

DC Circuit Decision on Fine Particle National Ambient Air Quality Standards Implementation Rule and New Source Review/Prevention of Significant Deterioration Rule

Summary:

- The EPA is currently reviewing the January 4, 2013, decision from the DC Circuit which held that the EPA should have issued its 2007 PM_{2.5} National Ambient Air Quality Standards (NAAQS) Implementation Rule and the related 2008 New Source Review (NSR)/Prevention of Significant Deterioration (PSD) rule for the 1997 PM_{2.5} NAAQS according to the Clean Air Act requirements for PM₁₀ nonattainment areas (Title I, Part D, subpart 4), not the general requirements for nonattainment areas (subpart 1).
- The Court's decision does not affect EPA's recent strengthening of the annual PM_{2.5} standard to 12 ug/m³ (signed on December 14, 2012), nor does it affect EPA's assessment of the costs and benefits associated with meeting the new standard. The EPA will, however, address the Court decision as we develop a proposed rule for implementing the new annual standard. The agency intends to move as quickly as possible to develop the proposed rule, which will be subject to public notice and comment.
- The Court remanded the two rules back to the agency, but did not vacate them and did not set a deadline for EPA to issue new rules.
- EPA is assessing the effect of the Court's decision on a variety of SIP-related actions currently pending or anticipated in the short-term (for example, nonattainment area State Implementation Plan (SIP) submittals for the 2006 PM_{2.5} NAAQS). The agency also is assessing the impact of the decision on pending NSR actions in nonattainment areas for the 1997 and 2006 standards.
- As EPA reviews the decision and determines the next steps, the agency is reaching out to state, local and tribal air agencies through existing

workgroups and EPA's Regional Offices. EPA encourages all air agencies to submit questions and raise issues through their EPA Regional Office contacts. Other interested parties with questions are encouraged to transmit those questions through their respective EPA Regional Offices. EPA will work to address those questions and concerns in the coming weeks and provide feedback as soon as possible.

Background:

- In April 2007, EPA issued a detailed implementation rule to assist states with the development of SIPs to demonstrate attainment with the 1997 annual and 24-hour PM_{2.5} NAAQS. In May 2008, the EPA finalized regulations to implement the NSR program for PM_{2.5}.
- In March 2012, the EPA issued guidance regarding the development of SIPs to demonstrate attainment with the 2006 24-hour PM_{2.5} NAAQS.
- The Natural Resources Defense Council, Sierra Club, American Lung Association, and Medical Advocates for Healthy Air challenged EPA's 2007 implementation rule for the 1997 PM_{2.5} NAAQS and the separate 2008 NSR/PSD rule for the 1997 PM_{2.5} NAAQS before the DC Circuit Court.
- On January 4, 2013, the Court ruled that the Clean Air Act requires implementation of the PM_{2.5} NAAQS under subpart 4 rather than implementation under subpart 1. Relative to subpart 1, subpart 4 is more specific about what states must do to bring areas into attainment through the establishment of a two tier classification system for nonattainment areas (Moderate or Serious).
- The DC Circuit remanded both the 2007 and 2008 rules to the EPA to repromulgate rules pursuant to subpart 4, but declined to set a deadline for further action.