

# **Appendix F**

## **Notices and Public Comments and Responses**



## **Notices for Public Comments**

**DEPARTMENT OF ENERGY AND ENVIRONMENT****NOTICE OF PUBLIC HEARING AND COMMENT PERIOD****Redesignation Request & Maintenance Plan for 2008 Ozone NAAQS**

Notice is hereby given that a public hearing will be held on Wednesday, November 1, 2017, at 5:30 p.m. in Room 555 at 1200 First Street NE, 5<sup>th</sup> Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on the District of Columbia's (District) proposed redesignation request and maintenance plan for the ground-level ozone 2008 national ambient air quality standards (NAAQS). Once the District has completed its procedures, the documents will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to its State Implementation Plan (SIP) at 40 CFR Part 52 Subpart J, pursuant to the provisions of § 107 of the federal Clean Air Act (CAA).

Ground-level ozone ambient air quality has improved in the Washington DC-MD-VA nonattainment area since the area was designated as being in nonattainment of the 2008 ozone NAAQS. 81 Fed. Reg. 26697 (May 4, 2016). EPA proposed a determination of attainment on April 25, 2017, which stated that the region had monitored attainment of the 2008 ozone NAAQS for the 2013-2015 monitoring period. 82 Fed. Reg. 19011 (April 25, 2017). The District, the State of Maryland, and the Commonwealth of Virginia are requesting that EPA concurrently approve, as a SIP revision for each state, the related CAA § 175A maintenance plan. The maintenance plan ensures that good ozone air quality will be maintained through 2030. The plan also demonstrates that ozone air quality in the Washington DC-MD-VA area will remain compliant with the 2008 ozone NAAQS, as measured by a monitoring network that meets all federal requirements.

Copies of the proposed redesignation request and maintenance plan are available for public review during normal business hours at the offices of the Department of Energy and Environment (DOEE), 1200 First Street NE, 5<sup>th</sup> Floor, Washington, DC 20002, and on-line at <https://doee.dc.gov/>.

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Ms. Alexis Tinsley at the DOEE address above or at [alexis.tinsley@dc.gov](mailto:alexis.tinsley@dc.gov) by 4:00 p.m. on November 1, 2017.

Interested parties may also submit written comments to Ms. Alexandra Catena, Monitoring and Assessment Branch, Air Quality Division, DOEE, at the same address or by email at [alexandra.catena@dc.gov](mailto:alexandra.catena@dc.gov). Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at (202) 535-2989 or email [rama.tangirala@dc.gov](mailto:rama.tangirala@dc.gov), or Ms. Catena at (202) 741-0862 or [alexandra.catena@dc.gov](mailto:alexandra.catena@dc.gov). The deadline for receiving public comments is at the conclusion of public hearing.



# Maryland

## Department of the Environment

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Ben Crumbles  
Secretary

### Notice of Public Hearing on Air Quality Plan

**The Maryland Department of the Environment (MDE) gives notice of a public hearing concerning the Washington DC-MD-VA 2008 Ozone NAAQS Marginal Nonattainment Area Redesignation Request and Maintenance Plan**

**A public hearing will be held on:**

**November 8, 2017 at the Montgomery County Planning Department, 8787 Georgia Avenue, Silver Spring, Maryland 20910 – Auditorium – 11:00 a.m.**

The District of Columbia, the State of Maryland, and the Commonwealth of Virginia request that the United States Environmental Protection Agency (USEPA) redesignate the Washington DC-MD-VA 2008 ozone National Ambient Air Quality Standard (NAAQS) marginal nonattainment area to attainment for this standard pursuant to the provisions under § 107 of the federal Clean Air Act (CAA).

The public hearing will be held on **November 8, 2017 at 11:00 a.m.** at Montgomery County Planning Department located at 8787 Georgia Avenue, Auditorium, Silver Spring, Maryland, 20910.

The public hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410 (a) and 40 CFR 51.102).

After consideration of comments received, the Redesignation Request and Maintenance Plan will be finalized and submitted to the United States Environmental Protection Agency (EPA) for approval.

The proposed plan documents and appendices have been made available on the Metropolitan Washington Council of Government's website at [https://www.mwcog.org/documents/2017/09/18\\_2/washington-dc-md-va-2008-ozone-naaqs-marginal-nonattainment-area--redesignation-request-and-maintenance-plan-air-quality-air-quality-conformity-ozone/](https://www.mwcog.org/documents/2017/09/18_2/washington-dc-md-va-2008-ozone-naaqs-marginal-nonattainment-area--redesignation-request-and-maintenance-plan-air-quality-air-quality-conformity-ozone/)

Note: the public library systems in the region can be used for Internet access to view the document.

Copies of the document can be viewed at the offices of the Maryland Department of the Environment, Air and Radiation Administration, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland. For more information, contact Alexandra Brun at (410) 537-3252.

Comments may be sent to Alexandra Brun, Maryland Department of the Environment, Air and Radiation Administration, 1800 Washington Boulevard, Suite 730, Baltimore, MD, 21230; emailed to [alexandra.brun@maryland.gov](mailto:alexandra.brun@maryland.gov); or faxed to (410) 537-4223, attn: Alexandra Brun. **Comments must be received by 5:00 p.m. on November 8, 2017 or be submitted at the hearing.**

Persons in need of special accommodations should contact the Department's Office of Fair Practices at (410) 537-3964 at least five (5) business days in advance of the hearing. TTY users should contact the Department through the Maryland Relay Service at 1-(800) 735-2258.

