

**July 6, 2020**

**ATTORNEY GENERAL RAOUL DEMANDS EPA CONTROL METHANE POLLUTION**

***Raoul, Coalition: EPA Disregards its Legal Obligation to Curb Methane Emissions from Existing Oil and Gas Operations, Endangering Health and Safety of Communities***

**Chicago** — Attorney General Kwame Raoul today joined a multistate coalition to demand that the U.S. Environmental Protection Agency (EPA) stop ignoring its legal responsibility to control emissions of methane from existing oil and gas operations. The action is a part of a lawsuit brought in April 2018 against the EPA for violating the federal Clean Air Act by “unreasonably delaying” its mandatory obligation under the act to control emissions of methane — a potent climate change-causing greenhouse gas — from existing oil and gas operations for four years.

[Today's motion for summary judgment](#) asks the court to rule in favor of the plaintiffs, declare the EPA's four-year delay unreasonable and order the EPA to develop and expeditiously issue a rule to control methane emissions from existing sources in oil and gas operations.

“The uncontrolled emissions of greenhouse gasses like methane have caused climate change, which is intensifying unexpected floods, droughts and other environmental disasters,” Raoul said. “I will work to ensure that the EPA does its job and takes action to reduce these dangerous emissions.”

Methane is an extremely potent greenhouse gas, warming the climate about 80-times more than carbon dioxide over a 20-year timeframe. Oil and gas operations — production, processing, transmission and distribution — are the largest single industrial source of methane emissions in the U.S. and the second largest industrial source of U.S. greenhouse gas emissions behind only electric power plants. About 850,000 existing oil and gas sources account for the majority of emissions from that sector. Based on EPA data, the Environmental Defense Fund estimates that roughly \$1.5 billion worth of natural gas, enough to heat more than 5 million homes, leaks or is intentionally released from the oil and gas supply chain each year. The logic of continuing to allow leaks and intentional discharges of methane is especially dubious, as methane itself is a valuable product, being the primary component of natural gas.

Since at least 2016, the Clean Air Act has required the EPA to regulate methane from existing sources in oil and gas operations. Recognizing its statutory duty, and the urgency of reducing dangerous emissions, in 2016 the EPA set a course to swiftly develop regulations for methane emissions from these sources. Had the agency stayed on course, it would have already issued existing source methane regulations. Instead, in early 2017, the EPA abruptly pulled the plug on the process, effectively terminating all agency work to promulgate a regulation. Raoul and the coalition argue that the EPA stopped the process without any consideration of the law or facts, and with no public input, putting our communities and our climate at risk.

Joining Raoul in filing the motion are the attorneys general of California, Connecticut, the District of Columbia, Iowa, Maine, Massachusetts, Maryland, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington, as well as the City of Chicago.

**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

FOR THE STATE OF NEW YORK

LETITIA JAMES  
Attorney General

/s/ Morgan A. Costello  
Morgan A. Costello  
Christopher C. Gore  
Assistant Attorneys General  
Office of the Attorney General  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224  
(518) 776-2392

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA  
Attorney General

/s/ Kavita P. Lesser  
Kavita P. Lesser  
Daniel M. Lucas  
Deputy Attorneys General  
California Department of Justice  
300 South Spring Street  
Los Angeles, CA 90013  
(213) 269-6605  
*Attorneys for the State of California, by  
and through the California Air  
Resources Board and Attorney General  
Xavier Becerra*

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
Attorney General

/s/ Melissa Hoffer  
Melissa Hoffer  
Chief, Energy and Environment Bureau  
Turner Smith  
Assistant Attorney General  
Megan Herzog  
Special Assistant Attorney General  
Office of the Attorney General  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
(617) 727-2200

FOR THE STATE OF CONNECTICUT

WILLIAM TONG  
Attorney General

/s/ Jill Lacedonia  
Jill Lacedonia  
Assistant Attorney General  
Office of the Attorney General  
55 Elm Street  
Hartford, CT 06141-0120  
(860) 808-5250

FOR THE STATE OF ILLINOIS

KWAME RAOUL  
Attorney General

/s/ Gerald Karr  
Gerald Karr  
Assistant Attorney General  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-3369

