

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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LOUISIANA ENVIRONMENTAL)
ACTION NETWORK,)
)
Plaintiff,)
)
v.)
)
CAROL M. BROWNER, in her official)
Capacity as Administrator, United States)
Environmental Protection Agency,)
)
Defendant.)
)
)
)

SIGN
by DEPUTY CLERK

00-879-A-3

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. OVERVIEW

1. Plaintiff Louisiana Environmental Action Network ("LEAN") brings this citizen suit under the Clean Air Act ("CAA"), 42 U.S.C. §§7401-7671q, to compel the Defendant, Carol M. Browner, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), to perform non-discretionary duties.
2. The EPA classified the Baton Rouge Metropolitan Area (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) (hereinafter "Baton Rouge Area") as a "Serious Nonattainment Area" for the pollutant ozone, pursuant to CAA §181(a)(1), 42 U.S.C. §7511(a)(1). CAA §181(a) requires serious ozone nonattainment areas to demonstrate attainment of the ozone standard by November 15, 1999. 42 U.S.C. §7511(a)(1).
3. The Administrator of EPA has a non-discretionary duty to determine within six months after the attainment deadline whether a nonattainment area demonstrated attainment of the ozone

standard. See CAA §179(c), 42 U.S.C. §7509(c). The Administrator must also publish notice in the Federal Register of EPA's determination. *Id.* EPA's deadline to determine whether the Baton Rouge Area had attained the ozone standard and to publish that determination in the Federal Register was May 15, 2000.

4. On May 10, 2000, the Governor of Louisiana acknowledged in a letter to EPA that the Baton Rouge Area failed to demonstrate attainment of the ozone standard by the statutory deadline of November 15, 1999.

5. The Administrator of EPA has the nondiscretionary duty to reclassify, within six months of the attainment deadline, a serious nonattainment area that has failed to demonstrate attainment to the more stringent designation of "severe nonattainment area." CAA §181(b)(2)(A), 42 U.S.C. §511(b)(2)(A). The Administrator must also publish notice in the Federal Register of that area's reclassification. *Id.* EPA's deadline to reclassify the Baton Rouge Area as a "severe nonattainment area" and to publish that determination in the Federal Register was May 15, 2000.

6. EPA's failure to make decisions on attainment and reclassification and to publish those decisions in the Federal Register injures LEAN's members by delaying the imposition of further controls on air emission and by allowing further increases of pollution into the air that LEAN's members rely on for their health and recreation. Declarative and injunctive relief would directly redress these harms.

II. JURISDICTION

7. This court has jurisdiction over the action pursuant to CAA §304(a), 42 U.S.C. §7604(a), 28 U.S.C. §1331, and 28 U.S.C. § 2201.

III. VENUE

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(e)(2) because a substantial part of the property that is the subject of the action is situated in this district. All of the parishes in the Baton Rouge Area are within the Middle District of Louisiana. Venue is also proper pursuant to 28 U.S.C. §1391(e)(3) because individual members of LEAN reside within the Middle District of Louisiana and LEAN's headquarters are in East Baton Rouge Parish, also within the Middle District of Louisiana.

IV. NOTICE

9. The Plaintiff provided notice of the citizen suit alleged herein in a July 6, 2000, Notice of Intent to File Suit to the Administrator of the United States Environmental Protection Agency. The notice complies with §304(b) of the Act, 42 U.S.C. §7604(b)(2), and 40 C.F.R. Part 54. A true and correct copy of the July 6, 2000, Notice of Intent to File Suit is attached as Exhibit A.

10. More than sixty days have passed since the Plaintiff provided the Administrator with its July 6, 2000, Notice of Intent to File Suit. EPA has failed to determine the Baton Rouge Area's attainment status and publish such findings in the Federal Register. Upon information and belief, EPA's failure to perform these non-discretionary duties will continue until enjoined by this Court.

V. PARTIES

11. The plaintiff, LEAN, is an incorporated, non-profit community organization with members residing throughout the Baton Rouge Area. LEAN serves as an umbrella organization for environmental and citizen groups and was organized for the purpose of preserving and protecting the state's land, air, water, and other natural resources, and protecting the

organization's members and other residents of the state from particular threats of pollution such as serious regional ozone levels.

