

Court Decision on Ozone Implementation Rule & Implications for the Washington Region

Background

EPA set the current ozone national ambient air quality standard (NAAQS) at 75 ppb and published it on March 27, 2008. Subsequently, EPA published a rule that established attainment deadlines for the five Clean Air Act (CAA) classifications for areas designated nonattainment for the 2008 ozone NAAQS (FR Vol. 77, No. 98, 05/12/2012).

EPA designated the Washington region as ‘Marginal’ nonattainment area for the above NAAQS effective July 20, 2012 and established a deadline of December 31, 2015 to attain the above NAAQS. CAA allows a three year period from the effective date of designation for a ‘Marginal’ nonattainment area to attain the NAAQS. This would have set the deadline at July 20, 2015, which lies in the middle of the ozone season (May-September). However, EPA interpreted the CAA differently and extended the deadline to December 31, 2015 to allow full three years of ozone season (2013-2015) for the attainment.

Court Case & Decision

Natural Resource Defense Council (NRDC) contested EPA’s interpretation in the United States Court of Appeals for the District of Columbia Circuit and its decision to extend the deadline. The court ruled on December 23, 2014 that the deadline for attaining the 2008 ozone NAAQS should be set at July 20, 2015 and cannot be extended to December 31, 2015.

Implications of Court case

The court ruling has important implications for the Washington region. With the deadline now reset at July 20, 2015, the region is required to use the ozone design value for the period 2012 through 2014 instead of 2013 through 2015 to demonstrate attainment for the 2008 ozone NAAQS. Based on the current draft data available for the period 2012 through 2014, the draft ozone design value is 76 ppb for the Washington region. Based on the draft data, it appears that the region will not be able to attain the above NAAQS (75 ppb) by the required deadline.

Following are the options that can be considered by the region moving forward in case the current draft ozone design value turns out to be the final design value after the deadline for data certification (May 1, 2015) is over.

Option 1: Request for One Year Extension of Attainment Deadline

The Washington region can request EPA to extend the attainment deadline by one year based on the “clean data” observed in 2014 as allowed under CAA. This can be done sometime after the 2014 data is certified (due May 1, 2015) and before January 20, 2016 (deadline for EPA to redesignate). The “clean data” for ozone is defined as the fourth highest daily eight hour maximum ozone concentration being 75 ppb or lower. Since this value for the region for 2014 was 71 ppb (draft data), the region is eligible to request the extension. Considering the design value trend, there is a strong likelihood of the region attaining the NAAQS by the end of 2015. At the same time, the extension would allow the region to learn

about EPA's final decision regarding the new ozone NAAQS in October this year. Meanwhile, the region can initiate the process of developing a few control measures. These measures could be included in a possible moderate nonattainment area SIP in case the region is not able to attain the NAAQS by the end of the ozone season 2015 and EPA chooses to keep the ozone NAAQS at its current level. Else, these control measures will also be helpful in attaining the new tougher ozone NAAQS if EPA publishes such a NAAQS in October.

Option 2: Develop SIP for the Washington Moderate Nonattainment Area (After Redesignation)

In case, the Washington region does not choose to request an extension of the attainment deadline, EPA would redesignate (bump up) the region to the Moderate Nonattainment Area, the next higher nonattainment classification between July 20, 2015 and January 20, 2016 (within six months from the attainment date). Following redesignation, the attainment date would be extended by three years to July 20, 2018. In this scenario, the region would need to develop and submit a State Implementation Plan (SIP) in a relatively short time-frame (likely within a year or so after redesignation, say latest by January 2017) decided based on the consultation with EPA. The SIP would include a reasonable further progress (RFP) plan and an attainment plan. The RFP plan would need to demonstrate reductions of at least 15% emissions using a combination of VOC and NOx emissions reductions during the period January 1, 2012 through December 31, 2017. The attainment plan would need to demonstrate an attainment of the NAAQS by the end of 2017 using the photochemical modeling.

Status of RFP and Attainment Plan and Photochemical Modeling

The Washington region developed a preliminary RFP plan a few months ago in anticipation of a possible redesignation to the moderate nonattainment classification, which demonstrated the region is able to meet the required 15% emission reductions during the six year period (January 1, 2012-December 31, 2017). There is some uncertainty now regarding the actual RFP emission reductions time period since the attainment date has been pushed a year early. It is possible EPA can require the 15% RFP emissions reductions to occur either during January 1, 2012 through December 31, 2016 or EPA can decide on a somewhat different time period. Depending on EPA's final decision, there may be some additional work required to complete the RFP plan. In addition, the region also needs to undertake a photochemical modeling effort using 2017 as the attainment year to demonstrate successfully the ability to attain the NAAQS by the end of that year. While the Ozone Transport Commission (OTC) has been working on 2018 as the attainment year for the modeling effort, it would need to develop new emissions inventories for 2017 and evaluate various attainment scenarios for that year. OTC would need to complete the modeling effort before January 2017 so the Washington region could include the modeling demonstration in its attainment plan (part of SIP) and submit the SIP by January 2017.

Expected New Ozone NAAQS & Redesignation for the 2008 Ozone NAAQS

EPA is expected to finalize the new ozone NAAQS (somewhere between 70 ppb and 65 ppb) by October 2015. Therefore, it is expected that EPA will wait until that time before redesignating the region even if the region chooses not to request for an extension and instead opts for a redesignation. In case, EPA decides to retain the current ozone NAAQS in October this year, it is expected to redesignate the region shortly after that in order to allow sufficient time to develop a SIP. In case, EPA announces a new tougher NAAQS, the region would no longer be required to submit a SIP and attain the current NAAQS.