ORAL ARGUMENT HELD SEPTEMBER 14, 2017
DECISION ISSUED FEBRUARY 16, 2018

Case No. 15-1123
(consolidated with 15-1115)

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

SIERRA CLUB, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

UNOPPOSED MOTION FOR LEAVE TO FILE AN AMICUS BRIEF BY THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS AND THE ASSOCIATION OF METROPOLITAN PLANNING ORGANIZATIONS IN SUPPORT OF RESPONDENT ENVIRONMENTAL PROTECTION AGENCY'S PETITION FOR REHEARING

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1)(A), the undersigned counsel certifies as follows:

A. Parties, Intervenors and Amici (Case No. 15-1123))

Petitioners: Sierra Club; Conservation Law Foundation; Downwinders at Risk; Physicians for Social Responsibility - Los Angeles.

Respondents: U.S. Environmental Protection Agency ("EPA"); E. Scott Pruitt, Administrator.

Intervenors: None.

Amici: Ventura County Air Quality Management District; South Coast Air Quality Management District,

B. Rulings under Review

The Petitions in these consolidated cases sought review of a final rule issued by EPA on March 6, 2015 entitled "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements." 80 Fed. Reg. 12,264 (Mar. 6, 2015). The ruling under review in the petition for rehearing filed by EPA is this Court's Decision dated February 16, 2018 (Dkt. 1718293).

C. Related Cases

Case No. 15-1115 was consolidated with Case No. 15-1123, but briefed and argued separately. Case No. 15-1465 was severed and is being held in abeyance pending further order of the Court. There are no other related cases pending in this or other courts.

Dated: April 30, 2018

s/ Albert M. Ferlo
Albert M. Ferlo

DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Amici, the American Association of State Highway and Transportation Officials ("AASHTO") and the Association of Metropolitan Planning Organizations ("AMPO") submit this disclosure statement. AASHTO is an association representing the State Departments of Transportation ("State DOTs") nationwide. AASHTO's members are state governmental entities, and it has no parent company and no publicly-held company has a 10% or greater interest in it. AMPO is an association representing Metropolitan Planning Organizations ("MPOs") nationwide. AMPO's members are state and local governmental entities, and it has no parent company and no publicly-held company has a 10% or greater interest in it.

Dated: April 30, 2018

s/ Albert M. Ferlo
Albert M. Ferlo

INTRODUCTION

The American Association of State and Highway Transportation Officials ("AASHTO") and the Association of Metropolitan Planning Organizations ("AMPO"), pursuant to Federal Rule of Appellate Procedure 29(b), hereby respectfully request permission to submit a brief as *amici curiae* in support of the Petition for Rehearing filed by the Environmental Protection Agency ("EPA") of this Court's decision in *Sierra Club, et al. v. United States Environmental Protection Agency, et al.*, D.C. Cir. No. 15-1123, consolidated with No. 15-1115, and decided by the panel on February 16, 2018.[1] Counsel for EPA does not oppose this motion. A copy of the proposed brief is attached to this motion. Counsel for Sierra Club, et al., takes no position on this motion.

Prospective *amici* believe that the Panel will benefit from the contributions of the organizations and their members. The members of the AASHTO and AMPO will be directly impacted by the Panel's decision. The State departments of transportation that comprise the membership of AASHTO and the metropolitan planning organizations that comprise the membership of AMPO are directly responsible for implementing the transportation conformity provisions of the Clean

[1] Because EPA's petition for rehearing does not request rehearing en banc, Circuit Rule 35(f) does not appear to apply to this motion. However, to the extent that Circuit Rule 35(f) does apply to this motion, we respectfully request the Court to treat this motion as a motion for an invitation to file an amicus brief in support of EPA's petition for rehearing.

Air Act at issue in this proceeding. AASHTO and AMPO are best able to address impact of the Panel's decision on the planning and implementation of transportation projects throughout the United States.