12. Members of LEAN own and rent homes throughout Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes. They breathe, use, and enjoy the ambient air in the area. Existing levels of the pollutant ozone impair LEAN members' use and enjoyment of the ambient air. Excessive ambient concentrations of ozone threaten the health of young and elderly members of LEAN and significantly curtail their outdoor activities. EPA's continued failure to determine the Baton Rouge Area's attainment status prevents reclassification and delays imposition of additional pollution controls. Thus, EPA's delay prolongs LEAN members' exposure to polluted air.

13. The defendant is Carol M. Browner, in her official capacity as Administrator of EPA. The Administrator is responsible for directing the activities of EPA and implementing the requirements and mandates of the Clean Air Act.

VI. LEGAL BACKGROUND

14. Congress imposed national ambient air quality standards ("national standards") to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare." CAA §109(a), 42 U.S.C. §7409(a); CAA §108(a)(2), 42 U.S.C. §7408(a)(2); See also 40 C.F.R. 50.9 (1996). Under CAA §181(a)(1), Congress developed a classification system that required EPA to classify areas that failed to attain the national standard for ozone as "marginal," "moderate," "serious," "severe," or "extreme." 42 U.S.C. §7511(a). Based on the area's classification, CAA §181(a)(1) provides a scheme for achievement of the standard and a deadline by which attainment must be achieved. See CAA §107(a), 42 U.S.C. §7407(a); CAA §181(a)(1), 42 U.S.C. §7511(a)(1). For Serious Ozone Nonattainment Areas, the 1990

Amendments allow nine years for areas to comply with the standard, fixing the deadline at November 15, 1999.

15. The ozone standard is attained when the expected number of days per calendar year with maximum hourly average ozone concentrations above 125 parts per billion (ppb) is equal to or less than one day. 40 C.F.R. Pt. 50. An area does not attain the national standard when any one of the area's monitors has exceeded the standard three or more times over a three year period. *Id.*

16. CAA §181(a)(5) is the sole provision provided by Congress that allows for an extension of the ozone attainment deadline – allowing for a one-year extension. To qualify for this extension, the Act requires that: (1) the State formally requests the one-year extension; (2) an EPA-approved State Implementation Plan is currently implemented by the State; and (3) the area involved has not recorded more than one exceedance of the ozone national standard during the year prior to the attainment deadline. 42 U.S.C. §7511(a)(5).

17. The Administrator must determine, based on the air quality as of the attainment date, whether the area attained the ozone standard by that date. This determination must be made not later than six months after the original attainment deadline, or the extension deadline if requested and granted. CAA §179(c)(1), 42 U.S.C. §7509(c)(1); CAA §181(b)(2)(A), 42 U.S.C. §7511(b)(2)(A). Upon making this determination, the Administrator must then publish a notice containing such determination and identifying any area that has failed to attain the standard. *Id.*

18. Any area that the Administrator determines has not attained is reclassified by operation of law to the next higher classification for the area. CAA §181(b)(2)(A), 42 U.S.C. §7511(b)(2)(A). No later than six months following the attainment date, the Administrator must publish a notice in the Federal Register indicating that the area has failed to attain the prescribed standard and specifying the reclassification. CAA §181(b)(2)(B), 42 U.S.C. §7511(b)(2)(B).

VII. GENERAL FACTUAL ALLEGATIONS

19. Pursuant to §181(a), the Baton Rouge Area was classified as a "Serious Ozone Nonattainment Area" with a prescribed attainment deadline of November 15, 1999.
20. Louisiana failed to request a one-year deadline extension pursuant to CAA §181(a)(5), 42 U.S.C. §7511(a)(5).
21. To date, the Administrator has failed to determine the Baton Rouge Area's attainment status and publish such findings in the Federal Register, pursuant to the EPA's nondiscretionary duty under CAA §179(c), 42 U.S.C. §7509(c).
22. The Baton Rouge Area recorded more than one exceedance of the ozone national standard during the year prior to November 15, 1999.
23. The Baton Rouge Area failed to attain the ozone standard by the statutory deadline of November 15, 1999.
24. The State of Louisiana failed to demonstrate that the Baton Rouge Area had attained the ozone standard by the statutory deadline of November 15, 1999.
25. By operation of law, the Baton Rouge Area's failure to demonstrate attainment by November 15, 1999 results in reclassification of the area from "Serious" to "Severe" nonattainment for ozone.
26. To date, the Administrator has failed to determine that the Baton Rouge Area failed to achieve attainment of the ozone standard.
27. To date, EPA has failed to reclassify the Baton Rouge Area to a "Severe" designation.
28. To date, EPA has failed to publish a notice in the Federal Register indicating its determination of nonattainment, pursuant to EPA's nondiscretionary duty under CAA §181(b)(2), 42 U.S.C. §7511(b)(2).

