 U.S.C. § 7407(d)(1)(B). Under that statutory provision, the promulgation of the ozone NAAQS on October 1, 2015 started the clock ticking for EPA to issue the designations by October 1, 2017. On June 28, 2017, EPA promulgated a rule giving itself an extension of one year to issue the designations, stating that it had “insufficient information” to complete the designations. 82 Fed. Reg. 29,246 (June 28, 2017) (the “designations delay”).

After a collection of states* and environmental organizations challenged EPA's designations delay in court, EPA abruptly reversed course and withdrew the designations delay. 82 Fed. Reg. 37,318 (Aug. 10, 2017). However, EPA was still equivocal on whether the 2015 ozone NAAQS designations would be made by the statutory deadline, noting that although there "may be areas of the United States for which designations could be promulgated" by the deadline, "[t]he Administrator may still determine that an extension of time to complete designations is necessary." 82 Fed. Reg. at 37,319.


As of today, EPA has failed to promulgate nationwide designations for the 2015 ozone NAAQS. The agency's failure to issue the designations constitutes a violation of a nondiscretionary duty under 42 U.S.C. § 7407(d)(1)(B) to promulgate timely nonattainment designations for the 2015 ozone NAAQS, subjecting the agency to suit under Section 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2). Accordingly, the States intend to file a lawsuit in federal district court to compel EPA to comply with its obligations under the statute.

If you would like to discuss this matter prior to expiration of the 60-day notice period, you may have your counsel contact us through New York Assistant Attorney General Brian Lusignan at the address below.

Very truly yours,

ERIC T. SCHNEIDERMAN
Attorney General of New York

By:



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*The governmental units challenging the designations delay consisted of the States of New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Minnesota, by and through its Minnesota Pollution Control Agency, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia.

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FACSIMILE NO. 410-576-7036

WRITER'S DIRECT DIAL NO. 410-576-6311

October 6, 2017

VIA CERTIFIED MAIL

E. Scott Pruitt, Administrator
Office of the Administrator (1101A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Notice of Intent to Sue for Failure to Issue Designations for 2015 Ozone National Ambient Air Quality Standards

Dear Administrator Pruitt:

Maryland hereby provides notice pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), of its intent to commence litigation regarding EPA's failure to timely issue nonattainment designations on the national ambient air quality standards (NAAQS) for ozone promulgated on October 1, 2015. See 65 Fed. Reg. 65,292 (Oct. 26, 2015).

As you are aware, EPA's promulgation of NAAQS sets in motion a process under the statute that several years later results in air quality benefits. See 42 U.S.C. § 7407(d)(1)(A), (B) (setting forth deadlines for state and EPA designation of nonattainment areas based on date the NAAQS was promulgated) and § 7410(a)(1) (deadline for states to submit implementation plan revisions tied to NAAQS promulgation date). Once EPA promulgates a NAAQS, states must propose designations of nonattainment areas within their borders within a year. 42 U.S.C. § 7407(d)(1)(A). EPA must then promulgate the designations (after making any necessary changes) "as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised [NAAQS]." Id., § 7407(d)(1)(B). The agency may extend this deadline by up to one year in the event that it has "insufficient information" to promulgate the designations. Id. A delay in any of these steps in the process in turn delays when the public receives the air quality benefits of a stronger standard.

Here, EPA has failed to issue the designations for nonattainment areas for the 2015 ozone standards as required under 42 U.S.C. § 7407(d)(1)(B). Under that statutory provision, the promulgation of the ozone NAAQS on October 1, 2015 started the clock ticking for EPA to issue the designations by October 1, 2017. On June 28, 2017, EPA promulgated a rule giving itself an extension of one year to issue the designations, stating that it had "insufficient information" to complete the designations. 82 Fed. Reg. 29,246 (June 28, 2017) (the "designations delay").

Administrator E. Scott Pruitt
October 6, 2017
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As of today, EPA has failed to promulgate nationwide designations for the 2015 ozone NAAQS. The agency’s failure to issue the designations constitutes a violation of a nondiscretionary duty under 42 U.S.C. § 7407(d)(1)(B) to promulgate timely nonattainment designations for the 2015 ozone NAAQS, subjecting the agency to suit under Section 304(a)(2) of the Act, 42 U.S.C. § 7604(a)(2). Accordingly, Maryland intends to file a lawsuit in federal district court to compel EPA to comply with its obligations under the statute.

If you would like to discuss this matter prior to expiration of the 60-day notice period, you may have your counsel contact us through Maryland Assistant Attorney General Leah Tulin at the address below.

Very truly yours,

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