

## Business, Oil, Enviro Groups Challenge EPA's Ozone Rule

By Juan Carlos Rodriguez

*Law360, New York (December 23, 2015, 6:02 PM ET)* -- Industry groups including the U.S. Chamber of Commerce and environmental groups including the Sierra Club on Wednesday separately asked the D.C. Circuit to review the U.S. Environmental Protection Agency's recent rule tightening ozone emission limits.

The EPA in October finalized a tightening of its ozone National Ambient Air Quality Standard to 70 parts per billion, down from 75 parts per billion, a change the agency says better protects children, people with lung diseases like asthma, and others. In a statement released Wednesday, the Chamber, the National Association of Manufacturers, the American Petroleum Institute and others said the EPA set an unattainable mandate with the new ozone standard that will slow economic growth opportunities.

"This new standard could halt progress in communities across the country as businesses are forced to slow expansion plans and outside development looks to other regions. The EPA has created a web of regulations that makes it almost impossible for businesses to succeed in this already tough economic climate," William Kovacs, senior vice president for environment, technology and regulatory affairs for the Chamber, said in a statement.

The rule is under fire over concerns it could impede economic growth and doesn't adequately address background ozone levels. The Clean Air Act requires the EPA to periodically review air quality criteria, the science upon which the standards are based, as well the standards themselves, which was last done in 2008.

The new standard is well below the ozone level shown to cause the widest range of respiratory effects — 80 parts per billion — and just below the lowest ozone level shown to cause both decreased lung function and increased respiratory problems — 72 parts per billion — according to the EPA.

While the industry groups said the regulation goes too far, the Sierra Club, Physicians for Social Responsibility, Appalachian Mountain Club and the National Parks Conservation Association said it doesn't go far enough, and filed their own petition for review. They said the EPA's standards are weaker than what medical experts have called for and fail to protect against thousands of deaths and hospital and emergency room visits and hundreds of thousands of asthma attacks that could be prevented by more protective standards.

"The EPA set its new standards at the very weakest level it considered, 70 parts per billion, despite findings by the agency's science advisors that harms to health occur below this level, especially for

vulnerable populations. The EPA also rejected calls from the National Park Service to establish a separate standard calibrated to protect trees, crops and other plants from ozone-caused damage,” the groups said in a statement.

David Baron, an attorney at Earthjustice, the nonprofit law firm representing the coalition of health and environmental organizations, said in a statement that the 70 ppb standard leaves kids, seniors and asthmatics without the protection doctors say they need from the pollutant.

“The EPA has a duty to set standards that assure our air is safe to breathe. We say they violated that duty here,” Baron said.

The industry groups are represented by James R. Bieke, Roger R. Martella and Joel F. Visser of Sidley Austin LLP, Lucinda Minton Langworthy and Aaron M. Flynn of Hunton & Williams LLP, Thomas A. Lorenzen and Robert J. Meyers of Crowell & Moring LLP, Steven P. Lehotsky and Sheldon B. Gilbert of the U.S. Chamber Litigation Center, Linda E. Kelly and Quentin Riegel of Manufacturers Center for Legal Action, Stacy Linden and Mara E. Zimmerman of API, and Richard S. Moskowitz of American Fuel and Petrochemical Manufacturers.

The environmental and health groups are represented by David S. Baron and Seth L. Johnson of Earthjustice.

The cases are Chamber of Commerce of the USA et al. v. U.S. Environmental Protection Agency, number 15-1491; and Sierra Club et al. v. U.S. Environmental Protection Agency, number 15-1490, both in the U.S. Court of Appeals for the D.C. Circuit.

--Additional reporting by John Kennedy. Editing by Patricia K. Cole.

---

All Content © 2003-2016, Portfolio Media, Inc.