For more information, contact Alexandra Brun at (410) 537-3252 (Toll free in Maryland call 1-(800) 633-6101 ext. 3234) or via email at [alexandra.brun@maryland.gov](mailto:alexandra.brun@maryland.gov).

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Public Notice – Air Quality Plan**

**Notice of action:** The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed plan to maintain compliance with the 2008 ozone national ambient air quality standard (NAAQS) in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

**Purpose of notice:** DEQ is seeking comments on the overall plan, and on the issue of whether the plan enables the Northern Virginia Ozone Nonattainment Area to maintain compliance with the 2008 ozone NAAQS until at least 2030.

**Public comment period:** October 16, 2017 to November 15, 2017.

**Public hearing:** A public hearing will be conducted at the DEQ Northern Regional Office in conference room 1, at 11:00 a.m. on November 6, 2017. The Northern Regional Office is located at 13901 Crown Court, Woodbridge, VA 22193. A map and directions maybe found at <http://www.deq.virginia.gov/Locations/NorthernRegionalOffice.aspx>.

**Description of proposal:** The proposal consists of the following.

1. Air quality maintenance plan in support of a concurrent request to redesignate the Northern Virginia ozone nonattainment area (Counties of Arlington, Fairfax, Loudoun, and Prince William; Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) to attainment: The purpose of the plan is to ensure that emissions of nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), and carbon monoxide (CO) do not exceed the 2014 attainment year levels through 2030, enabling the area to continue meeting the 2008 ozone NAAQS. The plan contains control measures that are currently in place and will be continued in order to maintain emissions at or below the 2014 levels. These measures include federal control programs for on-road and non-road engines as well as limitations on local power plants. The plan also contains a program of contingency measures to be implemented if the air quality monitoring stations in the area record a violation of the 2008 ozone NAAQS or if emissions in the area increase above the 2014 levels, as well as information concerning emissions estimates, growth assumptions, emission factors, and reduction assumptions.
2. Motor vehicle emissions budgets for the years 2014, 2025, and 2030: The purpose of the motor vehicle emissions budgets is to ensure that transportation emissions conform to the requirements of the proposed plan for maintaining compliance with the 2008 ozone NAAQS (transportation conformity).

The proposed ozone redesignation request and maintenance plan were prepared by the Metropolitan Washington Air Quality Committee (MWAQC), which consists of elected officials from the affected localities and representatives of state transportation and air quality planning agencies.

The maintenance plan, which contains the motor vehicle emissions budgets, will be submitted as a SIP revision in conjunction with a request to EPA from the Commonwealth to redesignate the Northern Virginia Ozone Nonattainment Area as attainment/maintenance. DEQ is accepting comments on both the redesignation request and maintenance plan, but the redesignation request will not be submitted as part of the SIP revision.

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposed maintenance plan and supporting technical documents will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

**How to comment:** DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be in writing, along with any supporting documents or exhibits. Comments on the redesignation request and maintenance plan must be submitted to Doris A. McLeod, Air Quality Planner, Air and Renewable Energy Division, Office of Data Analysis and Planning, Department of Environmental Quality, 629 E. Main St, PO Box 1105, Richmond, Virginia 23218 (phone 804-698-4197, fax 804-698-4510, email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov)). All materials received are part of the public record.

**To review the proposal:** The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans web site (<http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>). The documents may also be obtained by contacting the DEQ representative named above. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations: 1) Main Street Office, 8th Floor, 629 E. Main St, Richmond, VA, 804-698-4070 and 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, 703-583-3800.

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## **Public Comments**

**Law Office of Kathryn M. Amirpashaie, PLC**  
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Kathryn M. Amirpashaie

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November 10, 2017

**VIA E-MAIL ([doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov))**

Doris A. McLeod, Air Quality Planner  
Air and Renewable Energy Division  
Office of Data Analysis and Planning  
Virginia Department of Environmental Quality  
629 E. Main St  
P.O. Box 1105  
Richmond, Virginia 23218

**RE: Sierra Club Comments Concerning Virginia's Redesignation Request and Maintenance Plan for the 2008 Ozone National Ambient Air Quality Standard in the Northern Virginia Ozone Nonattainment Area**

Dear Ms. McLeod:

On behalf of the Sierra Club and its over 1,700 members living in the Washington DC-Maryland-Virginia 2008 ozone nonattainment area and others who are adversely impacted by the area's ozone pollution, I submit the following comments on Virginia's proposed revision to its State Implementation Plan ("SIP") that includes Virginia's request under the Clean Air Act ("CAA") that the Washington DC-MD-VA ozone nonattainment area be redesignated to attainment with respect to the 2008 ozone National Ambient Air Quality Standard ("NAAQS") as well as Virginia's plan to maintain attainment of the 2008 8-hour ozone standard in the Washington-MD-VA area. *See* Virginia's Redesignation Request for the Washington DC-MD-VA 2008 Ozone NAAQS Marginal Nonattainment Area (Sep. 18, 2017) (hereinafter "Redesignation Request"); *see also* Virginia's Maintenance Plan for the Washington DC-MD-VA 2008 Ozone NAAQS Nonattainment Area (Sep. 18, 2017) (hereinafter "Maintenance Plan"). According to the Virginia Department of Environmental Quality's ("DEQ") air quality plan public notice, DEQ is seeking comments on the overall plans, and on the issue of whether the plans

enables the Northern Virginia Ozone Nonattainment Area to maintain compliance with the 2008 ozone NAAQS until at least 2030; the public comment period ends November 15, 2017, making this submission timely.

