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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ALLIANCE OF NURSES FOR HEALTHY
12 ENVIRONMENTS, AMERICAN LUNG
13 ASSOCIATION, AMERICAN PUBLIC HEALTH
14 ASSOCIATION, AMERICAN THORACIC
15 SOCIETY, CENTER FOR BIOLOGICAL
16 DIVERSITY, CITIZENS FOR
17 PENNSYLVANIA'S FUTURE, CLEAN AIR
18 COUNCIL, CLEANAIRE NC, CONSERVATION
19 LAW FOUNDATION, ENVIRONMENTAL
20 DEFENSE FUND, GEORGIA INTERFAITH
21 POWER & LIGHT, MICHIGAN
22 ENVIRONMENTAL COUNCIL, NATURAL
23 RESOURCES DEFENSE COUNCIL,
24 NORTHEAST OHIO COMMUNITY
25 RESILIENCE CENTRE, RIO GRANDE
26 INTERNATIONAL STUDY CENTER,
27 SAVANNAH RIVERKEEPER, and SIERRA
28 CLUB,

Plaintiffs,

v.

LEE M. ZELDIN, Administrator, United States
Environmental Protection Agency, in his official
capacity,

Defendant.

Case No: 3:26-cv-03118-TSH

**PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

Date: May 21, 2026

Time: 10:00 a.m.

Place: Courtroom E, 15th Floor

Judge: Magistrate Judge Thomas S. Hixson

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1 for which EPA proposes to modify a recommended designation, and, within 150 days of the
2 Court’s order, promulgate immediately effective final designations of all areas of the country
3 through publication in the Federal Register.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **INTRODUCTION**

6 This is a straightforward mandatory duty lawsuit to drive a fundamental Clean Air Act
7 protection for human health forward after EPA has dragged its feet. To initiate the Act’s
8 mechanisms for reducing deadly fine particulate matter air pollution (also known as “PM_{2.5}”),
9 EPA was legally required to designate all areas of the country as meeting or not meeting the
10 updated health-protective standard for PM_{2.5} pollution no later than February 7, 2026. It has not
11 done so. Indeed, it has not designated any of the communities with PM_{2.5} pollution levels that
12 violate the standard. Those designations would trigger a suite of mandatory actions to reduce
13 emissions contributing to unhealthy air quality—actions that EPA estimated would save
14 thousands of lives annually and prevent chronic debilitating conditions including lung cancer,
15 cardiovascular disease, asthma, and Alzheimer’s disease. Thus, EPA’s delay seriously endangers
16 the health and wellbeing of millions of people who breathe unhealthily polluted air. A coalition
17 of 17 Health, Environmental, and Community Groups respectfully requests that this Court
18 establish an expeditious schedule for EPA to do its job and comply with the Act.

19 **STATEMENT OF ISSUES**

20 1. Has EPA failed to promulgate the initial area air quality designations, through
21 publication in the Federal Register, for all areas of the country under the 2024 primary annual
22 fine particulate matter standard by the February 7, 2026, deadline, as required by 42 U.S.C.
23 § 7407(d)(1)(B) & (d)(2)(A)?

24 2. By when must EPA take final action to promulgate the designations through
25 publication in the Federal Register and make those designations effective to complete this
26 overdue mandatory duty and remedy the harms its delay has caused?

STATEMENT OF FACTS AND LEGAL FRAMEWORK**I. FINE PARTICULATE MATTER SERIOUSLY HARMS HUMAN HEALTH.**

Fine particulate matter—airborne particles under 2.5 microns in diameter—is an air pollutant that enters the respiratory system and can then spread to different parts of the body. Integrated Science Assessment for Particulate Matter, EPA-HQ-OAR-2015-0072-0212, at 4-2 to -3, 4-55 to -56 (Dec. 2019), Ex.1 (“2019 Science Assessment”). Exposure to PM_{2.5} pollution causes premature death and sends people to the hospital and emergency department. 89 FR 16202, 16203/3 (Mar. 6, 2024). Specifically, PM_{2.5} pollution results in death, serious cardiovascular harms (like heart attacks and heart disease), respiratory harms (like asthma attacks and development of diseases like asthma and chronic obstructive pulmonary disease), neurological harms (like dementia and Alzheimer’s disease), and lung cancer. 2019 Science Assessment ES-12 to -16, ES-22 to -23, 1-21 to -30, 1-33 to -38 tbl.1-2, 5-1 to -220, 6-1 to -223, 8-1, 8-17 to -61, 10-1 to -77, 11-1 to -102. Though healthy adults can experience these harms, children, older adults, and people with preexisting heart or lung disease are at greater risk. 89 FR 16234/3-35/3; Limaye Decl. ¶¶ 15, 19, Ex.13. There is no threshold concentration below which PM_{2.5} causes no harm: any amount of PM_{2.5} in the air is unhealthy. 89 FR 16238/3, 16254/2; Supplement to the 2019 Integrated Science Assessment for Particulate Matter, EPA-HQ-OAR-2015-0072-1585, at 2-29 to -31 (May 2022), Ex.2; 2019 Science Assessment ES-23; Limaye Decl. ¶ 20.

Exposure to and harm from PM_{2.5} are not evenly distributed. Black and Hispanic populations “on average, experience higher PM_{2.5} exposures and PM_{2.5}-related health risks than non-Hispanic White populations.” 89 FR 16204/1. These disparities cause higher rates of PM_{2.5}-associated hypertension and mortality in these populations. *Id.* 16235/3. Lower income communities are also often exposed to higher concentrations of PM_{2.5} and experience greater risks of PM_{2.5}-related health outcomes. *Id.* 16375/2.

1 **II. THE CLEAN AIR ACT PRESCRIBES A CAREFULLY CRAFTED PROGRAM**
2 **FOR CONTROLLING PARTICULATE MATTER POLLUTION.**

3 At the “heart” of the Clean Air Act is the requirement that the entire country come
4 expeditiously into compliance with health- and welfare-protective air quality standards. *Alabama*
5 *Power Co. v. Costle*, 636 F.2d 323, 346 (D.C. Cir. 1980). EPA must set “primary” and
6 “secondary” standards for certain pervasive pollutants, like particulate matter, to protect public
7 health and welfare, respectively. 42 U.S.C. §§ 7408(a), 7409(a)-(b). It must review and, as
8 appropriate, update these standards at least every five years. *E.g., id.* § 7409(d)(1). In setting and
9 updating standards, EPA may not consider implementation costs or technological feasibility.
10 *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 471 & n.4 (2001); *Am. Petroleum Inst. v. Costle*,
11 665 F.2d 1176, 1185 (D.C. Cir. 1981). Only primary standards are at issue here.

