



Atlanta Regional Commission

March 8, 2018

The Honorable Scott Pruitt  
Office of the Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Request for EPA to Seek an Appeal and Stay of the South Coast Air Quality Management District Ruling**

The recent court ruling in the South Coast Air Quality Management District v. EPA et al., No. 15-1115 (D.C. Cir. Feb. 16, 2018) vacated portions of the 2008 Ozone Implementation Rule (80 Fed. Reg. 12,264) revoking transportation conformity for the 1997 ozone standard. This action appears to result in EPA being unable to render conformity determinations for pending transportation plans and programs in areas originally classified as nonattainment for the 1997 standard. The attached summary details the impacts on the Atlanta region as we understand the court ruling.

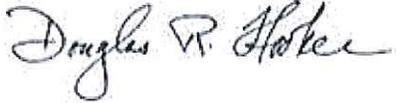
Since Georgia's Metropolitan Planning Organizations (MPOs) have ceased demonstrating conformity to the 1997 ozone standard, per the 2008 Ozone Implementation Rule, several urbanized areas in the state of Georgia are now without a 1997 ozone standard conforming transportation plan, thereby restricting the ability of EPA to approve conformity determinations for amendments to Regional Transportation Plans (RTPs) and Transportation Improvement Programs (TIPs). Currently in Georgia, the Atlanta Regional Commission (ARC) has two RTP/TIP amendments in progress that are impacted by this decision. This court decision threatens the implementation of over \$1.5 billion in federal transportation funds in FY 2018 and FY 2019.

The Atlanta Regional Commission, Georgia Department of Transportation, and Georgia Regional Transportation Authority request that EPA appeal this ruling and request a stay on the previous decision to ensure the transportation planning and project delivery process can continue on schedule. This action will ensure a smooth transition - and prevent delays in the delivery of transportation projects and programs - that will impact the lives of millions of Georgians.

[atlantaregional.org](http://atlantaregional.org)

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Sincerely,



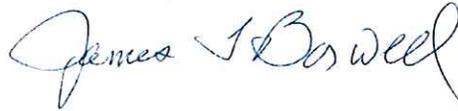
Doug Hooker  
Executive Director  
Atlanta Regional Commission



Kerry Armstrong  
Chairman  
Atlanta Regional Commission



Russell McMurry  
Commissioner  
Georgia Department of Transportation



Jamie Boswell  
Chairman  
Georgia Department of Transportation



Christopher Tomlinson  
Executive Director  
Georgia Regional Transportation Authority &  
State Road and Tollway Authority



Walter M. "Sonny" Deriso, Jr.  
Board Chairman  
Georgia Regional Transportation Authority

C: Ken Wagner, EPA

Attachment: Ozone Implementation Ruling Impacts

**ANTICIPATED IMPACTS ON THE ATLANTA REGION TRANSPORTATION PROGRAM FROM THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, PETITIONER v. ENVIRONMENTAL PROTECTION AGENCY, ET AL., RESPONDENTS NATIONAL ENVIRONMENTAL DEVELOPMENT ASSOCIATION'S CLEAN AIR PROJECT, ET AL., INTERVENORS**

Background

When a new ozone or particulate matter standard is put in place, the Environmental Protection Agency (EPA) provides a rule that informs States on how to implement the new standard. This rule is colloquially called the "Implementation Rule." When the nation transitioned from the 1997 to the 2008 ozone standard, EPA laid out a process in its Implementation Rule to remove requirements for the 1997 standard, including transportation conformity requirements, for areas that were designated for the new, stricter 2008 ozone standard and had attained the 1997 standard.

The goal of this process was to lower the burden on governments to meet requirements for multiple standards simultaneously, especially in the case where areas were already determined to be in nonattainment for a stricter standard.

In the Atlanta region, the transition from the 1997 to the 2008 ozone standard resulted in a smaller 15-county nonattainment area, replacing the 20-county 1997 ozone area. Conformity was then revoked for the outer 5 counties - including the Gainesville-Hall MPO - in 2015. In 2015-2016, ARC worked with the Georgia Environmental Protection Division (GA EPD) to establish new motor vehicle emissions budgets for the 2008 ozone standard and altered the conformity process to reflect the new procedures outlined in the Implementation Rule.

Lawsuit and the United States Court of Appeals for the District of Columbia Circuit Ruling

In 2017, the South Coast Air Quality Management District filed suit against EPA over the Implementation rule, citing removing conformity requirements (among other items) violates rules that help areas uphold air quality standards. As a result, on February 16, 2018 the DC Circuit Court of Appeals vacated portions of the EPA's 2008 Ozone Implementation Rule, agreeing with the plaintiffs. This ruling vacated the revocation of transportation conformity requirements for the 1997 ozone standard.

Implications and Unknowns

As ARC staff currently understands the ruling, all areas that were nonattainment for the 1997 ozone standard at one time must now continue to demonstrate conformity to that standard to receive a positive conformity determination on their Regional Transportation Plan (RTPs) and Transportation Improvement Program (TIP).

ARC has two TIP amendments in the pipeline that staff believes cannot be approved by federal partners, effectively stalling the transportation planning process. It is important to understand that this stall will be temporary, but threatens the implementation of over \$1.5 billion in federal transportation funds in FY 2018 and FY 2019 – and has the potential of trickling into future years as delays accrue. This action is the result of a court ruling, and is NOT a conformity lapse due to the inability to demonstrate conformity to established motor vehicle emissions budgets, as was the case in the Atlanta region during the conformity lapse of 1999. ARC will continue to work with our state and federal partners to pursue the best path forward. ARC can respond to the recent court ruling (processing a RTP/TIP amendment and demonstrating conformity to the 1997 Ozone standard) – if this is what EPA requires, but this will take time.

EPA should immediately seek an appeal and stay of the ruling, allowing states and MPOs to respond to the ruling and avoid threatening billions in federally-funded transportation projects.