

## **Obama Administration Withdraws Draft Ozone Ambient Air Quality Standards and Reinstates 2008 Standards**

**September 14, 2011**

President Obama announced on September 2 that his administration was withdrawing the draft ozone ambient air quality standards that the U.S. Environmental Protection Agency (EPA) had prepared and was in the process of issuing as new regulations. The new regulations, had they become final, would have resulted in stricter standards related to ozone. This action does not relieve companies of compliance with any current air pollution control requirements because the withdrawn standards had not been adopted as final. Moreover, the withdrawal may result in only a temporary respite from new ozone standards because the Clean Air Act requires EPA to reconsider ozone standards in 2013. In addition, the administration has clarified that it intends to proceed to the next steps in implementing standards announced in 2008.

Ground-level ozone is formed by the combination of volatile organic compounds and nitrogen oxides in the presence of sunlight, and has been linked to respiratory health problems including decreased lung function and aggravated asthma. The Clean Air Act requires EPA to set national ambient air quality standards for ozone and five other air pollutants, which states must achieve through imposing emission-control requirements on industrial facilities, vehicles, and other sources of the air pollutants in areas that do not attain the air quality standards.

EPA last issued a national ambient air quality standard for ozone in 2008 at a concentration of 0.075 parts per million (ppm), a standard that was stricter than the previous standard of 0.084 ppm, which EPA adopted in 1997. In September 2009, however, EPA announced that it was reconsidering the ozone standard for purposes of adopting even more restrictive air quality standards, and stayed the implementation of the 2008 standard. EPA engaged in a process of preparing revised ozone ambient air quality standards, but did not make the new standards final. The President's announcement prevented these newly revised standards from becoming effective, at least for now. The 2008 standard is currently in effect, although subject to litigation in the U.S. Court of Appeals for the District of Columbia Circuit. Absent judicial action that vacates or stays the 2008 standard, EPA will proceed to the next step related to implementing such standard—designating those areas that are in attainment and nonattainment with the 2008 standard, which, in turn, will trigger state and local implementing actions. EPA's webpage for the National Ambient Air Quality Standards lists both the 2008 and 1997 standards and indicates that the 1997 standard and the implementation rules for that standard will remain in effect while EPA undertakes rulemaking for the transition from the 1997 standard to the 2008 standard.

Further complicating companies' long-range planning, the Clean Air Act requires EPA to review and, if appropriate, revise the national ambient air quality standards every five years. Accordingly, the 2008 ozone ambient air quality standard, even though not yet implemented, is subject to review in 2013. It remains to be seen if the 2013 review of the ozone standard will result in standards similar to those EPA has now withdrawn.

Please contact any of the Morgan Lewis attorneys listed below if you have any questions about the developments discussed in this LawFlash.

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