

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN LUNG ASSOCIATION)
1301 Pennsylvania Ave. NW, Suite 800)
Washington, DC 20004)

NATIONAL PARKS CONSERVATION ASSOCIATION)
777 6th Street, NW, Suite 700)
Washington, DC 20001)

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY)
Ariel Rios Building)
1200 Pennsylvania Avenue, NW)
Washington, DC 20460)

LISA P. JACKSON, in her official capacity as Administrator,)
United States Environmental Protection Agency)
Ariel Rios Building)
1200 Pennsylvania Avenue, NW)
Washington, DC 20460)

Defendants.)

Case: 1:12-cv-00243
Assigned To : Wilkins, Robert L.
Assign. Date : 2/14/2012
Description: Admn. Agency Review

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action to compel the Administrator of the United States Environmental Protection Agency (“EPA”) to adopt overdue air quality standards to address the particulate matter pollution problem in the U.S. that is responsible for thousands of premature deaths and tens of thousands of hospital visits every year.

JURISDICTION AND VENUE

2. The instant action arises under the Clean Air Act (“Act”), 42 U.S.C. §§ 7401 *et seq.* This Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1331 and 1361. The relief requested herein by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201, 2202, and 1361.

3. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs served prior notice on the Administrator of the violations alleged herein and Plaintiffs’ intent to initiate the present action. This notice was provided via a certified letter, posted October 18, 2011, and addressed to the Administrator. More than 60 days have passed since the notice was served, and the violations complained of in the notice are continuing.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because Defendant Lisa P. Jackson is an officer of the United States sued for acts and omissions in her official capacity, and her official residence is in the District of Columbia.

PARTIES

5. Plaintiff American Lung Association (“ALA”), a corporation organized and existing under the laws of the State of Maine, is a national nonprofit organization dedicated to the conquest of lung disease and the promotion of lung health. American Lung Association is headquartered in Washington, D.C.

6. Plaintiff National Parks Conservation Association (“NPCA”) is a national nonprofit corporation organized and existing under the laws of the District of Columbia with its principal place of business in Washington, D.C. Its mission is to protect and enhance America’s National Parks for the use and enjoyment of present and future generations.

7. Plaintiffs’ members live, work, recreate and conduct other activities in areas where their health and welfare are adversely affected or threatened by particulate matter

pollution. Members are exposed to and harmed by such pollution by, among other things, breathing in such pollution (which threatens health, as further detailed below) and by experiencing its adverse impacts on visibility, and other aspects of public welfare.

8. The acts and omissions of EPA complained of herein cause injury to Plaintiffs and their members by delaying the five-year review of the national ambient air quality standards for particulate matter pollution as required by the Clean Air Act. This delay causes injury to Plaintiffs' members by prolonging and allowing the worsening of air quality conditions that impair or threaten members' health and welfare as further described herein, and by nullifying or delaying measures mandated by the Act to protect members' health and welfare from particulate matter pollution. The health, recreational, aesthetic, and environmental interests of Plaintiffs' members have been and continue to be adversely affected by the acts and omissions of EPA alleged herein.

9. The acts and omissions of EPA alleged herein further deprive Plaintiffs and their members of procedural rights and protections to which they would otherwise be entitled, including, but not limited to, the right to comment on, and judicially challenge, EPA action approving and/or revising the national ambient air quality standards for particulate matter.

10. For all the foregoing reasons, the failures complained of herein cause Plaintiffs and their members injuries for which they have no adequate remedy at law. Granting the requested relief would redress these injuries.

11. Defendant United States Environmental Protection Agency is the federal agency charged with implementation of the Clean Air Act, including the requirements alleged in this Complaint to have been violated.

12. Defendant Lisa P. Jackson is the Administrator of the United States Environmental Protection Agency, and is charged with the task of taking various actions to implement and enforce the Clean Air Act, including those actions sought herein. Defendant Jackson is sued in her official capacity, and she officially resides in Washington, D.C.

BACKGROUND AND FACTS

Particulate Matter Pollution

13. Particulate matter pollution refers generally to a broad class of diverse types of particles that can be suspended in the air. *See* 71 Fed. Reg. 61144, 61146 (Oct. 17, 2006). EPA has divided this pollution into two categories based on the size of the particles – fine and coarse. *Id.*

14. Fine particles (“PM_{2.5}”) are those particles 2.5 microns in diameter and smaller. 71 Fed. Reg. at 61146. Sources of PM_{2.5} include “motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning.” *Id.* EPA has reported a wide range of adverse health effects associated with elevated levels of ambient PM_{2.5}, including increased hospital admissions and emergency room visits for heart and lung disease, increased respiratory symptoms and disease, decreased lung function, and premature deaths. *See id.* at 61152.

