

***American Trucking Associations, Inc. v. USEPA, Nos. 97-1440 and 97-1441***  
**(D.C. Cir. May 14, 1999)**  
**Summary of Decision**

- ! In July 1997, EPA issued health-based air quality standards for ozone and particulate matter. In response to challenges filed by industry and others, a 3-judge panel of the Court of Appeals for the District of Columbia Circuit issued a split opinion on May 14.
- ! The Court held (2 to 1) that the Clean Air Act, as applied and absent further clarification, is unconstitutional because it “effects an unconstitutional delegation of legislative power.”
  - The Court stated that “the factors EPA uses in determining the degree of public health concern associated with different levels of ozone and PM are reasonable.”
    - It described these factors as including “the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, the types of health information available and the kind and degree of uncertainties that must be addressed.”
  - However, the Court said that when EPA considers these factors for potential non-threshold pollutants “what EPA lacks is any determinate criterion for drawing lines” to determine where the standard should be set. A threshold concentration of a pollutant is the level below which a person would not experience any health effects.
  - The vigorous dissent on this issue states that the court “ignores the last half-century of Supreme Court nondelegation jurisprudence.” The dissent goes on to say that “section 109’s delegation of authority is narrower and more principled than delegations the Supreme Court and this court have upheld since [a 1935 case relied on by the majority].”
- ! Contrary to the claims made by petitioners and other critics, nothing in the Court’s opinion undercuts or criticizes the science on which EPA relied.
  - The Court stated that “the growing empirical evidence demonstrating a relationship between fine particle pollution and adverse health effects amply justifies establishment of new fine particle standards.”
  - The Court rejected petitioners’ claims that EPA could not rely solely on epidemiological studies to set the PM<sub>2.5</sub> standards.
  - The Court rejected petitioners’ claims that EPA was required to do additional research on PM<sub>2.5</sub>.
- ! The Court rejected petitioners’ claims that EPA should take cost into account in setting the air quality standards.
- ! Contrary to the claims made by petitioners, nothing in the Court’s opinion undercuts or criticizes the process EPA used.
  - The Court rejected petitioners’ claims that EPA violated the National Environmental Policy Act.

- The Court rejected petitioners' claim that EPA acted arbitrarily and capriciously in deciding that it was not required to prepare a regulatory impact statement pursuant to the Unfunded Mandates Reform Act.
  - The Court rejected petitioners' claims that the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), required EPA to prepare a regulatory flexibility analysis of small business impacts.
- ! The Court held paradoxically that the Clean Air Act allows EPA to revise the primary ozone standard, but stated that revised ozone standard "cannot be enforced."
- The Court found that the Clean Air Act requires that EPA, at 5-year intervals, conduct a thorough review of the air quality standards and make such revisions as are appropriate.
  - The Court also found that the Clean Air Act requires that EPA designate areas as attainment, nonattainment or unclassifiable.
  - However, the Court held that, given the Act's (Subpart 2's) classification scheme and attainment dates for the pre-existing primary 1-hour ozone standard, the revised ozone standard "cannot be enforced."
- ! In addressing whether EPA should have considered alleged benefits of ozone as a shield in blocking ultraviolet (UVb) radiation, the Court held that EPA must consider whether ozone has a beneficial effect, and if so, consider such effects in assessing ozone's net effects on health.
- ! The Court found "ample support" for EPA's decision to regulate coarse particulate pollution, but also found that PM10 was "a poorly matched indicator for coarse particulate pollution" because PM10 includes fine particles.
- ! The Court rejected petitioners' claim that EPA should have considered any detrimental health effects relating to unemployment that allegedly would be caused by the NAAQS.
- ! The Court upheld EPA's decision to rely on the regional haze program to mitigate some of the adverse visibility effects caused by PM2.5.
- ! The opinion remands the cases to EPA for further consideration. The Court asked for further briefing on several issues. On June 18, 1999, the Court ruled that the PM2.5 standards should remain in place. However, the Court will allow parties to apply for the standards to be vacated if "the presence of this standard threatens a more imminent harm". Presumably, the "harm" refers to the burden on sources complying with the regulations. During remand, the legal status of the standards is as follows:
- The Court left the new ozone standards in place based on its determination that it "cannot be enforced."
  - The Court vacated the revised coarse particle (PM10) standards. The pre-existing PM10 standards continues to apply.