

THE CALIFORNIA AIR RESOURCES BOARD; THE ATTORNEYS GENERAL OF CALIFORNIA, ARIZONA, CONNECTICUT, HAWAI'I, ILLINOIS, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW YORK, OREGON, VERMONT, VIRGINIA, WASHINGTON, WISCONSIN; THE DISTRICT OF COLUMBIA; THE COUNTY OF HARRIS, TEXAS; AND THE CITY OF NEW YORK

February 17, 2026

Via Certified Mail

Lee Zeldin, Administrator
Office of the Administrator
Mail Code: 1101A

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to File Suit under Section 304 of the Clean Air Act for Failure to Issue Designations for 2024 Particulate Matter National Ambient Air Quality Standards

Dear Administrator Zeldin,

The States of California,¹ Arizona, Connecticut, Hawai'i, Illinois, Maryland, Massachusetts, Minnesota, New York, Oregon, Vermont, Virginia, Washington, Wisconsin, the District of Columbia, the County of Harris, Texas, and the City of New York (State and Local Governments) hereby provide notice pursuant to Section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2), of our intent to commence litigation regarding the U. S. Environmental Protection Agency's (EPA) failure to timely issue, via publication in the Federal Register, nonattainment designations for the national ambient air quality standards (NAAQS) for fine particulate matter promulgated on February 7, 2024. *See* 89 Fed. Reg. 16,202 (Mar. 6, 2024) (Final Rule).

EPA's promulgation of a NAAQS triggers a process designed to support State efforts to attain the NAAQS. EPA's promulgation of attainment and nonattainment designations are a mandatory and crucial step in that process.

Once EPA promulgates a NAAQS, States have up to one year to submit to EPA proposed designations for areas within their borders. 42 U.S.C. § 7407(d)(1)(A). EPA must promulgate final designations for all areas of the country (after making any necessary changes) "as

¹ The State of California is represented by and through the California Air Resources Board and Attorney General Rob Bonta.

expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised [NAAQS].” *Id.* § 7407(d)(1)(B). This deadline may be extended by up to one year in the event that the Administrator has “insufficient information” to promulgate the designations. *Id.* To promulgate designations as required under Section 107(d)(1), the Administrator must publish a notice in the Federal Register. *Id.* § 7407(d)(2)(A).

Nonattainment designations can bring grant eligibility and other immediate benefits to the States. *See e.g.*, 23 U.S.C. § 149(b), 42 U.S.C. § 7505, 42 U.S.C. § 7410(a)(2)(D)(i) (entitling States whose nonattainment is caused by pollution in upwind States to redress in the form of reduction of upwind emissions). In addition, for areas designated nonattainment, States must adopt and submit, within three years of promulgation of the standard, a plan to attain the NAAQS. 42 U.S.C. §§ 7502(b), 7513(a). Once that plan is approved by EPA, its provisions become enforceable under federal law, and federal agencies must ensure their actions conform to those provisions. 42 U.S.C. §§ 7506(c), 7604(a). Thus, delaying designations may not only delay when States and the public receive the full benefits of the stronger standard, but it may also result in a loss of benefits altogether as some benefits (such as grant funding) may become unavailable to States at a later date. Public health suffers each day that EPA has not complied with its duty to designate nonattainment areas.

Here, the promulgation of the particulate matter NAAQS on February 7, 2024 triggered the statutory deadline for EPA to issue the designations for nonattainment areas by no later than February 7, 2026. *See* 42 U.S.C. § 7407(d)(1)(B). On November 24, 2025, in litigation challenging the Final Rule, EPA requested that the D.C. Circuit “vacate the [Final] Rule before the area designation deadline of February 7, 2026.” Respondent’s Motion for Vacatur at 7, *Kentucky v. EPA*, No. 24-1050 (D.C. Cir., argued Dec. 16, 2024), ECF No. 2147050. However, at the time of this writing, the standard is still in place, meaning that EPA remains under a non-discretionary legal duty to issue the designations for nonattainment areas by February 7, 2026. The deadline has now passed and EPA has yet to issue the designations.

EPA’s failure to issue the designations constitutes a violation of two nondiscretionary duties: (1) under Section 107(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B), to promulgate timely designations for the 2024 fine particulate matter NAAQS, and (2) under Section 107(d)(2)(A) to publish designations for the 2024 fine particulate matter NAAQS in the Federal Register. These failures subject EPA to lawsuit pursuant to Section 304(a)(2), 42 U.S.C. § 7604(a)(2). The undersigned State and Local Governments intend to file a lawsuit in federal district court 60 days after the date of this notice to compel EPA to comply with its statutory obligations.

If you wish to discuss this matter prior to the expiration of the 60-day notice period, you may have your counsel contact California Deputy Attorney General Micaela Harms at the address below.