As discussed in detail below, Virginia's request that the Washington DC-MD-VA 8-hour ozone nonattainment area be redesignated to attainment with respect to the 2008 ozone NAAQS fails to satisfy the essential requirements of CAA section 107(d)(3)(E) and fails to ensure maintenance of the NAAQS through 2030.

## **I. BACKGROUND**

### **A. National Ambient Air Quality Standards**

The Clean Air Act is, at its core, a directive to protect the public from harmful air pollution and enhance the public health and public welfare of the nation. *See* 42 U.S.C. § 7401(b)(1). To this end, the Act requires the United States Environmental Protection Agency ("EPA") to promulgate NAAQS for all criteria pollutants. 42 U.S.C. § 7409(a)(1). Criteria pollutants are those pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and are emitted by "numerous or diverse mobile or stationary sources." 42 U.S.C. §§ 7408(a)(1)(A)-(B). Primary standards are health-based standards set at a level adequate to protect the public from the harmful effects of exposure to the criteria pollutants with an adequate margin of safety. *See* 42 U.S.C. § 7409(b). Secondary standards define the air quality level required to protect the public welfare by preventing adverse impacts on other elements of the environment, such as vegetation. *See id.* Together, these standards represent a ceiling of air pollution concentrations that apply throughout the country to protect public health and welfare. Within three years after promulgation of a new or revised NAAQS, each state must submit a plan "which provides for implementation, maintenance, and enforcement of [the NAAQS] in each air quality control region (or portion thereof) within such State." 42 U.S.C. § 7410(a)(1). By law, these "infrastructure SIPs" must contain certain specifically enumerated requirements set forth under CAA section 110. *See* 42 U.S.C. § 7410(a)(2).

Following promulgation of any new or revised NAAQS, EPA must promulgate designations for all areas of every state as either nonattainment, attainment, or unclassifiable for that NAAQS. 42 U.S.C. §§ 7407(d)(1)(B), (d)(2)(A). A nonattainment area is "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the [NAAQS] for the pollutant." 42 U.S.C. § 7407(d)(1)(A)(i). An attainment area is "any area . . . that meets the [NAAQS] for the pollutant." *Id.* at § 7407(d)(1)(A)(ii). An unclassifiable area is "any area that cannot be classified on the basis of available information as meeting or not meeting the [NAAQS] for the pollutant." *Id.* at § 7407(d)(1)(A)(iii).

The CAA outlines requirements for achieving clean air in designated nonattainment areas. *See* 42 U.S.C. § 7501, *et seq.* "These requirements include timelines for when designated nonattainment areas must attain the standards, deadlines for developing SIPs that demonstrate how

the State will ensure attainment of the standards, and specific emissions control requirements.” Final Rule, National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436, 16,503 (March 27, 2008). Under the CAA, the EPA Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless specific enumerated requirements have first been met—these being that:

- (i) the Administrator determines that the area has attained the national ambient air quality standard;
- (ii) the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title;
- (iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;
- (iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title; and
- (v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter.

42 U.S.C. § 7407(d)(3)(E).

## **B. The 2008 Ozone NAAQS**

Ozone is classified as a criteria air pollutant under the CAA. Exposure to ozone in the air we breathe has the potential to cause severe health problems, including chest pain, coughing, throat irritation, and congestion. Ground level ozone reduces lung function and inflames the linings of the lungs, and repeated exposure may permanently scar lung tissue. *See* 73 Fed. Reg. at 16,440. In addition, exposure to unsafe levels of ozone further impacts the health of those who already suffer from respiratory illness, for instance, by worsening bronchitis, emphysema, and asthma. *See id.* These effects lead to increased school absences in children, absences from work by adults, increased reliance on medication, visits to doctors and emergency rooms, and hospital admissions across the District of Columbia, Maryland, Virginia, and the rest of the country. *See id.* Research also indicates that ozone exposure may increase the risk of premature death from heart or lung disease. *See id.* In addition to direct impacts to the public health, ground-level ozone also damages our environment, vegetation, and trees, and impacts forests, parks, and crops. *See id.* at 16,405.

On March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (“ppm”) to provide increased protection of public health and the environment. *See* 73 Fed. Reg. 16,436; *see also* 40 C.F.R. 50.15. The air quality design value for

the 8-hour ozone NAAQS is the three-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. *See* 40 CFR part 50.15, appendix P. In revising the ozone standard, EPA recognized it was providing increased protection for public health, especially for children, the elderly, and asthmatics. Under the CAA, following promulgation of the 2008 ozone NAAQS, states were required to submit implementation plans no later than March 12, 2011. 73 Fed. Reg. 16,503 (March 27, 2008).

EPA's area designations for the 2008 ozone NAAQS became effective on July 20, 2012. Final Rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 Fed. Reg. 30,088 (May 21, 2012). In accordance with the CAA, areas designated as nonattainment were also classified according to the severity of their air quality problems, as Marginal, Moderate, Serious, Severe, or Extreme nonattainment. *See* 42 U.S.C. § 7511(a)(1). Depending on the classification of an area, states were required to submit nonattainment area SIPs providing for attainment of the standard "within 3 years (for areas classified marginal) to 20 years (for areas classified extreme) after final designations." 73 Fed. Reg. 16,503 (March 27, 2008). In addition, as required by the CAA, any area not attaining the standard by the applicable attainment date must be reclassified to the higher of either (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the notice. 42 U.S.C. § 7511(b)(2)(A).

