



December 18, 2017

Mark J. Langer
Clerk of the Court
U.S. Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *American Lung Association v. EPA*, No. 17-1172 (and consolidated case)
(oral argument not yet scheduled)

Dear Mr. Langer:

In recent statements, EPA contravenes arguments it presented in briefing on Public Health and Environmental Petitioners' and EPA's pending dispositive motions. EPA's recent statements reinforce the importance and propriety of vacating the Designations Delay. *See, e.g.*, Public Health & Env'tl. Pet'rs' Mot. to Govern Further Proceedings 4-6; Reply in Supp. of Cross-Mot. for Alternative Relief 1-4.

In briefing, EPA argued it rescinded the designations extension it issued regarding the 2015 national ambient air quality standards ("NAAQS") for ozone, and thus the extension "is no longer of any effect." EPA Mot. to Dismiss 2. EPA argued that the withdrawal meant that there is "no ongoing course of action for the Agency to resume." EPA Reply 4. However, EPA's recently released Fall 2017 Unified Agenda says EPA "intends to use the additional time afforded by the designations extension to finalize" guidance documents related to ozone standards "as well as to finalize its 2015 Ozone NAAQS Implementation rule."
https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201710/Statement_2000.html (attached). Indeed, the rulemaking agenda for that implementation rule says the date for completing that work is "To Be Determined," even though the deadline for making the designations has passed.
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060-AS82> (attached); *see also*
<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2060>

-AT41 (attached) (date for proposing potentially related rule is “To Be Determined”). Thus, on their face, EPA’s own statements show that EPA still considers the designations extension to be in place, despite having purported to withdraw it.

EPA’s statements highlight that the Designations Delay—the only relevant designations extension EPA has purported to grant itself—continues to have effects, and thus this case is not moot. Public Health & Env’tl. Pet’rs’ Mot. to Govern Further Proceedings 4-6. As of today, EPA still has not designated any nonattainment area anywhere in the country, and its recent statements indicate it continues to rely on the Designations Delay for its continuing delay. Vacatur is necessary. But even if this case were moot, EPA’s statements reinforce the importance of vacating and declaring void *ab initio* the Designations Delay to ensure it has no continuing effects that harm Petitioners and their members. Reply in Supp. of Cross-Mot. For Alternative Relief 2-3.

Respectfully submitted,

/s/Seth L. Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2017, I have served the foregoing **Letter** on all registered counsel through the Court's electronic filing system (ECF).

/s/Seth L. Johnson
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