I. INTEREST OF *AMICI CURIAE*

Both AASHTO and AMPO are responsible for preparing transportation conformity determinations that are now mandated as a result of the Panel's decision. The state and local governmental entities comprising the membership of AASHTO and AMPO will be required to prepare conformity determinations for transportation projects based on the now revoked 1997 standard, even for those areas that EPA has determined to meet the more stringent 2008 standard.

EPA has determined that there are 82 areas throughout the Country that met both the 1997 standard and the more stringent 2008 standard. In many of these 82 areas, efforts to determine conformity with the 1997 standard were discontinued when that standard was revoked, and the staffing and infrastructure needed to make those determinations were dedicated to other tasks. Those areas will need time to rebuild the staff and expertise to conduct conformity determinations for the 1997 standard, causing a delay in approval of needed transportation projects and approval amendments and updates to transportation plans, Transportation Improvement Programs ("TIPs"), and Statewide Transportation Improvement Programs ("STIPs") required under federal law. 23 U.S.C. §§ 134-135. The

delays in approving amendments and updates to transportation plans, TIPs, and STIPs will likely delay approval of needed transportation infrastructure projects in areas that already meet the more stringent 2008 standard. Thus, determining that those projects also meet the less stringent 1997 standard will require additional paperwork and delay projects without making the air cleaner in those areas.

The following organizations hereby seek leave to file the accompanying amicus brief:

AASHTO. The American Association of State Highway Transportation Officials, generally known as AASHTO, is a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It represents all five transportation modes: air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system. AASHTO works to educate the public and key decision makers about the critical role that transportation plays in securing a good quality of life and sound economy for our nation. AASHTO serves as a liaison between state departments of transportation and the Federal government. AASHTO is an international leader in setting technical standards for all phases of highway system development. Standards are issued for design, construction of highways and bridges, materials, and many other technical areas.

AMPO. The Association of Metropolitan Planning Organizations is a nonprofit, membership organization established in 1994 to serve the needs and interests of metropolitan planning organizations ("MPOs") nationwide. Federal highway and transit statutes require, as a condition for spending federal highway or transit funds in urbanized areas, the designation of MPOs, which have responsibility for planning, programming and coordination of federal highway and transit investments. AMPO offers its member MPOs technical assistance and training, conferences and workshops, frequent print and electronic communications, research, a forum for transportation policy development and coalition building, and a variety of other services.

II. USEFULNESS OF BRIEFING BY *AMICI* IN THIS CASE.

Amici seek to bring to the Court's attention the practical and legal implications of the panel's decision that were not fully addressed in EPA's Petition. First, *amici* address the panel's decision to ignore the plain language of Section 42 U.S.C. § 7502(e) that limits the need for anti-backsliding requirements only when a standard is relaxed. Second, *Amici's* brief points out the disruptive consequences to State DOTs and MPOs resulting from vacating portions of the 2008 Rule.

Amici believe that the proposed brief will be useful to the Court because the members of the *amici* organizations work daily to determine whether specific

transportation projects sponsored by the States and regional transportation plans adopted by municipal planning organizations around the United States meet the transportation conformity requirements imposed by the Clean Air Act. This daily experience in ensuring that projects and transportation plans meet these requirements give *amici* unique insight into the costs and effort involved in making these determinations and the regulatory uncertainty created by the decision further complicating those requirements. The proposed brief provides examples of how requiring determination of conformity with both the 1997 Rule and the 2008 Rule results in a waste of public resources without any benefit to air quality.

Amici's proposed brief is less than the 2,600-word limit established in Fed. R. App. Pro. 29(b)(4).

CONCLUSION

For the foregoing reasons the above-named organizations respectfully request the Court to grant this motion allowing submission of an amicus brief supporting EPA's petition for panel rehearing.

DATED: April 30, 2018

Respectfully Submitted

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Attorneys for Association of Metropolitan Planning Organizations

CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that pursuant to Rule 27(D)(1)(E) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 27(D)(1)(E) and (2), the foregoing Motion is proportionately spaced, has a typeface of 14 points, and contains 1,026 words, exclusive of those parts exempted by Rule 32(f). I have relied on Microsoft Word's calculation feature.

Dated April 30, 2018

s/ Albert M. Ferlo
Albert M. Ferlo

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, a copy of the foregoing documents was served via the CM/ECF system on all counsel of record.

Dated: April 30, 2018

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Proposed Amicus Brief By American Association of State Highway and Transportation Officials ("AASHTO") and the Association of Metropolitan Planning Organizations ("AMPO")

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Date: April 30, 2018

/s/ Albert M. Ferlo
Albert M. Ferlo

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Amici, the American Association of State Highway and Transportation Officials ("AASHTO") and the Association of Metropolitan Planning Organizations ("AMPO") submit the following statement. No party or party's counsel in this proceeding authored the proposed amicus brief, contributed money intended to fund preparation or submission of this proposed amicus brief and no person other than members of the proposed amici organizations contributed money that was intended to fund preparation or submission on this amicus brief. Fed. R. App. P. 29(a)(4)(e).

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GLOSSARY

AASHTO	American Association of State Highway and Transportation Officials
AMPO	Association of Metropolitan Planning Organizations
EPA	Environmental Protection Agency
MPO	Metropolitan Planning Organization
NAAQS	National Ambient Air Quality Standard
Plan	Metropolitan Transportation Plan
State DOTs	State Departments of Transportation
STIP	Statewide Transportation Improvement Program
TIP	Transportation Improvement Programs

INTEREST OF *AMICI CURIAE*

The American Association of State Highway and Transportation Officials ("AASHTO") is an association representing the State Departments of Transportation ("State DOTs") nationwide. The Association of Metropolitan Planning Organizations ("AMPO") is an association representing Metropolitan Planning Organizations ("MPOs") nationwide. AASHTO and AMPO's members, and the residents of their respective States and metropolitan areas, will be adversely affected by the re-imposition of transportation conformity requirements for the revoked 1997 national ambient air quality standard ("NAAQS") for ozone.

INTRODUCTION

This Court's February 16, 2018 decision ("Decision") will require State DOTs and MPOs in 82 metropolitan areas to delay approvals of transportation plans and projects until they demonstrate conformity to the revoked 1997 NAAQS for ozone – even though they have met the stricter 2008 standard for the same pollutant. This outcome will not yield any environmental benefits, but will create delays and increase costs for many transportation projects nationwide, beginning immediately. It also will have the paradoxical effect of inflicting additional burdens on the very regions that have made the most progress in achieving federal air quality standards.

More broadly, the Petition raises a fundamental legal question as to whether "anti-backsliding requirements" are required whenever a NAAQS is modified. Congress was explicit in imposing anti-backsliding requirements when a NAAQS is relaxed. The Decision appears to hold that anti-backsliding requirements apply whenever a NAAQS is *strengthened*. Such a broadening of the statutory requirement has significant implications for all future cases involving changes to the NAAQS, including the transition to the even more stringent *2015* ozone NAAQS.

AASHTO and AMPO urge the Court to modify the Decision or request supplemental briefing as requested by the Environmental Protection Agency ("EPA") in the Petition for Rehearing filed on April 23, 2018 ("Petition").

ARGUMENT

The Court erred in two ways in interpreting the Clean Air Act: (1) by interpreting section 172(e) of Act to require anti-backsliding measures when a NAAQS is strengthened, and (2) by holding that, under section 176(c) of the Act, maintenance areas remain subject to transportation conformity requirements even after the applicable NAAQS has been fully revoked. The court should grant rehearing on these issues to correct these errors, or at a minimum request supplemental briefing. In addition, the Court should grant rehearing to consider remanding EPA's rule without vacatur as to those 82 areas that have already

attained the 2008 ozone standard, so that planning and project development can continue without needless documentation and delay.

A. The Court Erred in Finding that "Anti-Backsliding Requirements" Compel EPA to Retain Transportation Conformity Requirements for a Revoked Air Quality Standard.