### **C. The Washington DC-MD-VA Nonattainment Area**

Effective July 20, 2012, EPA designated the Washington DC-MD-VA area—consisting of Virginia's Arlington, Fairfax, Loudoun, and Prince William counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities—as a marginal nonattainment area for the 2008 ozone NAAQS. 77 Fed. Reg. 30,152. In addition, the Maryland portion of this area includes: Calvert, Charles, Frederick, Montgomery, and Prince George's counties, 77 Fed. Reg. at 30127, and the Washington, DC portion of this area includes the entire District of Columbia. 77 Fed. Reg. at 30111. The area's marginal nonattainment designation was based on monitored data showing a violation of the 2008 8-hour ozone NAAQS for the 2008-2010 period. *See* 77 Fed. Reg. 30,091.

As a marginal nonattainment area, the Washington DC-MD-VA nonattainment area was required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2016. Final Rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 Fed. Reg. 26,697, 26,701 (May 4, 2016). Attainment of the ozone NAAQS is achieved when the design value at each ambient air quality monitoring site within the area is less than or equal to 0.075 ppm. *See* 73 Fed. Reg. 16,439. On April 25, 2017, EPA issued a proposed determination of attainment for the Washington DC-MD-VA area based on 2013-2015 monitor data. Proposed Rule, Determination of Attainment by the Attainment Date for the 2008 Ozone Standard; District of Columbia, Maryland, and Virginia; Washington DC-MD-VA Area, 82 Fed. Reg. 19011(Apr.

25, 2017). Virginia now seeks redesignation of the Washington DC-MD-VA nonattainment area to attainment. *See* Redesignation Request and Maintenance Plan (September 18, 2017).

## II. SUBSTANTIVE COMMENTS

For the reasons set forth below, Virginia’s Redesignation Request fails to meet the requirements of section 107(d)(3)(E) of the Clean Air Act and, therefore, should not be granted.

### A. Virginia has failed to meet all requirements applicable to the area under CAA Part D, as required by 42 U.S.C. § 7407(d)(3)(E)(v)

Under the CAA, a nonattainment area may not be redesignated attainment unless the State has met all requirements applicable to the area under CAA section 110—setting forth infrastructure SIP requirements, and Part D—Plan Requirements for Nonattainment Areas, 42 U.S.C. § 7407(d)(3)(E)(v)—e.g. for requirements that pertain to a SIP, those requirements are not “met” until EPA approves the changes into the SIP. As part of the Ozone Transport Region, § 184 of the CAA requires the Washington DC-MD-VA 2008 ozone NAAQS nonattainment area to implement Reasonably Available Control Technology (“RACT”) requirements in support of the 2008 ozone NAAQS. Virginia currently has proposed a SIP to support RACT in the Ozone Transport Region of Virginia (hereinafter “RACT SIP”), which the state intends to submit to EPA as a SIP revision to meet the requirements of § 110(a) of the Clean Air Act. *See* Public Notice – Air Quality Plan - Northern Virginia RACT, available at <http://www.deq.virginia.gov/Portals/0/DEQ/Air/PublicNotices/Drafts/nvanot.pdf>. According to the proposed RACT SIP, Virginia has determined that six facilities are subject to RACT requirements that necessitate the submittal of source-specific SIP revisions. RACT SIP at 23. Virginia says it will submit as necessary source-specific requirements addressing RACT for the 2008 ozone NAAQS for each of these facilities in subsequent SIP revisions. *Id.* However, these SIP revisions must be approved into Virginia’s plan *before* EPA may redesignate the area as an attainment area. Consequently, Virginia has not all requirements applicable to the area under CAA section 110.

### B. The Proposed Maintenance Plan Must Be Revised to Ensure Prompt Implementation of and Compliance with its Contingency Measures

The proposed Maintenance Plan’s implementation schedules for the contingency measures’ triggers are unacceptably long and fail to satisfy the prompt response timing required by CAA Section 175A. *See* 42 U.S.C. § 7505a(d). Section 175A of the CAA requires that Virginia’s proposed Maintenance Plan specify contingency measures necessary to assure that Virginia will *promptly* correct any violation of the standard which occurs after the redesignation of the area as an attainment area. *See id.* However, the contingency measures proposed in Virginia’s proposed Maintenance Plan do not provide for prompt implementation and compliance of those measures following the identified triggers—i.e. notification from EPA that a contingency measure must be implemented or a determination that an exceedance or violation occurred within

the previous year. *See* Maintenance Plan at 27. As proposed, implementation and compliance with necessary rules for ensuring attainment and maintenance of the 2008 8-hour ozone NAAQS would not become effective for up to 21 months. *See id.* This in no way constitutes a timeline consistent with “prompt” correction, in violation of the law. Thus, the plan must be revised. Virginia should commit to implementing the proposed Maintenance Plan’s contingency measures within, at most, 12 months of any given trigger.

