

Dated: July 25, 2007.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. E7-15827 Filed 8-10-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2006-0060; FRL-8452-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Implementation Plan Revision Variance for International Paper, Franklin Paper Mill, Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). This action will approve the SIP revision request submitted by the Commonwealth of Virginia, consisting of the variance regulations adopted by Virginia for the International Paper, Franklin Paper Mill facility. The variance regulations provide regulatory relief from compliance with state regulations governing new source review for the implementation of the International Paper, Franklin Paper Mill innovation project. In lieu of compliance with these regulatory requirements, the variance requires the facility to comply with site-wide emission caps. EPA is approving this revision to the Commonwealth of Virginia State Implementation Plan in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on October 12, 2007 without further notice, unless EPA receives adverse written comment by September 12, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2006-0060 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* campbell.dave@epa.gov.

C. *Mail:* EPA-R03-OAR-2006-0060, David Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2006-0060. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814-3376, or by e-mail at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

International Paper operates a pulp and paper mill located in Franklin, Virginia. International Paper is a member of EPA's voluntary National Environmental Performance Track Program and the Virginia Department of Environmental Quality's (VADEQ) Environmental Excellence Program. International Paper had entered into a partnership with the U.S. EPA and the VADEQ to implement an innovative approach to meeting environmental regulations in a more cost-effective manner. International Paper submitted a proposal for such an innovative project to VADEQ. International Paper's innovation project relied on the principles established in the Joint EPA/State Agreement to Pursue Regulatory Innovation that was signed by EPA and the Environmental Council of States (ECOS) in 1998.

The International Paper innovation project includes a number of environmentally beneficial projects that will: (1) Reduce groundwater use; (2) reduce solid waste generation and disposal; (3) reduce chemical and biological oxygen demand, and total suspended solids discharges to surface water; (4) reduce overall emissions for a number of air pollutants; and, (5) increase the efficiency of pulp production.

By implementing this project, emissions of hazardous air pollutants will be reduced at the Mill by an estimated 430 tons per year. Emissions increases of criteria pollutants and carbon dioxide from typical NESHAP control strategies will also be reduced under this project. These reductions, along with improvements in the combustion efficiencies of the No. 7 power boiler and No. 6 recovery furnace will result in a decreased use of fossil fuels and will net large decreases in criteria pollutant emissions from the Mill. The reduction in useable fiber discharges in the mill sewer along with improvements in the performance of the wastewater treatment system will result in substantial reductions in discharges of wastewater pollutants. Generation of thousands of tons per year of solid waste will also be eliminated.

In order to implement these projects, certain innovations to the typical regulatory implementation process were necessary in order to make these environmentally beneficial projects a reality. First, the International Paper innovation project required an

alternative regulatory approach under section 112 of the Clean Air Act (CAA). Pursuant to section 112, EPA promulgates the national emissions standards for hazardous air pollutants (NESHAP) for various categories of air pollution sources. On April 15, 1998, EPA promulgated a NESHAP for the Pulp and Paper Industry, as codified at 40 CFR part 63, subpart S, § 63.440 through 63.459. International Paper's Franklin Mill is subject to subpart S. Under Section 112(l) of the CAA, EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federally-promulgated section 112 rules, emission standards, or requirements. On April 15, 2004 (69 FR 19943), EPA published in the **Federal Register** an approval of an equivalency-by-permit determination made by the VADEQ for the International Paper, Franklin Mill. The VADEQ established the new requirements via a title V operating permit issued to the facility on March 31, 2006. In general, the equivalency-by-permit terms require International Paper to control different emission points of hazardous air pollutants (HAPs) at its facility than prescribed by the Pulp and Paper NESHAP (subpart S).

In addition to the approval above and in order to implement some of the other environmentally-beneficial projects contained in the innovation project proposal, International Paper would also need certain flexibility under the Commonwealth's existing preconstruction permitting regulations. The subject of this rulemaking action is to allow for those flexibilities by providing a limited variance to Virginia's existing permitting regulations. The variance allows the Commonwealth to establish site-wide emissions caps for a variety of pollutants, mostly criteria pollutants. The site-wide caps would be relied upon to limit the applicability of the provisions of Virginia's federally-enforceable major new source review provisions. Under Virginia's existing programs, sources may not rely upon site-wide emissions caps in order to limit the applicability of major new source review.

Typically, unit-specific limitations are required. The site-wide caps allow International Paper to make certain changes to its emission sources, primarily the boilers, that will allow them to maximize their utilization while minimizing their existing emissions and limiting their future potential emissions. Site-wide emissions caps are a type of new source review program flexibility that EPA has experimented with in the

past. In fact, EPA made changes to the federal new source review regulations at the end of 2002 (See 67 FR 80186) that incorporated this type of regulatory flexibility and called it a "plantwide applicability limit".

