BEFORE THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

PETITION FOR RULEMAKING TO REDESIGNATE LAKEVIEW, OREGON AS NONATTAINMENT FOR THE PARTICULATEMATTER ($PM_{2.5}$) NATIONAL AMBIENT AIR QUALITY STANDARDS

September 15, 2014

I. Introduction and Summary of Rulemaking Request

High levels of fine particulate matter ($PM_{2.5}$) are a persistent problem in Lakeview, Oregon. According to air quality data, Lakeview, Oregon has failed and continues to fail to meet the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards ("NAAQS"). The 2011-2013 $PM_{2.5}$ 24-hour design value concentrations for the Lakeview area have reached levels among the worst in the nation (5th) due to poorly controlled industrial and residential $PM_{2.5}$ emissions.[1]

The Northwest Environmental Defense Center, WildEarth Guardians, Oregon Wild, Beyond Toxics, Save Our Rural Oregon, Save America's Forests, Our Forests, Anti-Biomass Incineration Campaign/Energy Justice Network, Crag Law Center, Cascadia Wildlands, Neighbors for Clean Air, and concerned citizens George Wuerthner, Dolores Benson, Bob Palzer, and Chris Zinda (hereafter "Petitioners") hereby petition the Administrator of the Environmental Protection Agency ("Administrator" or "EPA"), pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, *et seq.*, the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, and EPA's regulations implementing the Clean Air Act, to redesignate Lakeview, Oregon, including the area within the Urban Growth Boundary in Lake County, Oregon, as nonattainment pursuant to section 107(d)(3) of the Clean Air Act, 42 U.S.C. § 7407(d)(3).

II. Description of Petitioners

The Northwest Environmental Defense Center, based in Portland, Oregon is an independent, non-profit organization working to protect the environment and natural resources of the Pacific Northwest.

Oregon Wild works to protect and restore Oregon's wildlands, wildlife and waters as an enduring legacy for all Oregonians.

WildEarth Guardians is a western U.S.-based conservation group with offices in Denver, Salt Lake City, Utah and elsewhere throughout the American West. WildEarth Guardians is dedicated to protecting and restoring the wildlife, wild rivers, and wild places of the American West. To this end, WildEarth Guardians seeks to safeguard clean air and the climate by promoting cleaner energy, efficiency and conservation, and alternatives to fossil fuels.

[1] EPA Design Values 2006 through 2013: PM2.5 Detailed Information, *available at* http://epa.gov/airtrends/values.html (updated Aug. 28, 2014) (last accessed Sept. 10, 2014) (attached as Exhibit 1).

Beyond Toxics is located in Eugene, and works to guarantee environmental protections and health for all communities and residents. We expose root causes of toxic pollution and help communities find effective, lasting solutions.

Save Our Rural Oregon is a nonprofit, public benefit corporation that works to build up and improve the image, livability, air quality, water quality and water usage and the economy of Klamath County and its rural environment in an environmentally responsible manner

Save America's Forests is a nationwide campaign to protect and restore America's wild and natural forests.

Our Forests is a 501(c)3 nonprofit organization headquartered in "Logging Epicenter USA," Eugene, Oregon, whose mission is to promote honesty, integrity, transparency, and fairness in the human use of our forests. Our Forests (www.ourforestsforever.org) engages the public and media in timely and important forest issues, highlighting the need to reform forest practices on private and public lands.

Anti-Biomass Incineration Campaign is an autonomous nationwide network of individuals and groups organized by Energy Justice Network. The Campaign opposes all industrial, commercial and institutional burning of biomass and biofuels for energy. The Campaign calls for deep reductions in energy consumption and a rapid phase out of nuclear power and fossil fuels. The Campaign recognizes that although there is an urgent need for rapid transition from fossil energy sources, plant-based alternatives for energy are not sustainable and are a dangerous false solution that threatens to worsen rather than resolve the problems we face.

Energy Justice Network goes beyond the demands of the traditional state and national environmental groups. Energy Justice Network understands that energy issues have profound impacts on many other environmental issues from agriculture to waste, and recognizes that low-income communities and communities of color tend to be the most seriously impacted by polluting energy systems. Energy Justice Network supports a comprehensive environmental justice approach.

The Crag Law Center was founded in the summer of 2001 with the primary purpose of building the capacity of so many other dedicated individuals and organizations striving to create positive change.

