



# EARTHJUSTICE

Kristi  
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October 18, 2017

Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building  
Mail Code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

## By Certified Mail

**RE: Notice of intent to sue under the Clean Air Act for failure to designate areas under the 2015 Ozone National Ambient Air Quality Standard as required by 42 U.S.C. § 7407(d)(1)(B)(i).**

Dear Administrator Pruitt:

Pursuant to 42 U.S.C. § 7604(a)(2), (b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) 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 under the primary national ambient air quality standard (“NAAQS”) for ozone, as revised on October 1, 2015, and published in the Federal Register on October 26, 2015. 80 FR 65,292, 65,452 (“2015 Ozone NAAQS”). This notice supplements the notice provided on October 3, 2017, which addresses the same nondiscretionary duties.

Section 107(d)(1)(A) of the Act requires that not later than one 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 (or portions thereof) in the State as nonattainment, attainment, or unclassifiable under 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)<sup>1</sup> as expeditiously as practicable, but in no case later than two years from the date of promulgation of the new or revised NAAQS. *Id.* § 7407(d)(1)(B)(i). Such period may be extended for up to one year only when the Administrator has insufficient information to promulgate the designations. *Id.* Pursuant to

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<sup>1</sup> 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.

section 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 October 1, 2015, the Administrator promulgated a revision of the primary NAAQS for ozone. 80 FR at 65,452. That promulgation triggered the Administrator's nondiscretionary duty to promulgate designations under the revised ozone NAAQS for all areas pursuant to section 107(d)(1)(B) as expeditiously as practicable, but not later than October 1, 2017, and to publish a notice in the Federal Register promulgating those designations pursuant to section 107(d)(2).

In June 2017, without notice or public input, EPA attempted to extend its deadline for promulgating designations by a year, from October 1, 2017, to October 1, 2018. 82 FR 29,246 (June 28, 2017). After being sued over its failure to satisfy the statutory requirement that would authorize this delay, EPA withdrew its action, thus reinstating the October 1, 2017, deadline. 82 FR 37,318 (Aug. 10, 2017).

October 1, 2017, has passed, and EPA has not satisfied its statutory obligation under § 107(d)(1)(B) of the Act to promulgate the designations or to extend its deadline for promulgating such designations for all areas, nor did it meet its obligation for publishing a Federal Register notice promulgating such designations as required by § 107(d)(2). Accordingly, you are in violation of your nondiscretionary duties under section 107(d)(1)(B) & (d)(2) of the Act to promulgate designations for the 2015 Ozone NAAQS by October 1, 2017, and to publish a Federal Register notice promulgating such designations.

As required by 40 C.F.R. § 54.3, the undersigned submit this notice letter on behalf of the following organization:

Center for Biological Diversity P.O. Box 710 Tucson, AZ 85702
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This party intends to commence a civil action to enforce the nondiscretionary duties described in this letter unless EPA fully performs these duties.

We 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; feel free to contact us at the phone numbers or email addresses indicated below.

Sincerely,

/s/Seth L. Johnson  
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