

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED JUL 12 2017
CLERK

JUL 12 2017

RECEIVED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN LUNG ASSOCIATION,)
AMERICAN PUBLIC HEALTH)
ASSOCIATION, AMERICAN)
THORACIC SOCIETY, CLEAN AIR)
COUNCIL, ENVIRONMENTAL)
DEFENSE FUND,)
ENVIRONMENTAL LAW AND)
POLICY CENTER, NATIONAL)
PARKS CONSERVATION)
ASSOCIATION, NATURAL)
RESOURCES DEFENSE COUNCIL,)
OHIO ENVIRONMENTAL)
COUNCIL, PHYSICIANS FOR)
SOCIAL RESPONSIBILITY, SIERRA)
CLUB, and WEST HARLEM)
ENVIRONMENTAL ACTION,)

Petitioners,

v.

U.S. ENVIRONMENTAL)
PROTECTION AGENCY and SCOTT)
PRUITT, Administrator, U.S.)
Environmental Protection Agency,)

Respondents.

No. 17-1172

ORIGINAL

PETITION FOR REVIEW

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, American Lung Association, American Public Health Association, American Thoracic Society, Clean Air Council, Environmental Defense Fund, Environmental Law and

Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Ohio Environmental Council, Physicians For Social Responsibility, Sierra Club, and West Harlem Environmental Action (collectively, "Petitioners") hereby petition this Court for review of the final action of Respondents U.S. Environmental Protection Agency and Administrator Scott Pruitt extending the deadline for promulgating initial area designations for the 2015 ozone national ambient air quality standards, which Respondents announced in a Federal Register notice published at 82 FR 29,246 (June 28, 2017) and titled "Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards" (Attachment A) and in letters to state governors dated June 6, 2017, two examples of which are attached (Attachments B and C).

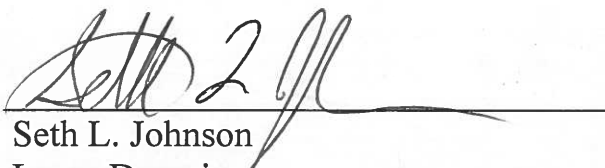
DATED: July 12, 2017

Respectfully submitted,



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aweeks@catf.us

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Environmental Council*



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No. 17-1172

Petitioners,

v.

U.S. ENVIRONMENTAL)
PROTECTION AGENCY and SCOTT)
PRUITT, Administrator, U.S.)
Environmental Protection Agency,)

Respondents.

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 28(a)(1) and D.C. Circuit Rules 26.1 and 28(a)(1)(A), American Lung Association, American Public Health Association, American Thoracic Society, Clean Air Council, Environmental Defense Fund, Environmental Law and Policy Center, National

ORIGINAL

Parks Conservation Association, Natural Resources Defense Council, Ohio Environmental Council, Physicians For Social Responsibility, Sierra Club, and West Harlem Environmental Action (collectively, “Movants”) make the following disclosures:

AMERICAN LUNG ASSOCIATION

Non-Governmental Corporate Party to this Action: American Lung Association (“ALA”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: ALA is a corporation organized and existing under the laws of Maine. ALA is a national nonprofit organization dedicated to a world free of lung disease and to saving lives by preventing lung disease and promoting lung health. ALA’s Board of Directors includes pulmonologists and other health professionals.

AMERICAN PUBLIC HEALTH ASSOCIATION

Non-Governmental Corporate Party to this Action: American Public Health Association (“APHA”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party's General Nature and Purpose: APHA, an organization incorporated in Massachusetts, has members from all fields of public health. Its issues include those affecting personal and environmental health and pollution control, chronic and infectious diseases, and health equity.

AMERICAN THORACIC SOCIETY

Non-Governmental Corporate Party to this Action: American Thoracic Society ("ATS").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: ATS is an international, non-profit medical-professional organization organized and existing under the laws of the State of New York. Its members protect human health by preventing and fighting respiratory disease, critical care illness, and sleep-disordered breathing through research, education, care, and advocacy.

CLEAN AIR COUNCIL

Non-Governmental Corporate Party to this Action: Clean Air Council ("CAC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: CAC is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. CAC is a not-for-profit organization focused on protection of public health and the environment.

ENVIRONMENTAL DEFENSE FUND

Non-Governmental Corporate Party to this Action: Environmental Defense Fund ("EDF").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: EDF, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to society's most urgent environmental problems.

ENVIRONMENTAL LAW AND POLICY CENTER

Non-Governmental Corporate Party to this Action: Environmental Law and Policy Center ("ELPC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Environmental Law and Policy Center of the Midwest (ELPC) is a nonprofit corporation incorporated in and operating under the requirements of the State of Illinois. ELPC is a legal advocacy organization

dedicated to improving environmental quality and protecting natural resources in the Midwest and Great Plains states.