C. **The Proposed Maintenance Plan Should Be Revised to Account for the Predicted Effects of Climate Change on the Area’s Ability to Maintain the Ozone NAAQS**

“Because ozone formation is greatest when the sunlight is most intense, the peak ozone levels typically occur during hot, dry, stagnant summertime conditions.” Maintenance Plan at 7. Well-established science indicates that higher temperatures experienced in recent years will soon become typical, particularly those occurring during the ozone season. Indeed, scientific data of climate change has projected that if greenhouse emissions are not rapidly and substantially reduced, the hottest summer of the last 20 years is expected to occur every other year, or even more frequently than that. *See, e.g.,* “Changes in Ecologically Critical Terrestrial Climate Conditions,” *Science*, 2 Aug. 2013, Vol. 341, no. 6145, 486-492. Therefore, the analyses underlying the 2008 ozone NAAQS and the assumptions upon which Virginia has based its claim that the NAAQS will be maintained in the present Washington DC-MD-VA 2008 Ozone NAAQS Nonattainment Area likely underestimate the level of ozone reductions actually required in light of increasingly warming temperatures to come. As a result, Virginia’s proposed Maintenance Plan for the Washington DC-MD-VA ozone nonattainment area is likely inadequate to maintain the standard over the next ten years, as required by law. *See* 42. U.S.C. § 7505a(a). Accordingly, given the projected increase in summer temperatures the area will experience during the ten-year maintenance period and beyond, Virginia should revise the proposed Maintenance Plan to specifically include consideration and a discussion of climate change impacts to ensure the Plan is indeed adequate.

### III. CONCLUSION

For the reasons set forth above, Virginia’s proposed Redesignation Request and Maintenance Plan fail to meet the CAA’s statutorily mandated requirements for granting a redesignation request for an area under the 2008 ozone NAAQS from nonattainment to attainment. *See* 42 U.S.C. § 7407(d)(3)(E). Therefore, Virginia should not submit the plan to EPA as a revision to the Commonwealth of Virginia SIP unless appropriate and necessary changes are first made to protect public health and comply with requirements of the Clean Air Act.

Respectfully submitted,

*/s Kathryn Amirpashaie*

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

NOV 13 2017

Mr. Michael G. Dowd, Director  
Air and Renewable Energy Division  
Department of Environmental Quality  
P.O. Box 1105  
Richmond, VA 23218

Dear Mr. Dowd:

Thank you for giving the U.S. Environmental Protection Agency (EPA) the opportunity to review and comment on Virginia's Redesignation Request and Maintenance Plan for the Washington, DC-MD-VA 2008 ozone national ambient air quality standards (NAAQS) marginal nonattainment area.

EPA's comments for the public record are provided in the enclosure to this letter. We look forward to working with you to resolve these comments. Please contact Sara Calcinore of my staff, at (215) 814-2043, if you have any questions or concerns regarding EPA's comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cristina Fernandez".

Cristina Fernandez, Director  
Air Protection Division

Enclosure





## **Enclosure: EPA's Comments on Virginia's Proposed Redesignation Request and Maintenance Plan for the Washington DC-MD-VA 2008 Ozone NAAQS Nonattainment Area**

The following are EPA's comments on the Commonwealth of Virginia's redesignation request and maintenance plan for the Washington DC-MD-VA 2008 ozone NAAQS marginal nonattainment area.

### **Redesignation Request**

#### **Figure 3-1**

- There are two figures labeled as Figure 3-1: the first figure is the map depicting the "Washington DC-MD-VA 2008 Ozone NAAQS Nonattainment Area" and the second figure is the "Design Value Trend" graph.

#### **3.2.2 Emission Reduction Requirements**

- The Healthy Air Act (HAA) was approved by EPA on September 4, 2008 (73 FR 51599). EPA recommends including a citation for the implementing regulations for the HAA as well as the Federal Register citation. The following are EPA's suggested edits:

"The Maryland Healthy Air Act (Annotated Code of Maryland Environment Title 2 Ambient Air Quality Control Subtitle 10 Healthy Air Act Sections 2-1001 – 2-1005, implementing regulations at COMAR 26.11.27) became effective on July 16, 2007 and approved by USEPA on ~~October 6~~ September 4, 2008 (73 FR 51599)..."

- The effective date of EPA's "Control of Emissions From Non-road Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)" final rule was January 7, 2003, not July 1, 2003.
- The Code of Federal Regulations (CFR) citation for the definition of "summer day emissions" is 40 CFR 51.900(v), not 40 CFR 51.901.

### **Maintenance Plan**

#### **5.1 Attainment Inventory**

- The Code of Federal Regulations (CFR) citation for the definition of "summer day emissions" is 40 CFR 51.900(v).

#### **5.4.2 Nonroad Emission Controls**

- The effective date of EPA's "Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)" final rule was January 7, 2003.

## 6.2 Air Quality Issues and Contingency Measures

- Maryland's NO<sub>x</sub> Rule Phase 1 is already effective and SIP-approved. A rule that is already in place cannot be used as a contingency measure, because the emission reductions have already been achieved. Contingency measures in a maintenance plan are meant to address potential future air quality problems and, therefore, need to be new measures that will achieve additional emissions reductions. The NO<sub>x</sub> Rule Phase 1 would be better placed in section 5.4, Control Measures for Maintenance of Good Air Quality.

