



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

OCT 11 2007

OFFICE OF  
AIR AND RADIATION

**MEMORANDUM**

**SUBJECT:** Partial Voluntary Remand Sought in the Ozone Phase 2 Rule Concerning Rate of Progress (ROP) Reductions Obtained From Outside a Nonattainment Area

**FROM:** William T. Harnett, Director *William Harnett*  
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**TO:** Air Division Directors, Regions I-X

On July 17, 2007, the Environmental Protection Agency (EPA) requested a partial voluntary remand from the D.C. Circuit Court of Appeals on the policy provision of Phase 2 of the Ozone Implementation Rule (70 FR 71612, November 11, 2005) that allowed rate of progress (ROP)/reasonable further progress (RFP) credit for reductions to come from outside the nonattainment area. This provision had been challenged by the Natural Resources Defense Council (NRDC).

EPA's recently published fine particulate matter (PM<sub>2.5</sub>) Implementation Rule (72 FR 20586, April 25, 2007) adopted a different approach for crediting "outside" reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) for ROP/RFP purposes. Because the PM<sub>2.5</sub> Implementation Rule significantly modified the policy regarding which outside NO<sub>x</sub> and VOC emissions are eligible to be credited towards a nonattainment area's RFP requirement, EPA asked for a partial voluntary remand of the Ozone Phase 2 Rule to consider whether it should be revised for consistency with the PM<sub>2.5</sub> Implementation Rule. In response to EPA's request for a partial voluntary remand of the Ozone Phase 2 Rule, NRDC asked the court for a vacatur i.e., to nullify this provision. The Court has not made a decision yet on these requests. The Agency plans to propose and go final on a rulemaking shortly to address adoption of an alternative approach to crediting reductions from outside the nonattainment area.

Until the rulemaking is completed for further direction, Regions are advised not to approve ozone ROP/RFP State Implementation Plans (SIPs) that have obtained VOC or NO<sub>x</sub> reductions from outside the nonattainment area. Regions are also advised not to make adequacy findings for motor vehicle emissions budgets ("budgets") contained in these SIPs. If an 8-hour

ozone nonattainment area needs to establish budgets for transportation conformity purposes before EPA's rulemaking is completed, the Region should contact the Office of Transportation and Air Quality contacts listed below to discuss available options.

For further information on this change contact John Silvasi of my staff at (919) 541-5666 or [silvasi.john@epa.gov](mailto:silvasi.john@epa.gov). For questions related to transportation conformity contact Meg Patulski at (734) 214-4842 or [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov) or Rudy Kapichak at (734) 214-4574 or [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov).