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6 *Signature Page)*

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

9 _____)
AMERICAN LUNG ASSOCIATION,)
10 AMERICAN PUBLIC HEALTH)
ASSOCIATION, AMERICAN THORACIC)
11 SOCIETY, APPALACHIAN MOUNTAIN)
CLUB, ENVIRONMENTAL DEFENSE)
12 FUND, ENVIRONMENTAL LAW AND)
POLICY CENTER, NATIONAL PARKS)
13 CONSERVATION ASSOCIATION,)
14 NATURAL RESOURCES DEFENSE)
COUNCIL, SIERRA CLUB, and WEST)
15 HARLEM ENVIRONMENTAL ACTION,)
16)
Plaintiffs,)
17)
v.)
18)
SCOTT PRUITT, Administrator, United)
19 States Environmental Protection Agency, in)
20 his official capacity,)
21)
Defendant.)
22)
_____)
23)

Civil Action No. _____

COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

INTRODUCTION

1
2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.
3 Plaintiffs American Lung Association, American Public Health Association, American Thoracic
4 Society, Appalachian Mountain Club, Environmental Defense Fund, Environmental Law and
5 Policy Center, National Parks Conservation Association, Natural Resources Defense Council,
6 Sierra Club, and West Harlem Environmental Action bring this action for declaratory judgment
7 and injunctive relief to compel Defendant Scott Pruitt (“Administrator” or “Defendant”), in his
8 official capacity as Administrator of the U.S. Environmental Protection Agency (“EPA”), to
9 carry out his overdue legal obligation to officially identify those areas of the country with
10 dangerous levels of ground-level ozone air pollution, a necessary step toward bringing those
11 areas into compliance with federal clean air standards by legally mandated deadlines.
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14 2. Ground-level ozone, or smog, seriously harms human health and the environment. At
15 high enough levels, it impairs breathing, inflames lungs, sends people to the hospital, and can
16 even kill. It also harms growing plants and even entire ecosystems. The Clean Air Act requires
17 EPA to establish health- and welfare-based national ambient air quality standards (“ozone
18 standards”) to limit the amount of ozone allowed in the outdoor air. Areas with ozone pollution
19 levels that violate the standards must clean up their air, and areas whose emissions contribute to
20 poor air quality in downwind communities must reduce those emissions.
21

22 3. EPA strengthened the ozone standards in 2015 based on an extensive scientific record
23 leading to its recognition that the prior ozone standards were inadequate to protect public health
24 and welfare. The signing of the final rule on October 1, 2015, triggered the Administrator’s
25 nondiscretionary duty to “promulgate the designations of all areas” of the country as meeting
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1 (“in attainment of”) or not meeting (“in nonattainment of”) the standards within two years—*i.e.*,
2 by October 1, 2017. 42 U.S.C. § 7407(d)(1)(B)(i).

3 4. This deadline has passed and the Administrator has not yet promulgated designations for
4 all areas of the nation. The areas that have not yet been designated are those that are most
5 polluted, where tens of millions of people live and work. EPA’s failure to meet the deadline that
6 Congress prescribed violates the Clean Air Act; thus, Plaintiffs seek both declaratory relief and
7 an order to compel the Administrator to issue designations for all areas forthwith.
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9 JURISDICTION AND VENUE

10 5. This action arises under the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B)(i). This Court has
11 jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 1331 and 1361.
12 This Court may grant the relief Plaintiffs request pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C.
13 §§ 2201, 2202, and 1361. Plaintiffs have a right to bring this action pursuant to the Clean Air
14 Act, 42 U.S.C. § 7604(a)(2); 28 U.S.C. § 1361; and the Administrative Procedure Act, 5 U.S.C.
15 §§ 701-706.
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17 6. By certified letter to the Administrator posted on October 3, 2017, Plaintiffs gave notice
18 of this action as required by the Clean Air Act, 42 U.S.C. § 7604(b)(2), and 40 C.F.R. Part 54.

19 7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a) Plaintiff Sierra Club
20 resides in this district; b) this district is one in which Defendant EPA resides and performs its
21 official duties; and c) a substantial part of the events and omissions giving rise to this claim has
22 occurred and is occurring in this district because EPA’s failure to act as complained of herein
23 threatens the health and welfare of district residents, including members of Plaintiffs (as further
24 detailed herein), and because EPA’s Regional Office in San Francisco, California, has a
25 substantial role in implementing the EPA duties at issue in this case.
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1 8. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or
2 Oakland Division of this Court because Plaintiff Sierra Club resides in Oakland, California, and
3 Defendant EPA resides in San Francisco, California.

4
5 **PARTIES**

6 9. Plaintiff **American Lung Association** is a corporation organized and existing under the
7 laws of Maine. ALA is a national nonprofit organization dedicated to a world free of lung
8 disease and to saving lives by preventing lung disease and promoting lung health. ALA's Board
9 of Directors includes pulmonologists and other health professionals.

10 10. Plaintiff **American Public Health Association** is an organization incorporated in
11 Massachusetts, and has members from all fields of public health. Its issues include those
12 affecting personal and environmental health and pollution control, chronic and infectious
13 diseases, and health equity.

14 11. Plaintiff **American Thoracic Society** is an international, non-profit medical-professional
15 organization organized and existing under the laws of the State of New York. Its members
16 protect public health by preventing and treating respiratory disease, critical care illness, and
17 sleep-disordered breathing through research, education, care, and advocacy.

18 12. Plaintiff **Appalachian Mountain Club** is a corporation organized and existing under the
19 laws of the Commonwealth of Massachusetts. It is a regional nonprofit organization dedicated to
20 promoting the protection, enjoyment, and understanding of the mountains, forests, waters, and
21 trails of the Northeast and Mid-Atlantic Outdoors.

22 13. Plaintiff **Environmental Defense Fund** is a national nonprofit corporation organized and
23 existing under the laws of the State of New York. It links science, economics, and law to create
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1 innovative, equitable, and cost-effective solutions to society’s most urgent environmental
2 problems.

3 14. Plaintiff **Environmental Law and Policy Center** is a nonprofit corporation incorporated
4 in and operating under the requirements of the State of Illinois. It is a legal advocacy
5 organization dedicated to improving environmental quality and protecting natural resources in
6 the Midwest and Great Plains states.

7
8 15. Plaintiff **National Parks Conservation Association** is a national nonprofit corporation
9 organized and existing under the laws of the District of Columbia. It is dedicated to protecting
10 and enhancing America’s National Parks for present and future generations.

11 16. Plaintiff **Natural Resources Defense Council** is a national nonprofit corporation
12 organized and existing under the laws of the State of New York that is dedicated to improving
13 the quality of the human environment and protecting the nation’s endangered natural resources.

14 17. Plaintiff **Sierra Club** is a nonprofit corporation organized and existing under the laws of
15 the State of California, with its headquarters located in Oakland, California. It is dedicated to the
16 protection and enjoyment of the environment.

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18 18. Plaintiff **West Harlem Environmental Action** is a corporation organized and existing
19 under the laws of New York. Founded in 1988, it is a Northern Manhattan community-based
20 organization whose mission is to build healthy communities by assuring that people of color
21 and/or those with low income participate meaningfully in the creation of sound and fair
22 environmental health and protection policies and practices.

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24 19. Collectively, Plaintiffs have over two million members, with members living, working,
25 and engaging in outdoor activities in all 50 states and Washington, DC.
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1 20. Defendant Scott Pruitt is the Administrator of the EPA. In that role, he is charged with
2 the duty to uphold the Clean Air Act and to take required regulatory actions according to the
3 schedules established therein. Administrator Pruitt is sued in his official capacity.