12 After EPA sets a standard, the Act prescribes a step-by-step implementation process, with
13 initial area air quality designations being the key first step. *See Am. Trucking Associations v.*
14 *EPA*, 283 F.3d 355, 358-59 (D.C. Cir. 2002). Within one year of promulgation, states must
15 submit any recommended designations to EPA. 42 U.S.C. § 7407(d)(1)(A).¹ Then, “as
16 expeditiously as practicable,” but no later than two years after promulgating a standard, EPA
17 “shall promulgate the designations of all areas (or portions thereof)” as either violating the
18 standard (“nonattainment” areas) or meeting the standard (“attainment” areas). *Id.*
19 § 7407(d)(1)(B).² The promulgation must occur through publication of a notice in the Federal
20 Register. *Id.* § 7407(d)(2)(A) (“The Administrator shall publish a notice in the Federal Register
21 promulgating any designation under [§ 7407(d)(1)]”). This duty applies even if a state fails to
22 submit a recommendation. *Id.* § 7407(d)(1)(B)(ii). EPA may modify a recommended
23

24 ¹ Tribes, the District of Columbia, and several U.S. territories are treated as states for this
25 purpose. *See id.* §§ 7601(d)(1), 7602(d).

26 ² There is a third designation—an “unclassifiable” area, which is “any area that cannot be
27 classified on the basis of available information as meeting or not meeting” the standard—which
28 is treated for regulatory purposes as an attainment area. 42 U.S.C. §§ 7407(d)(1)(A)(iii), 7471;
see also Miss. Comm’n on Env’tl. Quality v. EPA, 790 F.3d 138, 145 (D.C. Cir. 2015)
(describing “unclassifiable” designation).

1 designation, but must provide the state 120 days' notice and give the state an opportunity to rebut
2 the proposed modification (referred to herein as "120-day notice letters"). *Id.* § 7407(d)(1)(B)(ii).
3 The Act allows EPA to extend its deadline for promulgating designations for a limited time, but
4 only when it "has insufficient information to promulgate the designations." *Id.*
5 § 7407(d)(1)(B)(i).

6 The Act specifies the relevant considerations for establishing designations by specifically
7 defining each type of area. For example, a nonattainment area is one that "does not meet (or that
8 contributes to ambient air quality in a nearby area that does not meet)" a standard for a pollutant.
9 *Id.* § 7407(d)(1)(A)(i). The designation of an area is especially important because it determines
10 the stringency of the on-the-ground protections against pollution under the Act.

11 Congress created a detailed program to ensure that nonattainment areas comply with
12 particulate matter standards by specified deadlines ("attainment deadlines"). *Id.* §§ 7410(a), (c),
13 7502; *see also id.* §§ 7513-7513b (provisions specific to particulate matter nonattainment areas).³
14 For example, Congress mandated that more stringent air permitting requirements apply in areas
15 designated as nonattainment. New or modified major sources of PM_{2.5} pollution must offset their
16 new PM_{2.5} emissions and meet the "lowest achievable emission rate" for PM_{2.5} emissions, *id.*
17 § 7503(a)(1)(A), (a)(2), rather than the otherwise applicable, less stringent "best available control
18 technology," *id.* § 7475(a)(4). And existing sources in nonattainment areas must implement
19 "reasonably available control measures" including the adoption of "reasonably available control
20 technology." *Id.* § 7502(c)(1).

21 Crucially, the Act-mandated attainment deadlines are keyed to the date of designation.
22 *See* 42 U.S.C. § 7513(c); *WildEarth Guardians v. EPA*, 830 F.3d 529, 532 (D.C. Cir. 2016).
23 Similarly, other mandatory nonattainment area requirements depend on the designation date.
24 Each state must adopt a "state implementation plan" that, for nonattainment areas, includes all

25
26 ³ Sections 7513-7513b, collectively comprising Subpart 4 of Part D of Title I of the Act, refer to
27 "PM-10" but, because PM_{2.5} is a subset of PM-10, govern nonattainment requirements for PM_{2.5}.
28 *NRDC v. EPA*, 706 F.3d 428, 435 (D.C. Cir. 2013) ("[B]y its express terms, Subpart 4, when
enacted, governed all PM₁₀ particles, including those now denominated PM_{2.5}.").

1 the mandatory pollution control requirements as well as any specific measures that the state
2 decides should be implemented to address local sources of air pollution contributing to elevated
3 PM_{2.5} levels. *Id.* §§ 7410(a), 7502(b). The deadlines for states to submit plans adopting these
4 specific pollution control programs depend on the areas first being designated nonattainment and
5 run from the date of designation. *See, e.g., id.* §§ 7502(b), 7513a(a)(2)(B) (states must submit
6 attainment plans within 18 months of designation); *see also* 40 C.F.R. § 51.1003(a)(2) (states
7 must submit attainment plans within 18 months of the designation effective date).

8 The designations are also relevant to other Clean Air Act protections. For example,
9 designations affect the timing of emission reductions required by rules implementing the Act’s
10 “Good Neighbor Provision,” which requires states (or, if a state fails to act on time, EPA) to
11 prohibit emissions that “contribute significantly to nonattainment in” downwind states. 42 U.S.C.
12 § 7410(a)(2)(D)(i), (c); *see North Carolina v. EPA*, 531 F.3d 896, 911-12, *amended in other part*
13 *on reh’g*, 550 F.3d 1176 (D.C. Cir. 2008).

14 EPA’s promulgation of nonattainment designations is thus essential to triggering the
15 Act’s nonattainment provisions and bringing about the associated health benefits. Simply put,
16 delay of designations delays the stronger pollution controls Congress mandated to protect people
17 in communities with unhealthy air.

18 **III. EPA STRENGTHENS THE PRIMARY ANNUAL PM_{2.5} STANDARD IN 2024.**

19 EPA updated the PM_{2.5} standards on February 7, 2024, strengthening the primary annual
20 standard from 12.0 µg/m³ to 9.0 µg/m³ after a detailed review of the scientific evidence.
21 Memorandum on Initial Area Designations for the 2024 Revised Primary Annual Fine Particle
22 National Ambient Air Quality Standard, from Joseph Goffman, Ass’t Adm’r, to Reg’l Adm’rs
23 (Feb. 7, 2024), Ex.3 (“Memorandum”); 89 FR 16202/1 (Federal Register publication).⁴

24
25 ⁴ While publication in the Federal Register did not occur until March 7, 2024, EPA
26 acknowledged that in the national ambient air quality standard (“NAAQS”) setting process, a
27 standard is promulgated upon signature and release to the public. 89 FR 16366/1 (citing *API v.*
28 *Costle*, 609 F.2d 20 (D.C. Cir. 1979)). Signature and release to the public occurred on February
7, 2024. 89 FR 103652, 103653/1 (Dec. 19, 2024) (“EPA promulgated (signed and made
available on the EPA’s website) the reconsideration of the PM_{2.5} NAAQS on February 7, 2024”).

1 EPA undertook this detailed review out of a concern that the existing 2012 standards
2 were not adequate to protect public health and to address procedural flaws in its 2020 review of
3 the standards. *See* 89 FR 16210/2-13/3 (describing reconsideration decision and process);
4 *Physicians for Social Resp. v. Wheeler*, 956 F.3d 634, 644-49 (D.C. Cir. 2020) (EPA’s advisory
5 committee policy used in the 2020 review was arbitrary and unlawful). EPA ultimately
6 strengthened the standard in 2024 because the extensive scientific record established that
7 individuals experience negative health effects from PM_{2.5} exposures at levels allowed by the
8 2012 standards, including higher mortality and cardiovascular-related hospital admissions. *See*
9 88 FR 5558, 5581/1-83/2, 5604/1, 5607/1-2, 5608/2 (Jan. 27, 2023).

