

# **Ozone Transport Commission Ruling on Phase 1 of 8-Hour Ozone Implementation Rule**

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# *Background*

- U.S. Court of Appeals for the D.C. Circuit decided to vacate EPA's Phase 1 Rule 8-Hour Ozone Implementation Rule (Dec. 22, 2006 decision)
- The Phase1 Rule:
  - Provided EPA's interpretation of appropriate classification of 8-hour ozone nonattainment areas under subpart 1 or subpart 2
  - Revoked the 1-hour standard, effective one year after designations for the 8-hour standard (June 15, 2005)
  - Created anti-backsliding provisions outlining which requirements applicable under the 1-hour standard should continue to apply during transition to implementation of the 8-hour standard

## ***The court decided to vacate the rule and held that:***

- EPA improperly classified certain areas under the more flexible subpart 1
  - The court concluded these areas should have been classified under the more prescriptive subpart 2
- EPA appropriately established the subpart 2 classification scheme and attainment dates
- EPA had the ability to:
  - Revoke the 1-hour NAAQS when it promulgated the 8-hour NAAQS; and
  - Promulgate anti-backsliding provisions
- Additional requirements (which the EPA rule waived) had to be preserved under the anti-backsliding scheme

***The court ruled that these additional requirements had to be preserved:***

- New Source Review
- Conformity requirements
- Section 185 penalty fees for failure to attain in severe and extreme areas
- Contingency measures

## *Timing*

- Original date for EPA's court filing for rehearing/clarification was February 5, 2007
- EPA was granted a 45-day extension to March 22, 2007
- EPA is considering the possibility of seeking rehearing/clarification of the decision

## ***What Can States Do Now?***

- Continue to develop 8-hour ozone SIPs, including adopting & implementing control measures
- 8-hour SIP obligations may change for certain states
  - But impacts will depend on the court's response to any rehearing requests.
    - These impacts include whether the June 2007 submittal deadline will change and, if so, for what areas
- States should continue efforts to develop and submit their plans expeditiously

## ***What Can States Do Now Continued***

- States can use the Clean Data Policy for areas that show attainment based on current three years of air quality data
- Clean Data Policy allows suspension of certain SIP requirements that are tied to achieving the NAAQS. Includes:
  - Attainment demos
  - RFP plans
  - Contingency measures

## *Redesignations*

- 37 redesignation requests pending as of 2/15/07
  - 30 Subpart 1 areas
  - Seven Subpart 2 areas
- 24 additional requests expected
- National supplemental rulemaking will address redesignations that have already been proposed
  - EPA intends to finalize as soon as possible
  - Will provide 15-day comment period
- Future redesignation proposals will also address the court opinion.