

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

COMMONWEALTH OF)
KENTUCKY, ENERGY AND)
ENVIRONMENT CABINET,)
REBECCA GOODMAN,)
Secretary, KY EEC, and)
LOUISVILLE METRO AIR)
POLLUTION CONTROL DISTRICT)

Plaintiffs,)

v.)

Case No. 3:24-CV-600-CHB

U.S ENVIRONMENTAL PROTECTION)
AGENCY, and MICHAEL S. REGAN,)
Administrator, U.S. EPA)

Defendants.)

NATIONWIDE RELIEF SOUGHT

COMPLAINT

Blake E. Adams
Jarrod L. Bentley
Daniel C. Cleveland
*Kentucky Energy and Environment Cabinet
Office of Legal Services
300 Sower Boulevard, Third Floor
Frankfort, Kentucky 40601*

Quang Nguyen
Jefferson County Attorney's Office
First Trust Centre
200 S. Fifth Street, Suite 300N
Louisville, KY 40202

INTRODUCTION

1. This is an action to compel the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to act as mandated by the Clean Air Act, 42 U.S.C. § 7407(d)(3)(D) on the Kentucky Energy and Environment Cabinet’s (“Cabinet”) Request to Redesignate Kentucky Counties within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area (“Redesignation Request”).

JURISDICTION, VENUE, AND NOTICE

2. As this action seeks to compel the Administrator to perform a nondiscretionary act or duty under the Clean Air Act¹, this Court has jurisdiction under 42 U.S.C. § 7604(a)², 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

3. Congress waived federal sovereign immunity of the United States by authorizing this action under 42 U.S.C. § 7604(a)(2).

4. An actual controversy exists between the parties as defined in 28 U.S.C. § 2201.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1)(B) because Defendant Michael S. Regan is an officer of the United States acting in his official capacity and Defendant Environmental Protection Agency is an agency of the United States. A substantial part

¹ 42 U.S.C. §§ 7401 et seq.

² As defined in 42 U.S.C. § 7602(e), the Commonwealth and Louisville Metro Air Pollution Control District are “persons” for the purposes of 42 U.S.C. § 7604.

of the events or omissions giving rise to the claim occurred in the Western District of Kentucky where the requested redesignation applies to the attainment area consisting of Jefferson, Bullitt, and Oldham Counties, Kentucky.

6. Venue is also proper in this judicial district under 28 U.S.C. § 1391(e)(1)(C) because Plaintiff, Louisville Metropolitan Air Pollution Control District, resides in this judicial district.

7. Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs served on the Administrator notice of intent to sue for the violations alleged in this Complaint with intent to initiate this action. The Cabinet notified the Administrator by certified mail posted on May 31, 2024, with an electronic email copy to the Administrator and the Director of the Louisville Metro Air Pollution Control District on the same day.

8. Accordingly, the Commonwealth properly notified the EPA on May 31, 2024 pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54. A true and accurate copy of the Cabinet's Notice is attached as **Exhibit 1**.

9. As of the date of filing, more than 60 days have passed since the Cabinet served its Notice and the violation identified in the notice continue. 42 U.S.C. § 7604(b)(2).

PARTIES

10. Plaintiff, Kentucky Energy and Environment Cabinet, is a resident of Franklin County, Kentucky, and an executive agency of the Commonwealth of Kentucky organized pursuant KRS 224.10-050 with power and duties proscribed in Chapter 224 of the Kentucky Revised Statutes, and the authority delegated by the EPA to implement the Clean Air Act by developing state implementation plans using the technical expertise of the Cabinet's Division for Air Quality. *See* 40 C.F.R. Ch. 1, Subch. C, Part 52, Subpart S.

11. Plaintiff, Rebecca Goodman, in her official capacity, is a resident of Franklin County, Kentucky, and is the Secretary of the Cabinet as appointed by the Governor of the Commonwealth of Kentucky pursuant to Chapter 12 of the Kentucky Revised Statutes, and has the statutory authority and duty to oversee the administration of the programs and divisions under the Cabinet's purview, including the Division for Air Quality.

12. Plaintiff, Louisville Metro Air Pollution Control District is a resident of Jefferson County, Kentucky, and the air pollution control agency for the Louisville Metropolitan Area, including Jefferson County, Kentucky, created pursuant to Chapter 77 of the Kentucky Revised Statutes, and which has the statutory authority to oversee the implementation of the air pollution laws and regulations in the Louisville Metropolitan Area.

13. Defendant, United States Environmental Protection Agency, is the federal agency charged with implementing the Clean Air Act.

14. Defendant, Michael S. Regan, is the EPA Administrator who is charged with the duty to enforce the Clean Air Act, including undertaking nondiscretionary duties and actions according to the deadlines established by the Act. *See* 42 U.S.C. § 7407(d)(3)(D).

LEGAL BACKGROUND

15. "The federal Clean Air Act is a model of cooperative federalism. It requires each State to establish a State Implementation Plan ("SIP") to limit emissions in accordance with the national ambient air quality standards set by the federal EPA." *Ellis v. Gallatin Steel Co.*, 390 F.3d 461, 467 (6th Cir. 2004) (citing 42 U.S.C. §§ 7409(b)(1), 7410(a)(1)).

16. For the purposes of developing and carrying out implementation plans under 42 U.S.C. § 7410, § 7407 requires the Administrator to designate area air-quality regions in any

interstate area or major intrastate area that he deems necessary or appropriate for the attainment and maintenance of the National Ambient Air Quality Standards (“NAAQS”).