NATIONAL PARKS CONSERVATION ASSOCIATION

Non-Governmental Corporate Party to this Action: National Parks Conservation Association.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: National Parks Conservation Association, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization dedicated to protecting and enhancing America's National Parks for present and future generations.

NATURAL RESOURCES DEFENSE COUNCIL

Non-Governmental Corporate Party to this Action: National Resources Defense Council ("NRDC").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: NRDC, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

OHIO ENVIRONMENTAL COUNCIL

Non-Governmental Corporate Party to this Action: Ohio Environmental Council (“The OEC”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: The OEC is a nonprofit corporation organized and existing under the laws of the State of Ohio. Its mission is to secure healthy air, land, and water for all who call Ohio home.

PHYSICIANS FOR SOCIAL RESPONSIBILITY

Non-Governmental Corporate Party to this Action: Physicians for Social Responsibility (“PSR”).

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party’s Stock: None.

Party’s General Nature and Purpose: PSR is a corporation organized and existing under the laws of Massachusetts. It is a national nonprofit organization of medical and public health professionals and lay advocates dedicated to promoting peace, strengthening public health and child health, and supporting environmental integrity.

SIERRA CLUB

Non-Governmental Corporate Party to this Action: Sierra Club.

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

WEST HARLEM ENVIRONMENTAL ACTION

Non-Governmental Corporate Party to this Action: West Harlem Environmental Action, Inc. ("WE ACT for Environmental Justice").

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: WE ACT for Environmental Justice is a corporation organized and existing under the laws of New York. Founded in 1988, it is a Northern Manhattan community-based organization whose mission is to build healthy communities by assuring that people of color and/or those with low-income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

DATED: July 12, 2017

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*Counsel for Clean Air Council and
Ohio Environmental Council*

Respectfully submitted,

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Association, Natural Resources
Defense Council, Physicians for Social
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Harlem Environmental Action*

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*Counsel for Environmental Defense
Fund*

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **Petition for Review and Rule 26.1 Disclosure Statement** on Respondents by sending a copy via hand delivery to each of the following addresses on this 12th day of July, 2017.

Scott Pruitt
EPA Headquarters 1101A
United States Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460



Robyn Winz
Earthjustice

Attachment A



29246

Federal Register / Vol. 82, No. 123 / Wednesday, June 28, 2017 / Rules and Regulations

withdrawn or denied. The proceeds of any such fees will be used to pay the remaining portion of the Agency's cost of providing credit assistance and the costs of retaining expert firms, including financial, engineering, and legal services, in the field of municipal and project finance, to assist in the underwriting of the Federal credit instrument. All of, or a portion of, this fee may be waived.

(d) *Servicing fee.* EPA will require borrowers to pay a servicing fee for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (e.g., a loan guarantee, a secured loan with a single disbursement, or a secured loan with multiple disbursements), depending on the costs of servicing the credit instrument as determined by the Administrator. Such fees will be set at a level sufficient to enable the EPA to recover all or a portion of the costs to the Federal Government of servicing WIFIA credit instruments.

(e) *Optional supplemental fee.* If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under WIFIA, EPA and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs.

(f) *Reduced fees.* To the extent that Congress appropriates funds in any given year beyond those sufficient to cover internal administrative costs, EPA may utilize such appropriated funds to reduce fees that would otherwise be charged under paragraph (c) of this section.

(g) *Extraordinary expenses.* EPA may require payment in full by the borrower of additional fees, in an amount determined by EPA, and of related fees and expenses of its independent consultants and outside counsel, to the extent that such fees and expenses are incurred directly by EPA and to the extent such third parties are not paid directly by the borrower, in the event that a borrower experiences difficulty relating to technical, financial, or legal matters or other events (e.g., engineering failure or financial workouts) which require EPA to incur time or expenses beyond standard monitoring.

[FR Doc. 2017-13438 Filed 6-27-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 81

[EPA-HQ-OAR-2017-0223; FRL-9964-37-OAR]

Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of deadline for promulgating designations.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that it is using its authority under the Clean Air Act (CAA) to extend by 1 year the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. The new deadline is October 1, 2018.

DATES: The deadline for the EPA to promulgate initial designations for the 2015 ozone NAAQS is October 1, 2018.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Denise Scott, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-4208; email address: scott.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include state, local and tribal governments that would participate in the initial area designation process for the 2015 ozone standards.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for designations for the 2015 ozone NAAQS under Docket ID No. EPA-HQ-OAR-2017-0223. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

An electronic copy of this notice is also available at <http://www.epa.gov/ozone-designations> along with other information related to designations for the 2015 ozone NAAQS.

II. Designations Requirements

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). The primary standard was lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm. The EPA also revised the secondary standard by making it identical in all respects to the revised primary standard. (The previous ozone NAAQS were set in 2008 and remain effective.)