Cascadia Wildlands is a grassroots conservation organization that educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems.

Neighbors for Clean Air ("NCA") is an Oregon non-profit environmental and community organization based in Portland with approximately 1,500 members dedicated to creating a healthier Oregon through the reduction of air pollution, with a particular focus on hazardous air pollutants. NCA works through community and legislative advocacy, education, monitoring, and as a regulatory watchdog to ensure that air pollution is monitored, and controlled or reduced, in accordance with applicable state and federal requirements.

George Wuerthner is a citizen of Bend, Oregon who is a photographer, author, and activist. He has served on the boards of several regional and national conservation organizations.

Dolores Benson is a citizen of Lakeview, Oregon who has been active in raising awareness of air pollution in Lakeview.

Bob Palzer is a citizen of Medford, Oregon who works to ensure air quality in Southern Oregon.

Chris Zinda is a citizen of Lake County, Oregon who has been active in raising awareness of air pollution regulatory permitting activities in Lakeview and throughout Oregon. Mr. Zinda's professional training is in Public Administration with an emphasis on federal National Environmental Policy Act compliance, having worked for the National Park Service for 10 years. Now a stay-at-home dad, he has developed primary source information through public comment processes associated with Lakeview, Oregon's industrial air quality permitting, the implementation of EPA's PM Advance program, area designations for NAAQS, and revisions of Oregon's state implementation plant ("SIP").

The petitioners and certain members of the petitioner organizations live or recreate near, and breathe the air in and around, the Lakeview, Oregon area.

III. EPA Must Redesignate Lakeview, Oregon to Nonattainment for Fine Particulate Matter

1. EPA has the legal authority to initiate the redesignation process.

The Clean Air Act directs the Administrator to identify criteria air pollutants that may reasonably be anticipated to endanger public health and welfare. *See* 42 U.S.C. § 7408(a)(1). Once criteria air pollutants are identified, EPA must promulgate NAAQS for such pollutants. *See* 42 U.S.C. § 7409(a). EPA is obligated to establish primary NAAQS for criteria pollutants at a level "requisite to protect the public health." *Id*. § 7409(b)(1). EPA is also obligated to establish secondary NAAQS for criteria pollutants at a level "requisite to protect the public welfare[.]" *Id*. § 7409(b)(2).

Section 107(d) of the Clean Air Act directs EPA to identify those areas that are violating the NAAQS, and those nearby areas that are contributing to violations of the NAAQS, as the geographic areas within which states must address local emission sources for purposes of local attainment needs in accordance with the requirements of section 172 and applicable regulations. 42 U.S.C. § 7407(d). Within two years of promulgating a NAAQS (plus a possible one year extension), EPA must promulgate the designations of all areas. *Id.* § 7407(d)(1). An area that (1) does not meet an ambient air quality standard, or (2) contributes to ambient air quality in a nearby area that does not meet the standard, must be designated as a nonattainment area. *Id.* § 7407(d)(1)(A)(i). An attainment area is one "(other than an area identified [as nonattainment]) that meets the national primary or secondary ambient air quality standard for the pollutant." *Id.* § 7407(d)(1)(A)(ii). The initial designation for an area remains in effect until the area is redesignated. *Id.* § 7407(d)(B)(iv).

Section 107(d)(3) of the Act gives EPA the authority to redesignate areas when air quality data, planning and control considerations, or any other air quality related considerations indicate that an area designation should be revised. 42 U.S.C. § 7407(d)(3)(A). In fact, if an area meets either prong of the definition of nonattainment listed above, EPA is *required* to designate the area as nonattainment. 74 Fed. Reg. 58,688, 58,693 (Nov. 13, 2009). To do so, EPA must first notify the Governor of the state "that available information indicates that the designation of any area or portion of an area . . . should be revised." 42 U.S.C. § 7407(d)(3)(A). Such notification triggers a 120-day deadline by which the Governor must submit the redesignation to EPA. *Id*. § 7407(d)(3)(B). In turn, EPA must promulgate the redesignation within 120 days of receiving the Governor's response. *Id*. § 7407(d)(3)(C). If the Governor fails to submit the redesignation, EPA must promulgate an appropriate redesignation. *Id*.