4 **FACTUAL BACKGROUND: OZONE**

5 21. Ozone, the main component of smog, is a corrosive air pollutant that inflames the lungs
6 and constricts breathing, and likely kills people. *See* 80 FR 65,292, 65,308/3-09/1 (Oct. 26,
7 2015); EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* 2-20
8 to -23 tbl.2-1 (EPA-HQ-OAR-2008-0699-0405, Feb. 2013) (“ISA”). It causes and exacerbates
9 asthma attacks, emergency room visits, hospitalizations, and other serious health harms. *E.g.*,
10 EPA, *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards* 3-
11 18, 3-26 to -29, 3-32 (EPA-HQ-OAR-2008-0699-0404, Aug. 2014) (“PA”); ISA 2-16 to -18, 2-
12 20 to -24 tbl.2-1. Ozone-induced health problems can force people to change their ordinary
13 activities, requiring children to stay indoors and forcing people to take medication and miss work
14 or school. *E.g.*, PA 4-12.

15 22. Ozone can harm healthy adults, but others are more vulnerable. *See* 80 FR 65,310/1-3.
16 Because their respiratory tracts are not fully developed, children are especially vulnerable to
17 ozone pollution, particularly when they have elevated respiratory rates, as when playing
18 outdoors. *E.g.*, PA 3-81 to -82. People with lung disease and the elderly also have heightened
19 vulnerability. *See* 80 FR 65,310/3. People with asthma suffer more severe impacts from ozone
20 exposure than healthy individuals do and are more vulnerable at lower levels of exposure. *Id.*
21 65,311/1 n.37, 65,322/3.

22 23. Ozone also damages vegetation and forested ecosystems, causing or contributing to
23 widespread stunting of plant growth, tree deaths, visible leaf injury, reduced carbon storage, and
24 reduced crop yields. PA 5-2 to -3; ISA 9-1. The damage includes tree-growth losses reaching 30-
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1 50% in some areas, and widespread visible leaf injury, including 25-37% of sites studied in just
2 one state. PA 5-13; ISA 9-40. By harming vegetation, ozone can also damage entire ecosystems,
3 leading to ecological and economic losses. 80 FR 65,370/1-2, 65,377/3.

4 **STATUTORY AND REGULATORY BACKGROUND**

5 24. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s
6 air resources so as to promote the public health and welfare and the productive capacity of its
7 population.” 42 U.S.C. § 7401(b)(1). One “primary goal” is “pollution prevention.” *Id.* § 7401(c).
8 Congress found the Act to be necessary in part because “the growth in the amount and
9 complexity of air pollution brought about by urbanization, industrial development, and the
10 increasing use of motor vehicles, has resulted in mounting dangers to the public health and
11 welfare.” *Id.* § 7401(a)(2).

12 25. Central to the Act is the requirement that EPA establish national ambient air quality
13 standards for certain widespread air pollutants that endanger public health and welfare, referred
14 to as “criteria pollutants.” *Id.* §§ 7408-7409. One criteria pollutant is ground-level ozone. *See* 40
15 C.F.R. §§ 50.9, 50.10, 50.15, 50.19.

16 26. The national ambient air quality standards establish allowable concentrations of criteria
17 pollutants in ambient air. Primary standards protect public health, including that of sensitive
18 populations such as asthmatics, children, and the elderly. 42 U.S.C. § 7409(b)(1). Secondary
19 standards protect public welfare, including protection against damage to animals, crops,
20 vegetation, and buildings. *Id.* §§ 7409(b)(2), 7602(h). EPA must review and, as appropriate,
21 revise these standards at least every five years. *Id.* § 7409(d)(1).

22 27. After EPA sets or revises a standard, the implementation process begins. Within one year
23 of the standards’ promulgation, the states and Tribes provide EPA recommendations for initial
24 area designations, which classify all areas within the state or tribal land as “nonattainment,”
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1 “attainment,” or “unclassifiable” under the standards. *Id.* § 7407(d)(1)(A). A nonattainment area
2 is one that does not meet the standards or that “contributes to ambient air quality in a nearby area
3 that does not meet” the standards. *Id.* § 7407(d)(1)(A)(i). An attainment area is an area that meets
4 the standards and does not contribute to air quality in a nearby area that does not meet them. *Id.*
5 § 7407(d)(1)(A)(ii). An “unclassifiable” area is “any area that cannot be classified on the basis of
6 available information as meeting or not meeting” the standard, and is treated for regulatory
7 purposes as an attainment area. *Id.* §§ 7407(d)(1)(A)(iii), 7471.