VIII. FIRST CAUSE OF ACTION:

FAILURE TO MAKE ATTAINMENT DETERMINATION AND PUBLISH FINDINGS

(42 U.S.C. § 7509 (c)(1))

29. The plaintiff realleges and incorporates by reference paragraphs 1 through 24.
30. EPA's duty to determine that the Baton Rouge Area has not achieved attainment by November 15, 1999 is clearly expressed by the Act and is a ministerial task under CAA §179(c), 42 U.S.C. §7509(c).
31. EPA's duty to provide notice in the Federal Register of its determination of nonattainment within six months of the attainment deadline of November 15, 1999 is clearly expressed in the Act and is a ministerial task under CAA §179(c), 42 U.S.C. §7509(c).
32. CAA §304(a) vests district courts with jurisdiction to "order the Administrator to perform such... [non-discretionary] duty." 42 U.S.C. §7604(a).

IX. SECOND CAUSE OF ACTION:

FAILURE TO RECLASSIFY BATON ROUGE NONATTAINMENT AREA AND

PUBLISH NOTICE (42 U.S.C. § 7511(b)(2))

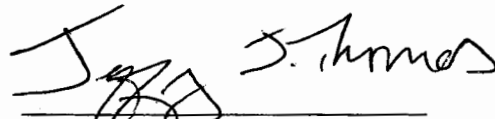
33. The plaintiff realleges and incorporates by reference paragraphs 1 through 28.
34. EPA's duty to reclassify the Baton Rouge Area for ozone nonattainment is clearly expressed by the Act and is a ministerial task under CAA §181(b)(2), 42 U.S.C. §7511(b)(2).
35. EPA's duty to publish such determination in the Federal Register no later than six months after November 15, 1999 is clearly expressed under the Act and is a ministerial task under CAA §181(b)(2), 42 U.S.C. §7511(b)(2).
36. CAA §304(a) vests district courts with jurisdiction to "order the Administrator to perform such... [non-discretionary] duty." 42 U.S.C. §7604(a).

X. PRAYER FOR RELIEF

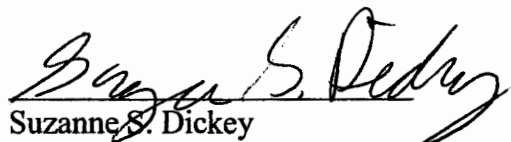
WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- A. Declare that the Baton Rouge Area failed to attain the ozone standard by November 15, 1999.
- B. Declare that EPA's failure to perform its non-discretionary duty to publish such findings in the Federal Register by May 15, 2000 violates CAA §179(c), 42 U.S.C. §7509(c).
- C. Order EPA to declare that the Baton Rouge Area failed to attain the federal ozone standard by November 15, 1999 and publish such notice in the Federal Register within thirty days of this Court's ruling.
- D. Declare that EPA's failure to perform its non-discretionary duty to determine and declare that the Baton Rouge Area failed to attain the ozone standard by November 15, 1999, to reclassify the Area to "severe" nonattainment classification, and to publish such findings in the Federal Register by May 15, 2000 violates CAA §181(b)(2), 42 U.S.C. §7511(b).
- E. Order EPA to reclassify the Baton Rouge Area as a "severe" nonattainment area and provide such notice within the Federal Register within thirty days of this Court's ruling.
- F. Grant plaintiff as substantially prevailing party court costs and such other relief as the Court deems just and proper. Plaintiff does not request or seek attorney fees.

Respectfully submitted,



Jeffrey J. Thomas, Student Attorney



Suzanne S. Dickey

Trial Attorney (La. Bar #23,713)

Tulane Environmental Law Clinic

6329 Freret Street

New Orleans, LA 70118-6321

(504) 865-5789

Fax (504) 862-8721

Counsel for LEAN

P.O. Box 66323

Baton Rouge, LA 70896

(225) 928-1315