

FW: Notice letter from Sierra Club re petition for redesignation of areas under 2008 ozone NAAQS  
To: CMS.OEX@epamail.epa.gov

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**From:** Seth Johnson [mailto:sjohnson@earthjustice.org]  
**Sent:** Wednesday, January 22, 2014 11:20 AM  
**To:** Mccarthy, Gina  
**Cc:** McCabe, Janet; Page, Steve; Josh Stebbins (josh.stebbins@sierraclub.org); David Baron; josh.berman@sierraclub.org  
**Subject:** Notice letter from Sierra Club re petition for redesignation of areas under 2008 ozone NAAQS

Dear Administrator McCarthy:

Attached please find the letter we mailed today giving you notice of agency action unreasonably delayed, namely EPA's response to Sierra Club's petition for redesignation of 57 areas throughout the country as nonattainment for the 2008 ozone NAAQS. As the letter explains, the Club intends to commence a citizen suit to compel you to act on its petition at any time beginning 180 days from the postmark date of the letter, which is January 22, 2014, unless EPA completes one of the actions described in the letter.

If you or your staff have questions about the letter or the petition, please don't hesitate to contact us.

Sincerely,

Seth Johnson

Seth Johnson

Senior Associate Attorney

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**VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

January 22, 2014

Ms. Gina McCarthy  
Administrator  
Environmental Protection Agency  
1101A EPA Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

RE: Notice of Citizen Suit Concerning Petition for Redesignation of Areas That Violate 2008 National Ambient Air Quality Standards for Ozone

Dear Administrator McCarthy,

This is a notice of “agency action unreasonably delayed” within the meaning of section 304(a) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a). This notice is provided to you as Administrator of the U.S. Environmental Protection Agency (“EPA”), in your official capacity, pursuant to CAA section 304(a) and (b), 42 U.S.C. § 7604(a), (b), and 40 C.F.R. Part 54, as a prerequisite to bringing a civil action.

The organization giving this notice is Sierra Club, 85 Second Street, 2d Floor, San Francisco, California 94105, (415) 977-5500.

On November 14, 2013, we petitioned you to redesignate as nonattainment 57 areas with 2012 ozone design values violating the 2008 8-hour National Ambient Air Quality Standards (“NAAQS”) for ozone. As a severable element of our petition, we also proposed boundaries for the areas that we requested be redesignated. Over 94 million Americans live in metropolitan areas where air quality monitors, located in places designated attainment or unclassifiable for the 2008 NAAQS, register 2012 design values above 0.075 ppm—a level EPA has determined to be harmful to public health and welfare. The Clean Air Act contains both a detailed framework for redesignating areas and, after redesignation is complete, a detailed framework for bringing nonattainment areas into attainment. 42 U.S.C. §§ 7407(d)(3), 7511(b)(1), 7511a. The scope and seriousness of the ozone violations militate strongly for swiftly beginning the process of realizing the Clean Air Act’s promise of healthful air for all Americans. Accordingly, we called on EPA to grant our petition and begin the redesignation process within 30 days of receiving the petition. EPA notified us by letter dated November 29, 2013, that it had received our petition, but has not told us of any decision on any aspect of the petition.

Sierra Club has the right to petition for EPA to take action, and EPA must grant or deny the petition within a reasonable time. 5 U.S.C. §§ 553(e), 555(b); *see also id.* § 706(1) (authorizing court to “compel agency action ... unreasonably delayed”); 42 U.S.C. § 7604(a)

(authorizing suits in district court “to compel agency action unreasonably delayed”). The D.C. Circuit has made plain that “a reasonable time for agency action is typically counted in weeks or months, not years.” *In re Am. Rivers*, 372 F.3d 413, 419 (D.C. Cir. 2004). That expeditious timeframe is especially merited here, for at levels exceeding the NAAQS, ozone pollution has serious effects on human health and the environment. Only more harm will occur if EPA persists in delaying getting violating areas on the congressionally established path toward clean air. Further, the issue at hand is fairly simple: Do the areas Sierra Club identified have ozone levels exceeding the NAAQS? EPA has already had two months to consider that basic question (and will have an additional six months before we can commence a citizen suit). And, as we explained in our petition, under the Clean Air Act, air quality data demonstrating violations of the NAAQS is dispositive that EPA must redesignate the areas at issue. 42 U.S.C. § 7407(d)(3)(A). Thus, EPA’s delay in responding to our petition is unreasonable. *See Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (laying out six-factor test for unreasonable delay, including “a ‘rule of reason,’” heightened need for speed when “human health and welfare are at stake,” and “the nature and extent of the interests prejudiced by delay”).

**180-Day Notice.** Pursuant to section 304 of the Clean Air Act, 42 U.S.C. § 7604, Sierra Club intends to commence a citizen suit to compel you to act on its petition at any time beginning 180 days from the postmark date of this letter, which is January 22, 2014, unless EPA has completed within that 180-day period one of the following:

- granting Sierra Club’s petition in full and notifying the governors of the relevant states, per section 107(d)(3)(A) of the Clean Air Act, *id.* § 7407(d)(3)(A), that available information indicates that the ozone designations for the areas addressed in Sierra Club’s petition should be revised to “nonattainment”;
- granting Sierra Club’s petition in part and denying the remainder, and notifying the governor(s) of the relevant state(s), per section 107(d)(3)(A) of the Clean Air Act, *id.*, that available information indicates that the ozone designations for the areas (or portions thereof) addressed in the granted part(s) of Sierra Club’s petition should be revised to “nonattainment”; or
- denying the petition in whole.

*See* 40 C.F.R. § 54.2(d).

### **Contact Information**

We are acting as attorneys for Sierra Club in this matter. Please contact us at your earliest convenience regarding this matter. Please address any communications to us at the address and telephone number set forth below.

Sincerely,

/s/Seth L. Johnson

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/s/Joshua Stebbins

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*On behalf of the Sierra Club*

Cc: Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation  
Steve Page, Director, Office of Air Quality Planning and Standards