The anti-backsliding requirements in section 172(e) of the Clean Air Act apply when a NAAQS is "relaxed." 42 U.S.C. § 7502(e). Here, EPA did not "relax" the ozone NAAQS, but instead adopted a stricter standard. Thus, the express statutory anti-backsliding requirements in the statute did not apply. Exercising its discretion, EPA chose to include certain anti-backsliding measures in its 2015 rule, explaining that it did so for consistency with "the principles" in section 172(e). 80 Fed. Reg. 12,264 at 12,306 (Mar. 6, 2015).[1]

In its Decision, the Court acknowledged that section 172(e) applies "if the EPA relaxes a NAAQS." Decision at 7. But in describing the requirements applicable here, the Court appears to have held that this requirement applies *whenever* a NAAQS is changed, stating that "EPA may revoke a previous NAAQS in full 'so long as adequate anti-backsliding provisions are introduced.'" Decision at 12 (quoting *South Coast Air Quality Management Dist. v. E.P.A.*, 472 F.3d 882, 899 (D.C. Cir. 2006)). Further, the Court cites section 172(e) as setting the

[1] In other rulemakings, EPA also has invoked "the principles" of section 172(e) as the basis for imposing anti-backsliding measures. *See, e.g.*, 82 Fed. Reg. 21276 at 81,288 (Nov. 17, 2016) (proposed rule for implementing 2015 ozone standard)

standard for what constitutes adequate anti-backsliding requirements, implying that the same requirements apply any time a NAAQS is modified. *Id*. The Court's interpretation of section 172(e) was erroneous.

First, if the statutory language is clear, there is no need to go beyond the language of the statute itself. *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *Chevron U.S.A., Inc. v. Nat'l Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (courts must "give effect to the unambiguously expressed intent of Congress"). Here, the language is clear: anti-backsliding requirements apply when EPA "relaxes" a NAAQS. If Congress had meant to impose a broader requirement, it could have done so by stating that anti-backsliding measures are required when EPA "modifies" a NAAQS. When Congress enacts narrow language, the Court's role is to enforce that language as enacted, not replace it with broader language. As the Supreme Court recently recognized in a case involving challenges to Clean Water Act permits:

> The Government invites us to broaden that narrow language to cover any agency action that dictates whether a permit is issued or denied. Congress easily could have drafted [the text] in that broad manner. ... But Congress chose not to do so. The Court declines the Government's invitation to override Congress' considered choice by rewriting the words of the statute.

Nat'l Ass'n of Mfrs. v. Dep't of Defense, 138 S. Ct. 617, 632 (2018). In short, the Court erred because it read into the statute a broad requirement that Congress never enacted.

Even assuming that section 172(e) is ambiguous, the Court must grant deference to EPA's interpretation of the statute. *Chevron*, 467 U.S. at 866. Here, EPA stopped short of interpreting section 172(e) to *require* anti-backsliding measures when a NAAQS is strengthened, and instead cited the "principles of" section 172(e) as the basis for its action. In effect, EPA interpreted the statute to leave the agency with discretion as to whether, and to what extent, anti-backsliding requirements are imposed when a NAAQS is strengthened. 80 Fed. Reg. 12,264 at 12,306 (Mar. 6, 2015). Under *Chevron*, the Court should have deferred to EPA's interpretation.[2] At a minimum, further clarity is needed on: (1) whether the anti-backsliding requirements in section 172(e) apply whenever a NAAQS is strengthened and (2), if so the degree to which EPA may tailor such requirements when strengthening a NAAQS.

[2] The Court's prior decisions assume, but do not squarely hold, that anti-backsliding requirements apply when a NAAQS is strengthened. *See South Coast*, 472 F.3d at 900 ("EPA interpreted it to apply here, ..."); *Nat'l Res. Def. Council, Inc. v. E.P.A.*, 777 F.3d 456, 462 (D.C. Cir. 2014) ("Interpreting the statute's anti-backsliding provision to apply to the 1997 NAAQS, ... the rule mandated ..."); *but see Nat'l Res. Def. Council, Inc. v. E.P.A.*, 779 F.3d 1119, 1123 (9th Cir. 2015) (describing *South Coast* as holding that "§ 172(e) applied when standards were strengthened as well as when they were relaxed.").