## Record of Public Hearings & Summary of Public Comments and Responses

As required by 40 C.F.R. § 51.102(e), the complete record of the hearing, along with a list of commenters and the text of the written presentations or summary of the oral presentations, is located at the Air Divisions of the Virginia Department of Environmental Quality, Maryland Department of the Environment, and the District Department of Energy and Environment. The department contacts to access this information are:

- Virginia Department of Environmental Quality – Director, Air Division
- Maryland Department of the Environment – Director, Air and Radiation Management Administration
- District Department of Energy and Environment – Associate Director, Air Quality Division

The records of the public hearings are blank since no one attended the hearings.

As required by § 2.1(h) of Appendix V of 40 C.F.R. Part 51, below is a summary of the comments received and responses thereto. Included is a brief statement of the subject, the identification of the commenter, the summary of the comment and the response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. All comments have been reviewed and responses developed based on an evaluation of the issues raised in consideration of the overall goals and objectives of the air quality program and the intended purpose of the document under review.

1. **Subject:** Failure to Meet CAA 107(d)(3)(E) Requirements for Redesignation & Maintenance of the NAAQS through 2030

**Commenter:** Sierra Club

**Text:** As discussed in detail below, Virginia's request that the Washington DC-MD-VA 8-hour ozone nonattainment area be redesignated to attainment with respect to the 2008 ozone NAAQS fails to satisfy the essential requirements of CAA Section 107(d)(3)(E) and fails to ensure maintenance of the NAAQS through 2030.

**Response:** DEQ disagrees with this statement. These submittals meet all requirements of section 107(d)(3)(E). Virginia has successfully redesignated a number of areas since 1990 using these same procedures that follow federal guidance and regulation. Additionally, inventory analysis and air quality data as presented in these documents show trends that strongly indicate air quality will be maintained, and most likely improve, through 2030. No data indicates that ozone air quality will worsen in this timeframe.

2. **Subject:** Lack of Approved RACT Submittals Required for Redesignation

**Commenter:** Sierra Club

**Text:** ... Virginia says it will submit as necessary source-specific requirements addressing RACT for the 2008 ozone NAAQS for each of these facilities in subsequent SIP revisions. However, these SIP revisions must be approved into Virginia's plan before EPA may

redesignate the area as an attainment area. Consequently, Virginia has not “met” all requirements applicable to the area under CAA Section 110.

**Response:** DEQ disagrees with the assessment that an area designated marginal and located within the Ozone Transport Region (OTR), thus subject to requirements under Section 184, must complete all source-specific non-CTG RACT determinations before a redesignation request for the marginal area may be approved.

Section 107(d)(3)(E) notes that the EPA Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless “the State containing such area has met all requirements applicable to the area under section 110 and part D.”

Section 184 requirements, including non-CTG RACT, apply regardless of air quality data for areas within the OTR whenever a revised ozone NAAQS is promulgated. The Northern Virginia area is a marginal nonattainment area for the 2008 ozone NAAQS. Marginal nonattainment areas outside the OTR would not need to require non-CTG RACT determinations for major stationary sources of VOC and NO<sub>x</sub>. Areas designated attainment for the 2008 ozone NAAQS that are located within the OTR must also require non-CTG RACT determinations for major stationary sources of VOC and NO<sub>x</sub>. These requirements are codified in the CAA and are required in the 2008 ozone NAAQS implementation rule at 40 CFR Part 51 Subpart AA *Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards*, 40 CFR 51.1116, which EPA finalized March 6, 2015.

CAA Section 184 does not require non-CTG RACT in the Northern Virginia area due to the area’s nonattainment status but rather due to its inclusion in the OTR. Therefore, these non-CTG RACT requirements do not fall into Section 110 and part D requirements as listed under Section 107(d)(3)(E).

Additionally, USEPA has addressed this issue in prior redesignations of marginal areas, for example the proposed redesignation approval of the Allentown-Bethlehem-Easton 1997 8-hour ozone nonattainment area to attainment at 73 FR 1167-1168 (01/07/2008)<sup>1</sup>. USEPA has also addressed this issue in the proposed and final “Policy Change for Ozone Redesignations” at 61 FR 53175-53177 (10/10/1996)<sup>2</sup> and 62 FR 24829-24830 (5/7/1997)<sup>3</sup>, respectively. These publications support the determination that Section 184 requirements such as non-CTG RACT for major stationary sources are not included in Section 110 and part D requirements listed under Section 107(d)(3)(E) for the redesignation of marginal areas in the OTR.

Since EPA published the 2008 ozone NAAQS implementation rule in March 2015, Virginia has worked diligently to update the Virginia Regulations for the Control and Abatement of Air Pollution to implement the non-CTG RACT requirements. While not required for a redesignation request and maintenance plan, episodic air quality analyses demonstrate that non-CTG RACT application on certain sources within the Northern Virginia area will benefit

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<sup>1</sup> <https://www.gpo.gov/fdsys/pkg/FR-2008-01-07/pdf/E8-27.pdf#page=1>

<sup>2</sup> <https://www.gpo.gov/fdsys/pkg/FR-1996-10-10/pdf/96-25894.pdf#page=1>

<sup>3</sup> <https://www.gpo.gov/fdsys/pkg/FR-1997-05-07/pdf/97-11910.pdf#page=1>

air quality, and Virginia expects to be submitting these determinations within twelve months of EPA's final approval of the non-CTG RACT implementation SIP that completed public notice on November 16, 2016. These non-CTG RACT determinations should provide further assurance that air quality will not only maintain compliance with the 2008 ozone NAAQS but should continue to improve. It should also be noted that Virginia's RACT SIP submittals for the 1997 ozone NAAQS were fully approved by USEPA.