Interested parties such as the petitioners identified herein may also petition the EPA to redesignate an area to nonattainment. For example, in 2009 EPA received a petition from the American Lung Association and other groups requesting that EPA take action to promulgate designations for the 2006 annual $PM_{2.5}$ NAAQS. *See* Letter to Lisa Jackson, Administrator, U.S. EPA, dated February 6, 2009, from the American Lung Association, Clean Air Task force, EarthJustice, Environmental Defense Fund, Natural Resources Defense Council, and Southern Environmental Law Center. Based on 2006-2008 monitoring data indicating that two areas designated as "unclassifiable/attainment" for the 1997 annual $PM_{2.5}$ NAAQS later violated that standard, EPA initiated the process to redesignate those areas, including both violating and contributing areas, to nonattainment in accordance with the procedures in section 107(d)(3) of the Clean Air Act. 74 Fed. Reg. at 58693. EPA thus has the legal authority to redesignate areas to nonattainment, either on its own initiative or in response to a petition.

2. EPA must immediately initiate the process to redesignate the Lakeview area to nonattainment with the federal $PM_{2.5}$ standard.

Petitioners request that the EPA redesignate the Lakeview area, including the Urban Growth Boundary ("UGB"), as nonattainment with the 2006 24-hour $PM_{2.5}$ NAAQS because $PM_{2.5}$ levels in this area have consistently violated the federal standard. Petitioners further request that EPA promulgate this designation by amending 40 C.F.R. parts 52 and 81 to reflect the change in designation. Petitioners request that in redesignating these nonattainment areas, EPA delineate the boundaries to include any and all areas (1) not meeting, and (2) contributing to ambient air quality in areas nearby Lakeview.

Adverse Impacts from Exposure to $PM_{2.5}$

Particulate matter is the general term used for a mixture of solid particles or liquid droplets found in the air. Fine particulate matter ($PM_{2.5}$) in the atmosphere is composed of a complex mixture of particles: sulfate, nitrate, and ammonium; particle bound water; elemental carbon, organic carbon representing a variety of organic compounds; and crustal material. $PM_{2.5}$ is referred to as "primary" if it directly emitted into the air as a solid or liquid particle and its chemical form is stable or if it is formed near the source by condensation processes. Primary $PM_{2.5}$ includes soot from diesel engines, fuel combustion products from industrial "hog fueled"

and other "biomass" processes, and fuel combustion products from agricultural and residential sources such as fireplaces, woodstoves, and pile or forest burning.

The EPA has recognized that health studies demonstrate significant associations between exposure to $PM_{2.5}$ and premature death from heart and lung disease. *See, e.g.*, 74 Fed. Reg. 58,688 (Nov. 13, 2009). Due to their small size, $PM_{2.5}$ can penetrate deeply into the lungs when inhaled and can accumulate, react, or be absorbed into the body. At high levels, $PM_{2.5}$ is lethal. Even at very small concentrations, however, $PM_{2.5}$ can cause a myriad of adverse health impacts including:

- Increased respiratory symptoms such as irritation of the airways, coughing, or difficulty breathing
- Decreased lung function
- Aggravation of heart and lung diseases
- Cardiovascular symptoms
- Cardiac arrhythmias
- Heart attacks
- Respiratory symptoms
- Asthma attacks
- Premature death
- Bronchitis

Id. The effects may result in increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days. *Id.* According to the EPA, people with lung disease, children, older adults, and even active adults are likely to be more sensitive to the impacts of fine particulate matter. *Id.*

Fine particulate matter also has negative environmental impacts. For example, EPA determined that $PM_{2.5}$ impairs visibility in various locations across the country, including urban areas and Class I Federal areas such as national parks and wilderness areas. 71 Fed. Reg. 61,144, 61,203 (Oct. 17, 2006). In addition, particulate matter contributes to adverse effects on vegetation, ecosystems, climate, and causes damage to and deterioration of property. *Id.* at 61,209. Specifically, excess levels of particulate nitrate and sulfate can lead to acidifying deposition to foliage, accelerated weathering of leaf and cuticular surfaces, increased permeability of leaf surfaces to toxic materials, water, and disease agents, increased leaching of nutrients and foliage, and altered reproductive processes. *Id.* at 61,209. Ultimately these impacts weaken trees and render them susceptible to other stresses. *Id.* PM deposited on terrestrial and aquatic ecosystems contributes to adverse impacts on species shifts, loss of diversity, and alteration of native fire cycles. *Id.* Ambient particles impact climate by scattering and absorbing radiation, changing the number and size distribution of cloud droplets, and altering the amount of ultraviolet solar radiation penetrating through the atmosphere to ground level. *Id.* Finally, PM nitrates and sulfates that deposit on materials may cause physical damage to and deterioration of property. *Id.*