10 EPA projected that compliance with the strengthened 2024 standard will lead to
11 significant public health benefits. EPA estimated that, in 2032, the new standard will lead to
12 4,500 fewer premature deaths, 290,000 fewer lost workdays, 800,000 fewer cases of asthma
13 symptoms, and 1,990 fewer emergency department visits, among other health benefits. *Final*
14 *Regulatory Impact Analysis for the Reconsideration of the National Ambient Air Quality*
15 *Standards for Particulate Matter*, EPA-HQ-OAR-2019-0587-0279, at 17 tbl.ES-6 (Jan. 2024),
16 Ex.4 (“RIA”). The economic value of these benefits significantly outweighs the cost of achieving
17 them, with net benefits in 2032 estimated to be between \$22 billion and \$46 billion. *Id.* 26, 27
18 tbl.ES-10.

19 Soon after EPA promulgated the 2024 standard, industry groups and some states filed
20 petitions for review requesting vacatur of the new standard. *Kentucky v. EPA*, No. 24-1050 (D.C.
21 Cir. Mar. 6, 2024). Other states and environmental and public health groups, including several
22 Plaintiffs, intervened in defense of the rule. *See, e.g.*, Unopposed Mot. to Intervene, *Kentucky v.*
23 *EPA*, No. 24-1050 (D.C. Cir. Mar. 27, 2024). No party sought a stay, and the case was briefed
24 and argued in 2024. In November 2025, without notice or public input, or disputing the
25 overwhelming scientific evidence supporting the strengthened standard, EPA reversed its
26 position defending the 2024 standard and requested that the court vacate the standard prior to the
27 February 7, 2026, designation deadline. Resp’ts’ Mot. for Vacatur 1, *Kentucky v. EPA*, No. 24-
28 1050 (D.C. Cir. Nov. 24, 2025). Respondent-Intervenors forcefully opposed this motion. *See,*

1 e.g., Health, Environmental, and Community Group Resp’t-Intervenors’ Resp. in Opp. & Cross-
2 Mot., *Kentucky v. EPA*, No. 24-1050 (D.C. Cir. Dec. 16, 2025). The D.C. Circuit has not yet
3 ruled on this motion or on the merits of the case, and the 2024 standard and all implementation
4 deadlines remain in full effect. *See* 42 U.S.C. § 7607(b)(1) (the filing of a petition for judicial
5 review “shall not postpone the effectiveness of such rule or action.”).

6 **IV. EPA HAS THE INFORMATION NECESSARY TO ISSUE DESIGNATIONS.**

7 EPA updated the standard on February 7, 2024, meaning its mandatory deadline for
8 issuing designations was February 7, 2026. *See* 42 U.S.C. § 7407(d)(1)(B)(i). EPA has long had
9 a process in place for issuing, as well as the necessary information to issue, designations by this
10 date.

11 On the same day it promulgated the updated standard, EPA published a memorandum
12 detailing the process and timeline for developing designations. *See generally* Memorandum. As
13 with prior PM_{2.5} standards, designations are based on three-year averages of PM_{2.5} levels, called
14 “design values,” from a national network of regulated, official air quality monitoring stations. *Id.*
15 3, Att.3 at 4-5; *see also* 40 C.F.R. § 50.20(b); *id.* pt.50, App.N, § 4.1; Graham Decl. ¶¶ 11-12,
16 Ex.12. An area must be designated as nonattainment if it violates the standard—meaning that the
17 design value exceeds the standard—or contributes to a violation of a standard in a nearby area.
18 Memorandum 3 (citing 42 U.S.C. § 7407(d)(1)). EPA explained that after identifying a violation,
19 it would use a time-tested five-factor approach to determine “what nearby areas contribute to the
20 violation(s)” and establish additional nonattainment areas. *Id.* 5, Att.3 (providing guidance on
21 these five factors), Att.3 at 1 (explaining that these factors were derived from ozone
22 designations, but were similar to the factors used in prior PM_{2.5} designations); *see also Miss.*
23 *Comm’n*, 790 F.3d at 149, 158-59 (upholding EPA’s use of the same five-factor test).

24 The necessary information to undertake this process has long been available. The 2023
25 design values—used by states to issue recommendations—were published in August 2024, and
26 the 2024 design values—which EPA planned to use for issuing final designations—were
27 published in early June 2025. Memorandum 2-3; EPA, *Air Quality Design Values*,

1 <https://www.epa.gov/air-trends/air-quality-design-values> (last updated Aug. 28, 2025), Ex.5.⁵
2 EPA and states thus had the relevant data long before the designations deadlines. Accordingly,
3 45 states, D.C., Puerto Rico, the U.S. Virgin Islands, and 3 Tribes submitted designation
4 recommendations to EPA.⁶ Winz Decl. ¶ 13, Ex.14.

5 EPA’s memorandum also outlined that pursuant to its rule allowing for the exclusion of
6 air monitoring data impacted by “exceptional events”—specific unpreventable emission events
7 that cause air pollution exceedances—states had until February 7, 2025, to submit exceptional
8 event demonstrations for 2021-2023, and until September 30, 2025, to submit exceptional event
9 demonstrations for 2024. Memorandum 4, Att.2 at 1; *see also* 40 C.F.R. § 50.14. Records EPA
10 released show 25 states and 2 Tribes have submitted exceptional event demonstrations for 2022-
11 2024. Winz Decl. ¶ 19. EPA has processed and issued responses for half of these. *Id.* ¶ 20.

12 In sum, long before EPA’s deadline to issue designations, EPA had established
13 procedures for developing designations, published the relevant design values in a timely manner
14 based on certified, quality-assured monitoring data, received recommendations and/or
15 exceptional event demonstrations from the vast majority of states, and responded to many of
16 those exceptional event demonstrations. EPA accordingly had all the information it needed to
17 issue designations under the 2024 standard by its February 7, 2026, deadline.

18 **V. EPA FAILS TO PROMULGATE ALL THE LEGALLY REQUIRED**
19 **DESIGNATIONS BY THE STATUTORY DEADLINE.**

20 February 7, 2026, has come and gone without EPA promulgating any designations under
21 the 2024 PM_{2.5} standard. EPA has not even issued any 120-day notice letters notifying states of
22 EPA’s intention to modify any designation recommendations. As a result, every county in the
23 United States remains undesignated, including areas that states recommended designating
24 nonattainment and the 125 counties that had 2023 or 2024 design values above the 2024

25 _____
26 ⁵ States must submit certified 2025 air monitoring data—used in calculating 2025 design
values—by May 1, 2026. 40 C.F.R. § 58.15(a)-(b).

27 ⁶ The Act requires EPA to designate areas even where no state or Tribe recommendation has
28 been made. 42 U.S.C. § 7407(d)(1)(B)(ii).