3. **Subject:** Prompt Implementation of Contingency Measures

**Commenter:** Sierra Club

**Text:** As proposed, implementation and compliance with necessary rules for ensuring attainment and maintenance of the 2008 8-hour ozone NAAQS would not become effective for up to 21 months. This in no way constitutes a timeline consistent with "prompt" correction, in violation of the law. Thus the plan must be revised. Virginia should commit to implementing the proposed Maintenance Plan's contingency measures within, at most, 12 months of any given trigger.

**Response:** DEQ disagrees with the opinion that a 21-month timeline is inconsistent with prompt correction of a situation requiring the implementation of a contingency measure. The timeline in the proposed document is consistent with EPA guidance on contingency measures (EPA memorandum, SUBJECT: Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act, Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, USEPA, May 20, 2005). In regards to contingency plans, Page 7, under Question 11, of this memorandum notes, "...The schedule for adoption and implementation should be as expeditious as practicable, but no longer than 24 months." Therefore, the proposal conforms with EPA's guidance on this topic. The commenter should also note that a shorter timeframe than that listed in the proposed plan is not practical. DEQ and other regulatory agencies cannot develop and implement a control program as well as meet all requirements within Virginia's Administrative Process Act within 12 months.

4. **Subject:** Predicted Effects of Climate Change

**Commenter:** Sierra Club

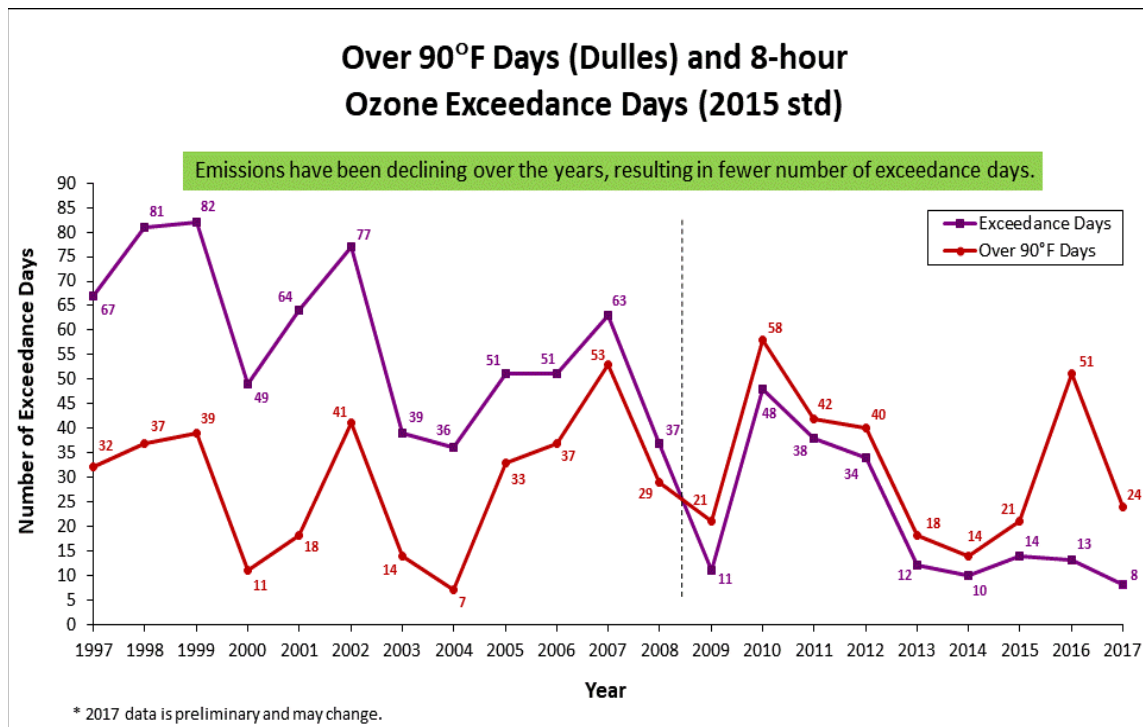
**Text:** Therefore, the analyses underlying the 2008 ozone NAAQS and the assumptions upon which Virginia has based its claims that the NAAQS will be maintained in the present area likely underestimate the level of ozone reductions actually required in light of increasingly warming temperatures to come.

...given the projected increase in summer temperatures the area will experience during the ten-year maintenance period and beyond, Virginia should revise the proposed Maintenance Plan to specifically include consideration and a discussion of climate change impacts to ensure that the plan is indeed adequate.

**Response:** Virginia takes very seriously the threat of climate change. In fact, in Executive Directive 11 the Governor directed DEQ on May 16, 2017, to take a number of actions, including the development of a regulation to address CO<sub>2</sub> emissions from electric power

facilities. Additionally, Northern Virginia jurisdictions, as part of the Metropolitan Washington Council of Governments, participates on the MWCOG’s Climate Energy and Environment Policy Committee (CEEPC), which developed the Regional Climate and Energy Action Plan (published March 23, 2017). Similarly, the District of Columbia and Maryland also participate on CEEPC and adopted plans to address climate change. Maryland passed a law (Greenhouse Gas Emissions Reduction Act of 2009), which seeks to reduce greenhouse gas emissions 25 percent from a 2006 baseline by 2020. The District of Columbia adopted a plan (Sustainable DC Plan), which seeks to reduce greenhouse gas emissions by 50% by 2032 and 80% by 2050.