II. Summary of SIP Revision

On December 13, 2005, the DEQ submitted a State Implementation Plan (SIP) approval request entitled "Variance for International Paper, Franklin Paper Mill". The applicable regulations for the variance were adopted by the State Air Pollution Control Board on June 22, 2005 in accordance with the requirements of the Virginia Air Pollution Control Law at Title 10.1 Chapter 13 of the Code of Virginia and 40 CFR part 51. These regulations allow the VADEQ to issue a permit for International Paper that will replace all previously issued minor NSR permits and PSD permits and establish site-wide emission caps for a number of regulated pollutants that may be relied upon for purposes of new source review applicability. The variance provides regulatory relief from compliance with state regulations governing new source review (Virginia Code—Article 4 of Chapter 50, and Articles 6, 8 and 9 of Chapter 80) for the implementation of the International Paper innovation project. In lieu of compliance with these regulatory requirements, the variance requires the facility to comply with site-wide emission caps.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental

assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example,

sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving this SIP revision request submitted by the Commonwealth of Virginia. This revision consists of approving the variance regulations adopted by Virginia at 9 VAC 5 Chapter 230 for the International Paper, Franklin Paper Mill. The variance provides regulatory relief from compliance with state regulations governing new source review for the implementation of the International Paper innovation project. In lieu of compliance with these regulatory requirements, the variance requires the facility to comply with site-wide emission caps. EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comment. This variance includes a number of environmentally beneficial projects which will reduce groundwater use, reduce solid waste generation and disposal, reduce Chemical Oxygen Demand and Total Suspended Solids disposal to surface water, increase the efficiency of pulp production and reduce overall emissions for a number of air pollutants. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 12, 2007 without further notice unless EPA receives adverse comment by September 12, 2007. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 12, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the variance for International Paper, Franklin Paper Mill in Franklin, Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 31, 2007.
William T. Wisniewski,
Acting Regional Administrator, Region III.
 ■ 40 CFR part 52 is amended as follows:
PART 52—[AMENDED]
 ■ 1. The authority citation for 40 CFR Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*
Subpart VV—Virginia
 ■ 2. In § 52.2420, the table in paragraph (c) is amended by adding the entry for Chapter 230 to read as follows:

§ 52.2420 Identification of plan.
 * * * * *
 (c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 230 Variance for International Paper Franklin Paper Mill				
5-230-10	Applicability and designation of affected facility.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-20	Definitions	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-30	Authority to operate under this chapter and FESOP.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-40 (Except A.7., A.9., A.10., and B.2.).	Sitewide Emissions Caps	09/07/05	08/13/07	[Insert page number where the document begins]
5-230-50	New Source Review program and registration requirements.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-60 (Except A.1.)	Other regulatory requirements	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-70	Federal Operating Permits	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-80	FESOP issuance and amendments.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-90	Transfer of ownership	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-100	Applicability of future regulation amendments.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-110	Termination of authority to operate under this chapter and FESOP.	09/07/05	08/13/07	[Insert page number where the document begins].
5-230-120	Review and confirmation of this chapter by Board.	09/07/05	08/13/07	[Insert page number where the document begins].
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[FR Doc. E7-15587 Filed 8-10-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA-R05-OAR-2006-0956; FRL-8452-3]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Dayton-Springfield 8-Hour Ozone Nonattainment Area to Attainment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on November 6, 2006, and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007, for redesignation of the Dayton-Springfield, Ohio area (Clark, Greene, Miami, and Montgomery Counties) to attainment for the 8-hour ozone standard. On June 20, 2007, EPA proposed to approve this submission. EPA provided a 30-day review and comment period. The comment period closed on July 20, 2007. EPA received one comment in favor of redesignation from the Dayton area Regional Air Pollution Control Agency. Today, EPA is approving Ohio's request and the associated plan for continuing to attain the standard. As part of this action, EPA is making a determination that the Dayton-Springfield area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based on three years of complete, quality-assured ambient air quality monitoring data for the 2004-2006 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. Preliminary 2007 air quality data show that the area continues to attain the 8-hour ozone standard. EPA is approving the maintenance plan for this area and is redesignating the area to attainment. Finally, EPA is approving, for purposes of transportation conformity, the motor vehicle emission budgets (MVEBs) for the years 2005 and 2018.

DATES: This final rule is effective on August 13, 2007.**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0956. All

documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886-1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: In the following, whenever "we," "us," or "our" are used, we mean the United States Environmental Protection Agency.

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I. What Is the Background for This Rule?

The background for today's action is discussed in detail in EPA's June 20, 2007, proposal (72 FR 33937). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information). The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness, as determined in accordance with Appendix I of part 50.

Under the Clean Air Act (CAA), EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to

determine that the area has attained the standard and that it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The Ohio EPA submitted a request on November 6, 2006 and supplemented it on November 29, 2006, December 4, 2006, December 13, 2006, January 11, 2007, March 9, 2007, March 27, 2007, and May 31, 2007, for redesignation of the Dayton-Springfield area (Clark, Greene, Miami, and Montgomery Counties) to attainment for the 8-hour ozone standard. The request included three years of complete, quality-assured data for the period of 2004 through 2006, indicating the 8-hour NAAQS for ozone had been achieved. The June 20, 2007 proposed rule provides a detailed discussion of how Ohio met this and other CAA requirements.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS, remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, contingent on an area not making reasonable further progress toward