

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK and STATE OF  
CONNECTICUT,

*Plaintiffs,*

v.

E. SCOTT PRUITT, in his official capacity as  
Administrator of the United States Environmental  
Protection Agency, and the UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,

*Defendants.*

Civil Case No.: 1:18-cv-00406-JGK

~~PROPOSED~~ ORDER ON  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

USDC SDNY  
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ELECTRONICALLY FILED

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DATE FILED: 6/12/2018

The Court, having considered the Motion for Summary Judgment (ECF No. 21) and supporting memorandum and declarations of plaintiffs State of New York and State of Connecticut (“Plaintiffs”); the Response to Plaintiffs’ Motion for Summary Judgment (ECF No. 30) and supporting declaration of defendants United States Environmental Protection Agency (“EPA”) and E. Scott Pruitt, in his official capacity as Administrator of EPA (together with EPA, “Defendants”); the parties’ Local Civil Rule 56.1 Joint Statement of Undisputed Material Facts on Motion for Summary Judgment (ECF No. 22); and Plaintiffs’ Reply Memorandum of Law, hereby **GRANTS** the pending Motion for Summary Judgment.

1. The Court declares that EPA is in violation of section 110(c)(1) of the Act, 42 U.S.C. § 7410(c)(1), for failing to timely perform its mandatory duty to promulgate a federal implementation plan (FIP) for each of Illinois, Michigan, Pennsylvania, Virginia and West Virginia that fully addresses each state’s obligations under 42 U.S.C. § 7410(a)(2)(D)(i)(I), the “Good Neighbor Provision,” with regard to the 2008 ozone national ambient air quality standards (NAAQS);

2. The Court enjoins EPA to perform its mandatory duty. The appropriate EPA official shall:
  - a. sign and disseminate a notice by June 29, 2018 of a proposed action fully addressing the obligations under the Good Neighbor Provision for the 2008 ozone NAAQS for Illinois, Michigan, Pennsylvania, Virginia, and West Virginia; and
  - b. promulgate by December 6, 2018 a final action fully addressing the obligations under the Good Neighbor Provision for the 2008 ozone NAAQS for Illinois, Michigan, Pennsylvania, Virginia, and West Virginia.
3. EPA shall expeditiously deliver notices of the proposed and final rulemaking described in paragraph 2 to the Office of the Federal Register for publication after signature and dissemination or promulgation, as indicated above, of such notices.
4. This Court will retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's order. The Court shall hold the matter open until the parties jointly advise the Court that EPA has met its deadlines under this Order, at which time the Court will enter judgment. Submission of any notice of deadline compliance shall not waive any party's rights to challenge the substance of action taken by such deadlines.
5. In accordance with 42 U.S.C. § 7604(d), the Court awards plaintiffs their costs of litigation, including reasonable attorneys' fees, including costs and fees incurred subsequent to entry of this order, in an amount to be determined based on submissions to this Court within 30 days of the Court's entry of judgment following the parties' joint submission of the notice of deadline compliance referenced in paragraph 4 above.

**SO ORDERED.**

DATED this 12 day of June, 2018

  
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HON. JOHN G. KOELTL  
UNITED STATES DISTRICT JUDGE