

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

_____	)	
MURRAY ENERGY CORP.,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	No. 15-1385 (consolidated with Nos.
	)	15-1392, 15-1490, 15-1491, 15-1494)
U.S. ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
<i>Respondent.</i>	)	
_____	)	

**PUBLIC HEALTH AND ENVIRONMENTAL ORGANIZATIONS’  
RESPONSE TO EPA’S STATUS REPORT**

Public Health and Environmental Petitioners and Respondent-Intervenors<sup>1</sup> respectfully submit that EPA’s three-sentence Status Report, filed July 10, 2017, is inadequate and incomplete, for it lacks important information about EPA’s review of the 2015 ozone standards.

EPA’s review of the 2015 standards is not merely “continuing,” Status Report 1, but is also leading directly to EPA efforts to delay their implementation. *See* Health and Environmental Organizations’ Opp. to Mot. to Postpone Oral Argument 6. In June, the agency extended by a full year its deadline for promulgating initial area air quality designations under the 2015 standards. 82 FR

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<sup>1</sup> Public Health and Environmental Organizations are, collectively, Petitioners Sierra Club, Physicians for Social Responsibility, National Parks Conservation Association, Appalachian Mountain Club, and West Harlem Environmental Action, Inc., and Respondent-Intervenors American Lung Association, Sierra Club, Natural Resources Defense Council, and Physicians for Social Responsibility.

29,246 (June 28, 2017); *e.g.*, Letter from Scott Pruitt, Adm'r, EPA, to Doug Ducey, Gov. of Ariz., at 1 (June 6, 2017), attach.A. EPA premised this designations delay centrally on its review of the standards. *E.g.*, 82 FR 29,247/3. Under the Act, the designations EPA delayed are the essential step that triggers statutory obligations and timetables to implement measures to reduce ozone pollution that endangers public health and welfare.<sup>2</sup>

Though they do not request relief at this time,<sup>3</sup> Public Health and Environmental Organizations remain deeply concerned that they face and will continue to face harms flowing from EPA's review and this fully ripe case's being held in abeyance to allow the review to proceed. The abeyance heavily burdens their right to seek judicial relief on their claims as petitioners that, among other things, the 2015 standards are illegally and arbitrarily weak. Compounding these concerns is the lack of any binding limit on EPA's review timeline or even any EPA estimate of how long the review might last. Unbridled delay of the instant case would be unjust and severely harmful to Public Health and Environmental Organizations and their members.

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<sup>2</sup> Twelve public health and environmental organizations, including all the Public Health and Environmental Respondent-Intervenors here, recently filed a lawsuit challenging the designations delay as illegal and arbitrary, and moved for immediate relief because the delay seriously harms them. Mot. for Summary Vacatur, or, in the Alternative, for Stay Pending Judicial Review, *American Lung Ass'n v. EPA*, No. 17-1172 (D.C. Cir. July 12, 2017).

<sup>3</sup> Public Health and Environmental Organizations reserve all their rights to seek any appropriate relief in future filings in these consolidated cases.

DATED: July 20, 2017

Respectfully submitted,

/s/Seth L. Johnson

Seth L. Johnson

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*Counsel for Public Health and  
Environmental Organizations*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of July, 2017, I have served the foregoing **Public Health and Environmental Organizations' Response to EPA's Status Report** on all registered counsel through the court's electronic filing system (ECF).

/s/Seth L. Johnson  
Seth L. Johnson

# Attachment A



**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:

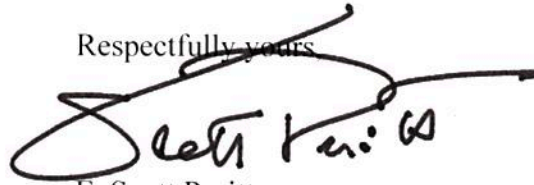
I am writing to update you on the status of the U.S. Environmental Protection Agency's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone promulgated in October 2015. Pursuant to section 107(d)(1)(B) of the Clean Air Act (CAA), I am extending the deadline for promulgating 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](mailto:lyons.troy@epa.gov) or (202) 564-4987.

Respectfully yours,

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

E. Scott Pruitt