15. EPA has also identified a number of adverse welfare impacts associated with elevated PM_{2.5} levels, including impacts on visibility. *See* 71 Fed. Reg. at 61203. By reducing visibility, elevated levels of PM_{2.5} reduce an individual’s sense of well-being where they live, work, and enjoy recreational opportunities.

16. Coarse particles (“PM_{2.5-10}”) are those particles between 2.5 and 10 microns in diameter. 71 Fed. Reg. at 61146. Sources of PM_{2.5-10} include “traffic-related emissions such as tire and brake lining materials, direct emissions from industrial operations, construction and demolition activities, and agricultural and mining operations.” *Id.* EPA has found that short-

term exposure to elevated PM_{10-2.5} levels is associated with mortality and increased hospitalization for cardiovascular and respiratory diseases. *Id.* at 61180.

The Clean Air Act's Requirements for National Ambient Air Quality Standards

17. The Act establishes a comprehensive scheme “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

18. As one of its central features, the Act requires the Administrator to set national ambient air quality standards for certain air pollutants. 42 U.S.C. § 7409(a). Under the Act, the Administrator must set primary standards for those pollutants at levels that will protect the public health with an adequate margin of safety, *id.* § 7409(b)(1), and secondary standards at levels that will “protect the public welfare from any known or anticipated adverse effects associated with the presence of those pollutants in the ambient air.” *Id.* § 7409(b)(2).

19. The Clean Air Act imposes on EPA a non-discretionary duty to review national ambient air quality standards every five years and “make such revisions in such criteria and standards and promulgate such new standards as may be appropriate” 42 U.S.C. § 7409(d)(1).

EPA’s Duty Under the Clean Air Act to Review the National Ambient Air Quality Standards for Particulate Matter

20. EPA last promulgated national ambient air quality standards for particulate matter on October 17, 2006. *See* 71 Fed. Reg. at 61144.

21. The D.C. Circuit Court of Appeals remanded these standards in *Am. Farm Bureau Fed’n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) because EPA had failed to demonstrate that the standards were adequate to protect public health and prevent adverse welfare impacts.

22. Pursuant to 42 U.S.C. § 7409(d)(1), EPA was required to review these standards within five years, thus by October 18, 2011.

23. To date, EPA has not even proposed a decision, let alone taken final action based on a review of these standards.

FIRST CLAIM FOR RELIEF

Failure to Review the National Ambient Air Quality Standards for Particulate Matter by the Statutory Deadline

24. Plaintiffs hereby incorporate all previous paragraphs by reference.

25. Defendants have failed to fulfill their duty under 42 U.S.C. § 7409(d)(1) to review the national ambient air quality standards for particulate matter promulgated October 17, 2006 within five years.

26. Defendants' failure to timely review the particulate matter standards constitutes a failure to perform an act or duty that is not discretionary within the meaning of 42 U.S.C. § 7604(a)(2).

27. Defendants' failure to perform the above-referenced nondiscretionary duty is ongoing. Plaintiffs are informed and believe that the omissions complained of herein will continue unless enjoined by order of this Court.

28. Accordingly, Plaintiffs are entitled to an order from this Court compelling Defendants to complete the required review of the national ambient air quality standards for particulate matter.

RELIEF REQUESTED

29. WHEREFORE, Plaintiffs pray that this Court:

(1) Declare that Defendants' failure to act as complained of herein constitutes a failure to perform a nondiscretionary duty required by 42 U.S.C. § 7409(d)(1) within the meaning of 42 U.S.C. § 7604(a)(2);

(2) Preliminarily and permanently enjoin EPA and the Administrator from continuing to violate the above-described nondiscretionary duties;

(3) Order Defendants to take final action completing the required review no later than October 15, 2012;


(4) Award Plaintiffs their reasonable costs of litigation, including attorney's fees, pursuant to 42 U.S.C. § 7604(d);

(5) Retain jurisdiction over this action to ensure compliance with the Court's orders; and

(6) Grant such other relief as the Court deems just and proper.

DATED: this 14th day of February, 2012.

Respectfully submitted,



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