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National Ambient Air Quality Standards for Fine Particulate Matter

In 1997 EPA revised the NAAQS for PM by, *inter alia*, adding two new standards for fine particles ($PM_{2.5}$), equal to or less than 2.5 microns in diameter, based on their link to serious health problems. 62 Fed. Reg. 38,652 (July 18, 1997). EPA set the primary (health based) and secondary (public welfare based) annual standards at 15 micrograms per cubic meter ($\mu g/m^3$) based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors. *Id.* EPA set the primary and secondary 24-hour $PM_{2.5}$ standards at 65 $\mu g/m^3$ based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area. *Id. See also* 40 C.F.R. § 50.7.

In 2006 EPA strengthened the primary and secondary 24-hour $PM_{2.5}$ NAAQS by lowering the standard from 65 $\mu g/m^3$ to 35 $\mu g/m^3$. 71 Fed. Reg. at 61,144. EPA created a more stringent standard based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to $PM_{2.5}$ at this level. The 2006 24-hour $PM_{2.5}$ standard is met whenever the three year average of the annual 98th percentile of values at monitoring sites is less than or equal to 35 $\mu g/m^3$. 40 C.F.R. § 50.13.

The Clean Air Act itself does not define what constitutes a violation of the NAAQS, but EPA's 2007 guidance concerning how to determine boundaries for nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS states that the three most recent calendar years of air quality monitoring data for $PM_{2.5}$ be used to identify a violation of the 24-hour $PM_{2.5}$ NAAQS. *See* Memorandum from Robert J. Meyers, Acting Assistant Administrator, to EPA Regional Administrators Regions I-X, "Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard" (June 8, 2007). This three-year average is often referred to as a "design value." EPA relied on such design values to make area designations under the 2006 24-hour $PM_{2.5}$ NAAQS in 2009. *See* 74 Fed. Reg. at 58693 (noting that "EPA identified violating monitors based on air quality monitoring data from Federal Reference Monitors for the calendar years 2006-2008").

Lakeview's Violations of the 2006 24-hour $PM_{2.5}$ NAAQS

Lakeview was formerly designated nonattainment and is currently designated as a maintenance area for coarse particulate matter (PM_{10}). Currently, Lakeview is designated as an attainment/unclassifiable area for the 2006 24-hour $PM_{2.5}$. Lakeview was not formally designated as nonattainment area during the initial 2009 area designations for 2006 24-hour $PM_{2.5}$ due to insufficient air quality monitoring information.

Since that time, air quality monitoring conducted by the Oregon Department of Environmental Quality ("DEQ") indicates that Lakeview is and has been violating the 2006 24-hour $PM_{2.5}$ NAAQS. Monitoring data from the single monitor in the region shows the design values exceeded the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ since it was first promulgated:

Table 1: 24-hour Design Values for Lakeview, Oregon (µg/m^3)[2]					
2006-2008	2007-2009	2008-2010	2009-2011	2010-2012	2011-2013
41	41	38	36	34	56

From 2011-2013, Lakeview's 24-hour $PM_{2.5}$ three-year average was 56 µg/m^3. This makes Lakeview the fifth worst violator of the 2006 24-hour $PM_{2.5}$ standard in the nation during this timeframe.

