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Recent U.S. Supreme Court Decision Does Not Bode Well for Baton Rouge Area

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A recent decision by the U.S. Supreme Court will result in more stringent ozone requirements for the five-parish Baton Rouge Ozone Nonattainment Area (East and West Baton Rouge, Livingston, Iberville, and Ascension Parishes).

On January 14, 2008, the Supreme Court denied requests from the National Petrochemical & Refiners Association (NPRA) and the U.S. Chamber of Commerce to review the appellate ruling *NPRA et al v. South Coast Air Quality Management District (SCAQMD), et al., 07-311* issued December 2006 by the D.C. Circuit Court. Essentially the lower court ruled that in its implementation rules for the new 8-hour ozone standard, EPA violated anti-backsliding requirements and improperly eased ozone attainment requirements for areas transitioning from the old 1-hour ozone standard to the new 8-hour standard.[1]

[1] The 1-hour standard was a maximum concentration-based standard of an hourly average ozone concentration of 120 parts per billion (ppb). The 8-hour ozone standard is an exposure-based standard of an average ozone concentration over an 8-hour period of 80 ppb.

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For the Baton Rouge Ozone Nonattainment Area, this means that the area will be required to continue to meet all applicable requirements of its “severe” designation under the 1-hour standard (revoked in 2005), even though air quality in the area had improved enough for it to be classified as a “marginal” nonattainment area (in 2004) under the new, more stringent 8-hour standard.

These applicable requirements include:

- lowering of the definition of major source from 50 to 25 tons per year (e.g. smaller businesses and minor modifications to larger businesses will now require permits);
- requirements for greater emission offsets and more expensive controls for industry;
- further rate-of-progress emissions reductions and implementation of contingency measures if we fail to attain the ozone standard;
- implementation of Section 185 penalty fees on major sources of NOx and VOCs in the five-parish area (earlier estimates put the potential cost to local industries at $60 million annually);
- possible transportation control measures; and
- possible mandates to introduce reformulated gasoline.

These requirements were prescribed during the late 1980s while the Clean Air Act Amendments of 1990 were being crafted. They are anachronistic given the progress made in reducing industrial emissions and our better knowledge, today, of primary sources of ozone-forming emissions and differing attainment strategies. The bottom line is that there will be negligible benefits and huge costs to the Baton Rouge area imposed by these requirements.

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Particularly perplexing (a “catch 22”) is the fact that the Baton Rouge area essentially achieved attainment with the old 1-hour standard in 2006, but since the standard was revoked in 2005, there is no formal means for EPA to make a finding of attainment and thus terminate the imposition of the annual Section 185 industrial emissions penalties, as would have been done if the 1-hour standard had remained in effect.

To make matters worse, on or before March 12, 2008, EPA will announce a new, probably more stringent (and much harder to achieve) 8-hour standard that practically assures the continuation of the old “severe” requirements for the Baton Rouge area for years to come.