Sincerely,

FOR THE STATE OF CALIFORNIA
ROB BONTA
ATTORNEY GENERAL

MYUNG J. PARK
CHRISTIE VOSBURG
Supervising Deputy Attorneys General
JONATHAN A. WIENER
STACY J. LAU
Deputy Attorneys General

/s/ Micaela M. Harms
MICAELA M. HARMS
Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
(415) 510-3743
Micaela.Harms@doj.ca.gov

FOR THE STATE OF CONNECTICUT
WILLIAM TONG
ATTORNEY GENERAL

/s/ Jill Lacedonia
JILL LACEDONIA
Assistant Attorney General
Connecticut Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
Jill.Lacedonia@ct.gov

FOR THE STATE OF ARIZONA
KRIS MAYES
ATTORNEY GENERAL

/s/ Kirsten Engel
KIRSTEN ENGEL
Special Attorney General
Environmental Protection Unit
2005 N. Central Ave
Phoenix, AZ 85085
(520) 209-4020
Kirsten.Engel@azag.gov

FOR THE STATE OF HAWAI'I
ANNE E. LOPEZ
ATTORNEY GENERAL

MELISSA J. KOLONIE
Supervising Deputy Attorney General

/s/ Lyle T. Leonard
LYLE T. LEONARD
Deputy Attorney General
465 South King Street, Room 200
Honolulu, HI 96813
(808) 587-3050
Lyle.t.leonard@hawaii.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ Jason E. James

JASON E. JAMES
Assistant Attorney General
MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division
Illinois Attorney General's Office
201 W. Pointe Drive, Suite 7
Belleville, IL 62226
(217) 843-0322
jason.james@ilag.gov

**FOR THE COMMONWEALTH OF
MASSACHUSETTS**

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Marcus Holmes

MARCUS HOLMES
Assistant Attorney General & Director of
Environmental Justice
Environmental Protection Division
BRIAN CLAPPER
Assistant Attorney General
Environmental Protection Division
TURNER SMITH
Assistant Attorney General & Deputy Bureau
Chief
Energy and Environment Bureau
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
Marcus.D.Holmes@mass.gov
Brian.Clappier@mass.gov
Turner.Smith@mass.gov

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN
ATTORNEY GENERAL

/s/ Steven J. Goldstein

STEVEN J. GOLDSTEIN
Assistant Attorney General
Office of the Attorney General of Maryland
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-641
sgoldstein@oag.maryland.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
ATTORNEY GENERAL

/s/ Cat Rios-Keating

CAT RIOS-KEATING
Special Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota St., Suite 600
St. Paul, MN 55101
651-300-7302
Catherine.Rios-Keating@ag.state.mn.us

FOR THE STATE OF NEW YORK
LETITIA JAMES
ATTORNEY GENERAL

/s/ Nicholas C. Buttino

NICHOLAS C. BUTTINO
Assistant Attorney General
New York Attorney General's Office
State Capitol
Albany, NY 12224
518-776-2406
Nicholas.Buttino@ag.ny.gov

FOR THE STATE OF OREGON
DAN RAYFIELD
ATTORNEY GENERAL

/s/ Paul Garrahan

PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096
(503) 947-4540
Paul.Garrahan@doj.oregon.gov

FOR THE STATE OF VERMONT
CHARITY R. CLARK
ATTORNEY GENERAL



MELANIE KEHNE
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186
melanie.kehne@vermont.gov

FOR THE COMMONWEALTH OF VIRGINIA
JAY JONES
ATTORNEY GENERAL

/s/ Tillman J. Breckenridge

TILLMAN J. BRECKENRIDGE
Solicitor General
Office of the Attorney General of Virginia
202 N 9th St.
Richmond, VA 23219
(804) 786-2071
TBreckenridge@oag.state.va.gov

FOR THE STATE OF WASHINGTON
NICHOLAS W. BROWN
ATTORNEY GENERAL

/s/ Jennifer Slocum

JENNIFER SLOCUM
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117
(360) 586-6741
Jenna.Slocum@atg.wa.gov

FOR THE STATE OF WISCONSIN
JOSHUA L. KAUL
ATTORNEY GENERAL

/s/ Bradley J. Motl

BRADLEY J. MOTL
Assistant Attorney General
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
(608) 267-0505
bradley.motl@wisdoj.gov

FOR THE DISTRICT OF COLUMBIA
BRIAN L. SCHWALB
ATTORNEY GENERAL

/s/ Lauren Cullum

LAUREN CULLUM
Special Assistant Attorney General
Office of the Attorney General
for the District of Columbia
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
lauren.cullum@dc.gov

FOR THE CITY OF NEW YORK
MURIEL GOODE-TRUFANT
CORPORATION COUNSEL

/s/ Nathan Taylor

NATHAN TAYLOR
Assistant Corporation Counsel
New York City Law Department
100 Church St.
Tel. 212-356-2315
ntaylor@law.nyc.gov

**FOR THE COUNTY OF HARRIS,
TEXAS**
JONATHAN G.C. FOMBONNE
COUNTY ATTORNEY

/s/ Sarah Utley

SARAH JANE UTLEY
Managing Counsel
Affirmative and Environmental Divisions
Harris County Attorney's Office
1010 Lamar, 11th Floor
Houston, Texas 77002