17. 42 U.S.C. § 7407(d)(3)(D) provides that “[t]he Governor of any State may, on the Governor’s own motion, submit to the Administrator a revised designation of any area or portion thereof within the State.”

18. 42 U.S.C. § 7407(d)(3)(D) also requires the Administrator to approve or deny a state’s redesignation request “[w]ithin 18 months of receipt of a complete State redesignation submittal.”

19. On November 25, 1971, the EPA created the Louisville Interstate Air Quality Control Region, which included the area geographically located within Jefferson County, Kentucky, as well as Floyd and Clark Counties in Indiana. 40 C.F.R. § 81.35.

20. On October 26, 2015, the EPA revised both the primary and secondary 8-Hour Ozone NAAQS to a level of 0.070 parts per million. 80 Fed. Reg. 65291 (Oct. 26, 2015).

21. On June 4, 2018, the EPA published final area designations for the 2015 8-Hour Ozone NAAQS. 83 Fed. Reg. 25776 (June 4, 2018).

22. The final area designations listed the Louisville, KY-IN2015 8-Hour ozone nonattainment area (“Louisville, KY-IN Area”) to include Bullitt, Jefferson, and Oldham Counties in Kentucky, as well as Clark and Floyd Counties in Indiana. *Id* at 25804.

23. The final area designations also classified the Louisville, KY-IN Area as “marginal” nonattainment for the 2015 8-Hour ozone NAAQS based on 2014-2016 modeling data design values. *Id*.

24. On July 5, 2022, the EPA issued a Final Rule approving a redesignation request redesignating the Indiana Counties of the Louisville, KY-IN to attainment for the 2015 8-Hour

Ozone NAAQS, based upon modeling data from air quality monitors sited in the Kentucky portion of the Louisville, KY-IN Area. 87 Fed. Reg. 30129.

CAUSE OF ACTION

25. On September 6, 2022, the Cabinet submitted a revision to its SIP requesting redesignation of the Kentucky Counties in the Louisville, KY-IN 2015 Area to attainment pursuant to 42 U.S.C. §7407(d)(3)(D). A true and accurate copy of the Redesignation Request is attached as **Exhibit 2**.

26. 42 U.S.C. §7407(d)(3)(D) requires the Administrator to approve or deny a redesignation requests withing “18 months of *receipt of a complete State redesignation submittal.*” (Emphasis Supplied).

27. On December 14, 2022, the EPA issued a letter to the Cabinet acknowledging its receipt of the Cabinet’s Redesignation Request on September 6, 2022, and finding that the submittal met the completeness criteria outlined in 40 C.F.R. Part 51, Appendix V.

28. On April 11, 2023, the EPA issued a Proposed Rule redesignating the Kentucky portion of the Louisville, KY-IN Area to attainment for the 2015 8-Hour Ozone NAAQS. 88 Fed. Reg. 23598.

29. In the Proposed Rule, the EPA proposed to determine that the Kentucky portion of the Louisville, KY-IN Area had met the requirements for redesignation under Clean Air Act Section 107(d)(3)(E). *Id.* at 23599.

30. Therefore, the Administrator was required to publish a Final Rule acting on the Cabinet’s Redesignation Request within 18 months of September 6, 2022, or, March 6, 2024. 42 U.S.C. § 7407(d)(3)(D).

31. As of the date of this filing, the Administrator has failed to issue a Final Rule approving or denying the Cabinet's Redesignation Request.

32. As a result, the Administrator has failed to perform a nondiscretionary duty as required by 42 U.S.C. § 7407(d)(3)(D), and Plaintiffs are entitled to file this action pursuant to 42 U.S.C. § 7604(a)(2).

WHEREFORE, the Plaintiffs, Kentucky Energy and Environment Cabinet and the Louisville Metro Air Pollution Control District respectfully request that the Court enter an Order as follows:

1. Declaring that the Defendants have violated and continue to violate the Clean Air Act by failing to take final action on Kentucky's Redesignation Request;

2. Compelling the Defendants to take final action on Kentucky's Redesignation Request by a date certain;

3. Retaining jurisdiction over this matter until the Defendants have complied with their nondiscretionary duty under 42 U.S.C. § 7407(d)(3)(D);

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

5. Awarding Plaintiffs with any other relief that the Court deems they are reasonably entitled.

Respectfully submitted: October 16, 2024.

/s/ Blake E. Adams
Blake E. Adams KBA # 99967
Jarrod L. Bentley KBA#98992
Daniel C. Cleveland, KBA #92210
Kentucky Energy and Environment Cabinet
Office of Legal Services
300 Sower Boulevard, 3rd Floor

Frankfort, Kentucky 40601
Phone: (502) 564-5368
Fax: (502) 564-7484
blake.adams@ky.gov
jarrod.bentley@ky.gov
daniel.cleveland@ky.gov
*Attorneys for Plaintiffs Kentucky Energy and
Environment Cabinet and Rebecca Goodman*

Quang Nguyen, KBA # 87442
Jefferson County Attorney's Office
First Trust Centre
200 S. Fifth Street, Suite 300N
Louisville, KY 40202
Phone: (502) 574-6743
Fax: (502) 574-5573
quang.nguyen@louisvilleky.gov

*Attorney for Plaintiff Louisville Metro Air Pollution
Control District*