



February 22, 2022

Michael S. Regan, Administrator
United States Environmental Protection Agency
Office of the Administrator: Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
regan.michael@epa.gov

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Sixty-day notice of intent to file a citizen suit under Section 304 of the Clean Air Act for failure to make findings of attainment/nonattainment under the 2015 ozone standards and to publish reclassifications of areas violating those standards.

Dear Administrator Regan:

Pursuant to 42 U.S.C. § 7604(b)(2), the following organizations give notice of their intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) for failing to perform certain nondiscretionary duties under the Clean Air Act (“the Act”):

Downwinders at Risk
1808 S. Good-Latimer #202
Dallas, TX 76226

HEAL Utah
824 S. 400 W., Ste. B111
Salt Lake City, Utah 84101

Sierra Club
2101 Webster St. Ste. 1300
Oakland, CA 94612

As further specified below, the Administrator has failed to perform his duties to determine whether numerous ozone nonattainment areas timely attained the 2015 primary national ambient air quality standard (“NAAQS” or “standard”) for ozone, to publish his determination in the Federal Register, and to publish the required reclassification of each area that failed to timely attain that standard. 42 U.S.C. §§ 7509(c), 7511(b)(2).

Ozone, the principal component of smog, is one of the most dangerous and widespread forms of air pollution in the United States today. Scientists link ozone to premature deaths, thousands of emergency room visits, and tens of thousands of asthma attacks each year. Ozone is especially dangerous to small children, people with asthma, and the elderly, who are often warned to stay indoors on polluted days. Smog pollution also damages forests and plants, stunting their growth, increasing the risk of tree die-off from disease, and causing harms that affect whole ecosystems. Hundreds of counties throughout the nation suffer from unsafe ozone levels.

EPA revised the ozone standard in 2015 (80 Fed. Reg. 65,292 (Oct. 26, 2015)) and published nonattainment area designations and classifications for that revised standard on June 4, 2018 (83 Fed. Reg. 25,776 (June 4, 2018)) with an effective date of August 3, 2018. At that time, EPA designated and classified the following as marginal nonattainment areas for the 2015 standard:

Allegan County, MI
Amador County, CA
Atlanta, GA
Baltimore, MD
Berrien County, MI
Butte County, CA
Calaveras County, CA
Chicago, IL-IN-WI
Cincinnati, OH-KY
Cleveland, OH
Dallas-Fort Worth, TX
Denver Metro/North Front Range, CO
Detroit, MI
Greater Connecticut, CT
Houston-Galveston-Brazoria, TX
Imperial County, CA
Las Vegas, NV
Louisville, KY-IN
Manitowoc County, WI
Mariposa County, CA
Milwaukee, WI
Muskegon County, MI
Northern Wasatch Front, UT
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE
Phoenix-Mesa, AZ
San Francisco Bay Area, CA
San Luis Obispo (Eastern part), CA
Sheboygan County, WI
Southern Wasatch Front, UT
St. Louis, MO-IL
Sutter Buttes, CA
Tuolumne County, CA
Uinta Basin, UT
Washington, DC-MD-VA
Yuma, AZ

83 Fed. Reg. 25,776 (June 4, 2018); EPA, Green Book, <https://www3.epa.gov/airquality/greenbook/jnc.html> (data as of Jan. 31, 2022) (last visited Feb. 22, 2022).

The applicable outside attainment date for the above-listed marginal areas was August 3, 2021 (three years after the effective date of designation). 42 U.S.C. § 7511(a); 40 CFR

§ 51.1303; 83 Fed. Reg. 25,776 (2018). Pursuant to 42 U.S.C. § 7511(b)(2), the Clean Air Act requires the Administrator to determine within six months after the attainment date—that is, by February 3, 2022—whether each of the above-listed marginal areas attained the standard by the August 3, 2021 attainment date. Any area that the Administrator found had not attained the standard by that date was required to be reclassified by operation of law to a higher classification. 42 U.S.C. § 7511(b)(2)(A); 83 Fed. Reg. 10,376 (Mar. 9, 2018). Further, the Act required the Administrator to publish a Federal Register notice no later than six months following the attainment date identifying whether each of the above-listed ozone nonattainment areas did or did not timely attain the standard. 42 U.S.C. §§ 7509(c), 7511(b)(2). For each area that the Administrator identified as having failed to attain the standard, the notice had to also identify the reclassification of such area to the appropriate higher classification. 42 U.S.C. § 7511(b)(2)(B).

The Administrator has failed to perform the above-described duties with respect to the above-listed marginal nonattainment areas. The outside attainment date of August 3, 2021 for each of those areas passed more than six months ago, but the Administrator has not determined whether each area attained the 2015 primary ozone standard by the applicable attainment date. The Administrator is therefore in violation of his nondiscretionary duty to make such determination within six months of the attainment date. 42 U.S.C. § 7511(b)(2)(A). Further, the Administrator has not published a notice in the Federal Register determining whether each of the above-listed ozone nonattainment areas did or did not timely attain the standard and identifying the required reclassifications of each area that did not timely attain. The Administrator is therefore in violation of his nondiscretionary duty to publish such Federal Register notice within six months of the attainment date pursuant to 42 U.S.C. § 7511(b)(2)(B).¹

This notice letter is submitted on behalf of the Sierra Club, Downwinders at Risk, and Heal Utah. These organizations intend to commence a civil action to enforce the nondiscretionary duties described in this letter unless EPA has fully performed those duties within sixty days of the postmark date of this letter.

We would welcome the opportunity to meet with EPA to discuss the potential for promptly resolving this matter. If EPA is interested in pursuing discussions on the above matter, please contact the undersigned counsel at mcbrown@earthjustice.org and janderson@alcp.org. If we do not hear from EPA in sixty days, we intend to proceed with filing a complaint in U.S. District Court.

Please direct any communications regarding this matter to the undersigned.

¹ We also note that on July 25, 2018, EPA designated Bexar County, Texas as being in marginal nonattainment of the ozone standard, with an effective date of September 24, 2018. 83 Fed. Reg. 35,136 (July 25, 2018). EPA must therefore make and publish the attainment/nonattainment determination and any reclassification for that area “within 6 months following the applicable attainment date,” that is, by March 24, 2022, at the latest. 42 U.S.C. § 7511(b)(2); 40 CFR § 51.1303; 83 Fed. Reg. 25,776 (June 4, 2018). In the interest of efficiency and expeditious implementation of the Act, EPA should make the required determinations and reclassification for Bexar County as part of the same action required for the other marginal areas listed earlier in this letter, even if that action is completed before March 24, 2022.

Sincerely,



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