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that do not meet the new or revised NAAQS. This step is known as the initial area designations. Section 107(d)(1)(A) of the CAA provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section [109], the Governor of each State shall * * * submit to the Administrator a list of all areas (or portions thereof) in the State" that designates those areas as nonattainment, attainment, or unclassifiable. The CAA defines an area as nonattainment if it is violating the NAAQS or if it is contributing to a violation in a nearby area. 42 U.S.C. 7407(d)(1)(A)(i).

The CAA further provides, "Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the

designations." 42 U.S.C. 7407(d)(1)(B)(i).

After the states submit their recommendations, but no later than 120 days prior to promulgating designations, the EPA is required to notify a state of any intended modifications to the state's recommended designation. The state then has an opportunity to demonstrate why any proposed modification is inappropriate. Whether or not a state provides a recommendation, the EPA must promulgate the designation that the agency deems appropriate within 2 years of promulgation of the NAAQS (or within 3 years if the EPA extends the deadline).

For the 2015 ozone NAAQS, the deadline for states to submit designation recommendations to the EPA for their areas was October 1, 2016. The EPA has been evaluating these recommendations and conducting additional analyses to determine whether it is necessary to modify any of the state recommendations.

III. Extension of Deadline for Promulgating Designations for the 2015 NAAQS

In this action, the EPA is announcing that it is using its authority under

section 107(d)(1)(B)(i) of the CAA to extend by 1 year the deadline for promulgating initial area designations for the 2015 ozone NAAQS. The new deadline is October 1, 2018. For the reasons explained in this notice, the EPA Administrator has determined that there is insufficient information to complete the designations by October 1, 2017.

Following the recent change in administrations, the agency is currently evaluating a host of complex issues regarding the 2015 ozone NAAQS and its implementation, such as understanding the role of background ozone levels and appropriately accounting for international transport. The Administrator has determined that he cannot assess whether he has the necessary information to finalize designations until additional analyses from this evaluation are available. In addition, pursuant to language in the recently-enacted Fiscal Year 2017 omnibus bill, the Administrator is establishing an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard. It is possible the outcome of that effort could identify flexibilities that could impact

the designations process. In light of the analyses currently underway at the agency, the Administrator has determined he needs additional time to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A), including full consideration of exceptional events impacting designations, and determine whether they provide sufficient information to finalize designations. We also note that new agency officials are currently reviewing the 2015 ozone NAAQS rule. The Administrator has determined that in light of the uncertainty of the outcome of that review, there is insufficient information to promulgate designations by October 1, 2017.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 21, 2017.

E. Scott Pruitt,
Administrator.

[FR Doc. 2017-13437 Filed 6-27-17; 8:45 am]

BILLING CODE 6560-50-P

Attachment B



**E. SCOTT PRUITT
ADMINISTRATOR**

June 6, 2017

The Honorable Doug Ducey
Governor of Arizona
State Capitol
1700 W. Washington Street
Phoenix, AZ 85007

Dear Governor Ducey:

I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities. As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations. Additionally, pursuant to language in the recently-enacted FY 2017 omnibus bill, I have established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

States have made tremendous progress and significant investment cleaning up the air. Since 1980, total emissions of the six principal air pollutants have dropped by 63 percent and ozone levels have declined by 33 percent. Despite the continued improvement of air quality, costs associated with compliance of the ozone NAAQS have significantly increased. I am committed to working with you and your local officials to effectively implement the ozone standard in a manner that is supportive of your air quality improvement efforts, without interfering with local decisions or impeding economic growth.

I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at lyons.troy@epa.gov or (202) 564-4987.

Respectfully yours



E. Scott Pruitt

Attachment C



E. SCOTT PRUITT
ADMINISTRATOR

June 6, 2017

The Honorable Andrew Cuomo
Governor of New York
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

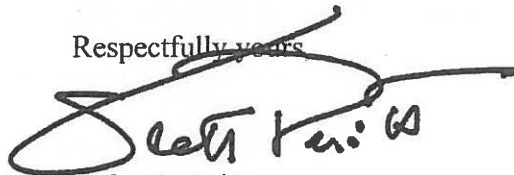
I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating initial area designations for the 2015 ozone NAAQS by one year. I have determined that there is insufficient information, and taking additional time is appropriate in order to consider completely all designation recommendations provided by state governors pursuant to CAA section 107(d)(1)(A) and to rely fully on the most recent air quality data. This additional time will also provide the Agency time to complete its review of the 2015 ozone NAAQS, prior to taking this initial implementation step.

Although the new ozone standard was set on October 1, 2015, there remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities. As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations. Additionally, pursuant to language in the recently-enacted FY 2017 omnibus bill, I have established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

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I appreciate the information you and your staff have shared with EPA already as part of this process. I am confident this progress will continue as we work together towards our shared goal of clean air, a robust economy and stronger, healthier communities. If you have questions or concerns, please contact me or your staff may contact Troy Lyons, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at lyons.troy@epa.gov or (202) 564-4987.

Respectfully yours



E. Scott Pruitt