THE LEADER IN ENERGY AND ENVIRONMENT NEWS

AIR POLLUTION

D.C. Circuit nixes EPA ozone requirements

Pamela King, E&E News reporter

Published: Friday, January 29, 2021

The E. Barrett Prettyman Federal Courthouse houses the U.S. Court of Appeals for the District of Columbia Circuit. Francis Chung/E&E News

This story was updated at 4:15 p.m. EST.

EPA must change its approach for areas that are falling short of the agency's ground-level ozone standard, a federal appeals court ruled today.

A three-judge panel for the U.S. Court of Appeals for the District of Columbia Circuit scrapped three parts of EPA's 2015 and 2018 rules implementing the National Ambient Air Quality Standards (NAAQS) for ozone.

The court found that the provisions it tossed either "contravene the statute's unambiguous language" or rely "on an unreasonable interpretation" of the Clean Air Act, wrote Judge David Tatel in a unanimous **opinion** issued today.

Ozone, a lung irritant linked to asthma and other health problems, is among the "criteria" pollutants for which the Clean Air Act requires EPA to set ambient air quality standards.

The agency capped ozone levels at 70 parts per billion in 2015 and established cleanup requirements for nonattainment areas in 2018. The litigation focused on the 2018 implementation rule.

Sierra Club and other environmental groups that challenged EPA's rules said the agency had effectively given states too much leeway on the requirements (***E&E News PM***, Sept. 22, 2020).

"This sort of gaming doesn't lead to real pollution reduction," said Earthjustice attorney Seth Johnson, who represented environmental challengers in the case. "It's just not what the law allows."

Johnson said the biggest win in the D.C. Circuit's ruling was the court's decision to scrap EPA's interprecursor trading program, which allows use of permitting offsets to comply with NAAQS.

"This will mean that when new refineries want to emit more carcinogenic volatile organic compounds, they're going to have to make sure that VOC emissions in the area actually go down," Johnson said.

The court also scrapped EPA's contingency measures, which kick in automatically if an area misses an attainment deadline or fails to make reasonable progress, and milestone compliance demonstration requirements, which said states can show they have reached a target by showing "percent implementation" instead of actual emissions reductions.

The D.C. Circuit did uphold a provision that allows states to choose between two baseline years — 2017 or 2018 — to measure their progress on reducing air pollution.

"Because no single year can serve as a perfect stand-in for 1990, EPA acted reasonably when it allowed states to choose between two baseline year options, each of which is 'ground[ed] in the statute,'" wrote Tatel, who was appointed during the Clinton administration.

Congress amended the Clean Air Act in 1990 after finding that the law had not led to the expected reductions in levels of ozone and other pollutants.

EPA said it is reviewing the decision

Senior Judge Harry Edwards and Judge Gregory Katsas also decided the case. They were appointed during the Carter and Trump administrations, respectively.

Twitter: **@pamelalauren** | Email: **pking@eenews.net**