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MADIGAN & ATTORNEYS GENERAL FILE LAWSUIT AGAINST U.S. EPA FOR FLOUTING CLEAN AIR REQUIREMENTS

Madigan & 15 State AGs Sue EPA for Failing to Designate Areas Impacted By Unhealthy Levels of Smog

Chicago — Attorney General Lisa Madigan along with a coalition of 15 attorneys general yesterday filed a lawsuit against 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, or smog.

With this suit, the coalition made good on its October pledge to sue the EPA if it failed to meet this key statutory and public health requirement. 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, the EPA missed the statutory Oct. 1 deadline for smog designation, prompting the coalition, four days later, to file a notice of intent to sue the EPA for failing to issue the required designations.

"We cannot accept U.S. EPA's failure to act when the public health risks of smog pollution are so well known, particularly for children and older adults," Madigan said. "I will continue to urge the courts to require U.S. EPA to fulfill its duty under the Clean Air Act to protect residents from harmful pollution."

The designation of areas with unhealthy smog levels plays a key role under the Clean Air Act in addressing the pollutant's severe harms to public health, triggering requirements for state-specific plans and deadlines to reduce pollution in the designated areas.

In October 2015, the EPA revised and 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, 2017.

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. Shortly thereafter, on Aug. 1, Madigan and a coalition of 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.

The Oct. 1 deadline the passed without EPA making any of the required designations, in violation of the Clean Air Act. A few days later, the coalition notified EPA of its intention to sue if the agency failed to correct the violation within 60 days. On Nov. 6, EPA issued designations for some areas of the county but failed to make any "non-attainment" area designations, which are the critical designations that trigger smog reduction measures to improve air quality and comply with the standards.

The areas EPA failed to designate include many densely populated areas – such as the City of Chicago, the rest of Cook County, and Metro-East St. Louis - that suffer from the highest levels of smog. In fact, more than half of the U.S. population lives in the undesignated areas. The 60-day notice period expired yesterday, without the EPA issuing all of the statutorily-required designations.

According to the EPA, the 2015 updated smog standards will improve public health protection – particularly for at-risk groups such as children, older adults, people of all ages who have lung diseases like 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 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. That is why, despite enacting stringent in-state controls on sources of these pollutants, many states cannot, alone, meet federal health-based air quality standards for smog.

Madigan was joined in the lawsuit by the attorneys general of New York, California, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota (by the Minnesota Pollution Control Agency), New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

A copy of the lawsuit is available [here](#).

-30-

[Return to December 2017 Press Releases](#)

