

**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 Act<sup>1</sup>, this Court has jurisdiction under 42 U.S.C. § 7604(a)<sup>2</sup>, 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

---

<sup>1</sup> 42 U.S.C. §§ 7401 et seq.

<sup>2</sup> 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

Jarrold L. Bentley KBA#98992

Daniel C. Cleveland, KBA #92210

Kentucky Energy and Environment Cabinet

Office of Legal Services

300 Sower Boulevard, 3<sup>rd</sup> 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*



JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET; REBECCA GOODMAN, Secretary, KY EEC; and LOUISVILLE ME

(b) County of Residence of First Listed Plaintiff Franklin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment

DEFENDANTS

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

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes rows for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Lists various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 7604

Brief description of cause: To compel Administrator to act pursuant to 42 U.S.C. § 7407(d)(3)(D). NATIONWIDE RELIEF SOUGHT.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Attorneys for Plaintiffs**

*Attorneys for Plaintiffs Kentucky Energy and Environment Cabinet and Rebecca Goodman*

Blake E. Adams  
Jarrod L. Bentley  
Daniel C. Cleveland  
300 Sower Blvd., 3<sup>rd</sup> Floor  
Frankfort, KY 40601  
(502) 564-5368

*Attorney for Plaintiff Louisville Metro Air Pollution Control District*

Quang Nguyen  
First Trust Centre  
200 S. Fifth Street, Suite 300N  
Louisville, KY 40202  
(502) 574-6743

# **Exhibit 1**



**Andy Beshear**  
GOVERNOR

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone: (502) 564-2150  
Fax: 502-564-4245

**Rebecca Goodman**  
SECRETARY

**Anthony R. Hatton**  
COMMISSIONER

May 31, 2024

**VIA CERTIFIED MAIL AND EMAIL**

Honorable Michael S. Regan  
Administrator  
United States Environmental Protection Agency  
Mail Code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
Regan.Michael@epa.gov

**Re: Notice of Intent to Sue for Failure to Take Nondiscretionary Action on the Commonwealth's Request to Redesignate Kentucky Counties Located within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area**

Dear Administrator Regan,

This letter is the Commonwealth of Kentucky's notice of intent to sue the United States Environmental Protection Agency ("EPA") as authorized by 42 U.S.C. § 7404(a)(2)<sup>1</sup> and 40 C.F.R. § 54.3(a) for its failure to act on the Commonwealth's Request to Redesignate Kentucky Counties within the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area ("Redesignation Request"). Kentucky submitted the Redesignation Request on September 6, 2022. On December 14, 2022, EPA issued a letter of completeness to Kentucky, which found the Redesignation Request met the completeness criteria outlined in 40 C.F.R. Part 51, Appendix V. On April 11, 2023, EPA issued a proposed rule redesignating the Kentucky portion of the Louisville, KY-IN 2015 8-Hour Ozone Nonattainment Area ("Louisville, KY-IN Area") to attainment.<sup>2</sup> In the proposed rulemaking, EPA proposed to determine that the Kentucky portion of the Louisville, KY-IN Area had met the

<sup>1</sup> As defined in 42 U.S.C. § 7602(e), a State is a "person" for the purposes of 42 U.S.C. § 7604.

<sup>2</sup> 88 Fed. Reg. 23598.

requirements for redesignation under Section 107(d)(3)(E) of the Clean Air Act.<sup>3</sup> The Louisville KY-IN Area is composed of Bullitt, Jefferson, and Oldham Counties in Kentucky, and Clark and Floyd Counties in Indiana.<sup>4</sup> It should be noted that on July 5, 2022, EPA approved the redesignation request and maintenance plan for the Indiana portion of the Louisville, KY-IN Area.<sup>5</sup> Additionally, in its approval of the redesignation of the Indiana portion of the Louisville, KY-IN Area, EPA used the same air quality monitoring data used in Kentucky's Redesignation Request,<sup>6</sup> including data from monitors physically located in Kentucky.

EPA is required to approve or deny the requested redesignation within 18 months of *receipt* of a complete State redesignation plan.<sup>7</sup> This is a nondiscretionary duty, which should have been performed for Kentucky's Redesignation Request no later than March 6, 2024. If a state's redesignation plan meets the requirements of 42 U.S.C. § 7407(d)(3)(E), the Administrator should approve the redesignation.

By failing to approve or deny Kentucky's Redesignation Request, EPA has not complied with its nondiscretionary duty under 42 U.S.C. § 7407(d)(3)(D). This inaction triggered the Commonwealth's right to send this Notice of Intent to Sue for "failure of the Administrator to perform any act or duty under [the Clean Air Act] which is not discretionary with the Administrator."<sup>8</sup> If the Administrator fails to act on Kentucky's Redesignation Request within 60 days of this Notice of Intent to Sue, the Commonwealth reserves the right to sue for relief under 42 U.S.C. § 7604(a)(2) and seek to compel EPA to take the appropriate action, as well as any other equitable relief under 5 U.S.C. § 706(1) and other applicable laws and power of the court.

Sincerely,



---

Michael Kennedy, P.E.  
Director, Division of Air Quality  
Kentucky Energy and Environment Cabinet  
300 Sower Blvd.  
Frankfort, KY 40601

---

<sup>3</sup> *Id.* at 23599.

<sup>4</sup> *Id.*

<sup>5</sup> *See* 87 Fed. Reg. 30129.

<sup>6</sup> *Compare* 87 Fed. Reg. 30129, 30130 *with* 88 Fed. Reg. 23598, 23601.

<sup>7</sup> *See* 42 U.S.C. § 7407(d)(3)(D).

<sup>8</sup> 42 U.S.C. § 7604(a)(2).