1 standard. *See* Graham Decl. ¶¶ 13-14. Plaintiffs have members who live in each of these 125
2 counties. *See, e.g.*, Olinger Decl. ¶ 5, Ex.53; Stith Decl. ¶ 6, Ex.62. And other undesignated areas
3 likely contribute to violations of the 2024 standard in other counties. *See, e.g., Responses to*
4 *Significant Comments on the State and Tribal Designation Recommendations for the 2012*
5 *Annual PM_{2.5} NAAQS*, EPA-HQ-OAR-2012-0918-0337, at 29-30 (Dec. 17, 2014), Ex.6; Graham
6 Decl. ¶ 22.

7 EPA’s delay in promulgating designations means that the people living, working, and
8 enjoying outdoor activities in these areas are deprived of Clean Air Act protections specifically
9 designed to reduce particulate matter pollution and protect their health.

10 JURISDICTION, NOTICE, VENUE, AND STANDING

11 This Court has jurisdiction under the Clean Air Act’s citizen suit provision, which
12 authorizes district courts to hear actions brought by “any person” to compel EPA to perform
13 “any act or duty” under the Act “which is not discretionary.” 42 U.S.C. § 7604(a), (a)(2); *see*
14 *also id.* § 7602(e) (defining “person”). EPA’s failure to promulgate initial area air quality
15 designations under the 2024 standard for all areas of the country by February 7, 2026, is a failure
16 to perform an action that is not discretionary, as explained herein.

17 Plaintiffs satisfied the notice requirements for bringing this action. *See* Letter to EPA
18 Administrator Lee M. Zeldin (Feb. 10, 2026), Ex.7. More than 60 days have passed since the
19 notice was provided, and EPA has continued its failure to fulfill its mandatory duty. *See* 42
20 U.S.C. § 7604(b)(2); 40 C.F.R. § 54.2(d).

21 Venue is proper in this Court because Plaintiff Sierra Club is headquartered in Oakland
22 and thus resides in this district and this district is one in which EPA resides and performs its
23 official duties. 28 U.S.C. § 1391(e)(1)(A), (C). Venue is also proper because (1) a substantial
24 part of the events and omissions giving rise to this claim occurred and is occurring in this district
25 because EPA failed to promulgate all designations for this district; (2) the health and welfare of
26 district residents, including members of Health, Environmental, and Community Groups, *see,*
27 *e.g.*, Olinger Decl. ¶ 5(i), (p), (y), are threatened by EPA’s failure to make designations; and (3)

1 EPA's Regional Office in San Francisco, California, has a substantial role in implementing the
2 duty at issue. 28 U.S.C. § 1391(e)(1)(B); *see* Memorandum 1, 4, Att.1 at 1.

3 Health, Environmental, and Community Groups have standing to bring this suit because
4 their members would have standing to sue in their own right, their interest in safeguarding public
5 health and the environment is germane to their organizational purposes, and this suit will not
6 require individual participation of members. Declarations, Exs.15-65; *Hunt v. Wash. State Apple*
7 *Advert. Comm'n*, 432 U.S. 333, 343 (1977). As discussed more fully below, at pp.16-18,
8 Plaintiffs have members who live, work, recreate, worship, and carry out other activities in areas
9 where recent official EPA measurements report harmful levels of fine particulate matter
10 pollution, but where EPA has not yet promulgated designations. *See* Declarations, Exs.12, 15-65.
11 Such particulate pollution endangers the health of their members and their members' families,
12 and diminishes members' enjoyment of their outdoor activities by causing them to limit the time
13 they spend outdoors. *See id.* Promulgation of designations is necessary to start the process of
14 bringing particulate pollution levels down to comply with the standard EPA says is necessary to
15 protect public health with an adequate margin of safety. *See supra* pp.4-6. Plaintiffs' members in
16 areas that do not violate the 2024 standard also experience harms from existing fine particulate
17 matter pollution that designations will help alleviate. As explained above, any level of fine
18 particulate matter pollution can cause health harms. Further, fine particulate matter can be
19 transported long distances. *See, e.g., EPA v. EME Homer City Gen.*, 572 U.S. 489 (2014)
20 (considering EPA rule governing interstate transport of fine particulate matter); Graham Decl.
21 ¶ 23. Thus, designations will bring the level of fine particulate matter pollution down not only in
22 areas designated nonattainment but also in downwind areas, and this will benefit Plaintiffs'
23 members. *See, e.g., Limaye Decl.* ¶ 23.

24 Accordingly, Health, Environmental, and Community Groups have standing to bring this
25 suit. *E.g., Friends of the Earth v. Laidlaw Env'tl. Servs. (TOC)*, 528 U.S. 167, 181-84 (2000)
26 (environmental group has standing where members use area impacted by pollutant discharges
27 and aver reasonable concerns about the effects of those discharges on their recreational,
28 aesthetic, and economic interests); *Hall v. Norton*, 266 F.3d 969, 973-74, 976 (9th Cir. 2001)

1 (individual has standing where he faces a threat of harm from air pollution when traveling,
2 shopping, and carrying out other activities in polluted area); *see also Clean Wisc. v. EPA*, 964
3 F.3d 1145, 1157-58 (D.C. Cir. 2020) (“more ozone is more ozone, and there is no threshold
4 concentration below which ground-level ozone is known to be harmless” (cleaned up)).

5 EPA’s failure to timely promulgate designations further injures Plaintiffs and their
6 members by depriving them of procedural opportunities to protect these concrete interests. The
7 Act’s procedure for promulgating all area designations by a fixed deadline is designed to protect
8 Plaintiffs’ members’ concrete interests in breathing clean air. *See Salmon Spawning & Recovery*
9 *Alliance v. Gutierrez*, 545 F.3d 1220, 1229-30 (9th Cir. 2008) (environmental group had standing
10 where agency violated procedural requirement designed to protect group’s concrete interests in
11 welfare of endangered species); *see also Nat’l Fam. Farm Coal. v. EPA*, 966 F.3d 893, 909 (9th
12 Cir. 2020) (same). As described above, EPA’s continuing failure to complete designations
13 postpones attainment deadlines and required steps to reduce unsafe levels of pollution, thereby
14 prolonging Plaintiffs’ members’ exposure to harmful PM_{2.5} pollution. Moreover, EPA’s failure
15 to complete the designations process deprives Plaintiffs and their members of their procedural
16 right to judicially challenge final designations that they contend are unlawful or arbitrary. An
17 order compelling EPA to make the designations by a date certain will redress the foregoing
18 injuries.

19 ARGUMENT

20 I. LEGAL STANDARD

21 Under Federal Rule of Civil Procedure 56, summary judgment must be granted when,
22 viewing the facts in the light most favorable to the nonmoving party, the record shows that “there
23 is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
24 law.” Fed. R. Civ. P. 56(a). Once the moving party has satisfied its burden, it is entitled to
25 summary judgment if the non-moving party fails to cite “specific facts showing that there is a
26 genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *accord* Fed. R. Civ.
27 P. 56(c)(1)(A).

1 In ordering appropriate relief, a district court should compel EPA to correct its statutory
2 violations as soon as possible. *NRDC v. Train*, 510 F.2d 692, 705, 712-13 (D.C. Cir. 1974).
3 Where there is a clear statutory deadline, EPA bears the especially “heavy” burden of proving
4 that expeditious compliance would be “impossible.” *Sierra Club v. Thomas*, 658 F. Supp. 165,
5 170-71 (N.D. Cal. 1987) (citing *Train*).

