

1999, the Appeals Court remanded the ozone standard to EPA on the basis that our interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc. v. EPA*, 175 F.3d 1027, 1034–1040 (ATA I) *aff'd*, 195 F.3d 4 (D.C. Cir., 1999) (ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.⁵ We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. Specifically, the Court noted we could not ignore the provisions of subpart 2 that “eliminate[] regulatory discretion” allowed by subpart 1. *Id.* at 918. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are “ill-fitted” to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit Court rejected all remaining challenges to the ozone and fine particle (PM_{2.5}) standards. *American Trucking Assoc. v. EPA*, 283 F.3d 355 (D.C. Cir. 2002) (ATA III). With that ruling, EPA began to move forward with programs to protect Americans from the wide variety of health problems that these air pollutants can cause, such as respiratory illnesses and premature death.

The implementation rule proposed herein will provide specific requirements for State, local, and Tribal air pollution control agencies to address as they prepare implementation plans to attain and maintain the 8-hour NAAQS. Each State with an area that is not attaining the 8-hour ozone NAAQS will have to develop—as part of its SIP—emission limits and other requirements to attain the NAAQS within the

timeframes set forth in the CAA.⁶ Tribes with jurisdiction over Tribal lands that are not attaining the 8-hour ozone standard could voluntarily submit a Tribal implementation plan (TIP) but would not be required to do so. However, in cases where a TIP is not submitted, EPA, working with the Tribes, would have the responsibility for planning in those areas.

B. What Technical Work Influenced EPA's Implementation Approach?

In developing our original approach for implementation of the 8-hour standard, we considered input from a variety of technical information sources and experts. We originally described the technical information of the physical processes that produce ozone, fine particles, and regional haze and relied on that in developing a proposed implementation approach. See “Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations; Proposed Rule” (December 13, 1996, 61 FR 65764). We also participated with States in the eastern United States in the Ozone Transport Assessment Group (OTAG), which documented that long-distance transport of nitrogen oxides across much of the OTAG study area contributed to high levels of ozone. For background on OTAG and the results from the study, see the following Web site: <http://www.epa.gov/ttn/naaqs/ozone/rto/otag/index.html>.

That OTAG process resulted in a report to EPA with the conclusions that included the following:

- Regional NO_x reductions are effective in producing ozone benefits; the more NO_x reduced, the greater the benefit.
- Ozone benefits are greatest where emissions reductions are made; benefits decrease with distance.
- Elevated and low-level NO_x reductions are both effective.
- Volatile organic compound controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.
- Air quality data indicate that ozone is pervasive, that ozone is transported, and that ozone aloft is carried over and transported from one day to the next.

As a result of these recommendations, EPA called for SIP revisions from 22 States and the District of Columbia and established Statewide budgets on NO_x

emissions that those jurisdictions would have to meet by 2007. Stationary source emissions reductions to meet the budgets were required to be implemented by May 2004.⁷ The purpose of the rule was to address long-range transport by eliminating the significant contribution that each State's NO_x emissions made to both 1-hour and 8-hour ozone nonattainment problems in downwind areas. The call for SIP revisions was challenged by a number of States, industry and interest groups but was largely upheld by the court and has remained a viable means for obtaining significant NO_x emissions reductions.

The OTAG report also recognized that VOC emissions reductions do not play much of a role in long-range transport, and concluded that VOC reductions are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.

Under the Federal Advisory Committee Act (FACA), we also formed a Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs that provided recommendations and ideas to assist us in developing implementation approaches for these programs. We have incorporated ideas from the FACA process for a number of SIP elements, particularly those related to transport of ozone, the process for demonstrating attainment of the ozone standard, and requirements for ensuring reasonable further progress. Further information on the FACA process and its reports is found at the following Web site: <http://www.epa.gov/ttn/faca/>.

As noted above, we have also promulgated national rules that reduce VOC and NO_x emissions (ozone precursors) from mobile and stationary sources, which also help address ozone nonattainment problems. A number of commenters recommended that we set additional national standards for more source categories such that States and Tribes do not have to control these sources locally. They suggest that such standards would eliminate the inconsistent regulation that occurs when each nonattainment area chooses how to regulate sources within its jurisdiction. We continue to review source categories for possible Federal measure development.

This technical backdrop led us to be guided by the principle of emphasizing national and regional measures to help areas come into attainment and, where possible, reducing the need for those

⁵ The Court addressed a number of other issues, which are not relevant here.

⁶ The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.

⁷ The EPA's NO_x SIP Call mandated reductions by May 2003. However, the Court's stay of the rule pending litigation resulted in a 1-year delay to May 2004.