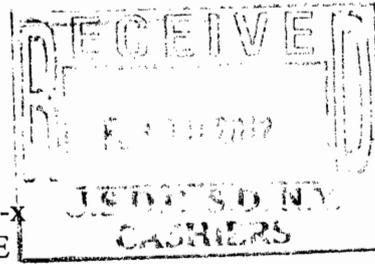


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



JUDGE PAULEY

-----x  
STATE OF NEW YORK, STATE OF CALIFORNIA, STATE  
OF CONNECTICUT, STATE OF DELAWARE, STATE OF  
MARYLAND, COMMONWEALTH OF MASSACHUSETTS,  
STATE OF NEW MEXICO, STATE OF OREGON,  
STATE OF RHODE ISLAND, STATE OF VERMONT, and  
STATE OF WASHINGTON,

Plaintiffs,

**12 CIV 1064**  
COMPLAINT

— against —

Index No. \_\_\_\_\_

LISA P. JACKSON, as Administrator of the  
Environmental Protection Agency and the  
ENVIRONMENTAL PROTECTION AGENCY,

Defendants.

-----x  
Plaintiffs New York, California, Connecticut, Delaware, Maryland, Massachusetts, New  
Mexico, Oregon, Rhode Island, Vermont and Washington (collectively, the "States") bring this  
action to compel Lisa P. Jackson, as Administrator of the Environmental Protection Agency  
("EPA"), and EPA to comply with the nondiscretionary duty under the Clean Air Act ("Act") to  
timely review and revise as necessary the National Ambient Air Quality Standards ("NAAQS")  
for particulate matter pollution. The States seek an injunction requiring EPA to promptly  
propose and take final agency action on the particulate matter NAAQS by dates certain.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction of this action pursuant to section 304(a)(2) of the Act,  
42 U.S.C. § 7604(a)(2), which authorizes any person, after duly giving notice, to commence a  
citizen suit against EPA where the Administrator has failed to perform a nondiscretionary duty  
under the Act.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to the States' claim occurred in this judicial district, as the Administrator's failure to perform her nondiscretionary duty to timely complete review and promulgate necessary revisions to the particulate matter NAAQS is adversely impacting areas within this judicial district, specifically the New York City metropolitan area, which experiences elevated levels of particulate matter pollution. Additionally, a substantial number of its citizens and residents on whose behalf plaintiff State of New York brings this action, which does not involve real property, reside in this district, and EPA maintains an office in this district.

### **PARTIES**

3. Plaintiff State of New York is a sovereign entity that brings this action on behalf of its citizens and residents.

4. Plaintiff State of California is a sovereign entity that brings this action on behalf of its citizens and residents.

5. Plaintiff State of Connecticut is a sovereign entity that brings this action on behalf of its citizens and residents.

6. Plaintiff State of Delaware is a sovereign entity that brings this action on behalf of its citizens and residents.

7. Plaintiff State of Maryland is a sovereign entity that brings this action on behalf of its citizens and residents.

8. Plaintiff Commonwealth of Massachusetts is a sovereign entity that brings this action on behalf of its citizens and residents.

9. Plaintiff State of New Mexico is a sovereign entity that brings this action on behalf of its citizens and residents.

10. Plaintiff State of Oregon is a sovereign entity that brings this action on behalf of its citizens and residents.

11. Plaintiff State of Rhode Island is a sovereign entity that brings this action on behalf of its citizens and residents.

12. Plaintiff State of Vermont is a sovereign entity that brings this action on behalf of its citizens and residents.

13. Plaintiff State of Washington is a sovereign entity that brings this action on behalf of its citizens and residents.

14. Each of the plaintiffs is a “person” as defined in the applicable provision of the Act, 42 U.S.C. § 7602(e).

15. Defendant Lisa P. Jackson is Administrator of the EPA and is sued in her official capacity. The Administrator is charged with implementation and enforcement of the Act, including the requirement to timely review and revise as necessary the NAAQS for particulate matter pollution.

16. Defendant EPA is an executive agency of the federal government charged with implementing and enforcing the Act in coordination with the States.

### **STATUTORY AND REGULATORY FRAMEWORK**

17. The Act requires EPA to promulgate health-based, or “primary” NAAQS for criteria pollutants, such particulate matter, at a level that is requisite to protect public health with an adequate margin of safety. 42 U.S.C. § 7409(b)(1). EPA also must promulgate welfare-based, or “secondary” NAAQS, for criteria pollutants such as particulate matter, at a level that is requisite to protect public welfare. *Id.*, § 7409(b)(2).

18. Pursuant to section 109(d)(1) of the Act, EPA must, “at five-year intervals,” “complete a thorough review of [air] quality criteria published under section 7408 of [the Act] and the national ambient air quality standards promulgated under this section and make such revisions in such criteria and standards and promulgate such new standards as may be appropriate” to adequately protect public health and welfare. *Id.*, § 7409(d)(1).

19. EPA’s promulgation of a NAAQS sets in motion a multiyear process under the statute that is designed to result in cleaner air for the public. *See* 42 U.S.C. § 7407(d)(1)(A), (B) (setting forth deadlines for state and EPA designation of nonattainment areas based on date the NAAQS was promulgated) and § 7410(a)(1) (deadline for states to submit implementation plan revisions tied to NAAQS promulgation date).

## **FACTUAL BACKGROUND**

### **A. Particulate Matter Pollution**

20. Particulate Matter includes “a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes.” 71 Fed. Reg. 61,143, 61,146 (Oct. 17, 2006). Within this general definition, particulate matter is classified based on factors such as particle size, origin, and chemical composition. For example, EPA uses particle size to distinguish between fine particulate matter (“PM<sub>2.5</sub>”) and coarse particulate matter (“PM<sub>10</sub>”).