9 28. Then, “as expeditiously as practicable, but in no case later than” two years after
10 promulgating or revising a standard, EPA “shall promulgate the designations of all areas (or
11 portions thereof) submitted” by states and Tribes. *Id.* § 7407(d)(1)(A)-(B); *see also id.*
12 §§ 7601(d)(1), 7602(d). In promulgating designations, EPA may modify a state or Tribe’s
13 recommendations, but if EPA intends to do so, it must so notify the state or Tribe at least 120
14 days in advance of promulgating the designation. *Id.* § 7407(d)(1)(B)(ii). If a state or Tribe does
15 not submit recommendations for an area, EPA still must promulgate a designation for that area.
16 *See id.*

18 29. A nonattainment designation triggers requirements for states to ensure that air quality in
19 nonattainment areas will attain ozone standards by specified deadlines. *Id.* §§ 7410(a), (c), 7502;
20 *see also id.* §§ 7511-7511f (provisions specific to ozone nonattainment areas). Among the
21 protections is a preconstruction permitting program, which requires large new factories and
22 power plants in nonattainment areas to operate state-of-the-art pollution controls and to secure
23 reductions in air pollution from other sources sufficient to more than offset the new pollution
24 they will introduce. *Id.* §§ 7503, 7511a. Each state must adopt a “state implementation plan” that
25 includes all the protections Congress required for nonattainment areas and any specific measures
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1 the state determines should be implemented to address local sources of air pollution contributing
2 to elevated ozone levels. *Id.* § 7410(a)(2)(I).

3 30. The requirements—and deadlines—for states to adopt the specific programs Congress
4 mandated to control harmful emissions in nonattainment areas depend on the areas being
5 designated nonattainment. *See, e.g., id.* §§ 7502(b), (c), 7503.

7 31. Simultaneously with their designation, ozone nonattainment areas must be classified
8 based on the severity of their ozone pollution levels. *Id.* § 7511(a)(1) tbl.1. The higher the
9 classification, the longer the area has to come into attainment, but the more stringent the controls
10 it must adopt. If an area fails to attain on time, EPA must reclassify it to a higher classification,
11 triggering stronger pollution control requirements.

12
13 **FACTUAL BACKGROUND: 2015 OZONE STANDARD REVISION AND EPA'S**
14 **FAILURE TO PROMULGATE DESIGNATIONS**

15 32. EPA revised the ozone standards most recently on October 1, 2015 (“the 2015
16 standards”), strengthening them by tightening the maximum 8-hour level of ozone allowed in the
17 ambient air to 70 parts per billion (ppb), down from the 75 ppb allowed under the prior version
18 of the standards (“the 2008 standards”). 80 FR 65,292/1, 65,452/2; 73 FR 16,436, 16,436/1
19 (2008).

20 33. EPA made this revision after its lengthy and detailed review process demonstrated that
21 the 2008 standards were inadequate to protect public health and welfare. 80 FR 65,342/2-47/1,
22 65,389/1-90/2. Important parts of the extensive record showed that healthy young adults
23 experienced adverse health effects with ozone exposures at levels allowed by the 2008 standards
24 and linked ozone levels allowed by those standards to hospital visits, deaths, and other serious
25 health harms. *Id.* 65,343/1-44/3, 65,346/2-3. In a 15-city study, EPA estimated that tens of
26 thousands of children would still face dangerous ozone exposures even after the 2008 standards
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1 were met. *Id.* 65,344/3-47/1. EPA's independent scientific advisors likewise unanimously found
2 the 2008 standards were not strong enough to protect public health and welfare. *Id.* 65,346/2,
3 65,381/3.

4 34. EPA's revision of the standards on October 1, 2015 meant its mandatory deadline for
5 issuing designations was October 1, 2017. *See* 42 U.S.C. § 7407(d)(1)(B)(i).