6 **II. EPA HAS FAILED TO PERFORM ITS MANDATORY DUTY TO**
7 **PROMULGATE DESIGNATIONS.**

8 EPA had a mandatory duty under the Clean Air Act to promulgate designations of all
9 areas in each state under the standard through publication in the Federal Register no later than
10 February 7, 2026. It failed to do so.

11 Congress commanded that, after changing a national ambient air quality standard, EPA
12 “shall promulgate the designations of all areas (or portions thereof) [in each state] as
13 expeditiously as practicable, but in no case later than 2 years from the date of promulgation of
14 the new or revised national ambient air quality standard,” permitting up to a one-year extension
15 only “in the event the Administrator has insufficient information to promulgate the
16 designations.” 42 U.S.C. § 7407(d)(1)(B)(i); *see also* 89 FR 16366/1 (EPA acknowledgment of
17 this statutory requirement). Congress further specified that EPA “shall publish a notice in the
18 Federal Register promulgating any designation under” § 7407(d)(1), thus requiring EPA to
19 promulgate these designations by publication in the Federal Register. 42 U.S.C. § 7407(d)(2)(A).
20 Thus, Congress plainly mandated that EPA must promulgate designations under an updated
21 standard via publication of a notice in the Federal Register, and that EPA must make such
22 publication no later than two years after EPA promulgates the updated standard.

23 The duty to promulgate all designations through publication in the Federal Register by
24 the precise deadline set forth in the Act is non-discretionary. *See NRDC v. Train*, 545 F.2d 320,
25 324-25, 327 (2d Cir. 1976) (holding that EPA had non-discretionary duty under Clean Air Act
26 where statute used the “mandatory” term “shall” and included “a specific timetable” for
27 attainment of air quality standards). Moreover, EPA has repeatedly conceded that it was required
28 to promulgate the designations by the two-year deadline. *See, e.g.,* Resp’ts’ Mot. for Vacatur 1,

1 *Kentucky v. EPA*, No. 24-1050 (D.C. Cir. Nov. 24, 2025) (acknowledging an “area designation
2 deadline of February 7, 2026”).

3 These mandatory designations for the standard are overdue. EPA promulgated the
4 standard on February 7, 2024, which made the promulgation of all area designations due no later
5 than two years from that date, on February 7, 2026. *See* 42 U.S.C. § 7407(d)(1)(B)(i); 89 FR
6 103653/1. The standard and associated mandatory duty to designate areas remain in effect
7 notwithstanding ongoing litigation. 42 U.S.C. § 7607(b)(1). EPA has not taken any actions to
8 promulgate designations or extend that deadline. EPA’s failure to complete all area designations
9 is continuing. These facts are beyond dispute.

10 Because it is undisputable that EPA has not promulgated through publication in the
11 Federal Register all area designations for the standard by the statutory deadline or to date—a
12 nondiscretionary duty mandated by the Clean Air Act—EPA has plainly violated the law, and
13 Health, Environmental, and Community Groups are entitled to summary judgment finding EPA
14 liable for violating the law.⁷

15 **III. THE COURT SHOULD REQUIRE EPA TO COMPLETE ALL DESIGNATIONS**
16 **WITHIN 150 DAYS OF THE COURT’S ORDER.**

17 The Court has “broad latitude” to fashion an equitable remedy, particularly where the
18 public interest is involved. *Alaska Ctr. for Env’t v. Browner*, 20 F.3d 981, 986 (9th Cir. 1994);
19 *Nw. Env’t Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 680 (9th Cir. 2007). And when
20 EPA has indisputably failed to perform its mandatory duty to issue designations, the Court may
21 craft an “appropriate equitable remedy...in its discretion.” *In re Ozone Designation Litig.*, 286 F.
22 Supp. 3d 1082, 1084 (N.D. Cal. 2018). Such a remedy may include interim deadlines that are not
23 statutorily required to prevent agencies from escaping duties “simply by procrastinating.” *Cmtys.*
24 *for a Better Env’t v. EPA*, 2008 WL 1994898, at *3 (N.D. Cal. May 5, 2008) (internal citations
25 omitted).

26 _____
27 ⁷ To the extent that EPA is subject to two distinct duties—one to promulgate and the other to
28 publish notice in the Federal Register promulgating the designations—EPA has violated both for
the reasons given above.

1 Plaintiffs request that the Court issue a mandatory injunction compelling EPA to: (1)
2 within 30 days of the Court’s order send 120-day notice letters to states and Tribes for any areas
3 for which EPA proposes to modify a recommended designation; (2) within 150 days of the
4 Court’s order promulgate designations through publication in the Federal Register; and (3) make
5 those designations effective immediately.⁸ Such a request is within the Court’s authority and
6 discretion, and is necessary to effectuate the Clean Air Act and protect people’s health, is
7 appropriate in light of statutory deadlines, and gives EPA adequate time to finalize designations.

8 **A. A court order compelling EPA to act expeditiously is necessary and**
9 **appropriate.**

10 **1. Such an order is necessary to effectuate the Clean Air Act.**

11 Because Congress specified precisely what EPA must do and EPA has not done it, this
12 Court must issue an order requiring EPA to complete its duty forthwith. 42 U.S.C. § 7604(a)
13 (expressly empowering district courts “to order the Administrator to perform such [an unlawfully
14 withheld] act or duty”); *see also TVA v. Hill*, 437 U.S. 153, 173 (1978); *United States v.*
15 *McIntosh*, 833 F.3d 1163, 1172 (9th Cir. 2016). “Once Congress, exercising its delegated
16 powers, has decided the order of priorities in a given area, it is for the courts to enforce them
17 when enforcement is sought. Courts of equity cannot, in their discretion, reject the balance that
18 Congress has struck in a statute.” *United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S.
19 483, 497 (2001) (internal citation and quotation and alteration marks omitted); *see also Horne v.*
20 *Flores*, 557 U.S. 433, 450 (2009) (“It goes without saying that federal courts must vigilantly
21 enforce federal law and must not hesitate in awarding necessary relief.”).

22 Such an order is necessary to prevent EPA from thwarting the Clean Air Act. As fully
23 discussed above, Congress has expressly commanded that EPA promulgate initial area air quality
24 designations as expeditiously as practicable and no later than two years after promulgating an
25 updated national ambient air quality standard, except under particular, limited circumstances

27 ⁸ Plaintiffs reserve the right to modify this requested relief as warranted by a change in
28 circumstances.

1 allowing an extension of up to a year—circumstances upon which EPA does not claim to rely,
2 and which it could not in good faith invoke. EPA’s failure to comply with this clear command
3 nullifies swaths of the Act. To ensure public health would be protected, Congress laid out a
4 precise system for implementation of particulate matter standards. *See* 42 U.S.C. §§ 7502-7503
5 (general provisions for nonattainment areas), 7513-7513b (provisions specifically for particulate
6 matter nonattainment areas). Deadlines—both for adopting the programs Congress specifically
7 required and for ultimately attaining the standards—depend on areas first being designated
8 nonattainment and the date they are so designated. *See* 42 U.S.C. §§ 7513(c) (establishing
9 attainment deadlines for nonattainment areas based on designation dates), 7513a(a)(2)(B)
10 (attainment plans due within 18 months of designation); *see also* 40 C.F.R. § 51.1003(a)(2)
11 (attainment plans due within 18 months of the designation effective date).