However, the maintenance plan for the 2008 ozone NAAQS does not require discussions of the climate change work being carried out to be considered adequate. Current ozone air quality is compliant with the 2008 ozone NAAQS and has improved steadily over the last 20 years. While ozone creation is affected by meteorological factors such as temperature, precursor (VOC and NO<sub>x</sub>) emission reductions have improved air quality significantly. The following chart originates from the Metropolitan Washington Air Quality Committee. The chart provides the number of exceedance days based on the 2015 ozone NAAQS in the Metropolitan Washington area as well as the number of days over 90°F, based on measurements at Dulles International Airport.



Temperature is not the only meteorological measurement that impacts ozone formation. Rainfall, wind speed, wind direction, and other data also impact ozone creation. What can be gleaned from the above chart is that the ozone air quality in the Metropolitan Washington area is steadily improving. This information, coupled with the information provided in the proposed documents that show the area’s air quality is well beneath the 75 ppb standard and that additional, significant VOC and NO<sub>x</sub> emission reductions are expected in the future,



provide ample assurance that the area's air quality will maintain compliance with the 2008 ozone NAAQS through 2030.

5. **Subject:** Typographical error related to Figure 3-1 in Redesignation Request

**Commenter:** USEPA

**Text:** There are two figures labeled as Figure 3-1: the first figure is the map depicting the “Washington DC-MD-VA 2008 Ozone NAAQS Nonattainment Area” and the second figure is the “Design Value Trend” graph.

**Response:** The label for the second figure will be renamed to Figure 3-2.

6. **Subject:** Corrections and citations for HAA approval date in Redesignation Request

**Commenter:** USEPA

**Individual Comments:**

- a. **Text:** 3.2.2 – Emission Reduction Requirements

The Healthy Air Act (HAA) was approved by EPA on September 4, 2008 (73 FR 51599). EPA recommends including a citation for the implementing regulations for the HAA as well as the Federal Register citation. The following are EPA's suggested edits:

“The Maryland Healthy Air Act (Annotated Code of Maryland Environment Title 2 Ambient Air Quality Control Subtitle 10 Healthy Air Act Sections 2-1001 – 2-1005, *implementing regulations at COMAR 26. 11.27*) became effective on July 16, 2007, and approved by USEPA on ~~October 6~~ September 4, 2008 (73 FR 51599).”

**Response:** The above suggestions for corrections in the HAA approval date and adding citations for implementing regulations as well as the Federal Register citation (*shown above in italics*) will be incorporated.

- b. **Text:** The effective date of EPA's “Control of Emissions From Non-road Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)” final rule was January 7, 2003, not July 1, 2003.

**Response:** The above suggestion for correction in the Federal Register citation will be incorporated.

- c. **Text:** The Code of Federal Regulations (CFR) citation for the definition of “summer day emissions” is 40 CFR 51.900(v), not 40 CFR 51.901.

**Response:** The above suggestion for correction in the Federal Register citation will be incorporated.

7. **Subject:** Citations in Maintenance Plan

**Commenter:** USEPA

**Text:** 5.1 – Attainment Inventory

The Code of Federal Regulations (CFR) citation for the definition of “summer day emissions” is 40 CFR 5 I .900(v).

**Response:** The above suggestion for correction in the Federal Register citation will be incorporated.

8. **Subject:** Effective date for implementation of EPA's “Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)” in Maintenance Plan

**Commenter:** USEPA

**Text:** 5.4.2 – Nonroad Emission Controls

The effective date of EPA's “Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)” final rule was January 7, 2003.

**Response:** The above suggestion for correction in the effective date for the above rule will be incorporated.

9. **Subject:** Contingency Measures in Maintenance Plan

**Commenter:** USEPA

**Text:** 6.2 – Air Quality Issues and Contingency Measures

Maryland's NO<sub>x</sub> Rule Phase 1 is already effective and SIP-approved. A rule that is already in place cannot be used as a contingency measure, because the emission reductions have already been achieved. Contingency measures in a maintenance plan are meant to address potential future air quality problems and, therefore, need to be new measures that will achieve additional emissions reductions. The NO<sub>x</sub> Rule Phase 1 would be better placed in section 5.4, Control Measures for Maintenance of Good Air Quality.

**Response:** The States disagree with this statement. Emission reductions that are mandated by rule but achieved after a poor air quality episode are appropriate for contingency measures addressing exceedances or violations of a standard. However, the comment does bring into question the clarity of the proposed maintenance plan's contingency measure section. The States in no way meant to imply that reductions achieved prior to an exceedance or violation of the 2008 ozone NAAQS would be appropriate for use as a contingency measure and agree that such an approach would be counterproductive to the intent of contingency measures. Therefore, the States have reworded this section of the proposed maintenance plan to clarify that Maryland's NO<sub>x</sub> Rule Phase 1 and other mandated measures would apply as contingency measures for exceedances and violations experienced prior to the achievement of the emission reductions (contingency measures for near term air quality exceedances). Additionally, an explanatory sentence was included to note that the Maryland NO<sub>x</sub> Rule Phase 1 reduces emissions from certain coal-fired power plants, including units located within the Washington DC-MD-VA area, through June 2020. For exceedances of the 2008 ozone NAAQS experienced after the achievement of the mandated emission reductions, the

States have clarified that additional control programs that are currently not mandated would be implemented (contingency measures for long term air quality exceedances).