

Articles

Stricter Smog Standards to Burden Municipalities and Industry

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On January 7, 2010, the U.S. Environmental Protection Agency (EPA) announced that it will again lower national standards for ground-level ozone (smog), which will further restrict development and industry in some 650 counties across the U.S., particularly in California, the Gulf Coast, the Atlantic seaboard and industrial Midwest. The proposed rule is controversial because it will create compliance problems for many industries and local governmental entities.

EPA is proposing to set the new primary air quality standard for health-based risks at between 0.060 and 0.070 ppm on an 8-hour averaged basis, down from the 0.075 ppm level imposed by the Bush Administration in 2008. EPA will also set a secondary standard aimed at protecting public welfare (i.e., effects on vegetation, forests and crops) at 7-15 ppm-hours on a cumulative seasonal basis for the hotter summer months. The agency announced in September 2009 that it would reconsider the Bush standard in response to complaints from some in the environmental and scientific community that the standards were not sufficiently protective of human health. Others have argued that a lower standard would be increasingly difficult to meet as targets approach natural background concentrations of ozone. Ground-level ozone is formed when emissions from industrial facilities, power plants, landfills, motor vehicles, and natural sources such as vegetation, react in sunlight, and has been linked to health problems such as asthma and other respiratory illnesses.

EPA will issue the revised standards by August 2010, and nonattainment areas will then begin a multi-year process to implement the new standards and additional controls on emissions sources. EPA is proposing to accelerate the usual schedule to require attainment by 2014 to 2031, depending on the area's nonattainment status. Hundreds of states and counties are already struggling to meet current air quality standards, and the unavailability of affordable reductions has hampered the building of new hospitals and schools and has limited industrial output in many areas. Failure to meet attainment can result in loss of federal transportation funding and per-ton penalties on industrial emissions.

The rule was published in the Federal Register early last week. 75 Fed. Reg. 2938 (Jan. 19, 2010). Public comment will be accepted for 60 days (until March 10, 2010). Public hearings have been scheduled for February 2, 2010 in Arlington, Virginia and Houston, Texas, and February 4, 2010 in Sacramento, California.