12 Thus, the Congressionally-crafted framework for improving air quality and public health
13 begins operating in earnest—and other statutory deadlines can be determined—only once EPA
14 completes its task of promulgating initial area air quality designations.

15 By refusing to promulgate those designations, EPA unlawfully nullifies Congress’s
16 carefully conceived mechanism for improving air quality and public health. *Cf. Whitman*, 531
17 U.S. at 485 (“EPA may not construe the statute in a way that completely nullifies textually
18 applicable provisions meant to limit its discretion.”). The Act explicitly gives district courts
19 authority “to order the Administrator to perform such [an unlawfully withheld] act or duty.” 42
20 U.S.C. § 7604(a). A court order is thus authorized and needed to prevent Congress’s mandate
21 from being disregarded.

22 **2. Such an order serves the Act’s core purpose of protecting public health.**

23 So long as EPA fails to make designations, it delays pollution controls the Act requires to
24 reduce unsafe particulate matter levels in communities where Health, Environmental, and
25 Community Groups’ members live, work, worship, and enjoy recreation. EPA’s failure to act
26 means that areas with fine particulate matter levels that violate the 2024 standard, or that
27 contribute to a violation, will not be timely designated as nonattainment and thus will lack the
28 anti-pollution protections that a nonattainment designation would accord them, as just explained.

1 These important protections include measures states adopt into their implementation plans to
2 sufficiently limit emissions of fine particulate matter for the area to come into attainment, as well
3 as attainment deadlines, nonattainment new source review permitting for new or modified major
4 sources of pollution, and pollution controls for large existing plants. The few areas currently in
5 nonattainment under the prior PM_{2.5} standard will also benefit from designation, as they will
6 have to adopt new, stronger plans to come into attainment with the lower standard. And people
7 living in downwind attainment areas will also benefit from the reduction of PM_{2.5} emissions in
8 upwind nonattainment areas, as any level of fine particulate matter can cause health harms.

9 Delays in promulgating designations will severely harm Health, Environmental, and
10 Community Groups' members by prolonging their exposure to particulate matter levels that EPA
11 has found cause higher mortality and cardiovascular-related hospital admissions. Limaye Decl.
12 ¶¶ 9, 21; 88 FR 5581/1-83/2, 5604/1, 5607/1-2, 5608/2. EPA also found that implementation of
13 the new standard would reduce mortality rates, emergency room visits, lung cancer occurrence,
14 asthma occurrence, and asthma symptoms, among other health benefits. RIA 17 tbl.ES-6. The
15 attached Declarations, Exs.15-65, demonstrate the human impacts of these harms. For example,
16 American Thoracic Society member Dr. Susanna McColley lives in Chicago, which has annual
17 PM_{2.5} levels that violate the 2024 standard. McColley Decl. ¶¶ 1-2, Ex.47; Graham Decl. ¶ 13.
18 She usually enjoys running and biking several times a week, but checks the Air Quality Index
19 and does not engage in these activities when there are high levels of PM_{2.5} to avoid triggering her
20 asthma and to reduce her risk of health harms from PM_{2.5}. McColley Decl. ¶¶ 10-12. As a
21 pediatric pulmonologist, Dr. McColley receives more emergency room visits and gets more calls
22 about her patients experiencing respiratory symptoms on days with high PM_{2.5}, and counsels her
23 patients with chronic conditions to avoid outdoor activities on poor air quality days. *Id.* ¶¶ 3, 8.
24 Other members of Plaintiffs and their families who live in areas with PM_{2.5} levels that exceed the
25 2024 standard routinely find their ability to breathe impaired by air pollution. *See, e.g.*, Lawson
26 Decl. ¶ 7, Ex.43; Smith Decl. ¶¶ 8, 12, 13, Ex.61; Ressler Decl. ¶ 4, Ex.56. Many are at greater
27 risk of experiencing health impacts from PM_{2.5} pollution due to chronic lung and heart
28 conditions, or due to their age. *See, e.g.*, Miske Decl. ¶ 6, Ex.49; Scribner Decl. ¶ 8, Ex.58;

1 Sinclair Decl. ¶ 6, Ex.60; Garrett Decl. ¶ 7, Ex.34; Beshur Decl. ¶¶ 5-6, Ex.20. Members refrain
2 from outdoor activities they would otherwise enjoy because of elevated PM_{2.5} pollution levels, or
3 engage in these activities but enjoy them less, due to acute symptoms from PM_{2.5} exposure or
4 health concerns from PM_{2.5} pollution. *See, e.g.*, Garrett Decl. ¶ 10; Lawson Decl. ¶ 7; Smith
5 Decl. ¶¶ 13-14; Hall Decl. ¶ 6, Ex.31; Ali Decl. ¶ 9, Ex.17; Bonitatibus Decl. ¶¶ 15-16, Ex.21;
6 Hooks Decl. ¶ 8, Ex.33.

7 Because the attainment deadlines run from the effective date of designation, *see* 40
8 C.F.R. § 51.1004(a)(1), the fine particulate matter pollution levels in these areas will be allowed
9 to remain at dangerously elevated levels for longer unless and until EPA takes its legally
10 required action. *See* Limaye Decl. ¶¶ 21, 24. Health, Environmental, and Community Groups’
11 members living in such areas experience severe harms to their health and wellbeing because of
12 particulate matter pollution. They thus are and will be harmed by the delay in mandatory
13 pollution reductions and the additional time that they will have to endure dangerous particulate
14 matter levels.

15 In short, EPA has delayed initial area designations beyond what the statute allows,
16 extending the time that hundreds of thousands of Health, Environmental, and Community
17 Groups’ members will be exposed to excessive amounts of air pollution that causes serious
18 harms to them, their families, and their patients. *See* Olinger Decl. ¶ 5; Stith Decl. ¶ 6; Trujillo
19 Decl. ¶¶ 7-8, Ex.63. These harms are extremely serious—irreparable even (though the Court
20 need not reach that question), *see Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 766
21 (9th Cir. 2004) (irreparable harms include “pain, infection, amputation, medical complications,
22 and death”)—and without a court order compelling EPA to act, they will be allowed to persist
23 longer still.

24 **B. A 150-day timeframe is appropriate, pragmatic, and reasonable.**

25 When Congress “categorically mandate[s]” that EPA meet explicit deadlines, EPA is
26 “deprive[d] of all discretion over the timing of its work.” *Sierra Club v. Thomas*, 828 F.2d 783,
27 791 (D.C. Cir. 1987). Violations of such statutory deadlines should be corrected “as soon as
28 possible,” using all available means. *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir. 1990).