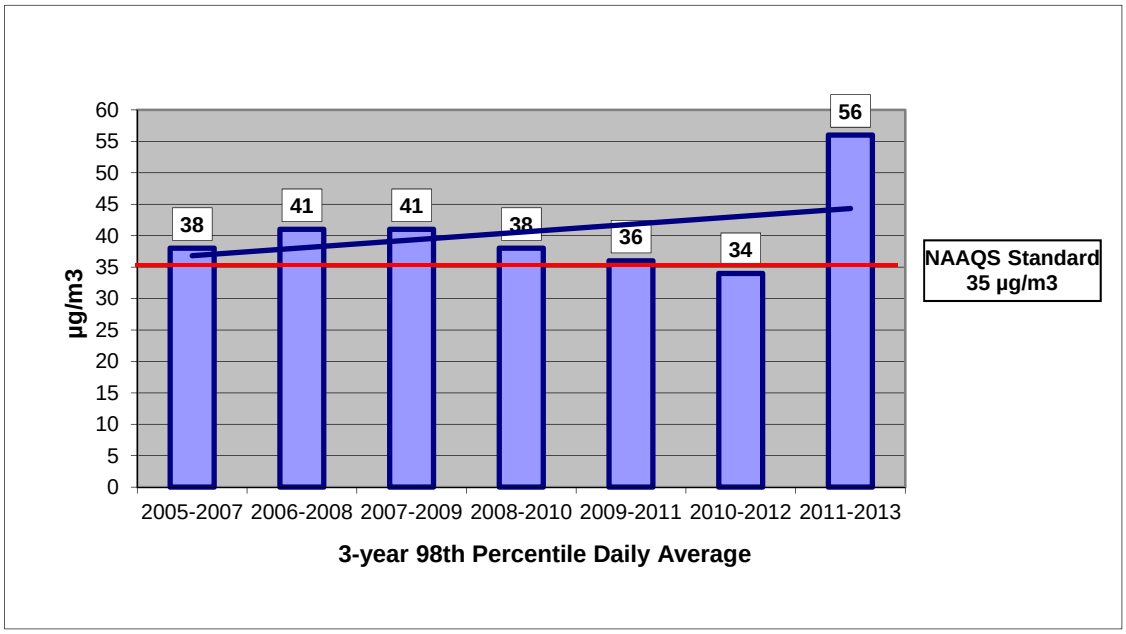
Table 2: $PM_{2.5}$ 24-hour Monitor Values for Lakeview, Site ID 410370001[3]								
Year	Exc Events	Obs	First Max	Second Max	Third Max	Fourth Max	98th Percentile	Weighted Arithmetic Mean
2014	None	30	47.4	44.4	42.3	36.8	**47**	13.1
2013	None	121	104	103	93.6	92.2	**94**	14.6
2012	Included	114	42.2	38.6	36.7	36.3	**37**	9.7
2011	None	110	58.3	38.5	37.8	34.3	**38**	9.1
2010	None	116	34.2	32.1	26.3	26	**26**	7.5
2009	Included	121	62.4	61.2	43.2	42.6	**43**	10.6
2008	Included	118	71.6	44.8	43.7	43	**44**	11.2
2007	None	86	44	37.5	28.8	26.3	**38**	8.1

For 2013 alone, Lakeview's 98th percentile concentration for the $PM_{2.5}$ 24-hour average was 94 µg/m^3.

[2] Created from EPA's Design Values in Exhibit 1. *See* EPA Design Values 2006 through 2013, *supra* note 1.

[3] EPA AirData, Summary of 24-hour $PM_{2.5}$ Monitor Values for Lake County, Lakeview, Oregon, Site ID No. 410370001, POC 1, EPA Region 10, *available at* http://www.epa.gov/airdata/index.html (last accessed Sept. 10, 2014). AirData provides access to air quality data collected at outdoor monitors across the United States that comes primarily from the Air Quality System (AQS) database. The AQS database contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies from thousands of monitoring states and is used to, *inter alia*, assess air quality and assist in Attainment/Non-Attainment designations.

Figure 1: Lakeview Center and M Street Monitor
Three Year 98th Percentile Daily Average Concentrations[4]



As the trend line above illustrates, the Lakeview area is nowhere close to being considered a borderline violator of the 2006 24-hour $PM_{2.5}$ standard. Lakeview has consistently violated the 2006 24-hour $PM_{2.5}$ NAAQS.

EPA Must Redesignate Lakeview to Nonattainment

Air quality monitoring data demonstrating Lakeview has violated the 2006 24-hour $PM_{2.5}$ standard requires EPA to redesignate the Lakeview area to nonattainment. EPA's discretion under section 107(d)(3) of the Act to consider various factors is guided by language and structure of the Clean Air Act. Indeed, Congress made clear in the definitions of the difference designations that it intended EPA to redesignate areas based on air quality data. Section 107(d)(1) expressly defines "nonattainment" as any area that does not meet the NAAQS. 42 U.S.C. § 7407(d)(1)(i). This section goes on to define "attainment" to exempt any area meeting the definition of nonattainment. *Id.* § 7407(d)(1)(ii) ("attainment, any area (other than an area identified in clause (i))"). EPA has embraced this understanding. 74 Fed. Reg. at 58,693 ("If an area meets either prong of the definition of nonattainment . . . EPA is required to designate the area as 'nonattainment.'"). Thus EPA must redesignate Lakeview area as nonattainment based on the area's design values showing violations of the 2006 24-hour $PM_{2.5}$ standard.

