

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

AUG - 1 2017

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

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

FILED  
AUG - 1 2017

CLERK

RECEIVED

STATE OF NEW YORK, STATE OF CALIFORNIA, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF ILLINOIS, STATE OF IOWA, STATE OF MAINE, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF NEW MEXICO, STATE OF OREGON, STATE OF RHODE ISLAND, COMMONWEALTH OF PENNSYLVANIA, STATE OF VERMONT, STATE OF WASHINGTON, and DISTRICT OF COLUMBIA,

*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and SCOTT PRUITT, as Administrator of the U.S. Environmental Protection Agency,

*Respondents.*

Case No. 17-1185

**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, the States of New York, California, Connecticut, Delaware, Illinois,

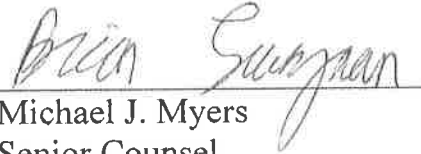
Iowa, Maine, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, and the District of Columbia (collectively, Petitioners) hereby petition this Court for review of the final action of Respondents United States Environmental Protection 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 Fed. Reg. 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, an example of which is attached (Attachment B).

DATED: July 31, 2017

Respectfully submitted,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL



Michael J. Myers

Senior Counsel

Morgan A. Costello

Brian Lusignan

Assistant Attorneys General

Environmental Protection Bureau

The Capitol

Albany, NY 12224

(518) 776-2400

*Attorneys for the State of New York, on  
behalf of the New York State  
Department of Environmental  
Conservation*

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA  
ATTORNEY GENERAL OF  
CALIFORNIA

Robert W. Byrne <sup>BL</sup>  
<sub>per auth</sub>  
Robert W. Byrne  
Senior Assistant Attorney General  
Gavin G. McCabe  
Supervising Deputy Attorney General  
Melinda Pilling  
Timothy E. Sullivan  
Deputy Attorneys General  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102  
(415) 703-5585

*Attorneys for State of California, by  
and through the California Air  
Resources Board and Attorney General  
Xavier Becerra*

FOR THE STATE OF  
CONNECTICUT

GEORGE JEPSEN  
ATTORNEY GENERAL

Matthew I. Levine <sup>BL</sup>  
<sub>per auth</sub>  
Matthew I. Levine  
Scott N. Koschwitz  
Assistant Attorneys General  
Office of the Attorney General  
P.O. Box 120, 55 Elm Street  
Hartford, CT 06141-0120  
(860) 808-5250

FOR THE STATE OF DELAWARE

MATTHEW P. DENN  
ATTORNEY GENERAL

Valerie S. Edge <sup>BL</sup>  
<sub>per auth</sub>  
Valerie S. Edge  
Deputy Attorney General  
Delaware Department of Justice  
102 West Water Street, 3d Floor  
Dover, DE 19904  
(302) 739-4636

FOR THE STATE OF ILLINOIS

LISA MADIGAN  
ATTORNEY GENERAL

Matthew J. Dunn <sup>BL</sup>  
<sub>per auth</sub>  
Matthew J. Dunn  
Gerald T. Karr  
James P. Gignac  
Assistant Attorneys General  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-0660

FOR THE STATE OF IOWA

THOMAS J. MILLER  
ATTORNEY GENERAL

Jacob Larson <sup>BL</sup>  
per auth

Jacob Larson  
Assistant Attorney General  
Office of Iowa Attorney General  
Hoover State Office Building  
1305 E. Walnut Street, 2<sup>nd</sup> Floor  
Des Moines, Iowa 50319  
(515) 281-5341

FOR THE STATE OF MAINE

JANET T. MILLS  
ATTORNEY GENERAL

Gerald Reid <sup>BL</sup>  
per auth

Gerald D. Reid  
Natural Resources Division Chief  
6 State House Station  
Augusta, ME 04333  
(207) 626-8800

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL

Carol Iancu <sup>BL</sup>  
per auth

Carol Iancu  
Assistant Attorney General  
Environmental Protection Division  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
(617) 963-2428

FOR THE STATE OF MINNESOTA

LORI SWANSON  
ATTORNEY GENERAL

Max Kieley <sup>BL</sup>  
per auth

Max Kieley  
Assistant Attorney General  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127  
(651) 757-1244

*Attorneys for State of Minnesota, by  
and through the Minnesota Pollution  
Control Agency*

FOR THE STATE OF NEW MEXICO

HECTOR BALDERAS  
ATTORNEY GENERAL

William Grantham <sup>BL</sup>  
per auth

William Grantham  
Brian McMath  
Assistant Attorneys General  
Office of the Attorney General  
408 Galisteo Street  
Villagra Building  
Santa Fe, NM 87501  
(505) 490-4060

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
ATTORNEY GENERAL

Paul Garrahan <sup>BL</sup> per auth  
Paul Garrahan  
Attorney-in-Charge  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
(503) 947-4593

FOR THE COMMONWEALTH OF  
PENNSYLVANIA

JOSH SHAPIRO  
ATTORNEY GENERAL

Steven J. Santarsiero <sup>BL</sup> per auth  
Steven J. Santarsiero  
(Pro Hac Vice Admission Pending)  
Chief Deputy Attorney General  
Michael J. Fischer  
Chief Deputy Attorney General  
Kristen M. Furlan  
Assistant Director  
Bureau of Regulatory Counsel  
PA Department of Environmental  
Protection

PA Office of the Attorney General  
1000 Madison Avenue, Suite 310  
Norristown, PA 19403  
(610) 631-5971

FOR THE STATE OF RHODE  
ISLAND

PETER F. KILMARTIN  
ATTORNEY GENERAL

Gregory Schultz <sup>BL</sup> per auth  
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

Nicholas F. Persampieri <sup>BL</sup> per auth  
Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-3186

FOR THE STATE OF  
WASHINGTON

ROBERT W. FERGUSON  
ATTORNEY GENERAL

Katharine Shirey *BC*  
*per auth*

Katharine G. Shirey  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40117  
Olympia, WA 98504-0117  
(360) 586-6769

FOR THE DISTRICT OF  
COLUMBIA

KARL A. RACINE  
ATTORNEY GENERAL

James McKay *BC*  
*per auth*

James C. McKay, Jr.  
Senior Assistant Attorney General  
Office of the Attorney General  
441 Fourth Street, NW  
Suite 630 South  
Washington, DC 20001  
(202) 724-5690



## CERTIFICATE OF SERVICE

I hereby certify that pursuant to Circuit Rule 15(a), a copy of the foregoing Petition for Review was served on July 31, 2017 by first-class mail, postage prepaid on the following:

Hon. E. Scott Pruitt, Administrator  
Office of the Administrator (1101A)  
Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Hon. Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Correspondence Control Unit  
Office of General Counsel (2311)  
United States Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

  
\_\_\_\_\_  
BRIAN LUSIGNAN

July 31, 2017

# ATTACHMENT A

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](mailto: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](http://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 6580-50-P

# ATTACHMENT B



E. SCOTT PRUITT  
ADMINISTRATOR

June 6, 2017

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

Dear Governor Cuomo:

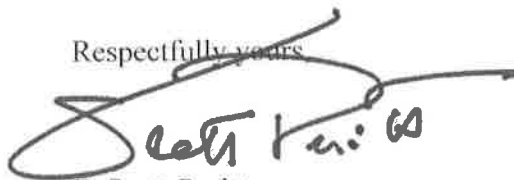
I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating 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.

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](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours

A handwritten signature in black ink, appearing to read "Scott Pruitt", written over the typed name below.

E. Scott Pruitt