



Andy Beshear
GOVERNOR

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

May 31, 2024

VIA CERTIFIED MAIL AND EMAIL

Honorable Michael S. Regan
Administrator
United States Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Regan.Michael@epa.gov

Re: Notice of Intent to Sue for Failure to Take Nondiscretionary Action on the Commonwealth's Request to Redesignate Kentucky Counties Located within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area

Dear Administrator Regan,

This letter is the Commonwealth of Kentucky's notice of intent to sue the United States Environmental Protection Agency ("EPA") as authorized by 42 U.S.C. § 7404(a)(2)¹ and 40 C.F.R. § 54.3(a) for its failure to act on the Commonwealth's Request to Redesignate Kentucky Counties within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area ("Redesignation Request"). Kentucky submitted the Redesignation Request on September 6, 2022. On December 14, 2022, EPA issued a letter of completeness to Kentucky, which found the Redesignation Request met the completeness criteria outlined in 40 C.F.R. Part 51, Appendix V. On April 11, 2023, EPA issued a proposed rule redesignating the Kentucky portion of the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area ("Louisville, KY-IN Area") to attainment.² In the proposed rulemaking, EPA proposed to determine that the Kentucky portion of the Louisville, KY-IN Area had met the

¹ As defined in 42 U.S.C. § 7602(e), a State is a "person" for the purposes of 42 U.S.C. § 7604.

² 88 Fed. Reg. 23598.

requirements for redesignation under Section 107(d)(3)(E) of the Clean Air Act.³ The Louisville KY-IN Area is composed of Bullitt, Jefferson, and Oldham Counties in Kentucky, and Clark and Floyd Counties in Indiana.⁴ It should be noted that on July 5, 2022, EPA approved the redesignation request and maintenance plan for the Indiana portion of the Louisville, KY-IN Area.⁵ Additionally, in its approval of the redesignation of the Indiana portion of the Louisville, KY-IN Area, EPA used the same air quality monitoring data used in Kentucky's Redesignation Request,⁶ including data from monitors physically located in Kentucky.

EPA is required to approve or deny the requested redesignation within 18 months of *receipt* of a complete State redesignation plan.⁷ This is a nondiscretionary duty, which should have been performed for Kentucky's Redesignation Request no later than March 6, 2024. If a state's redesignation plan meets the requirements of 42 U.S.C. § 7407(d)(3)(E), the Administrator should approve the redesignation.

By failing to approve or deny Kentucky's Redesignation Request, EPA has not complied with its nondiscretionary duty under 42 U.S.C. § 7407(d)(3)(D). This inaction triggered the Commonwealth's right to send this Notice of Intent to Sue for "failure of the Administrator to perform any act or duty under [the Clean Air Act] which is not discretionary with the Administrator."⁸ If the Administrator fails to act on Kentucky's Redesignation Request within 60 days of this Notice of Intent to Sue, the Commonwealth reserves the right to sue for relief under 42 U.S.C. § 7604(a)(2) and seek to compel EPA to take the appropriate action, as well as any other equitable relief under 5 U.S.C. § 706(1) and other applicable laws and power of the court.

Sincerely,



Michael Kennedy, P.E.
Director, Division of Air Quality
Kentucky Energy and Environment Cabinet
300 Sower Blvd.
Frankfort, KY 40601

³ *Id.* at 23599.

⁴ *Id.*

⁵ *See* 87 Fed. Reg. 30129.

⁶ *Compare* 87 Fed. Reg. 30129, 30130 *with* 88 Fed. Reg. 23598, 23601.

⁷ *See* 42 U.S.C. § 7407(d)(3)(D).

⁸ 42 U.S.C. § 7604(a)(2).