

D.C. Circuit Upholds Health-Based Ozone NAAQS

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On July 23, 2013, the D.C. Circuit Court of Appeals issued a [decision](#) upholding the health-based ozone NAAQS and remanding the secondary ozone NAAQS targeted at protecting the environment. States and advocacy groups had challenged the 2008 ozone NAAQS, set at 75 parts per billion (ppb), arguing that EPA impermissibly departed from the advice of its science advisors, the Clean Air Scientific Advisory Committee (CASAC), who recommended setting a health-based standard between 60 and 70 ppb. The D.C. Circuit found that CASAC failed to provide analysis of adverse health effects justifying the 70 ppb level, and that EPA's assertion of scientific uncertainty justified a departure from CASAC's recommended range for the health-based standard.

However, the D.C. Circuit remanded the secondary ozone NAAQS aimed at protecting the environment. In 2008, EPA had set a secondary standard identical to the primary standard, and the D.C. Circuit held that the Agency did not conduct sufficient analysis to justify setting the secondary standard at this level. The Court remanded the secondary ozone NAAQS to the Agency for further consideration or explanation, but left the standard in place rather than vacating the rule.

EPA is currently in the process of reviewing and considering revisions to the ozone NAAQS under the five-year review required by the Clean Air Act. On June 19, 2013, EPA announced a delay in the five-year review process allowing EPA to evaluate extensive comments the Agency received from CASAC. The Agency plans to issue a proposed ozone NAAQS in mid- to late-2014, rather than December 2013 as originally-scheduled. Environmental groups are pursuing litigation in Federal district court in effort to force a deadline of September 30, 2014 for issuing a final revised ozone NAAQS.

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