6 35. All the impacted states and Tribes submitted designation recommendations to EPA well
7 in advance of this deadline. *See* [www.epa.gov/ozone-designations/2015-ozone-standards-state-](http://www.epa.gov/ozone-designations/2015-ozone-standards-state-recommendations)
8 [recommendations; www.epa.gov/ozone-designations/2015-ozone-standards-tribal-](http://www.epa.gov/ozone-designations/2015-ozone-standards-tribal-recommendations)
9 [recommendations](http://www.epa.gov/ozone-designations/2015-ozone-standards-tribal-recommendations). They did so with ample guidance from EPA regarding what kind of
10 information it needed to make final designations. *See, e.g.*, Memorandum on Area Designations
11 for the 2015 Ozone National Ambient Air Quality Standards, from Janet McCabe, Acting Ass't
12 Adm'r, to Reg'l Adm'rs (Feb. 25, 2016).

13 36. On June 28, 2017, EPA purported to extend its ozone designation deadline by one year.
14 82 Fed. Reg. 29,246 (June 28, 2017). After multiple public health and environmental
15 organizations (including Plaintiffs) and several states sued EPA over the extension, EPA issued a
16 notice formally withdrawing it. 82 Fed. Reg. 37,318 (Aug. 10, 2017). Thus, the mandatory
17 deadline for issuing designations remains October 1, 2017. *See* 42 U.S.C. § 7407(d)(1)(B)(i).

18 37. By its October 1, 2017 deadline, EPA had not promulgated a single ozone designation
19 under the 2015 standards for any area in the country. At no point did EPA notify any state or
20 Tribe that it intended to modify any of their recommended designations pursuant to
21 § 7407(d)(1)(B)(ii).

1 38. On November 6, 2017, EPA issued attainment and unclassifiable designations for some
2 areas of the country, but no nonattainment designations. 82 FR 54,232, 54,235/2 (Nov. 16, 2017)
3 (signature date is November 6, 2017).

4 39. As of the date of this filing, EPA has not issued designations under the 2015 standards for
5 all areas of the nation by the October 1, 2017, deadline, as required by the Clean Air Act. EPA
6 also has not notified any state or Tribe that it intends to modify any of their recommended
7 designations. Nor has EPA attempted to extend its now-passed deadline.

8 40. More than 100 million of the roughly 323 million people in the United States live in the
9 hundreds of counties that remain as of this date without designations under the 2015 standards,
10 including urban areas like Los Angeles, New York City, Chicago, Washington-Baltimore,
11 Denver, Houston, San Antonio, Detroit, Cincinnati, Philadelphia, Atlanta, and Oakland, where
12 ozone pollution is particularly severe. *See* 82 FR 54,235-87.
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15 **PLAINTIFFS' INJURIES**

16 41. Plaintiffs' members include individuals who live, work, travel, and/or engage in
17 recreational activities in areas where air quality violates the 2015 ozone standards, including
18 areas state governors themselves have recommended be designated nonattainment, but for which
19 EPA has failed to make ozone designations in the timeframe required by 42 U.S.C.
20 § 7407(d)(1)(B)(i), including in cities like Baltimore, Chicago, Philadelphia, and San Antonio.
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22 42. The acts and omissions of EPA alleged herein harm Plaintiffs' members by prolonging
23 air quality conditions that adversely affect or threaten their health, and by nullifying or delaying
24 measures and procedures mandated by the Act to protect their health from ozone pollution in
25 places where they live, work, travel, and/or recreate. Indeed, ozone levels that exceed the 2015
26 standards can exacerbate Plaintiffs' members' health problems such as asthma and chronic
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1 obstructive pulmonary disease, causing physical problems that force them to limit activities that
2 they would otherwise be able to do and enjoy.

3 43. The acts and omissions of EPA alleged herein also harm Plaintiffs' members' welfare
4 interests—including their recreational, aesthetic, educational, and professional interests—
5 because their reasonable concerns about the health effects of their ozone exposure diminish their
6 enjoyment of activities they previously enjoyed or would like to continue to engage in, and of
7 areas they previously enjoyed or would like to continue to use.

