



## Alerts

### USEPA Considers Troublesome New Air Quality Standards for Ozone

August 26, 2011

*Hinshaw Environmental Bulletin*

The United States EPA has been preparing to issue new national ambient air quality standards (NAAQS) for ozone. These would likely be the most expensive environmental rules ever issued. If adopted, they could cause many existing businesses to have to lay out additional capital for retrofit or substitute technologies to meet an unrealistic and overly aggressive standard. Even businesses in areas that have always been in attainment may be surprised to find they need to expend capital on controls to meet the extremely low proposed standard.

#### Background

The Clean Air Act provides that the EPA periodically review and adjust ambient air quality standards in order to provide protection of public health and the environment, with a reasonable safety margin. The Act provides that the Administrator must make periodic review and adjust the standards in keeping with the best science on the subject. The reviews are to take place every five years. They are done in a staggered manner so that states can have staff attend to the need for new regulation in an orderly way, and business can count on getting a certain amount of mileage from its pollution-control investments.

Currently, Chicago and many other areas of the country have reached attainment of existing standards after decades of effort and great expense. That will change overnight if these standards are adopted. The current Administrator has indicated she expects to depart from the bipartisan prior practice and to revisit a NAAQS in less time than the law provides. This is especially questionable because the air quality in this nation in terms of ozone has improved markedly over the years, and because the kinds of measures states will have to adopt and impose on business and the general public to meet the expected more stringent new standard will be competing for diminished state staffs and private industrial ability to make investments.

Prior Administrators have generally relied upon the advice and findings of a Clean Air Scientific Advisory Committee (CASAC), which is an expert Board set up by law to provide unbiased scientific opinion on air standards and health effects, if any, of air pollutants. This Administrator intends to ratchet down the ozone standard fully two years before the next CASAC full review is due. The stated need for a more stringent standard is that people's health is adversely affected, yet the facts on asthma are that ozone levels have declined 30 percent

#### Service Areas

Environmental



in the nation, while asthma cases have seriously increased. Dr. Roger McClellan, a former CASAC member, has stated that “there is no compelling reason based on the EPA CASAC’s advice that the ozone NAAQS be set in the range of 60 to 70 ppb”...He also says: [Administrator Jackson’s] decision to “reconsider” that [2008 USEPA] decision “is without precedent and, if she proceeds, will set a terrible precedent for any future EPA Administrator to reconsider every rule of the previous administration. What a way to create havoc and send the economy in to a tail spin.”

The USEPA’s willingness to take a very aggressive position in favor of public protection is admirable in a sense, but regulation based on bad science is destructive. The Agency has become alarmist in air quality programs, to the point that over-control is rather clearly occurring. The method for this over-control often is to claim thousands of instances of death or disease prevented, yet we feel there is little or no reliable epidemiological science evidence of such alleged human toll actually occurring due to air pollution, especially regarding ozone.

### **What You Can Do**

Businesses and other organizations with manufacturing and transportation-related operations should consider asking their Congressional representatives and the White House to question adoption of the new ozone standard. While another round of rulemaking is something that attorneys might thrive on, we would rather the economy recover without unnecessary regulatory impediments. If you need assistance addressing your concerns, please contact your regular Hinshaw attorney or any [environmental attorney](#) on our website.

For further information, please contact [Harvey M. Sheldon](#) or your regular [Hinshaw attorney](#).

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*