

# A!ert

dvrpc

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*Alert is a monthly update on transportation and air quality planning activities in the Delaware Valley.*



## Air Quality Regulations

### U.S. Supreme Court Rules to Limit the U.S. Environmental Protection Agency's Ability to Regulate Greenhouse Gas Emissions from Existing Power Plants

On June 30, 2022, the U.S. Supreme Court ruled that the Clean Air Act did not give the U.S. Environmental Protection Agency (EPA) authority to create a cap-and-trade regulatory framework for limiting greenhouse gas (GHG) emissions from existing power plants.

In a 6-3 vote, in the case of *West Virginia v. U.S. EPA*, the Supreme Court ruled that Congress, not the EPA, has the power to create a system of cap-and-trade regulations to limit emissions from existing power plants to drive a transition to more renewable sources of energy to meet the nation's power demands.

The court's ruling affects the government's authority to set standards for GHGs from power plants under the Clean Air Act. The case was initially filed in response to President Obama's Clean Power Plan in 2015. The Clean Power Plan required coal-fired power plants to either reduce GHG emissions or subsidize alternate forms of energy. That order was never implemented because it was immediately challenged in court.

According to the EPA, fossil fuel-fired power plants are the second-largest source of pollution in the U.S. behind transportation. The U.S. is also the second-largest producer of GHGs behind China, making this ruling a significant challenge to the government's goal to reduce emissions that contribute to climate change.

Chief Justice John Roberts wrote the majority opinion in the case and was joined by the Supreme Court's other five conservative members.

"Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible 'solution to the crisis of the day.'" Roberts wrote. "But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme."

The ruling, however, does not affect the EPA's ability to limit all GHG emissions.

Jason Rylander, an attorney at the Center for Biological Diversity's Climate Law Institute, said that while the ruling was "bad" and "unnecessary," the EPA still has the ability to limit GHGs at the source through the Clean Air Act and more broadly through other provisions of the law.

Ethan Shenkman who served as EPA deputy general counsel during the Obama administration, said the ruling could have widespread consequences if it is used to



## Save the Date

Friday  
August 19, 2022

**Deadline for Applications:**  
US EPA  
*Clean School Bus Rebate Program*

For more information,  
please visit:

[www.EPA.gov](https://www.epa.gov)  
and search  
"Clean School Buses"

Friday  
August 26, 2022

**Deadline for Applications:**  
PA DEP  
*Alternative Fuel Incentive Grants Program*

For more information,  
please visit:

[www.dep.pa.gov](https://www.dep.pa.gov)  
and search  
"AFIG"

question the authority of federal agencies to regulate GHG pollution in other contexts.

Shenkman said, “We can expect the Biden administration to move quickly to propose new carbon regulations designed to pass muster under the Supreme Court’s analysis and will still have many regulatory and policy tools at its disposal to make progress on its climate goals.”

The affordability of natural gas as a fuel for power plants has driven a decline in the use of coal to generate electricity in recent years. But, increasing demand for electricity as the economy recovers from the COVID-19 pandemic along with price increases in natural gas caused by shortages due to the ongoing war in Ukraine may drive an increase in the use of coal to generate electricity.

See more information on the Supreme Court’s decision at [CBSnews.com](https://www.cbsnews.com).

## EPA Proposes that the Philadelphia Region Failed to Meet its Attainment Date for the Ground-Level Ozone Standards

In April 2022, the EPA published a proposal in the *Federal Register* indicating that the Greater Philadelphia region failed to meet the attainment date for the 2015 Ozone National Ambient Air Quality Standard (NAAQS) by the legislated deadline of August 2021.

The EPA’s proposal noted that 24 regions across the nation failed to meet the 2015 Ozone NAAQS Attainment date. The areas addressed in this proposal are currently classified as in “Marginal” nonattainment which is the lowest or least serious classification level for nonattainment. The Clean Air Act (CAA) requires EPA to determine whether these areas attained the standard by the attainment date, and if not, take specified actions to ensure these areas achieve the NAAQS as soon as possible. The finding was based on the most recent publicly available and certified ozone monitoring data for the years 2018-2020.

The EPA proposed that the areas that failed to meet their attainment date get reclassified as having a more serious ozone pollution problem than previously designated. These areas must take measures to further reduce ozone pollution. The proposal recommends that these areas be reclassified from “Marginal” to “Moderate” nonattainment and face more protective CAA requirements designed to achieve attainment of the NAAQS by a new attainment date of August 3, 2024. These increased requirements include stricter permitting regulations for point sources, implementation of reasonably available control technology for major sources of emissions, basic vehicle inspection and maintenance (I/M) for urbanized areas, and the submission of a new plan, known as a State Implementation Plan or SIP, demonstrating how the area will attain the NAAQS.

As part of this action, EPA is proposing that states submit SIP revisions addressing all “Moderate” area requirements for the reclassified areas no later than January 1, 2023. EPA is also proposing that state air agencies also implement additional control measures that they deem are needed to meet the CAA requirements as soon as possible but no later than January 1, 2023 with the exception of the basic vehicle I/M requirement. The EPA is proposing that the I/M programs be fully implemented no later than four years after the effective date of reclassification.

DVRPC is part of the 16-County Philadelphia-Wilmington-Atlantic City Ozone Nonattainment Area. Since this region missed the deadline to demonstrate the attainment date for “Marginal” areas, each of the four states in this area will be required to develop new plans to show how they will meet the new attainment date for “Moderate” nonattainment areas of 2024. These SIPs will include new, more stringent, on-road emissions budgets that will be used for transportation conformity. EPA’s proposal is currently still in the required 60-day public comment period so there is still some uncertainty about when the proposed requirements will take effect.

The EPA has published a fact sheet to explain the [Proposed Attainment Date Findings](#) which can be viewed on the EPA Website.



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