



## **EPA RECONSIDERS FEE AND ANTI-BACKSLIDING PROVISIONS IN OZONE NAAQS**

On February 3, 2005, the U.S. Environmental Protection Agency (EPA) responded to two issues raised in petitions for reconsideration filed in response to EPA's rule to implement the 8-hour ozone National Ambient Air Quality Standard (NAAQS). See, 70 Fed. Reg. 5593. The federal agency also proposed to revise two aspects of the implementation rule first published in the Federal Register on April 30, 2004 (69 Fed. Reg. 23,858).

Following publication of the April 30 final rule, EPA received several petitions requesting reconsideration of a number of issues. In the most recent proposed rule, EPA provided additional information and solicited comments on two of the issues raised in those petitions, including whether the CAA § 185 fee provisions apply once the 1-hour NAAQS is revoked, and the timing for determining an "applicable requirement" for purposes of anti-backsliding once the 1-hour NAAQS is revoked. EPA also proposed two additional revisions to the April 30 implementation rule.

With respect to the Section 185 fee provisions, EPA

made explicit its position concerning the provision for areas previously in extreme or severe nonattainment areas. In particular, EPA explained:

For severe and extreme areas, the Fee Provisions operate in lieu of reclassification. And, in our proposal, we proposed that we would no longer be obligated to reclassify areas for the 1-hour NAAQS after that NAAQS was revoked. As with all the requirements that we determined no longer apply, the Fee Provisions are linked to whether or not the area has met the 1-hour NAAQS, which the Agency determined in 1998 was no longer necessary to protect public health.

70 Fed. Reg. at 5596. EPA went on to state that because there will no longer be an applicable 1-hour attainment date, there cannot be a failure to meet such a date. "Thus, the consequences that would apply based on such a failure would not be triggered." However, EPA also requested comments on this position. All comments must be received by March 21, 2005.

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The second issue reconsidered by EPA concerned the date for determining which 1-hour obligations remain as applicable requirements. EPA proposed to adopt the effective date of the 8-hour designation (June 15, 2004 for most areas), not the date of signature (April 15, 2004), as the date for determining which 1-hour measures continue to apply in an area once the 1-hour standard is revoked. Practically, only two areas are affected by this change – Beaumont/Port Arthur and San Joaquin Valley. Both of these areas were reclassified between April 15 and June 15, 2004, thereby establishing applicable requirements.

Finally, EPA proposed to revise two aspects of the Phase I implementation rule. First, EPA proposed that

contingency measures will no longer be required once the 1-hour standard is revoked. Thus, an area that has not submitted a 1-hour attainment demonstration or a specific 1-hour RFP SIP would no longer need to submit contingency measures with those SIPs. In the other revision, EPA proposed to add the term “attainment demonstration” to the definition of “applicable requirements” in 40 C.F.R. § 51.900.



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## WEB WATCH

- New York State Department of Environmental Conservation’s Pollution Prevention Unit has developed, through a grant from EPA Region 2, a step-by-step EMS guide for small and medium-sized organizations. <http://www.dec.state.ny.us/website/ppu/p2pub.html#ems>
- Clean Air Act Toolbox - put together by the Air Force Center for Environmental Excellence. It has links to a number of helpful resources in air permitting, including regulations, EPA guidance, reports on NSR developments, policy papers and a review of NSR decisions on military installation projects. [http://www.afcee.brooks.af.mil/eq/air/caatoolbox/html/federal/toolsindex/tools/category\\_tools.asp?sg\\_id=4](http://www.afcee.brooks.af.mil/eq/air/caatoolbox/html/federal/toolsindex/tools/category_tools.asp?sg_id=4)

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