B. The Court Erred in Finding that Conformity Determinations Are Required in Areas Formerly Designated as "Maintenance Areas" for a Revoked Air Quality Standard.

The transportation conformity determinations in section 176(c) of the Clean Air Act apply in non-attainment areas and maintenance areas, which the statute defines as any "area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan." 42 U.S.C. § 7506(c)(5). The issue in this case is whether an area's "maintenance" status for a NAAQS – and the corresponding transportation conformity requirements – lives on after that NAAQS is revoked.

In its Decision, the Court held that "[a]lthough the Final Rule revoked the 1997 NAAQS, it cannot revoke the statutory status" of then-existing maintenance areas for that NAAQS. Decision at 27-28. The Court reasoned that such areas remain in maintenance status for the revoked 1997 NAAQS because a maintenance area is defined in section 176(c) as any area "that *was* designated as a nonattainment area but that *was* later redesignated . . . as an attainment area.'" *Id.* (emphasis in original). The Court held that even when EPA fully revokes a NAAQS, EPA is powerless to revoke the maintenance designations for that NAAQS.

The Court's holding conflicts with the Court's decision in *Nat. Res. Def. Council, Inc. v. E.P.A.*, 777 F.3d 456 (D.C. Cir. 2014) ("*NRDC v. EPA (2014)*"),

where the Court considered a previous rule in which EPA had revoked the 1997 ozone NAAQS solely for purposes of transportation conformity. The Court held then that, while EPA had the power to revoke a NAAQS in full, EPA could not revoke a NAAQS in part. The Court noted that when a NAAQS is fully revoked, "there remained no nonattainment areas or maintenance areas for purposes of the previous, fully revoked standard." *See NRDC v. EPA (2014)*, 777 F.3d at 471-72 (citing *South Coast*, 472 F.3d at 898). That is precisely the situation here: EPA fully revoked the 1997 NAAQS, and in doing so, abolished the nonattainment and maintenance area designations for that standard, and with them, transportation conformity requirements for that NAAQS. It would contradict that prior decision for the Court to hold that maintenance designations remain in effect for the 1997 NAAQS even after that standard has been fully revoked.

By reading the statute's definition of a maintenance area to include any area that "was" designated as non-attainment in the past, the Court has blocked EPA from exercising the power that the Court acknowledged in *NRDC v. EPA (2014)*: the power to revoke a NAAQS in full.

C. The Court Should Remand Without Vacatur to Avoid Re-Imposing Transportation Conformity Requirements in Areas that Have Attained the 2008 Standard.

The issue of remedy is a matter of critical importance to States and MPOs. As EPA shows in its Petition and the attached Declarations of William L. Wehrum

("Wehrum Declaration") and Walter E. Waidelich ("Waidelich Declaration"), the Decision would adversely affect the planning and development of transportation projects nationwide, including 82 areas that have attained the 2008 ozone standard. Petition at 19-20. These "disruptive consequences" are directly relevant to this Court's decision on vacatur under the *Allied-Signal* test. *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993).

First, the Decision creates uncertainty about the validity of existing metropolitan transportation plans ("Plans"), transportation improvement programs ("TIPs"), and statewide transportation improvement programs ("STIPs") adopted since March 2015, when EPA revoked the 1997 ozone standard. In reliance on EPA's rule, States and MPOs adopted Plans, TIPs, and STIPs over the past three years without making conformity determinations for the 1997 standard. The Decision implies that these plans could be deemed invalid because they were adopted without the conformity determinations that the Court has now held to be required. If that were to occur, the environmental approvals for projects in those areas could also be called into question because those approvals relied on the existence of a valid Plan, TIP, and/or STIP.

