

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 This action does not relieve companies of compliance with any current air pollution control requirements because the withdrawn standards had not been adopted as final.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.

Washington, D.C.

William H. Lewis, Jr.	202.739.5145	wlewis@morganlewis.com
Ronald J. Tenpas	202.739.5435	rtenpas@morganlewis.com

Philadelphia

John J. McAleese, III	215.963.5094	jmcaleese@morganlewis.com
-----------------------	--------------	--

Princeton

Christopher J. McAuliffe	609.919.6619	cmcauliffe@morganlewis.com
--------------------------	--------------	--

Now Available: Environmental eDeskbook

This eDeskbook is designed to be an up-to-date reference tool for people encountering environmental issues and the regulatory framework established to protect the environment. The eDeskbook provides quick access to current contact information, articles, environmental regulations, noteworthy calendar items, and other environmental resource materials. View the Environmental eDeskbook at environmentaldeskbook.morganlewis.com.

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.