FOR THE STATE OF IOWA

THOMAS J. MILLER  
Attorney General

/s/ Jacob Larson  
Jacob Larson  
Assistant Attorney General  
Environmental Law Division  
Hoover State Office Building  
1305 E. Walnut St., 2nd Floor  
Des Moines, IA 50319  
(515) 281-5341

FOR THE STATE OF MAINE

AARON M. FREY  
Attorney General

/s/ Laura Jensen  
Laura Jensen  
Assistant Attorney General  
Maine Attorney General's Office  
6 State House Station  
Augusta, ME 04333-0006  
(207) 626-8800

FOR THE STATE OF MARYLAND

BRIAN E. FROSH  
Attorney General

/s/ Leah J. Tulin  
Leah J. Tulin  
Assistant Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
(410) 576-6962

FOR THE STATE OF NEW MEXICO

HECTOR H. BALDERAS  
Attorney General

/s/ William Grantham  
William Grantham  
Consumer & Environmental Protection  
Division  
New Mexico Office of the Attorney General  
201 Third St. NW, Suite 300  
Albuquerque, NM 87102  
(505) 717-3500

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General

/s/ Paul Garrahan  
Paul Garrahan  
Attorney-in-Charge, Natural Resources  
Section  
Oregon Department of Justice  
1162 Court St. NE  
Salem, OR 97301-4096  
(503) 947-4593

FOR THE COMMONWEALTH OF  
PENNSYLVANIA

JOSH SHAPIRO  
Attorney General

/s/ Michael J. Fischer  
Michael J. Fischer  
Chief Deputy Attorney General  
Ann Johnston  
Senior Deputy Attorney General  
Pennsylvania Office of the Attorney General  
Strawberry Square  
Harrisburg, PA 17120  
(717) 705-6938  
Robert A. Reiley  
Assistant Director, Pennsylvania  
Department of Environmental Protection  
Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17120

FOR THE STATE OF RHODE ISLAND

PETER F. NERONHA  
Attorney General

/s/ Gregory S. Schultz  
Gregory S. Schultz  
Special Assistant Attorney General  
Rhode Island Department of Attorney  
General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.  
Attorney General

/s/ Nicholas F. Persampieri  
Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-3186

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON  
Attorney General

/s/ Emily C. Nelson  
Emily C. Nelson  
Assistant Attorney General  
Washington State Attorney General's Office  
PO Box 40117  
Olympia, WA 98504  
(360) 586-4607

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE  
Attorney General

Catherine A. Jackson  
Chief, Public Integrity Section

/s/ David S. Hoffmann  
David S. Hoffmann  
Assistant Attorney General  
Office of the Attorney General  
of the District of Columbia  
441 Fourth St. NW Ste. 600-S  
Washington, D.C. 20001  
(202) 442-9889

FOR THE CITY OF CHICAGO

EDWARD N. SISKEL  
Corporation Counsel

/s/ Jared Policicchio  
Jared Policicchio  
Supervising Assistant Corporation Counsel  
Admitted *Pro Hac Vice*  
30 N. LaSalle Street, Suite 1400  
Chicago, IL 60602  
(312) 744-1438

DATED: July 3, 2020

/s/ Susannah L. Weaver

Susannah L. Weaver, D.C. Bar # 1023021  
Sean H. Donahue, D.C. Bar # 940450  
Donahue, Goldberg & Weaver, LLP  
1008 Pennsylvania Ave. SE  
Washington, DC 20003  
Phone: (202) 569-3818 (Ms. Weaver)  
Phone: (202) 277-7085 (Mr. Donahue)  
susannah@donahuegoldberg.com  
sean@donahuegoldberg.com

Peter Zalzal, CO Bar # 42164  
Rosalie Winn, CA Bar # 305616  
Rachel Fullmer, CO Bar # 49868  
Environmental Defense Fund  
2060 Broadway, Suite 300  
Boulder, CO 80302  
Phone: (303) 447-7214 (Mr. Zalzal)  
Phone: (303) 447-7212 (Ms. Winn)  
Phone: (303) 447-7208 (Ms. Fullmer)  
pzalzal@edf.org  
rwinn@edf.org  
rfullmer@edf.org

*Counsel for Plaintiff-Intervenor Environmental Defense  
Fund*