



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

National Secondary Ambient Air Quality Standards/Clean Air Act: U.S. Environmental Protection Agency and Center for Biological Diversity Enter into Settlement Agreement Addressing NOx SOx, and Particulate Matter

10/17/2022

The United States Environmental Protection Agency (“EPA”) and Center for Biological Diversity (“CBD”) entered into a September 28th Settlement Agreement (“Settlement”) to resolve certain issues associated with Clean Air Act duties related to oxides of nitrogen (“NOx”), sulfur oxides (“SOx”), and particulate matter (“PM”).

CBD and Center for Environmental Health had filed suit on April 13th against EPA in the United States District Court for the Northern District of California alleging that the federal agency had failed to undertake certain non-discretionary duties under the Clean Air Act which involve secondary National Ambient Air Quality Standards for NOx, Sox, and PM.

A secondary standard is defined in Section 109(b)(2) of the Clean Air Act as requiring that EPA specify a level of air quality the attainment and maintenance which, in the judgment of the Administrator, based on the criteria, are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air.

Welfare effects are defined by Section 302(h) as including, but not limited to:

. . . effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and wellbeing.

The Clean Air Act requires that EPA undertake at five-year intervals a review of ambient criteria and make revisions as may be appropriate.

CBD alleged that EPA had not undertaken the five-year reviews for the previously referenced pollutants by the required time periods.

The Settlement sets out a timeline for EPA to undertake such reviews for these pollutants and sign a Notice of Proposed Rulemaking setting forth a proposed decision.

A copy of the Settlement can be downloaded [here](#).

