

The Inside Story

EPA Readies Ozone Suit Briefing

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EPA is readying its preferred plan for resuming briefing in stalled litigation filed by industry, environmentalists and others challenging the agency's 2008 ozone standard, with the suit set to continue after President Obama forced EPA to scrap plans to tighten the standard.

In a [Sept. 2 court filing](#) in the consolidated lawsuits over the Bush-era ozone standard of 75 parts per billion (ppb), EPA says it "no longer expects it will take final action . . . in the near future" on issuing a revised standard following [Obama's announcement](#) earlier that day that he is forcing EPA to scrap its pending final rule to tighten the limit to between 60 and 70 ppb.

Instead, EPA tells the U.S. Court of Appeals for the District of Columbia Circuit that within 10 days it will file a motion to govern further proceedings, outlining how the agency believes briefing should resume in the ozone lawsuit, *State of Mississippi, et al. v. EPA*.

The court had put the case on hold pending EPA's revised ozone standard. Industry has long been pushing the court to resume briefing, saying their lawsuit challenges the Bush EPA ozone standard as too stringent and that the Obama EPA's rule would do nothing to resolve those concerns because it would have led to a stricter standard. Environmentalists and some states supportive of a stricter standard, however, filed suit over the Bush-era standard as too weak.

EPA Administrator Lisa Jackson has criticized the 2008 ozone national ambient air quality standard (NAAQS) as neither legally nor scientifically defensible, putting the agency in a difficult position of having to defend the 2008 standard despite the administrator's comments.

Attached to EPA's court filing is a letter from Obama's regulatory review chief Cass Sunstein to Jackson explaining the White House's decision to scrap the rule.

Sunstein notes that "finalizing a new standard now . . . could produce needless uncertainty" because the Clean Air Act requires NAAQS reviews every five years, with the next review due in 2013. The comments echo arguments raised by industry and Republican opponents of a stricter NAAQS.

Sunstein also said that the reconsideration is based on scientific data from 2006, saying that "work has already begun on a new and forthcoming scientific review."

Moreover, says Sunstein, additional rules recently promulgated by EPA such as new efficiency standards for heavy-duty trucks and the nitrogen oxide and sulfur dioxide cap-and-trade Cross-State Air Pollution Rule "are projected to reduce ozone as well," improving public health.

The decision continues to roil advocates of a stricter ozone limit. The Center for Progressive Reform, a think tank which generally advocates stricter environmental regulations, in a [Sept. 6 blog post](#) calls on Jackson to either disobey the White House's order or resign, saying that scrapping the rule "may not strictly violate the letter of Clean Air Act, but it will violate the spirit of that statute."

The group praises Jackson's work at the agency, saying "she's got one last act of courage ahead of her," which would be to "either defy [President Obama] or step down. Either way, she'll be a hero."

The group warns that if a revision to the standard is left until 2013, "Americans living in cities -- where ozone pollution is at its worst -- will be left in worse shape than they would have been had the inadequate Bush Administration standard gone into effect."

But at the same time, regulatory review watchdog the Center for Regulatory Effectiveness [defends Obama's decision](#), noting that it "is based upon the concept of centralized regulatory review" and "upon the deliberate

decisions of nine consecutive presidential administrations" upholding executive branch authority over regulatory rulemakings.