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GOVERNOR

ENERGY AND ENVIRONMENT CABINET

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Rebecca Goodman
SECRETARY

October 31, 2023

Senator Brandon Smith
Representative Jim Gooch, Jr.
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Re: 2023 Regular Legislative Session - House Join Resolution (HJR) 37 Reformulated Gasoline (RFG) Report

Dear Co-chairs:

Please find enclosed the report required in accordance with HJR 37 from the 2023 Regular Legislative Session. HJR 37 requires the Energy and Environment Cabinet (Cabinet) to report on the status of RFG in the Louisville non-attainment area for ozone.

If you have any questions regarding this report, please contact Michael Kennedy, Director, Kentucky Division for Air Quality at (502) 782-6997.

Sincerely,

Rebecca W. Goodman,
Secretary

cc: Stefan Kascavage
Christy Glass

House Joint Resolution Number 37 Report
Kentucky Interim Joint Committee on Natural Resources and Energy

Prepared by the Kentucky Energy and Environment Cabinet

October 2023

Background

The Clean Air Act (Act)¹ establishes a comprehensive program for controlling and improving the nation's air quality through both state and federal regulation. Title I of the Act requires the U.S. Environmental Protection Agency (EPA) Administrator to identify air pollutants that endanger public health and welfare and formulate National Ambient Air Quality Standards (NAAQS) that specify the maximum permissible concentration of those pollutants in the ambient air. Pursuant to the Act, EPA designates areas of the country as "attainment," "nonattainment," or "unclassifiable" for specific NAAQS, based on whether that area has attained the standard.

Areas designated as nonattainment for ozone pursuant to 42 U.S.C. § 7407(d) are further classified as a Marginal, Moderate, Serious, Severe, or Extreme nonattainment area. States have the primary responsibility for ensuring that ambient air quality satisfies the NAAQS. Each state must draft a State Implementation Plan (SIP) for each pollutant, and EPA is charged with approving or disapproving the SIP submission. Although certain SIP requirements apply to an area regardless of its designation, nonattainment areas are subject to greater regulations as compared to attainment areas.

The federal Reformulated Gasoline (RFG) program was mandated by Congress in the 1990 Clean Air Act amendments. The first phase of the RFG program began in 1995 and the second (current) phase began in 2000. In 1995, Kentucky voluntarily opted Boone, Campbell, and Kenton Counties (Northern Kentucky Area), as well as Kentucky's portion of the Louisville ozone area (Jefferson County and parts of Bullitt and Oldham Counties) into the federal RFG program. Following a re-designation of the Northern Kentucky Area as attainment for the ozone NAAQS, on April 18, 2017, Kentucky submitted a petition to the EPA Administrator requesting to opt-out from the RFG program for the Northern Kentucky Area. EPA approved Kentucky's request on May 16, 2018, with an effective date of July 1, 2018.

During the 2023 Regular Legislative Session, House Joint Resolution 37 (HJR 37) was signed into law by the Governor. It directs the Energy and Environment Cabinet (Cabinet) and Louisville Metro Air Pollution Control District (District) to revise Kentucky's SIP to remove the RFG requirements for the Louisville ozone area. HJR 37 also requires the Cabinet and the District, no later than 60 days after the redesignation of the Louisville ozone area as attainment for ozone, to revise Kentucky's SIP to:

- (1) Remove the reformulated gas requirement for Jefferson County and the parts of Oldham and Bullitt Counties to which the reformulated gas requirement currently applies;
- (2) If necessary, implement air pollution control strategies other than mobile source gas formulations or additives to achieve equivalent, or greater, emission reductions than those achieved by reformulated gasoline requirements in those areas to which the reformulated gas requirements applied; and

¹ 42 U.S.C. § 7401 *et seq.*

(3) Make any other changes necessary to satisfy any applicable requirement concerning attainment of NAAQS and reasonable further progress, and any other applicable requirement of Section 110 of the Clean Air Act.

Further, no later than October 31, the Cabinet and District shall report to the Interim Joint Committee on Natural Resources and Energy on the status of revisions to the state implementation plan.²

Redesignation Status

On September 6, 2022, the Cabinet submitted a request to EPA for redesignation of the Kentucky portion of the Louisville ozone area to attainment for the 2015 8-hour ozone NAAQS. On April 18, 2023, EPA published a proposed rule to approve the Cabinet's redesignation request.³ EPA's proposed rule was open for public comment from April 18 through May 18, 2023. EPA did receive public comments for the proposed redesignation. As of the date of this report, EPA has not yet taken final action on the redesignation request submitted by the Cabinet.

By June 26, 2023, the Cabinet and District realized that ozone monitoring data collected in Louisville would cause the 3-year design value to exceed the 2015 ozone NAAQS. The Cabinet and District assert that pollution from the Canadian wildfires negatively impacted air quality in the Commonwealth and caused ozone levels to exceed the current NAAQS. The District is currently working to submit an exceptional event demonstration showing that ozone levels in the Louisville ozone area would have met the NAAQS if not for the Canadian wildfire impacts. The District's Canadian wildfire exceptional event submission will be the next step for this path forward. The Cabinet and the District understand this step to be crucial for EPA to finalize the redesignation request as submitted. Upon submittal of the exceptional event demonstration, EPA should finalize the redesignation request for the Area.

² See HJR 37, at Sections 2 and 3.

³ 88 Fed. Reg. 23598 (Apr. 18, 2023).