



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Office of the Regional Administrator

May 25, 2021

The Honorable Greg Abbott
Governor of State of Texas
P.O. Box 12428
Austin, Texas 78711

Dear Governor Abbott:

This letter is to notify you of an ozone designation action the U.S. Environmental Protection Agency (EPA) is taking regarding El Paso County, Texas in response to a July 10, 2020 decision by the District of Columbia Circuit Court of Appeals (*Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020)).

On October 1, 2015, the EPA revised both the primary and secondary ozone National Ambient Air Quality Standards (NAAQS) to provide increased protection of public health and the environment. Whenever the EPA establishes a new NAAQS, the Clean Air Act (CAA) requires the EPA to designate all areas of the country as to whether they are meeting or not meeting the NAAQS. The EPA designated areas for the 2015 ozone NAAQS in 3 rounds, resulting in 52 Nonattainment areas.

In accordance with our authority under the CAA, the EPA will designate an area as Nonattainment if there are certified, quality-assured air quality monitoring data showing a violation of the 2015 ozone standards or if the EPA makes a determination that the area is contributing to a violation of the standards in a nearby area. Areas designated Attainment/Unclassifiable are not measuring or contributing to a violation of the standards.

As a first step in implementing the 2015 ozone standards, the EPA asked states to submit their designation recommendations, including appropriate area boundaries. After considering Texas's recommendations, the EPA originally agreed with the recommendation to designate El Paso County as Attainment/Unclassifiable in our designations promulgated on April 30, 2018.

Multiple petitioners (i.e., several environmental and public health advocacy groups, three local government agencies, and the state of Illinois) filed six lawsuits challenging certain ozone designations that were promulgated on April 30, 2018. In a July 10, 2020 decision, the D.C. Circuit remanded to the EPA, but did not vacate, the designations for 16 of the challenged counties, including El Paso County, Texas.

In response to the Court's remand, the EPA has re-evaluated the designation for El Paso County by applying its uniform, nationwide analytical method and interpretation of CAA section 107(d)(1) in considering the specific facts and circumstances for the area using only data available at the time of the original designation. This includes Texas's September 30, 2016, and August 23, 2017, ozone designation recommendations, which were based on 2014-2016 air quality data. Upon re-evaluation of the record, the EPA intends to designate El Paso County Nonattainment as part of the Doña Ana, NM

ozone Nonattainment area. Because the EPA intends to modify the designation recommendation for El Paso County, CAA Section 107(d)(3)(b) requires the EPA to conduct a 120-day notification process which provides Texas the opportunity to demonstrate why any proposed modification is inappropriate. The Technical Support Document for the intended El Paso designation provides a detailed analysis to support our intended designation decision, is posted on the EPA's Ozone Designations web site at <https://www.epa.gov/ozone-designations>.

In order to remain consistent with the designations across the rest of the country in responding to the court's remand, EPA is limiting its review to information that was a part of the existing record for the original final area designations promulgated on April 30, 2018. (For example, EPA is not considering more recent design values). If Texas would like us to reconsider any information from that existing record, please re-submit that information to us by July 26, 2021. Please submit such information by sending it to EPA's public docket for the designation at: EPA-HQ-OAR-2017-0548, located at www.regulations.gov, and by sending a copy to EPA Region 6, pursuant to the instructions detailed in the forthcoming *Federal Register* action. The EPA will also make its intended designation decision and supporting documentation for El Paso County available to the general public for review and comment. We will be announcing a 30-day public comment period shortly in the *Federal Register*. If EPA receives information from Texas, it will review such information and will also respond to any significant comments received during the public comment period. After that process is complete, EPA plans to issue the final ozone designations in early Fall 2021.

The EPA is committed to working with the states and tribes to reduce ozone air pollution. We look forward to a continued dialogue with you and your staff as we work together to implement the 2015 ozone standards. Should you have any questions regarding this matter, please do not hesitate to contact me at 214-665-8120 or have a member of your staff contact Carrie Paige at 214-665-6521 or paige.carrie@epa.gov.

Sincerely,



David W. Gray
Acting Regional Administrator

cc: Jon Niermann, Chairman
Texas Commission on Environmental Quality

Toby Baker, Executive Director
Texas Commission on Environmental Quality

Tonya Baer, Director, Office of Air
Texas Commission on Environmental Quality