Redesignation to Nonattainment Provides Meaningful and Necessary Protection

The Clean Air Act requires states with areas designated nonattainment to undertake specific planning and pollution control activities within these areas, imposing a requirement to

[4] Created from EPA's Desgin Values in Exhibit 1. *See* EPA Design Values 2006 through 2013, *supra* note 1.

attain the federal standards "as expeditiously as practicable, but no later than 5 years from" the date of nonattainment designation. 42 U.S.C. § 7502(a)(2). Proper designation of areas also helps citizens know whether the air quality where they live and work is healthful or not.

Once an area is designated as nonattainment for $PM_{2.5}$, states must submit SIP revisions by date certain. *Id.* § 7502(b). The plan must provide for implementation of all reasonably available control measures as expeditiously as practicable, including application of reasonably available control technology ("RACT") to existing sources; it must provide for attainment of the NAAQS; it must require reasonable further progress to achieving the NAAQS; it must include a comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$. *Id.* § 7502(c). For major new or modified sources, the plan must expressly identify and quantify the emissions, if any, of $PM_{2.5}$ that will be allowed and require implementation of the lowest achievable emissions rate ("LAER") through permitting requirements. *Id.* § 7502(c)(4), (5). Finally, the plan must include enforceable emission limitations, control measures, means or techniques, and schedules and timetables as necessary to provide for attainment, as well as contingency measures to be undertaken in case the area fails to make reasonable further progress or attain the NAAQS by date certain. *Id.* § 7502(c)(6).

Where a state fails to make required SIP submissions or to adequately implement a SIP to attain the NAAQS in a nonattainment area, EPA may impose sanctions. 42 U.S.C. § 7509(a). Specifically, EPA may restrict highway funding or impose a more stringent emissions offset ratio of at least 2 to 1 for new or modified sources. *Id.* § 7509(b).

Background on Lakeview

Lakeview, Oregon is located in a geographic region characterized as basin and range. The region is defined as graben valleys ringed by scarp fault mountains. Lakeview is situated on the northern end of the Goose Lake graben valley, directly west of and at the foot of the Warner Mountains that rise over three thousand feet above the valley floor. This particular kind of topography is a major cause of the air quality problems present in Lakeview and along the Warner Mountains in Oregon and California. High-pressure weather systems create both warm and cold weather inversions that trap pollutants in the valleys for extended periods of time, helping to create hazardous air quality conditions. According to Oregon DEQ:

> Lakeview can experience very strong nighttime inversions….In the wintertime, arctic air masses frequently move over the Lakeview area valley. Temperatures can remain well below freezing for several weeks at a time. Winter nights are commonly clear and cool in the valley. Under these conditions, inversions and air stagnation can occur and reoccur for many days in a row over Lakeview.

Town of Lakeview, Lake County and Oregon Department of Environmental Quality, *Particulate Matter Advance Action Plan* (Sept. 2014), page 2.

The region is not only geographically distinct, but also industrially distinct with a heavy reliance on mining and wood products industries. The two main industrial sources of emissions are the Collin's Fremont Sawmill and Cornerstone Minerals. Both sources use antiquated

emissions control technology and operate pursuant to an Air Contaminant Discharge Permit ("ACDP") issued by DEQ. In addition, Lakeview Cogeneration, LLC is a biomass electrical energy generation facility owned by Iberdrola Renewables. DEQ issued this facility a modified ACDP in 2013 that tripled the amount of allowable $PM_{2.5}$ authorized in the previous 2010 ACDP. Each of these facilities represent Lakeview's heavy current and future reliance on resource extraction industries. DEQ has not required any of these facilities to install more stringent controls such as RACT to control $PM_{2.5}$ emissions or to provide offsets for emissions because Lakeview is still formally designated as attainment.

