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The EPA's Implementation of the 8-Hour Ozone Standard: Why Stronger Public Health Protections Against Ozone Are Needed

Background

When Congress amended the Clean Air Act in 1990, it enacted a detailed set of ozone control requirements known as "Subpart 2." In Subpart 2, Congress established:

- Various classifications (from marginal to extreme) that reflect the severity of an area's ozone problem;
- A series of deadlines—each keyed to a different classification—by which polluted areas must attain the ozone standard; and
- Specific control measures that must be implemented in specified timeframes.

Subpart 2 provides areas that have higher nonattainment classifications (i.e., areas with dirtier air) additional time to comply with the ozone standard, but also requires those areas to implement more protective control measures.

In 1997, EPA issued an 8-hour National Ambient Air Quality Standard, a more protective standard that is sorely needed because the existing 1-hour standard does not adequately protect children, the elderly, and other vulnerable populations from the dangers posed by ozone.

However, when EPA issued its 8-hour ozone standard, it also adopted an implementation policy that attempted to discard the Subpart 2 protections in favor of the less protective requirements of Subpart 1. The Supreme Court unanimously rejected this approach in 2001, holding that EPA's approach was "astonishing," "unreasonable" and "unlawful"—and that EPA lacked authority to shunt aside the Subpart 2 requirements.

The 2003 Implementation Rule

On June 2, 2002, EPA issued a long-overdue proposal that describes how the agency intends to implement the 1997 8-hour ozone standard. EPA's implementation proposal suffers from several major defects. For example, despite the Supreme Court's ruling, EPA would relegate many of the so-called nonattainment areas to the weaker Subpart 1, thereby allowing them to avoid the more protective Subpart 2.

The implications of such an approach air quality are troubling. Areas that are subject only to Subpart 1 would be able to duck the stronger requirements of Subpart 2 on issues such as new source review and percentage reductions in smog-causing pollutants. :

Likewise troubling is EPA's announced intention to revoke the 1-hour standard one year after EPA designates which areas are in violation of the 8-hour standard. (EPA is required by court order to make these designations by April 15, 2004.) By revoking the 1-hour standard, EPA would allow areas to discontinue measures that are necessary for controlling and reducing ozone levels—and that have already been delayed years past Clean Air Act deadlines.

Under the agency's proposal, EPA would authorize polluted areas to weaken or abandon measures such as:

- further progress requirements, designed to ensure that areas make consistent progress toward attainment of the ozone standard;
- transportation conformity, requiring states to certify that transportation projects will not interfere with attainment of the ozone standard; and
- maintenance plans, aimed at keeping areas that previously violated the 1-hour standard from sliding back into nonattainment;

Ozone and Public Health

Health researchers have repeatedly associated ozone pollution with a variety of respiratory problems, including asthma attacks, respiratory-related hospitalizations, reductions in lung function, respiratory symptoms (such as coughing, shortness of breath, and nausea), increased airway responsiveness, increased susceptibility to respiratory infection, and pulmonary inflammation.

Ozone is particularly dangerous to children, the elderly, and people with respiratory illnesses. Recent studies have linked elevated ozone levels to school absences due to asthma and other respiratory ailments, and scientists have found that ozone may not only trigger asthma, but could actually contribute to the development of the condition in children.

Americans are currently suffering from an asthma epidemic. Over the past two decades asthma prevalence has almost doubled. According to the most recent information, close to 20.3 million Americans currently have asthma, of which 12 million including four million children—suffered an asthma attack during the previous year.

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