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Environmental Notes - November 2015

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ENVIRONMENTAL NOTES

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NEW OZONE STANDARD: BETTER THAN IT COULD HAVE BEEN, BUT CREATES UNCERTAINTY FOR INDUSTRY

BY: CHANNING J. MARTIN

EPA has issued a final rule tightening the primary ozone national ambient air quality standard ("NAAQS") down to 70 ppb from the 75 ppb limit established in 2008. The new NAAQS takes effect on December 28, 2015 (despite the many legal challenges already filed). Once that occurs, applicants for New Source Review or Prevention of Significant Deterioration permits must incorporate the new NAAQS into their applications and demonstrate that their projects will not lead to violations of it. The question is how is that to be done? Industry and states look to EPA to supply the necessary implementation rules and guidance on how to make the demonstration, but EPA often lags in issuing that guidance after the new NAAQS takes effect. A number of states and other commenters urged EPA to issue its implementation rule at the same time as the new NAAQS, but that did not happen. So now what?

EPA issued a memorandum on October 1, 2015 that seeks to allay concerns about implementing the new standard. In it, Acting EPA Air Chief Janet McCabe states that EPA will work with states "to carry out the duties of ozone air quality management in a manner that maximizes common sense, flexibility and cost-effectiveness while achieving improved public health expeditiously and abiding by... legal requirements." The memorandum commits EPA to issuing new designation guidance in early 2016, along with other guidance to follow later. It also points out that the new rule contains a "grandfather" provision that excludes complete or near complete permit applications from having to demonstrate compliance with the new NAAQS.

Specifically, grandfathering applies to those applications that the reviewing authority formally determined were complete on or before the signature date of the NAAQS (October 1, 2015) or for which the reviewing authority first published a notice of a draft permit or preliminary determination on or before that date.

As for everyone else that has an application in the pipeline, the memo says, "EPA continues to recommend following its existing permitting guidance pending additional guidance specific to ozone and the revised standards." Translation: Work with your state agencies and keep your fingers crossed you get it right.

What about Virginia, North Carolina and South Carolina?

There is reason for optimism that things may not be as bad as they could have been for industry and businesses in these states. Under the rule, states have one year to recommend cities, counties, or portions thereof that should be designated as not attaining the new standard. Thereafter, EPA will finalize nonattainment designations (likely based on 2014-2016 data) in 2017 or early 2018. Once an area is designated as nonattainment, additional emission requirements for new and expanding businesses are required, as well as additional control technology for existing sources.

The good news is that all cities and counties in South Carolina and all but Mecklenburg County (73 ppb) in North Carolina have 2012-2014 Design Values equal to or less than the new standard. While Virginia has made good progress on reducing ozone in Northern Virginia, heavily-congested Fairfax (72 ppb) and Arlington (74 ppb) have 2012-2014 Design Values that exceed 70 ppb. This does not mean these are the only localities in these states that are likely to be designated as nonattainment with the new standard. There are a number of localities that are on the borderline and could go either way.

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