Further, delaying the necessary redesignation will allow pending projects to construct and operate in the area without the necessary, more stringent controls on $PM_{2.5}$ emissions. First, Iberdrola Renewables has received DEQ authorization, under ACDP No. 19-0033-ST-01, to construct a biomass electrical generation facility in Lakeview that will be allowed to emit an additional 32 tons of $PM_{2.5}$, annually. Second, Redrock Biofuels has proposed a $70 million biofuels facility for Lakeview. This project will use a $4.1 million dollar Department of Defense grant to turn 140,000 tons of juniper trees into 14 million gallons of jet fuel. In the works since 2011, this project has not yet been issued an ACDP. Without a nonattainment designation, these projects will be constructed and operate without the installation of LAER to control $PM_{2.5}$ emissions and without offsets that would reduce overall $PM_{2.5}$ emissions.

Finally, Lakeview suffers from poor economic conditions, which raises the critical question of social and environmental justice. Roughly 17% of the Lakeview population is below the poverty level. *See* CensusViewer, Lakeview, Oregon Population: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Quick Facts, *available at* http://censusviewer.com/city/OR/Lakeview (last accessed Sept. 11, 2014). The economically disadvantaged, combined with a general population that has traditionally relied on residential wood heating as a primary heat source, means that residential wood burning for home heating purposes is a major contributor of $PM_{2.5}$ in Lakeview. DEQ has chosen to focus its state planning and controls on these sources, resulting in a discriminatory burden on the economically disadvantaged general public. The various industries listed above, however, should be required to properly mitigate their impact to air quality and resultant environmental and human health. The more stringent control of $PM_{2.5}$ emissions from industrial sources that would apply under a nonattainment designation is imperative to ensure that Lakeview's high levels of $PM_{2.5}$ emissions does not worsen and that the costs associated with future mitigation measures are shared by the sources causing or contributing to the problem.

Reliance on the NAAQS Advance Program is Improper

In 2013, Lakeview, Oregon was one of the first communities in the United States offered the advantage of the EPA preplanning program called Particulate Matter (PM) Advance. First used for ozone in 2012, the Advance program is designed to encompass all NAAQS regulated constituents. In short, areas that are at or just below a newly promulgated NAAQS for a particular pollutant are given additional time (in five year increments) to reduce their emissions to ensure those areas continue to meet the standard. *See* EPA, *Advance: A U.S. Environmental Protection Agency Program, available at* http://www.epa.gov/airquality/advance/ (last accessed

Sept. 11, 2014). The purpose of the Advance program is to help these areas avoid nonattainment designation and the strict requirements associated with it, outlined above.

EPA may not rely on Lakeview's plans to implement a PM Advance program to justify failing to redesignate the area as nonattainment. The Advance program contains express statements that it does not apply to nonattainment areas. *See* EPA, *PM Advance Eligibility*, *available at* http://www.epa.gov/airquality/advance/eligibilityPM.html (last accessed September X, 2014) (noting that to be eligible to participate in the PM Advance program "[t]he area(s) to which the . . . local government is signing up is/are not designated nonattainment for either the 1997 or 2012 annual $PM_{2.5}$ NAAQS and/or the 2006 24-hour $PM_{2.5}$ NAAQS."); *see also id.* ("It is important to note that signing up for PM Advance does not shield an area from being redesignated to nonattainment if the area eventually violates the $PM_{2.5}$ NAAQS.").

Because Lakeview has consistently violated the 2006 24-hour $PM_{2.5}$ NAAQS it is not eligible for this program. Moreover, none of EPA's NAAQS Advance programs (ozone and PM) provide for public notice and comment procedures. In fact, EPA expressly denies any federal oversight of state or local entities that choose to implement the Advance program. Reliance on the PM Advance program in this instance would be inconsistent with the express language of the Clean Air Act and would undercut its purposes.

Reliance on Oregon's Control Programs is Improper

EPA may not rely on Oregon's programs to justify failing to redesignate the area as nonattainment. States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. The Clean Air Act requires states to submit for EPA approval State Implementation Plans ("SIPs") that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. 42 U.S.C. § 7410. DEQ has an EPA-approved SIP. DEQ is, therefore, the agency with primary responsibility for implementing the Clean Air Act in Oregon.

