



Emily Schilling

Partner
801.799.5753
Salt Lake City
ecschilling@hollandhart.com

Proposed Utah Designation Recommendations for NAAQS

Insight — 01/11/2018

On January 5, 2018 EPA published a proposed response to state designation recommendations for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) bringing final designation determinations one step closer. EPA's proposal for each state is set forth in a letter to that state dated December 20, 2017. In 2015, EPA lowered the primary 8-hour ozone standard from 0.075 parts per million (ppm) to 0.070 parts per million, which resulted in many more areas of the United States failing to attain the NAAQS.

In the letter to Utah and accompanying Technical Support Document, EPA indicates its general agreement with the recommendations made by Governor Herbert in his letter to EPA of September 29, 2016. EPA's proposed recommendation for Utah is to designate all of Salt Lake and Davis Counties and portions of Utah, Weber, Tooele, Uintah, and Duchesne Counties as Nonattainment for the 2015 Ozone NAAQS. EPA proposes to designate the remainder of the State as Attainment/Unclassifiable, meaning either that monitoring data demonstrates attainment or that there is no data to use as a basis for designation. EPA's proposed response expands the area proposed for nonattainment in Uintah and Duchesne Counties.

Ozone is primarily a summertime pollutant along the Wasatch Front, resulting from the interaction of nitrogen oxides and volatile organic compounds emitted by vehicles, manufacturers, and other sources of combustion and evaporative emissions with intense sunlight during periods of stagnant air. Ozone in the Uinta Basin, however, is primarily the result of winter inversions in which volatile organic compounds emitted by oil and gas producing facilities and other energy operations react to sunlight.

Utah had recommended that the Uinta Basin Nonattainment Area include those townships in Uintah and Duchesne Counties under State regulatory jurisdiction in which 10 percent or more are at or below 6,000 feet in elevation. A substantial part of Uintah and Duchesne Counties is Indian Country under direct EPA regulatory jurisdiction for purposes of the Clean Air Act. The Ute Tribe had recommended that all Indian country land in the Uinta Basin be designated as attainment subject to EPA's concurrence with an exceptional events submittal to EPA.

EPA's recommendation for the Uinta Basin differs from that of the Tribe and the State. EPA intends to designate as nonattainment all townships in Uintah and Duchesne Counties at least ten percent of which are at an elevation of 6,250 feet or lower. The change in elevation results from violations recorded by the Whiterocks regulatory monitor, which is at an

elevation of 6,216 feet.

The nonattainment designations will initially be Marginal Ozone Nonattainment Areas based on the average ozone exceedances for the three-year periods from 2014 to 2016. The Utah Division of Air Quality is confident that the next three-year average (2015-2017) will not change the Marginal status for the Wasatch Front. However, there is a significant possibility that the 2015-2017 average for the Uinta Basin may bump the ozone nonattainment classification of the area to Moderate.

The State is not required to prepare a State Implementation Plan (SIP) for a Marginal Ozone Nonattainment Area; however, new major sources and major modifications of existing sources will be required to offset increases in volatile organic compounds with one-to-one reductions in order to obtain a permit to construct. A Moderate Ozone Area designation triggers a requirement for the State to prepare a SIP for approval by EPA, setting forth the steps the State will take to achieve attainment of the Ozone NAAQS in the nonattainment area. In areas under exclusive EPA jurisdiction, such as Indian Country, EPA is required to prepare a Federal Implementation Plan (FIP) containing the same type of provisions.

The SIP/FIP must include requirements for Reasonably Available Control Technology (RACT) for existing major sources of ozone precursors and Reasonably Available Control Measures (RACM) for existing area sources of ozone precursors. In addition, new major sources of ozone precursors or major modifications of existing sources of ozone precursors would be required to implement Lowest Available Emission Rate technology to control ozone precursors and to offset each ton of volatile organic compounds with 1.15 tons of reductions. A SIP for the Wasatch Front Areas, if triggered by a reclassification to Moderate, would also include measures to reduce nitrogen oxide emissions from transportation sources, although only EPA can set standards and limits for emissions from individual vehicles. A Uinta Basin SIP/FIP would be focused primarily on control of ozone precursors from energy production, processings, and transportation facilities.

The comment period on EPA's proposed response will run until February 5, 2018. In the notice, EPA indicates its intent to make final designation determinations no earlier than 120 days from the date EPA notified states and tribes of its intended designations, which in the case of Utah, would be 120 days from December 20, 2016 or April 19, 2018. States and tribes may provide additional information to EPA for consideration during the 120-day period before final designation determinations.

As with the PM_{2.5} SIP process, the development of control measures for the ozone nonattainment areas in Utah will be complex and time-consuming. Sources and other stakeholders should begin now to consider how to engage with the State as this process continues to unfold.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.