

Air Regulations Update: EPA Moves Forward With SO₂ NAAQS Implementation and D.C. Circuit Remands PM_{2.5} Monitoring Exemptions to EPA for Further Consideration

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The U.S. Supreme Court declined to hear a challenge to EPA's SO₂ 24-hour NAAQS on January 22, 2013. The U.S. Court of Appeals for the D.C. Circuit ruled in July 2012 that EPA did not exceed its authority when it reduced the 24-hour SO₂ standard from 140 parts per billion ("ppb") to 75 ppb in 2010. Several states and industry groups had argued that EPA had set the new SO₂ NAAQS far below the level required to protect public health.

The states and industry also challenged that EPA's implementation of the rule, including the increased use of computer modeling in lieu of monitoring data. The D.C. Circuit found that this issue was not yet ripe because EPA had not finalized implementation plans. On February 6, 2013, EPA released a [paper](#) describing its strategy for implementing the SO₂ NAAQS, stating that the increased use of computer modeling will provide flexibility for air agencies to determine the most effective approach for characterizing air quality, and that modeling can provide air quality information for areas where monitoring is impractical. This strategy paper does not constitute a rulemaking or other final agency action.

Another D.C. Circuit decision on January 22, 2013 found that EPA exceeded its authority by exempting some new facilities from PM_{2.5} monitoring requirements. EPA had established a significant impact level and significant monitoring concentration PM_{2.5} emissions from new facilities which allowed these facilities to obtain an exemption from PM_{2.5} standards if they could show their emissions would have only minor impacts on air quality. The D.C. Circuit remanded this program to the agency for further consideration.

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