

Ozone/Clean Air Act: Kentucky Files Judicial Action Against U.S. Environmental Protection Agency for Alleged Delay in NAAQS Reclassification



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The Commonwealth of Kentucky, Energy and Environment Cabinet and Louisville Metro Air and Pollution Control District (collectively, “Kentucky”) filed a Complaint in the United States District Court for the Western District of Kentucky on October 16th to compel the United States Environmental Protection Agency’s (“EPA”) Administrator to perform a non-discretionary act or duty under the Clean Air Act. See Case No. 3:24-CV-600-CHB.

Kentucky’s Complaint requests that EPA redesignate Kentucky Counties within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area (“Redesignation Request”).

Sections 108 and 109 of the Clean Air Act require EPA to identify air pollutants utilizing certain criteria and set National Ambient Air Quality Standards (“NAAQS”). Ozone is one of the six criteria air pollutants that have been designated pursuant to these sections of the Clean Air Act.

Once NAAQS are established, the Clean Air Act provides that the states are primarily responsible for ensuring attainment and maintenance of the NAAQS. Each state is required to formulate, subject to EPA approval, an implementation plan designed to achieve each NAAQS. The SIPs will contain the measures and actions that the state proposes to undertake to attain each NAAQS.

The states are generally free to make their own choices as to how they will attain the NAAQS through their SIPs. However, the SIP (including revisions) must be reviewed and approved by EPA to determine that the criteria set forth in Section 110 of the Clean Air Act are met. Such review would include revisions to the SIP.

The state SIPs will often be targeted to a specific air quality control region. Those air quality control regions are identified as attainment, nonattainment, or unclassified. If nonattainment, they may be classified pursuant to their severity of nonattainment.

Kentucky’s Complaint addresses the Louisville Interstate Air Quality Control Region (“Louisville Region”). This includes an area geographically located within Jefferson County, Kentucky, as well as Floyd and Clark Counties in Indiana.

EPA had revised the primary and secondary 8-Hour Ozone NAAQS in 2015. The agency listed the Louisville Region as nonattainment and marginal for the ozone NAAQS.

On July 5, 2022, EPA is stated to have issued a final rule approving a redesignation request redesignating the Indiana Counties of the Louisville Region to attainment. On September 6, 2022, Kentucky submitted a revision to its SIP requesting redesignation of the Kentucky Counties in the Louisville Region to attainment pursuant to 42 U.S.C. § 7407(d)(3)(D). As a result, the Complaint alleges that the EPA Administrator is required to approve or deny the redesignation request within “18 months of receipt of a complete state designation submittal”.

EPA is stated to have issued a proposed rule on April 11, 2023, that would make the requested redesignation. As a result, the Complaint alleges that the EPA Administrator was required to publish a final rule acting on Kentucky’s redesignation request within 18 months of September 6, 2022. The EPA Administrator is stated to have failed to meet the required deadline and as a result not performed a Clean Air Act non-discretionary duty.

The Complaint requests that the Court compel EPA to take final action on the redesignation request by a date certain.

A copy of the Complaint can be downloaded [here](#).