



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 19 2007

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Impacts of the Court Decision on the Phase 1 Ozone Implementation Rule

FROM: William L. Wehrum
Acting Assistant Administrator

A handwritten signature in black ink, appearing to read "W. L. Wehrum", written over the printed name and title.

TO: EPA Regional Administrators
Regions I - X

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit upheld certain aspects and rejected certain aspects of EPA's framework for implementing the 8-Hour ozone National Ambient Air Quality Standard (NAAQS or standard). The rule was vacated and remanded to EPA for further proceedings. The court's mandate has not been issued and we have until March 22, 2007 to decide whether to seek rehearing on any aspect of the decision. Since the decision was announced, we have received many questions from the Regions, Federal, State, local agencies, and Tribes on its impact. The inquiries can be grouped into four primary questions and the purpose of this memo is to provide you responses to those questions as best we can at this time. We request that you and your staff share this information, as appropriate, with State, local, and tribal representatives.

If you or your staffs have any questions on specific program elements, please refer to the attached list of EPA staff to contact.

Question 1: Have State Implementation Plan (SIP) obligations changed as a result of the decision? EPA is planning to seek clarification and/or rehearing of the court's decision. We do not expect a final decision and mandate of the court for some time. We cannot give definitive guidance on the ramifications of the decision until it is final.

Question 2: Should States submit nonattainment SIPs by June of this year?

Notwithstanding the uncertainty as to the status of the Phase 1 Rule, we strongly encourage the Regional Offices to work with the States to continue to develop 8-hour ozone SIPs. We recognize SIP obligations may change for certain States when the court decision is final. However, because our primary concern is to ensure public health protection, and because the legal process leaves unclear at this time whether the June submittal deadline will change for any given area, it is prudent for States to continue efforts to develop and submit expeditiously their plans for meeting the 8-hour ozone standard.

Question 3: Can ozone nonattainment areas with clean air be redesignated to attainment during the pendency of the court decision? Preliminary air quality data from 2004-2006 indicate that many designated nonattainment areas may now be attaining the 8-hour ozone standard. After the air quality data are quality assured, EPA anticipates using the Clean Data Policy, which was issued in May 1995 and recently included as part of our Phase 2, 8-hour ozone implementation rule, to suspend certain SIP requirements that are tied to achieving the NAAQS as long as areas now meeting the standard remain in attainment for the 8-hour NAAQS. These requirements include attainment demonstrations, reasonable further progress plans, and contingency measures in attainment demonstrations.

Currently redesignation requests are pending for 37 areas, and we expect to receive more redesignation requests once 2004-2006 quality assured data are available. OAR and OGC are currently working with the relevant Regional Offices to issue a supplemental proposed rule to reopen the comment period for 18 areas where the Regional Offices have already proposed a redesignation to attainment. We are seeking comment on our belief that the court's decision does not alter the requirements for redesignation so as to preclude redesignation, and that we can move forward to final rulemaking on these actions. I ask the Regional Offices to take final action on those redesignation requests as soon as possible once the comment period has ended on the supplemental proposal. In addition, OAR and OGC are working with the Regional Offices to develop appropriate language to include in future proposed rulemakings for redesignation to attainment.

Question 4: What transportation conformity, general conformity, and NSR requirements must be met at this time in 8-hour ozone areas? While we cannot give definitive guidance on the ramifications of the decision until it is final, transportation and general conformity determinations and NSR permits issued at this time must at a minimum meet current applicable 8-hour requirements.

CC: Bill Harnett
Kimber Scavo
Scott Mathias
John Silvasi
Kevin McLean
Sara Schneeberg
Diane McConkey
Lori Stewart
Rudolph Kapichak
William Baker

Attachment

List of OAR Contacts

- Transportation Conformity** – Meg Patulski (734) 214-4842
Rudy Kapichak (734) 214-4574
- General Conformity** – Tom Coda (919) 541-3037
- New Source Review** – David Painter (919) 541-5515
Lynn Hutchinson (919) 541-4795
- Ozone Implementation** – John Silvasi (919) 541-5666