

EPA Asks Appeals Court for 180 Days to Review Ozone Air Quality Standard

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Acting on behalf of the Environmental Protection Agency, the Department of Justice March 10 asked a federal appeals court for 180 days to allow EPA to decide whether ozone air quality standards it issued in 2008 should be revised (*Mississippi v. EPA*, D.C. Cir., No. 08-1200, motion filed 3/10/09).

The government motion filed in the U.S. Court of Appeals for the District of Columbia Circuit asked the court to hold in abeyance a challenge by states, environmental groups, and industry representatives to the ozone standards to give the Obama administration an opportunity to determine whether the standards "should be maintained, modified or otherwise reconsidered."

The motion was not opposed by the other parties to the litigation.

In March 2008 then-EPA Administrator Stephen Johnson announced new national ambient air quality standards (NAAQS) for ozone. The agency set both the primary and secondary ozone standards at 0.075 part per million. That was above the 0.060 ppm to 0.070 ppm range unanimously recommended by the EPA's Clean Air Scientific Advisory Committee, a panel of experts that evaluates the science used to make the rules.

The previous standard was 0.08 ppm, but due to rounding, it had been enforced at the level of 0.085 ppm.

EPA at the time said the standard was the most protective in EPA history.

Ground-level ozone has been linked to respiratory problems such as asthma, particularly in children and the elderly. Even short-term exposure has been linked to increased mortality.

Most recently, a study published in the *New England Journal of Medicine* concluded that long-term, cumulative exposure to ground-level ozone is associated with an increased risk of dying from lung disease. (See related story in this issue.)

In May 2008, 14 states, along with environmental and industry groups, challenged the standards in the D.C. Circuit (103 DEN A-2, 5/29/08).

David Baron, an attorney with Earthjustice representing the environmental groups, told BNA, "We're encouraged that they are taking another look at this."

"This is extremely encouraging news," said Clean Air Watch President Frank O'Donnell. "This means that EPA could put a tougher new smog standard on a fast track."