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2015 Ozone National Ambient Air Quality Standard

A review of the upcoming ozone nonattainment designation process and a case study on factors considered when opposing a nonattainment designation

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Ozone is one of the six National Ambient Air Quality Standards ("NAAQS") established by the federal Clean Air Act ("fCAA"). Effective December 28, 2015, the federal Environmental Protection Agency ("EPA") lowered the ozone NAAQS from 0.075 parts per million ("ppm") to the more stringent level of 0.070 ppm ("2015 ozone NAAQS"). In Texas, the Texas Commission on Environmental Quality ("TCEQ") is the state agency charged with establishing a State Implementation Plan ("SIP") for the state to comply with the ozone NAAQS.

The next few years will be a critical ozone planning period as TCEQ and EPA evaluate monitoring data and other factors to determine which areas are not in compliance with the 2015 ozone NAAQS and therefore should be subject to a 2015 ozone NAAQS "nonattainment designation." Stringent emission controls, more burdensome permitting requirements, and additional transportation planning requirements are imposed upon areas designated as nonattainment.

This paper provides a brief background on the fCAA NAAQS program and describes the anticipated 2015 ozone NAAQS nonattainment designation process. The analysis then turns to the factors used by EPA to potentially add areas to nonattainment areas proposed by each state and what factors can be evaluated to challenge an initial nonattainment designation. The paper concludes with a summary of the fCAA sanctions for failure to submit a SIP or submission of an inadequate SIP.

I. NAAQS Basics

NAAQS standards establish ambient air quality standards for the region. Ambient air describes the air impacting the general environment outside of a facility's fenceline. The primary intent of the NAAQS is to protect public health, in particular "sensitive populations such as children and the elderly."¹

¹ The Clean Air Act, 42 U.S.C. § 7409 (2011). The CAA also allows EPA to set a secondary NAAQS standards to protect negative impacts to animals, crops, vegetation and buildings. *Id.* To date, EPA has not proposed a separate secondary standard for ozone.

The fCAA requires each state to designate regions that exceed a NAAQS as a "nonattainment" region for that specific NAAQS, *i.e.*, ozone or particulate matter. Once EPA finalizes the nonattainment designations, states then begin the planning process to submit a SIP to EPA.

For each nonattainment region, the state must prepare a SIP to demonstrate how a state will achieve compliance, or attainment, for the identified nonattainment areas.² The SIP regulatory package submitted by the state to EPA for approval includes emission reduction rules; state funding and state resource commitments to implement and enforce the air quality programs; monitoring data; emission inventories; modeling and a narrative that describes how the rules will move an ozone nonattainment region into compliance with the ozone standard.³ In regulatory terms, the state-prepared SIP package is called the "attainment demonstration."

Ozone is not emitted from stationary sources but is formed certain atmospheric conditions by chemical reactions between oxides of nitrogen ("NOx") and volatile organic compounds ("VOCs"). Therefore, rules imposed in an ozone SIP would likely require NOx and VOC emission reductions from midstream oil and gas sources such as tanks, engines, flares, and gas processing plants. SIP rules may apply to all existing and new sources regardless of when the source was built.

It is anticipated that all nonattainment counties in Texas will be designated as marginal or moderate for the 2015 ozone NAAQS.⁴ A marginal and moderate designation for a nonattainment area imposes a three-year and six-year deadline, respectively, to attain the 2015 ozone Standard.⁵

II. Nonattainment Designation for the 2015 Ozone NAAQS

Governors will submit ozone nonattainment area recommendations to EPA in October 2016 for the 2015 ozone NAAQS. On August 3, 2016, TCEQ recommended to Governor Abbott that twenty-one (21) counties be designated nonattainment for the 2015 ozone NAAQS. These 21 counties include nineteen (19) counties that are already in nonattainment with the current 2008 ozone NAAQS and added two (2) counties with monitors that indicate exceedance of the new, lower 2015 ozone NAAQS. TCEQ based the recommendations on monitoring data from

² 42 U.S.C. § 7407(a).

³ 42 U.S.C. § 7410(a)(2).

⁴ TCEQ estimates that regions with a design value between 0.071 to 0.081 ppm would be classified as marginal, 0.081 to 0.093 as moderate, 0.093 to 0.105 ppm as serious. It is not anticipated that Texas will have areas classified as severe or higher for the 2015 ozone NAAQS.

⁵ 42 U.S.C. § 7511(a)(1).

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