



October 6, 2011

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Lisa P. Jackson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Notice of citizen suit under section 304 of the Clean Air Act regarding failure to perform nondiscretionary duties with respect to ozone nonattainment/attainment designations

Dear Administrator Jackson:

Pursuant to 42 U.S.C. §7604(b)(2) and 40 C.F.R. Pt. 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency ("Administrator," "you," or "EPA") for failing to perform certain nondiscretionary duties under the Clean Air Act ("the Act"). As further specified below, you have failed to carry out your nondiscretionary duty under section 107(d) of the Act, 42 U.S.C. §7407(d), to promulgate designations of all areas throughout the nation as nonattainment, attainment, or unclassifiable ("designations") for the national ambient air quality standards (NAAQS) for ozone as revised on March 12, 2008.

Section 107(d)(1)(A) of the Act requires that by such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109 of the Act, the Governor of each State shall submit to the Administrator a list designating all areas in the State as nonattainment, attainment, or unclassifiable for that NAAQS. 42 U.S.C. §7407(d)(1)(A). Section 107(d)(1)(B) of the Act provides that upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under §107(d)(1)(A)¹ as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised NAAQS. Id. §7407(d)(1)(B). Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations. Id. Pursuant to §107(d)(2)(A) of the Act, the Administrator must publish a notice in the Federal Register promulgating any designations under §107(d)(1). Id. §7407(d)(2)(A).

On March 12, 2008, the Administrator promulgated a revision of the NAAQS for ozone. 73 Fed. Reg. 16436 (2008) ("March 2008 ozone NAAQS"). That promulgation triggered the Administrator's nondiscretionary duty to promulgate designations for the revised ozone NAAQS for all areas pursuant to §107(d)(1)(B) as expeditiously as practicable, but not later than March

¹ If the Governor of a state fails to submit the list in whole or in part, as required under §107(d)(1)(A), then §107(d)(1)(B)(ii) requires the Administrator to promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

12, 2010, and to publish a notice in the Federal Register promulgating those designations pursuant to §107(d)(2). On January 19, 2010, EPA announced in the Federal Register that it was using its authority under §107(d)(1)(B)(i) of the Act to extend by 1 year the deadline for promulgating initial area designations for the March 2008 ozone NAAQS. 75 Fed. Reg. 2936.² The notice stated that, with this extension, “[t]he deadline for EPA to promulgate designations for the 2008 ozone NAAQS is March 12, 2011.”

The March 12, 2011 deadline for EPA to promulgate designations for the March 2008 ozone NAAQS and to publish a Federal Register notice promulgating such designations has passed, but EPA has not promulgated designations for that NAAQS as required by §107(d)(1)(B) of the Act, or published a Federal Register notice promulgating such designations as required by §107(d)(2) of the Act. Accordingly, the Administrator is in violation of her nondiscretionary duties under §§107(d)(1)(B) & (d)(2) of the Act to promulgate designations for the March 2008 ozone NAAQS by March 12, 2011 and to publish a Federal Register notice promulgating such designations by March 12, 2011.

This notice letter is submitted on behalf of the following organizations:

American Lung Association
1301 Pennsylvania Ave., NW, Suite 800
Washington, DC 20004-1725

Environmental Defense Fund
257 Park Avenue South, 17th Floor
New York, NY 10010

Natural Resources Defense Council
40 West 20th Street
New York, NY 10011

National Parks Conservation Association
1300 19th Street NW, Suite 300
Washington, DC 20036

Appalachian Mountain Club
5 Joy Street
Boston, MA 02108

These parties intend to commence a civil action to enforce the nondiscretionary duties described in this letter unless EPA has fully performed these duties within sixty days of the postmark date of this letter.

² EPA’s claim in the January 19, 2010 notice that it lacked sufficient information to promulgate designations by March 12, 2010 was in fact unfounded. There was ample information before the agency at that time to make the required designations. Even if additional time was justified, however, the EPA has also missed its extended deadline for making the required designations.

The undersigned are acting as legal counsel for the above-named organizations in this matter. We would be happy to discuss the concerns raised in this letter with you. Any communications should be addressed to undersigned at the addresses indicated below.

Sincerely,

David S. Baron
Attorney
Earthjustice
1625 Massachusetts Avenue, NW, Suite 702
Washington, D.C. 20036
202-745-5203
dbaron@earthjustice.org

Sean Helle
Attorney
Earthjustice
313 East Main Street
Bozeman, MT 59715
(406) 586-9699
shelle@earthjustice.org