DEQ is currently updating its SIP. DEQ Rules and Regulations, *Air Quality Permitting Updates* , *available at* http://www.oregon.gov/deq/RulesandRegulations/Pages/2014/aqperm .aspx (last accessed Sept. 11, 2014) (hereafter, "DEQ Notice"). Oregon's state designations currently mirror the federal designations of attainment or unclassifiable, nonattainment, and maintenance. DEQ has proposed to complicate these designations by adding a second layer of state designations: sustainment and reattainment. The sustainment designation would apply to areas federally designated as attainment but on the verge of violating the NAAQS. The reattainment designation would apply to areas federally designated as nonattainment.

DEQ is seeking to apply the attainment/sustainment designation to Lakeview. DEQ itself states that the purpose of a sustainment designation for Lakeview is to avoid nonattainment designation and the attendant rigorous standards. *See* DEQ Notice at 858 ("Local officials expect to bring the area quickly back into attainment with the standards *to avoid* a federal nonattainment designation and the resulting impacts on costs for businesses seeking to locate there.") (emphasis added). Yet the data provided above shows Lakeview at nearly three times

the primary standard in 2013 with a 3-year average 160% above the primary standard, making quick and lasting compliance with the standard unlikely.

Further, DEQ hopes a sustainment designation will allow continued economic growth in the area. DEQ explains that under existing state rules, areas that are near or above the NAAQS find it "difficult or impossible for new and expanding businesses to demonstrate that their added emissions will not cause or contribute to air quality violations" because current rules do not provide for offset possibilities. *Id*. The proposed sustainment designation would allow new permits, requiring offsets at a ratio of only 0.1:1, which could drop as low as 0.5:1. These ratios are much too low to adequately contain or reduce overall $PM_{2.5}$ levels. DEQ goes on to explain that the "Lakeview community voluntarily participates in EPA's 'PM Advance' program" and "DEQ has determined that the PM Advance plan and designation as a sustainment area would complement each other to address stationary sources within the Lakeview area." *Id.* at 858. As noted above, Lakeview is not eligible for the PM Advance program. Reliance on DEQ's proposed new sustainment designation to avoid the redesignation of Lakeview to nonattainment risks the health of that community and delays the necessary action that Congress intended. DEQ's proposed sustainment designation thereby undercuts the express Congressional intent as set forth in the Clean Air Act.

IV. Conclusion

Redesigating Lakeview to nonattainment will ensure that $PM_{2.5}$ pollution is reduced and industrial emissions are better controlled, affording greater protection to the people, particularly children and the elderly in the area. In addition, undertaking the requested actions will ensure that the problem is resolved through effective and enforceable means. On the basis of EPA's own data, petitioners request that EPA notify the Governor of Oregon that available information indicates that Lakeview should be redesignated as nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS, pursuant to section 107(d)(3)(A) of the Clean Air Act. Because $PM_{2.5}$ emissions pose a significant threat to public health and welfare, the need to undertake this action in a timely fashion is critical. Petitioners request that EPA provide such notice to the Governor of Oregon within 30 days of receiving this petition.

Sincerely,

/s/Marla Nelson
Staff Attorney
Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd.
Portland, Oregon 97219
(503) 768-6726
msnelson@nedc.org

Submitted on behalf of the Northwest Environmental Defense Center, WildEarth Guardians, Oregon Wild, Beyond Toxics, Save Our Rural Oregon, Save America's Forests, Our Forests, Anti-biomass Incineration Campaign/Energy Justice Network, Crag Law Center, Cascadia

Wildlands, Neighbors for Clean Air, and concerned citizens George Wuerthner, Dolores Benson, Bob Palzer, and Chris Zinda

DATED: September 15, 2014

Cc: Janet McCabe, Acting Assistant Administrator, Office of Air and Radiation
Steve Page, Director, Office of Air Quality Planning and Standards
Dennis McLerran, Regional Administrator, EPA Region 10
Dick Pedersen, Director, Oregon DEQ

Exhibits:

1. EPA Design Values 2006 through 2013: PM2.5 Detailed Information, *available at* http://epa.gov/airtrends/values.html (updated Aug. 28, 2014) (last accessed Sept. 10, 2014).

2. Lakeview Area – Particulate Matter Advance Action Plan, Town of Lakeview, Lake County and the Oregon Department of Environmental Quality, September 2014.

3. Oregon Department of Environmental Quality State Implementation Plan Revision, Public Notice, "Kitchen Sink" (web addy).