21. Particulate matter has scientifically demonstrated negative effects on public health and welfare. EPA has determined that particulate matter pollution causes thousands of premature deaths and tens of thousands of hospital visits in the United States every year. With regard to public welfare, high levels of airborne fine particulates can, among other adverse effect, impair visibility and damage vegetation.

22. In its 2011 Policy Assessment of particulate matter pollution, EPA staff concluded that a “substantially stronger and broader body of evidence” than previously known links inhalation of fine particulate matter to premature death, respiratory illnesses, and heart disease.

**B. EPA’s Failure to Timely Review and Revise Particulate Matter NAAQS**

23. EPA issued its most recent NAAQS for particulate matter in October 2006, more than five years ago. 71 Fed. Reg. 61,143 (Oct. 17, 2006).

24. In the 2006 NAAQS, the EPA Administrator decided not to revise the primary annual standard of 15 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) for  $\text{PM}_{2.5}$ , 71 Fed. Reg. at 61,172-77, contrary to the recommendations of EPA’s independent scientific advisory committee, EPA staff, and numerous medical and public health groups.

25. States, environmental groups, and other parties subsequently filed petitions for review of the 2006 particulate-matter NAAQS in the District of Columbia Circuit Court of Appeals. In February 2009, that Court granted the petitions in part, ruling that EPA failed to reasonably explain its decision not to strengthen the primary annual standard for  $\text{PM}_{2.5}$ , and remanding the rule to EPA for further proceedings. *American Farm Bureau Fed’n v. EPA*, 559 F.3d 512, 524 (D.C. Cir. 2009).

26. EPA indicated in October 2009 that it would address the Court’s remand order in the course of its five-year statutory review of the particulate matter NAAQS, which was then underway. Recognizing the importance of having a primary standard in place that sufficiently protects public health, EPA represented that it would accelerate its review of the particulate matter NAAQS and issue proposed NAAQS by July 2010 and final NAAQS by April 2011; in advance of the statutory deadline of October 2011.

27. EPA has completed the technical work required to review the NAAQS, including an integrated science assessment in December 2009, a health risk assessment in June 2010, and a visibility assessment in July 2010. See 76 Fed. Reg. at 22,666.

28. In March 2010, based on the evidence in those assessments, EPA staff issued a draft policy assessment making recommendations to the Administrator. The scientific review committee reviewed EPA's initial draft policy assessment in April 2010 and a second draft policy assessment in July 2010. EPA issued its final policy assessment in April 2011.

29. EPA failed to issue its proposal on the particulate matter NAAQS in July 2010, as promised. Rather, in December 2010, the agency announced that it was postponing the date for proposing and promulgating revised NAAQS from July 2010 and April 2011, respectively, to March 2011 and November 2011. 75 Fed. Reg. at 79,645 (Dec. 20, 2010). The agency subsequently announced it would not issue its proposal until July 2011.

30. Concerned about these repeated delays in issuing a rule vitally important to public health, a group of the States sent a letter to EPA in March 2011 requesting a firm timetable for completing review and making necessary revisions to the particulate matter NAAQS. On May 13, 2011, EPA responded in writing that it would issue proposed NAAQS "later this year" and final standards in "the spring of 2012."

31. Despite those representations, to date EPA has not either proposed or promulgated revised particulate matter NAAQS.

**C. Notice of Violation**

32. On November 16, 2011, the States sent a citizen suit notice letter by certified mail to the EPA Administrator notifying her of the violation of section 109(d)(1), and of the States' intention to commence a lawsuit if EPA did not correct the violation within 60 days. According

to U.S. Postal Service receipts, the Administrator received the letter on November 21, 2011. More than 60 days have passed since the notice letter and EPA has not proposed or promulgated particulate matter NAAQS.

**CLAIM FOR RELIEF**  
**(Failure to Perform the Nondiscretionary Duty**  
**to Timely Review and Revise NAAQS for Particulate Matter)**

33. As set forth above, the Administrator had a nondiscretionary legal duty to complete review of the particulate matter NAAQS, including promulgating any revisions to the standards necessary to adequately protect public health and welfare, by no later than October 18, 2011.

34. The Administrator's failure to timely complete review and promulgate any necessary revisions to the particulate matter NAAQS is a violation of 42 U.S.C. § 7409(d)(1), which continues to this day.

35. This violation constitutes a "failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator" under 42 U.S.C. § 7604(a)(2).

36. The delay caused by the Administrator's failure has harmed and continues to harm the States by delaying the adoption and implementation of more protective fine particulate matter standards that will result in cleaner and healthier air in the States, benefitting the health and welfare of their citizens.

**REQUESTED RELIEF**

**WHEREFORE**, the States respectfully request that this Court enter judgment against Defendants as follows:

A. Declaring that Defendants are in violation of section 109(d)(1) of the Act for failing to timely review and revise the particulate matter NAAQS;

B. Enjoining Defendants to promptly complete review, propose, and promulgate necessary revisions to the particulate matter NAAQS pursuant to 42 U.S.C. § 7409(d)(1) by dates certain;

C. Awarding the States the costs of litigation, including reasonable attorneys' fees;

D. Retaining jurisdiction over this matter until such time as Defendants have promulgated revised particulate matter NAAQS; and

E. Such other relief as the Court deems just and proper.

Dated: February 10, 2012

Respectfully submitted,

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\* Motion for admission *pro hac vice* to be filed shortly after filing of complaint

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\* Motion for admission *pro hac vice* to be filed shortly after filing of complaint