1 Urgency is particularly heightened in this case because Congress intended EPA to move “as
2 expeditiously as practicable” to promulgate designations and then for nonattainment areas to
3 come into attainment “as expeditiously as practicable,” but no later than fixed deadlines
4 calculated off the date of designation, and develop specific pollution control plans by deadlines
5 similarly determined by the date of designation. 42 U.S.C. §§ 7407(d)(1)(B)(i), 7513(c)(1),
6 7513a(a)(2)(B); *see Alaska Ctr.*, 20 F.3d at 986 (district court should tailor the remedy to further
7 “the congressional objectives” of the statute).

8 In fashioning an appropriate deadline, courts generally consider the original statutory
9 time period for compliance, the public interest, and the time needed by the agency to properly do
10 the job. *See Sierra Club*, 658 F. Supp. at 171-72. Where Congress directed an agency to perform
11 a regulatory duty within a given time, the “agency carries a heavy burden to show” that its
12 proposed remedy is as expeditious as possible, and that faster compliance is “impossible.”
13 *American Lung Ass’n v. Browner*, 884 F. Supp. 345, 347 (D. Ariz. 1994); *see also, e.g., Train*,
14 510 F.2d at 712-13 (“injunction should serve like adrenalin, to heighten the response and to
15 stimulate the fullest use of resources,” and agency has burden to demonstrate it is impossible to
16 comply by deadline); *Cmtys. for a Better Env’t*, 2008 WL 1994898, at *2 (rejecting EPA’s
17 argument that “it is only obligated to demonstrate a reasonable schedule” and finding that “EPA
18 bears the heavy burden of proving impossibility” (internal quotations and citations omitted)).

19 Here, Health, Environmental, and Community Groups respectfully request that the Court
20 direct EPA to issue any 120-day letters within 30 days of the Court’s order, take final action to
21 promulgate all designations through publication in the Federal Register within 150 days of the
22 Court’s order, and make these designations immediately effective. This timeframe is expeditious
23 and practicable, for it is consistent with available indications of progress EPA has already made
24 toward making designations, fits with EPA’s past practices, and still allows EPA to provide the
25 legally required notice to states if it intends to depart from their recommendations. *See* 42 U.S.C.
26 § 7407(d)(1)(B)(ii).⁹

27 _____
28 ⁹ The Act expressly exempts designations from the notice and comment process, though it encourages notice and comment. 42 U.S.C. § 7407(d)(2)(B); *see also* Memorandum 3 (EPA

1 **1. The statutory period for compliance supports the requested order.**

2 A 150-day deadline to publish effective designations is fully consistent with the Clean
3 Air Act. “Congress enacted the Clean Air Act Amendments of 1970, mandating a ‘massive
4 attack on air pollution.’” *American Lung Ass’n v. EPA*, 134 F.3d 388, 388 (1998) (citations
5 omitted); *see Train v. NRDC*, 421 U.S. 60, 64 (1975) (through the 1970 Amendments,
6 “Congress...t[ook] a stick to the States”). The subsequent 1977 Amendments “reaffirmed”
7 Congress’s 1970 goal, including reinforcing the NAAQS framework’s “precautionary and
8 preventative orientation.” *Lead Indus. Ass’n v. EPA*, 647 F.2d 1130, 1152-55 & n.51 (D.C. Cir.
9 1980).

10 To bring about speedy implementation and protect public health, the Act requires the
11 EPA to issue designations “as expeditiously as practicable, but in no case later than two years
12 from the date of promulgation” of the standard. 42 U.S.C. § 7407(d)(1)(B)(i). Because the Act
13 prescribes that EPA must “publish a notice in the Federal Register” to promulgate designations,
14 *id.* § 7407(d)(2)(A), that two-year deadline is a deadline for publication in the Federal Register.
15 As of the date of this filing, EPA has had over two years and two months to develop and
16 promulgate designations. By the deadline of the requested 150-day order, EPA will have had
17 over two years and 7 months, in addition to the time between this filing and any such order, to
18 develop and publish designations in the Federal Register.¹⁰ Accordingly, a 150-day deadline is
19 well aligned with the designations framework as well as the broader purpose of the Act.

20 Critically, Congress’s precise system for implementing standards has deadlines that are
21 keyed to the date an area is designated as nonattainment, *see supra* p.5, making a 150-day order
22

23 _____
24 typically provides public comments after issuing 120-day letters and “does intend to consider
25 public input in the [PM_{2.5}] designations process” again). Plaintiffs’ requested timeframe also
26 allows for such notice and comment when EPA sends 120-day letters. For example, when issuing
27 designations under the 2012 primary annual standard, EPA sent 120-day letters on August 19,
28 2014, announced a 30 day public comment period on August 29, 2014, and signed the final
designations on December 18, 2014—121 days after sending the letter. 80 FR 2206, 2209, 2211
(Jan. 15, 2025).

¹⁰ Nothing prevents EPA from continuing its work on designations even before this Court issues
any ruling.

1 appropriate to prevent further implementation delay. And since EPA has taken the position that it
2 is the effective date of the designations—not the promulgation date—that triggers subsequent
3 statutory deadlines, *see, e.g.*, 40 C.F.R. §§ 51.1003(a)(2), 51.1004(a)(1), a remedy mandating an
4 effective date is essential for remediating unlawful delays and ensuring that the statute’s
5 subsequent implementation deadlines are not further postponed. *See NRDC v. Sw. Marine, Inc.*,
6 236 F.3d 985, 1000 (9th Cir. 2000) (district courts have discretion to implement “equitable
7 measures [] reasonably calculated to remedy [the] established wrong”) (citations omitted).

8 While some implementation deadlines are dependent on the exact date of designations,
9 *see, e.g.*, 42 U.S.C. § 7513a(a)(2)(B), others are based on the calendar year that designations
10 occur, adding further statutory justification for a 150-day order here. The most important
11 deadline for public health—the outermost date nonattainment areas must come into compliance
12 with the new standard—depends on the calendar year a designation is made. *Id.*
13 § 7513(c) (mandatory attainment deadlines are “no later than the end of the sixth calendar year
14 after the area’s designation as nonattainment” for moderate areas and “no later than the end of
15 the tenth calendar year beginning after the area’s designation as nonattainment” for serious
16 areas); 40 C.F.R. § 51.1004(a)(1) (attainment deadlines are keyed to the calendar year of the
17 effective date of designations). Thus, were the designations promulgated in the Federal Register
18 and effective on or after January 1, 2027, the attainment deadline would be pushed back an entire
19 year. To prevent this dramatic delay of critical statutory deadlines and effectuate Congress’s
20 framework to protect public health, a 150-day order for promulgation via publication in the
21 Federal Register and immediate effective date is necessary.

22 Other statutory timeframes for designations also support a 150-day order. EPA has
23 discretion in the designations process to modify a state’s recommendations about designations as
24 necessary to ensure the designations meet the requirements of the Act. 42 U.S.C.
25 § 7407(d)(1)(B)(ii); *Alaska Ctr.*, 20 F.3d at 986-87 (approving of injunction that required agency
26 to act, but left intact agency discretion over how exactly to act). To do so, EPA must notify the
27 state “no later than 120 days” before it promulgates final designations that it intends to modify
28 the state’s recommendation and give the state “an opportunity to demonstrate why any proposed

1 modification is inappropriate.” 42 U.S.C. § 7407(d)(1)(B)(ii). EPA will have adequate time to go
2 through this process under Health, Environmental, and Community Groups’ request.