Even if the Decision is not applied retroactively, it blocks State DOTs and MPOs from amending or updating Plans, TIPs, and STIPs in these 82 areas (except for changes involving "exempt projects") until a conformity determination for the

1997 standard can be completed. Petition at 20. In large metropolitan areas, many projects could be delayed if the Plan and TIP are not approved on time.[3] *See* Waidelich Declaration, ¶ 12 ("Literally billions of dollars in construction projects could be impacted through the end of this calendar year if there is no relief."). Moreover, even under normal circumstances, the process of making a conformity determination may take a year or longer to complete due to the technical work, interagency coordination, and public involvement that is required. *Id.* ¶ 9. Here, the time will likely be greater because EPA has not issued guidance on key technical questions related to preparing a conformity analysis for a revoked standard.

Delays in approving Plans, TIPs, and STIPs will be even more extreme in the many areas that have not been subject to *any* transportation conformity requirements since the 1997 standard was revoked. *See* Wehrum Declaration, ¶ 10. ("Most of the complete Orphan Nonattainment and Maintenance Areas are not determining transportation conformity for any CAA pollutant because they have been designated as attainment for all currently existing NAAQS."). Reconstituting the organizational capabilities to carry out conformity analyses in these areas will

[3] The metropolitan area that includes Las Vegas, Nevada, is one of the 82 orphan areas. The region's MPO is planning to approve Plan and TIP amendments in progress and the amendments are planned to be adopted in the late fall 2018; proposed TIP includes projects with a total value of approximately $580 million.

extend the time needed to make conformity determinations for the 1997 standard. These challenges will be even greater for small MPOs with limited staff resources who rely on consultants to carry out conformity analyses and must now re-procure those services.[4]

The re-imposition of conformity requirements for the 1997 standard will have immediate effects on States' and MPOs' ability to approve transportation projects. The environmental review process cannot be completed for a project until it is included in the STIP and, if applicable, the MPOs' Plan and TIP. *See* 40 C.F.R. §§ 93.104(c), 93.107. Without the ability to approve substantive amendments or updates to Plans, STIPs, and TIPs, the environmental review process for many projects in the 82 areas will need to be placed on hold – potentially jeopardizing federal funding and increasing project costs, while impeding States' ability to deliver projects that reduce congestion and improve safety.[5]

[4] Rochester, New York, is one of the 82 orphan areas. Since the 1997 standard was revoked in March 2015, the Rochester area's MPO has not conducted the conformity process for any pollutant, and would need to re-constitute that capacity before undertaking a conformity analysis.

[5] Beaumont, Texas, is one of the 82 orphan areas. The Beaumont MPO's pending (not yet approved) TIP contains seven non-exempt projects with a cost of $344.6 million, including a $143 million project on I-10 that will add capacity and provide hydraulic improvements to reduce the potential for flooding and flood damage.

The upcoming transition to the 2015 ozone standard - which supersedes the 2008 standard - further underscores the potential implications of the Decision for transportation agencies. EPA adopted the 2015 NAAQS in October 2015, and has proposed final rules for transitioning to that standard, including revoking the 2008 NAAQS.[6] Under the Decision, areas in attainment for the 2015 NAAQS could be required to demonstrate conformity for both revoked standards (2008 and 1997), while areas in nonattainment for the 2015 NAAQS could be required to demonstrate conformity for *all three* standards (2015, 2008, and 1997).

Imposing these burdens will result in little, if any, environmental benefit, and it would be paradoxical to impose these burdens on the communities that have done what the Clean Air Act commands: cleaned up the air. The amici urge the Court, at a minimum, to modify its order in a manner that avoids vacatur of EPA's rule as it relates to the 82 areas that have attained the 2008 standard.

CONCLUSION

For the foregoing reasons, and the reasons contained in EPA's Petition for Rehearing, the Court should grant the Petition for Rehearing.

[6] *See* 80 Fed. Reg. 65,292 (Oct. 26, 2015) (final rule adopting 2015 NAAQS); 81 Fed. Reg. 81,276 (Nov. 17, 2016) (proposed rule for transition to 2015 NAAQS).

Dated: April 30, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because it contains 2,486 words, excluding the parts of the brief exempted under Rule 32(f), according to the count of Microsoft Word.

Date: April 30, 2018

/s/ Albert M. Ferlo
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