

Message

From: Adam Piper [apiper@ruleoflawdefensefund.org]
Sent: 6/6/2017 5:27:16 PM
To: Liz Murrell [elizabethmurrill@msn.com]
CC: Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, E]
Subject: Fwd: For Legal Review: Ozone Letter & Press Release - OUT TODAY
Attachments: 2017-06-05 DRAFT Release re Ozone Letter.docx

Liz -
Attached is embargoed background (the EPA's draft press release for later today) on the Ozone rule. Tate Bennett at the EPA is CC'd on this email for any questions you or AG Landry may have.

Thanks,
Adam

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From: Bennett, Tate <bennett.tate@epa.gov>
Sent: Tuesday, June 6, 2017 1:17 PM
Subject: FW: For Legal Review: Ozone Letter & Press Release - OUT TODAY
To: Adam Piper <apiper@ruleoflawdefensefund.org>,

Hi Adam! Below is a DRAFT release you can share carefully. It's subject to change, but will give folks an idea.

From: Bowman, Liz
Sent: Tuesday, June 6, 2017 12:59 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: For Legal Review: Ozone Letter & Press Release - OUT TODAY

Attached, please find the updated draft press release and the updated letter (draft of press release with edits is below), which attempt to incorporate the legal edits you sent me into both. (copied and pasted below for reference). I did not change anything per their comments on the third paragraph [1] b/c an overstatement doesn't mean factually inaccurate, and it's Mandy's language that she discussed with Ryan. Therefore, I don't really feel like I can/should change it if it isn't factually inaccurate. I am copying Mandy on this email chain for her awareness...

Can you please either send these to the person that needs to review them or let me know who I need to send them to, in order to get both the letter and the press release signed off on by legal? Thank you! – Liz

EPA TO EXTEND DEADLINE FOR 2015 OZONE NAAQS AREA DESIGNATIONS
"We share the goal of clean air, a robust economy and stronger, healthier communities."
- Administrator Pruitt

WASHINGTON – U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt sent a letter to governors today to inform them of EPA's efforts related to the National Ambient Air Quality Standards (NAAQS) for ozone

promulgated in October 2015. EPA is extending the deadline for promulgating initial area designations, by one year, for the 2015 ozone NAAQS.

“States have made tremendous progress and significant investment cleaning up the air. We will continue to work with states to ensure they are on a path to compliance,” **said Administrator Scott Pruitt.**

The National Ambient Air Quality Standard (NAAQS) for ground-level ozone is an outdoor air regulation under the Clean Air Act. As part of the process to determine what areas of the country are able to meet the current air quality standards, states are currently submitting their proposals for area designations under the 70 parts per billion (ppb) standard, which was lowered from 75 ppb in 2015. Areas designated as being in “nonattainment” of the standard face serious consequences, including: increased regulatory burdens, stiff federal penalties, lost highway dollars, restrictions on infrastructure investment, and increased costs to businesses.

EPA is giving states more time to develop air quality plans and EPA is looking at providing greater flexibility to states as they develop their plans. And, pursuant to the language in the recently-enacted FY2017 Omnibus funding bill, Administrator Pruitt is establishing an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

Additionally, the Agency is taking time to better understand some lingering, complicated issues so that air attainment decisions can be based on the latest and greatest information. This additional time will also provide the agency time to review 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 and localities. As part of the review process, the Agency is evaluating these issues, primarily focused on:

- Fully understanding the role of background ozone levels;
- Appropriately accounting for international transport, timely consideration of exceptional events demonstrations; and,
- Assessing methods to review effects associated with implementing the new standard.

“We share the goal of clean air, a robust economy and stronger, healthier communities. We are committed to working with states and local officials to effectively implement the ozone standard in a manner that is supportive of air quality improvement efforts without interfering with local decisions or impeding economic growth,” said Administrator Pruitt.

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.

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Here are ARLO's views on the press release (and their request to review the letter):

Justin- There are a few statements in the press release that we want to flag for you, particularly the first two. Aside from that, I will note that ARLO has not seen the subject letter. Needless to say, we would strongly recommend a legal review of the letter since it is presumably the final agency action that is subject to challenge.

[1] The third paragraph says- “Areas designated as being in “nonattainment” of the standard face serious consequences, including: increased regulatory burdens, stiff federal penalties, lost highway dollars, restrictions on infrastructure investment, and increased costs to businesses.” We are not sure to what “stiff federal penalties” and “restrictions on infrastructure investment” refer. We assume “lost highway dollars” refers to the highway funding sanction, but that is not a consequence of designation itself (it would in fact be quite far in the future and only if a state fails to give us an approvable plan; there are no sanctions for not meeting the standard), and we are not aware that any area has ever actually lost funding. While this sentence may not be inaccurate per se, it seems to at least be an overstatement.

[2] The sixth paragraph (with the three bullets) suggests that we will consider “adverse effects associated with implementing the new standard” as part of the reconsideration of the NAAQS, that would be inconsistent with Whitman v. American Trucking Associations and could introduce some legal risk for any reconsideration.

[3] The first sentence of the fourth paragraph is confusing because it suggests the one-year delay is providing states flexibility, which it doesn't. If you need to include something, it would be better to say something like, "This action will give states more time to develop air quality plans and EPA is also looking at providing greater flexibility to states as they develop their plans."

[4] The fifth paragraph says the additional time will allow the agency to “complete” its review of the standard. Not sure what is intended here but it would almost certainly take more than a year to complete a rulemaking to revise the standard, if that is the decision.

From: Schwab, Justin

Sent: Tuesday, June 6, 2017 9:53 AM

To: Bowman, Liz <Bowman.Liz@epa.gov>

Cc: Fotouhi, David <fotouhi.david@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>

Subject: Re: For Legal Review: Ozone Letter & Press Release - OUT TODAY

As far as I can remember I have not been shown the letter.

Sent from my iPhone

On Jun 6, 2017, at 9:51 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Ryan and Mandy both approved this language, it's directly from the letter. Have you all read the letter?

From: Schwab, Justin

Sent: Tuesday, June 6, 2017 9:34 AM

To: Bowman, Liz <Bowman.Liz@epa.gov>

Cc: Fotouhi, David <fotouhi.david@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>

Subject: Re: For Legal Review: Ozone Letter & Press Release - OUT TODAY

Not sure the part about consequences for nonattainment is strictly correct. Will run this by the specialists in OGC

Sent from my iPhone

On Jun 6, 2017, at 9:23 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Can you all take a look at the press release below, with regard to the Ozone letters being sent today? Please let me know if you have any legal edits. We would like to get this out asap. Thank you – Liz

**EPA TO EXTEND DEADLINE FOR 2015 OZONE NAAQS
AREA DESIGNATIONS**

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healthier communities.” - Administrator Pruitt*

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EPA is granting states more time and flexibility to develop air attainment plans. And, pursuant to the language in the recently-enacted FY2017 Omnibus funding bill, Administrator Pruitt is establishing an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with the ozone standard.

Additionally, the Agency is taking time to better understand some lingering, complicated issues so that air attainment decisions can be based on the latest and greatest information. 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.

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