

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF NEW YORK, et al.,)	
)	
Plaintiffs,)	
)	
and)	
)	
ENVIRONMENTAL DEFENSE FUND,)	Civil Action No. 18-773 (RBW)
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
ANDREW WHEELER, et al.,)	
)	
Defendants.)	
)	
)	

**PLAINTIFFS’ NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Please take notice that Plaintiffs the States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, and the City of Chicago and Plaintiff-Intervenor Environmental Defense Fund (collectively Plaintiffs), by and through the undersigned counsel, hereby move for summary judgment pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7(h). This motion is based on the points and authorities set forth in an accompanying memorandum, the accompanying statement of undisputed material facts, the attached declarations and exhibits, and any argument that may be presented at a hearing on the motion. This matter is scheduled for a status conference on January 8, 2021, at 12:00 p.m. (ECF No. 83).

MOTION

Plaintiffs bring this action under section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), to “compel ... agency action unreasonably delayed.” Defendants Environmental Protection Agency (EPA) and Andrew Wheeler, EPA Administrator, in his official capacity (collectively Defendants) have unreasonably delayed fulfilling EPA’s mandatory duty under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), and applicable regulations, to promulgate regulations to reduce methane emissions known to endanger human health and welfare from existing oil and natural gas sources. EPA has delayed in fulfilling this mandatory duty for over four years.

In determining whether an agency has unreasonably delayed performance of its mandatory duties, this Court weighs the following six factors set out in *Telecommunications Research & Action Center v. Federal Communications Commission (TRAC)*, 750 F.2d 70, 79-80 (D.C. Cir. 1984):

(1) the time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.”

In re United Mine Workers of Am. Int’l Union, 190 F.3d 545, 549 (D.C. Cir. 1999) (quoting *TRAC*, 750 F.2d at 80). “No one factor is determinative, and each case must be analyzed according to its own unique circumstances.” *In re Pub. Emps. for Envtl. Responsibility*, 957 F.3d 267, 273 (D.C. Cir. 2020) (internal quotation marks omitted).

While Plaintiffs need not prevail on every factor, in this case they do. EPA’s justification for its lengthy delay is contrary to the statute, and its decision to halt its active process to regulate

existing sources was unreasoned and unreasonable, failing the “rule of reason” (*TRAC* factors 1 and 2). EPA’s delay in this case significantly harms Plaintiffs and the public by allowing additional emissions of dangerous pollution (*TRAC* factors 3 and 5). EPA has not stated that it lacks resources or has any competing priorities (*TRAC* factor 4). And while a showing of bad faith is not necessary, here EPA’s rationale for delay is pretextual, an attempt to justify post-hoc a decision made for improper reasons (*TRAC* factor 6).

There is no genuine dispute of material fact in this case, and summary judgment may be entered in Plaintiffs’ favor. Accordingly, Plaintiffs request that the Court grant this motion for summary judgment and issue an order: (1) declaring that Defendants have unreasonably delayed performing their mandatory duty to issue regulations to reduce methane emissions from existing sources in the oil and natural gas sector in violation of the Clean Air Act, 42 U.S.C. § 7411(d), and applicable regulations; and (2) ordering Defendants to submit to the Court within thirty (30) days a plan for promulgation of regulations for existing sources of methane emissions in the oil and natural gas sector pursuant to 42 U.S.C. § 7411(d) that includes date-certain deadlines for issuance of both draft and final regulations.

Respectfully Submitted,

Dated: July 3, 2020

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