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MADIGAN & ATTORNEYS GENERAL PLEDGE LAWSUIT AGAINST U.S. EPA FOR IGNORING KEY CLEAN AIR DEADLINE

Madigan & 13 Attorneys General File Notice of Intent to Sue EPA Over Its Failure to Designate Areas Impacted By Smog – The Clean Air Act "Trigger" For Required Reductions In Dangerous Air Pollution

Chicago – Attorney General Lisa Madigan and 13 other attorneys general today file a notice of intent to sue the U.S. Environmental Protection Agency (EPA) for failing to meet the Clean Air Act's statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone, known as smog.

In August, Madigan and a coalition of attorneys general sued the EPA for illegally delaying the designations, and the following day, the EPA reversed course and withdrew the notice extending the deadline. However, this week, the EPA missed the statutory deadline of Oct. 1 for smog designation.

Reducing smog levels is vital to protecting Americans from dangerous pollution. According to the American Lung Association, over 115 million Americans breathe harmful levels of smog, which often travels far distances from other states with less stringent clean air regulations. Designating areas with unhealthy smog levels plays a key role under the Clean Air Act in addressing the pollutant's severe harms to public health and triggering requirements for state-specific plans and deadlines to reduce pollution in the designated areas.

"The U.S. EPA's inaction is unacceptable when it is well known that smog leads to severe health problems particularly for children and older people," Madigan said. "If U.S. EPA continues to abdicate its role to protect our environment and health, I will ask a court to require U.S. EPA to fulfill its duty under the Clean Air Act to ensure that people across the country are protected from dangerous pollution."

[The notice of intent to sue](#) was filed by Madigan and the attorneys general of California, Connecticut, Iowa, Maine, Massachusetts, Minnesota (through the Minnesota Pollution Control Agency), New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia.

In October 2015, the EPA strengthened the national air quality standards for smog. The Clean Air Act requires that the EPA, within two years after issuance of new or revised standards, designate areas of the county that are in "attainment" or "non-attainment" with these public health and welfare standards. In the case of the 2015 smog standards, EPA was required to issue attainment or non-attainment designations by Oct. 1.

However, on June 28, 2017, EPA Administrator Pruitt published a notice extending the deadline for the smog designations for all areas in the country for one year. On Aug. 1, Madigan and a coalition of 16 attorneys general sued the EPA for illegally delaying the designations. The next day, EPA abruptly reversed course and announced it was withdrawing the designations delay, although it remained equivocal on whether it would meet the Oct. 1 deadline.

As of this week, EPA has failed to make the required designation of areas of the country impacted by unhealthy levels of smog, missing the Oct. 1 deadline and violating the Clean Air Act. Today's notice of the coalition's intent to sue over EPA's illegal inaction fulfills the Act's requirement that parties provide a 60-day notice prior to filing a lawsuit.

The designation of areas for national air quality standards is a key statutory obligation under the Clean Air Act and for protecting the public's health. For areas designated as in non-attainment with the standards, states must adopt "implementation plans" – a collection of actions that the state will undertake to reduce pollution in order to ensure the standards will be met in those

areas. The deadlines for submitting implementation plans – and for ensuring that air quality standards are met within designated areas – are both tied to the date of EPA designations.

According to EPA, the 2015 updated smog standards will improve public health protection, particularly for at-risk groups, including children, older adults, people with lung diseases such as asthma, and people who are active outdoors, especially outdoor workers. In fact, the EPA estimated that meeting the new smog standards would result in net annual public health benefits of up to \$4.5 billion starting in 2025 (not including California, where a number of areas have longer to meet the standards), while also preventing approximately:

- 316 to 660 premature deaths;
- 230,000 asthma attacks in children;
- 160,000 missed school days;
- 28,000 missed work days;
- 630 asthma-related emergency room visits; and
- 340 cases of acute bronchitis in children.

Smog forms when nitrogen oxides, volatile organic compounds, and carbon monoxide emitted from power plants, motor vehicles, factories, refineries, and other sources react under suitable conditions. Because these reactions occur in the atmosphere, smog can form far from where its precursor gases are emitted and, once formed, smog can travel far distances, which is why, despite enacting stringent in-state controls on sources of these pollutants, many states are not able to meet federal health-based air quality standards for smog on their own.

Madigan's investigation was jointly conducted by her Special Litigation Bureau and Workplace Rights Bureau. Special Litigation Bureau Chief Jeanne Witherspoon, Workplace Rights Bureau Chief Jane Flanagan and Assistant Attorneys General John Wolfsmith and Christopher J. Kim handled the case.

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