



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

JUN 06 2013

MEMORANDUM

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

SUBJECT: Withdrawal of Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)

FROM: Stephen D. Page, Director
Office of Air Quality Planning and Standards

TO: Regional Air Directors, Regions I-X

The purpose of this memorandum is to announce the U.S. Environmental Protection Agency's withdrawal of its guidance document titled "Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)," dated March 2, 2012.

When the guidance document was issued in March 2012, the EPA intended to provide recommendations concerning the development of state implementation plans (SIPs) to demonstrate attainment with the 2006 24-hour PM_{2.5} NAAQS. To this end, the guidance document addressed multiple topics, including: (i) the overall statutory framework for attainment plans; (ii) basic emissions inventory requirements; (iii) use of seasonal versus annual inventories; (iv) development of on-road mobile source emission inventories; and (v) points of comparison between the guidance recommendations for the 2006 PM_{2.5} NAAQS and the regulatory requirements for the 1997 PM_{2.5} NAAQS. A core premise of the guidance document was the EPA's intention to implement the 2006 PM_{2.5} NAAQS pursuant solely to the statutory requirements of subpart 1 of Part D of Title I of the Clean Air Act (CAA), comparable to the EPA's regulatory approach to implementation of the 1997 PM_{2.5} NAAQS.

On January 4, 2013, however, the U. S. Court of Appeals for the District of Columbia (D.C.) Circuit held that the EPA incorrectly interpreted the CAA with respect to statutory requirements for the implementation of the 1997 PM_{2.5} NAAQS. In *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to the EPA both the final "Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008).¹ The Court found that the EPA erred in both rules in implementing the 1997 PM_{2.5} NAAQS pursuant only to the general implementation provisions of subpart 1, rather than also the implementation provisions specific to particulate matter in subpart 4. The Court reasoned that the plain meaning of the CAA requires implementation of the 1997 PM_{2.5} NAAQS under subpart 4 because PM_{2.5} particles fall within the statutory definition of PM₁₀ and are thus subject to the same statutory requirements. As a result, the Court remanded both rules and instructed the EPA "to repromulgate these rules pursuant to Subpart 4

¹ 706 F.3d 428 (D.C. Cir. 2013).

consistent with this opinion.” The same logic would necessarily apply to the implementation of the 2006 PM_{2.5} NAAQS pursuant to subpart 4 as well.

Given the Court’s opinion in *Natural Resources Defense Council v. EPA*, the EPA is withdrawing its guidance document for the 2006 PM_{2.5} NAAQS. As a guidance document, the EPA was only making recommendations concerning how to meet what it believed were the applicable statutory requirements for PM_{2.5} attainment plans. However, in light of the Court’s opinion, a core premise of the EPA’s guidance document (that implementation could proceed pursuant solely to the requirements of subpart 1 rather than also pursuant to the requirements of subpart 4) is no longer tenable. Although the Agency is withdrawing the guidance, we will continue to implement the 2006 PM_{2.5} NAAQS under the CAA.

The EPA is in the process of evaluating the effect of the January 2013 Court decision on PM_{2.5} NAAQS implementation. As always, states should rely on the CAA when completing their attainment SIPs for the 2006 PM_{2.5} NAAQS. Additionally, the EPA’s 1992 General Preamble and 1994 Addendum to the General Preamble provide guidance that may be useful to states.² I encourage your staff to contact OAQPS staff with specific questions that may arise.

Please share this memorandum announcing the EPA’s withdrawal of the “Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” with the state agencies in your region. Questions should be directed to Rich Damberg at (919) 541-5592 or damberg.rich@epa.gov; and Megan Brachtl at (919) 541-2648 or brachtl.megan@epa.gov.

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² See, 57 FR 13498 (April 16, 1992) for the General Preamble and 59 FR 41998 (August 16, 1994) for the Addendum to the General Preamble.