3 **2. A 150-day deadline gives EPA adequate time to finalize designations.**

4 A 150-day overall deadline provides EPA with adequate time to finalize the designations,
5 as EPA has the data it needs to promulgate designations and the broader designations process is
6 already well underway.

7 Importantly, EPA already has all the information it has historically used to make
8 designations.¹¹ The vast majority of states gave their recommended designations to EPA long
9 ago. Winz Decl. ¶ 13. Per the records EPA released under the Freedom of Information Act, many
10 have submitted exceptional events demonstrations, and EPA has processed many. Winz Decl.
11 ¶¶ 19-20. EPA has the most recent design values based on quality-assured, certified monitoring
12 data. *See supra* p.8. It has provided significant guidance, based on its prior practice (which
13 survived judicial review), about how to make designations and determine nonattainment area
14 boundaries. *See* Memorandum 3-8, Att.3 at 1-14, Att.4 at 1; *Miss. Comm’n*, 790 F.3d at 147, 149,
15 158-59 (upholding EPA’s use of five-factor approach in ozone designations). EPA also has
16 datasets with copious information relevant to making designations and determining
17 nonattainment area boundaries: amounts of PM_{2.5} emitted in every county; vehicle miles traveled
18 in every county; the population of every county; and a variety of wind data. EPA, *Particle*
19 *Pollution Designations Memorandum and Data for the 2024 Revised Annual PM_{2.5} NAAQS* (last
20 updated Feb. 4, 2026), [https://www.epa.gov/particle-pollution-designations/particle-pollution-](https://www.epa.gov/particle-pollution-designations/particle-pollution-designations-memorandum-and-data-2024-revised)
21 [designations-memorandum-and-data-2024-revised](https://www.epa.gov/particle-pollution-designations/particle-pollution-designations-memorandum-and-data-2024-revised) (table titled “Datasets Provided by EPA to
22 Support the Five-factor Analysis”), Ex.8. EPA even created a public tool to help in crafting
23 designations and nonattainment area boundaries by making maps that rely on analyses of these
24 datasets and the most recent official design values. *Id.* (section titled “C. PM_{2.5} Designations
25
26

27 ¹¹ Tellingly, EPA has never claimed it lacks sufficient information to promulgate 2024 PM_{2.5}
28 designations at any location, let alone nationwide.

1 Mapping Tool”); Memorandum 7. Thus, EPA has all the information it needs to make legally
2 adequate designations within 150 days of this Court’s order.

3 EPA has also addressed concerns about the calibration of certain PM_{2.5} monitors that are
4 used for calculating some design values. Specific models of Teledyne brand monitors, which
5 have been approved for use by EPA since 2016, were discovered to have positive biases with
6 PM_{2.5} readings about 20% higher than other approved monitors. Supplemental Information on
7 the EPA’s Update of PM_{2.5} Data from T640/T640X PM Mass Monitors, EPA-HQ-OAR-2023-
8 0642-0033, at 1-2 (May 13, 2024) (“Teledyne Memo”), Ex.9; Graham Decl. ¶ 16. EPA
9 addressed this issue in early 2024, undergoing public notice and comment and finalizing a
10 methodology in May 2024 to retroactively update all PM_{2.5} monitoring data in EPA’s Air Quality
11 System from these monitors to remove this bias. *See* Teledyne Memo 3-5; 89 FR 42874 (May
12 16, 2024). EPA’s published 2023 and 2024 design values incorporated the updated Teledyne
13 monitor data. Graham Decl. ¶ 16. EPA accordingly addressed this issue early enough to leave
14 ample time for the designations process to proceed on schedule. Indeed, 45 states, D.C., Puerto
15 Rico, the U.S. Virgin Islands, and 3 Tribes developed and submitted designations
16 recommendations. Accordingly, this data calibration issue has been addressed and poses no
17 barrier to EPA’s issuance of final designations.

18 EPA has thus had ample time and information to work on and issue designations. Though
19 EPA has made clear that it does not want to issue designations, *see supra* pp.7-8 (EPA moved
20 D.C. Circuit to vacate 2024 standard by designations deadline, but 2024 standard remains in
21 effect), its bare desire cannot justify its failure to carry out its statutory duty. *See Thomas*, 828
22 F.2d at 791 (EPA is “deprive[d] of all discretion over the timing of its work” when Congress
23 mandates deadlines). EPA’s inaction coupled with its explicit reluctance to act tacitly confirms it
24 has failed to act with the “utmost diligence” to meet its statutory deadline. *In re Ozone*
25 *Designation Lit.*, 286 F. Supp. 3d at 1090 (citing *Train*, 510 F.2d at 713). Because there is
26 nothing that would have made it “infeasible or impossible for the EPA, acting in good faith, to
27 meet the Congressional deadline,” *Sierra Club v. Gorsuch*, 551 F. Supp. 785, 787 (N.D. Cal.
28 1982), the agency should not be rewarded with further time to complete its work beyond 150

1 days. Notably, though EPA’s efforts have lagged, documents released through the Freedom of
2 Information Act indicate that EPA has completed some work on designations already that would
3 allow EPA to issue designations post-haste. *See supra* pp.8-9. EPA’s publicly released records
4 show it has received exceptional event submissions from 25 states and 2 Tribes, and throughout
5 2025 has issued responses on over half of these. Winz Decl. ¶¶ 19-20. Given the work already
6 completed and the urgency of the task, EPA should be held to a strict—and achievable—
7 timeline.

8 **3. A 150-day timeframe is necessary to protect public health.**

9 Swift action is necessary here to protect public health and the public interest. Further
10 delaying the designations will cause serious harm to the breathing public and to the environment.
11 *See supra* pp.16-18; Limaye Decl. ¶ 21 (delaying designations “will lead to a longer period of
12 inaction before measures to abate health-harming PM_{2.5} are undertaken in...important, heavily-
13 impacted areas,” resulting in “more asthma attacks, hospitalizations, lost workdays, emergency
14 room visits, and premature deaths in those areas”).

15 While every additional day of delay postpones important statutory implementation
16 deadlines, the mandatory attainment dates are keyed to the calendar year when designations
17 occur. 42 U.S.C. § 7513(c). Were EPA to have more than 150 days to promulgate effective
18 designations, such designations may not occur until 2027 and the attainment deadline would be
19 pushed back by an entire year.

20 A single year delay has devastating consequences. EPA estimated that in 2032—the year
21 it assumed that Moderate nonattainment areas would have to attain the 2024 standard—the new
22 standard would lead to 4,500 fewer premature deaths, 800,000 fewer cases of asthma symptoms,
23 1,990 fewer emergency department visits, 5,700 fewer people developing asthma, 160 fewer
24 cases of lung cancer, and 290,000 fewer lost workdays. RIA 3, 17 tbl.ES-6. Pushing back the
25 attainment deadline by a year would mean that many of these health benefits are not realized for
26 another year. Instead, more people will be hospitalized, have asthma attacks, develop cancer, and
27 die.

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