

## Fact Sheet

### **Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard**

#### **Action:**

- On August 18, 2010, the U.S. Environmental Protection Agency (EPA) proposed an approach to assure that air quality improvements under EPA's National Ambient Air Quality Standards (NAAQS) for 1-hour ground-level ozone are retained as areas work to meet the more health protective 8-hour ozone standards set in 1997.
- Several aspects of EPA's final rules for implementing the 1997 8-hour ozone standards were challenged in court. This proposed rule addresses issues related to how pre-construction permitting requirements under the New Source Review (NSR) permitting program should transition from the 1-hour to the 8-hour standards.
- EPA is proposing that NSR permitting requirements for the 1-hour ozone standards continue to apply until an area meets the current ozone standards.
- EPA is also communicating its Clean Air Act interpretation that areas attaining the 8-hour ozone standards should implement the NSR Prevention of Significant Deterioration permitting programs regardless of their status relative to the revoked 1-hour ozone standards.

#### **Background:**

- On April 30, 2004 (69 FR 23951), EPA published the Phase 1 Final Rule that addressed the following key elements related to implementation of the 8-hour ozone standards: classifications for the 8-hour NAAQS; revocation of the 1-hour standards (i.e., when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone standards; attainment dates; and the timing of emissions reductions needed for attainment.
- The Phase 1 Rule and two additional rules that EPA promulgated in response to petitions for reconsideration were challenged. On December 22, 2006, the Court issued a decision, ruling against EPA on several of the issues raised and rejecting other challenges to the rule. (*South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006)). The decision negated EPA's approach to anti-backsliding provisions for 1-hour NSR programs. This proposed rule responds to the Court's action.
- The Clean Air Act requires owners and operators of new large stationary sources (known as major sources) of air pollution and large stationary sources making major

modifications to obtain an air pollution permit before starting construction. This permitting program is called New Source Review (NSR). There are two major components to the NSR permitting program:

- 1) If the new source or modification is planned for an area that doesn't meet one or more of the national ambient air quality standards (NAAQS) (nonattainment area), a **Nonattainment NSR** permit is required.
- 2) If the new source or modification is planned for an area where air quality is acceptable (attainment and unclassifiable areas), a **Prevention of Significant Deterioration** (PSD) permit is required. The permit requires that the best available control technology (BACT) be met to control emission.
  - PSD permitting also applies for some Clean Air Act pollutants that do not have a NAAQS and that are not listed hazardous air pollutants. A current example of such a pollutant is hydrogen sulfide.
  - Similarly, the PSD permitting provisions will apply to greenhouse gas (GHG) emissions beginning January 2, 2011.

### **How to Comment:**

- EPA will accept comment on this proposal for 30 days following publication in the Federal Register. EPA also will hold a public hearing if one is requested.
- Comments should be identified by Docket ID No. EPA-HQ-OAR-2008 -0462 and submitted by one of the following methods:
  - Federal eRulemaking Portal (<http://www.regulations.gov>),
  - e-mail ([a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)),
  - Mail (EPA Docket Center, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460), or
  - Hand delivery (EPA Docket Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW, Washington, DC).

### **For Further Information:**

- To download a copy of the notice, go to EPA's Worldwide Web site at: <http://www.epa.gov/nsr>
- Today's proposed rule and other background information are also available either electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
- The Public Reading Room is located at EPA Headquarters, room number 3334 in the EPA West Building, 1301 Constitution Avenue, NW, Washington, DC. Hours of

operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.

- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
- Materials for this proposed action can be accessed using Docket ID No. EPA-HQ-OAR-2008-0462.
- For more information on the proposed rule, contact Mr. David Painter at (919)-541-5515 or e-mail at [painter.david@epa.gov](mailto:painter.david@epa.gov).