9 44. The acts and omissions of EPA alleged herein further harm Plaintiffs' members' welfare
10 interest in using and enjoying the natural environment in areas that do not meet the 2015
11 standards. Elevated levels of ozone damage plant life and natural ecosystems, thus harming
12 Plaintiffs' members' recreational and aesthetic interests. Ozone damage to vegetation can lead to
13 wildlife avoidance of certain areas, as well as a reduction in biodiversity or other changes to a
14 local community's ecosystem, making it more difficult for Plaintiffs' members to observe, fish,
15 cultivate, study, research, or write about wildlife, plants, or ecosystems.

17 45. The acts and omissions of EPA alleged herein further deprive Plaintiffs and their
18 members of procedural rights and protections to which they would otherwise be entitled,
19 including, but not limited to, the right to judicially challenge final ozone designations adversely
20 affecting their members, the right to enforce requirements of the Act for preparation and
21 implementation of plans to remedy violations of the 2015 ozone standards in nonattainment areas
22 and prevent violations in attainment areas, and the right to comment on and judicially challenge
23 such plans.

25 46. The EPA acts and omissions alleged herein further injure Plaintiffs and their members by
26 depriving them of information to which they are entitled by law, including, but not limited to,
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1 EPA's published identification of each area in the nation as attainment, nonattainment, or
2 unclassifiable. If Plaintiffs had access to such information, they would use it to, among other
3 things: educate their members and the public about the scope of ozone standards violations
4 nationwide, including identification of areas that violate the 2015 ozone standards and areas that
5 meet the standards; advocate for adoption of adequate measures to bring nonattainment areas
6 into compliance with the standards and prevent significant deterioration of air quality in
7 attainment areas; advocate for appropriate action by EPA to determine whether unclassifiable
8 areas meet or do not meet the standards; and more efficiently target Plaintiffs' actions to promote
9 effective implementation of the 2015 ozone standards. Such information would also assist
10 Plaintiffs' members in determining whether they are exposed to ozone levels that violate health
11 standards and in taking action to protect themselves and their families from ozone pollution. The
12 acts and omissions complained of herein deprive Plaintiffs and their members of the benefits of
13 such information and thus cause them injury.

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16 47. EPA's failure also hampers Plaintiffs' ability to perform certain programmatic functions
17 essential to their missions, such as ensuring that states put in place the public health and
18 environmental protections that accompany nonattainment designations, and educating the public
19 about these protections.
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21 48. Accordingly, the health, recreational, aesthetic, procedural, informational, and
22 organizational interests of Plaintiffs and their members have been and continue to be adversely
23 affected by the acts and omissions of EPA alleged herein.
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25 49. A court order requiring EPA to promptly promulgate designations for all areas, as the law
26 requires, would redress Plaintiffs' and Plaintiffs' members' injuries.
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CLAIM FOR RELIEF

50. The allegations of all foregoing paragraphs are hereby incorporated as if set forth fully herein.

Violation of the Clean Air Act

51. EPA’s deadline for promulgating initial area air quality designations for all areas of the country under the 2015 ozone standards was October 1, 2017.

52. The Administrator failed to promulgate designations for all areas in the country by that date, as required by 42 U.S.C. § 7407(d)(1)(B)(i).

53. As of the filing of this Complaint, EPA has not promulgated designations for all areas in the country.

54. This constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary” within the meaning of the Clean Air Act, 42 U.S.C. § 7604(a)(2), and thus a violation of the Act. EPA’s violations are ongoing, and will continue unless remedied by this Court.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court:

- (1) Declare that EPA’s failure to timely promulgate area designations for all areas under the 2015 National Ambient Air Quality Standards for ozone by the deadline required by 42 U.S.C. § 7407(d)(1)(B)(i) constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary” within the meaning of 42 U.S.C. § 7604(a)(2);
- (2) Enjoin the Administrator from continuing to violate the above-described nondiscretionary duty;

- 1 (3) Order the Administrator to promulgate area designations for all areas of the country
2 under the 2015 National Ambient Air Quality Standards for ozone forthwith;
3 (4) Retain jurisdiction to ensure compliance with the Court's decree;
4 (5) Award Plaintiffs the costs of this action, including attorneys' fees; and,
5 (6) Grant such other relief as the Court deems just and proper.
6

7 DATED: December 4, 2017
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9 Respectfully Submitted,
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West Harlem Environmental Action*

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