PM2.5/Clean Air Act: U.S. Court of Appeals Addresses EPA Motion for Vacatur



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The United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") addressed in a June 26th Opinion an issue arising out of the United States Environmental Protection Agency ("EPA") 2024 rule revising the Clean Air Act National Ambient Air Quality Standards ("NAAQS") for particulate matter. *See COMMONWEALTH OF KENTUCKY, ET AL., v. EPA ET AL.*, consolidated with 24-1051, 24-1052, 24-1073, 24-1091.

The Opinion addresses EPA's moving to vacate the rule on grounds that it exceeded its statutory authority and acted unreasonably by failing to consider costs.

Particulate matter is a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. It is composed of two major components.

Larger particulates (PM10) are generally the result of mechanical, evaporative, and suspension processes. Particulates designated PM2.5 typically consist of sulfates, nitrates, elemental carbon, organic carbon, compounds or metals. Because of their small size, these particulates can remain in the air for a significant period of time.

Section 108 and 109 of the Clean Air Act require that EPA identify air pollutants utilizing certain criteria and set NAAQS for each. Particulates are one of the six air pollutants currently designated as criteria air pollutants and are therefore subject to NAAQS. Section 109 requires that EPA promulgate primary NAAQS for the pollutants identified under Section 108.

Section 109(d)(1) of the Clean Air Act mandates a periodic review of each NAAQS. Depending on the results of the review, EPA must determine whether the existing air quality criteria and NAAQS should be revised. EPA's previous review and revision of the PM2.5 NAAQS is an example of this review process.

EPA had modified under the Biden Administration the PM2.5 NAAQS to a more restrictive 9 micrograms per cubic meter. The previous PM2.5 standard was 12 micrograms per cubic meter.

EPA under the Trump Administration filed a Motion for vacatur in the DC Circuit arguing that in previously revising the PM2.5 NAAQS that it based its action on an erroneous interpretation of the Clean Air Act and exceeded its authority by revising the standard without initiating and completing a thorough review. It further argued that the result was:

… an unlawful tightening of the annual standard for fine particulate matter (PM2.5) from 12.0 μ g/m³ to 9.0 μ g/m³ without the rigorous stepwise process that Congress requires. EPA now confesses error and urges this Court to vacate the rule before the area designation deadline of February 7, 2026.

A number of states intervened supporting the EPA Motion and other states and environmental organizations opposed it. Some industry groups have also intervened in support of EPA's Motion.

The DC Circuit denies EPA's Motion for Vacatur and therefore upholds the current PM2.5 NAAQS.

A copy of the Opinion can be found here.