



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT - 3 2007

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia Circuit on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS)

FROM: Robert J. Meyers 
Principal Deputy Assistant Administrator

TO: Regional Administrators
Regions I-X

On June 8, 2007, the U.S. Court of Appeals for the District of Columbia Circuit responded to our petition for a rehearing of the court's December 22, 2006, decision on the Phase 1 Rule to implement the 8-hour ozone National Ambient Air Quality Standards (NAAQS). The purpose of this memorandum is to provide a brief summary of the implications of the court's opinion for the NSR program in ozone non-attainment areas.

The court reaffirmed its decision stating that the Environmental Protection Agency (EPA) improperly determined that areas designated as non-attainment under the 1-hour ozone NAAQS would no longer be subject to 1-hour New Source Review requirements. A number of areas that were designated as non-attainment for the 1-hour standard have lower classifications (and thus less-stringent NSR provisions) under the 8-hour standard. In the Phase 1 rule published in the Federal Register on April 30, 2004 (69 FR 23951), EPA made NSR applicability thresholds and emission offsets dependent upon the 8-hour attainment status of an air quality region. The effect of the court's ruling is to restore NSR applicability thresholds and emission offsets pursuant to classifications previously in effect for areas designated non-attainment for the 1-hour ozone standards.

We intend to undertake rulemaking to conform our NSR regulations to the court's decision. Planned NSR-related actions will occur in two distinct phases. First, we will issue an immediately-effective final rule under authority of the Good Cause Provision of the Administrative Procedures Act to restore the NSR applicability thresholds and emission offsets associated with designated 1-hour ozone nonattainment areas. Second,

we plan to undertake a separate notice and comment rulemaking to address longer-term applicability of 1-hour NSR requirements. In particular, we will determine the conditions and mechanisms under which the requirements for the 1-hour standard might cease to apply for NSR purposes. While we proceed with rulemaking to address the NSR-related components of the court decision, we strongly encourage you to have States comply with the court decision as quickly as possible.

If you or your staff have any questions on specific program elements, please refer to the attached list of EPA staff to contact.

Attachment

cc: Air Division Directors, Regions I-X

List of OAR Contacts

New Source Review	--	David Painter (919) 541-5515
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