

*Whitman v. American Trucking Associations*  
U.S. Supreme Court, Nos. 99-1257, 99-1426  
February 27, 2001

*Supreme Court Decision on the EPA's Ozone & Particulate Matter Air Quality Standards*

In a landmark decision, the U.S. Supreme Court unanimously affirmed EPA's ability to set national air quality standards that protect millions of people from the harmful effects of air pollution.

At issue were air quality standards that EPA issued in 1997 for ground-level ozone (smog) and fine particles (soot). Fine particles are associated with premature death and chronic bronchitis. Ozone can cause lung inflammation and, over time, may cause permanent damage to the lungs. Both pollutants are associated with increased hospital admissions and emergency room visits, and can cause respiratory symptoms, aggravate asthma, and increase susceptibility to respiratory infection.

**Highlights of the Court's Decision**

***Constitutionality:*** The Supreme Court unanimously upheld the constitutionality of the 1970 Clean Air Act provision that authorizes EPA to set national ambient air quality standards to protect public health and welfare. These standards are the cornerstone of the nation's successful program to protect public health by reducing air pollution.

- The Court reversed a decision by the U. S. Court of Appeals for the D. C. Circuit that could have called into question laws and regulations that are the basis for many of our nation's programs for protecting public health and safety.
- The D. C. Circuit had adopted a novel interpretation of the "nondelegation doctrine" in holding that the Clean Air Act, as applied by EPA in setting the ozone and particulate matter standards, gave EPA so much discretion that it improperly delegated legislative authority to EPA.
- The Supreme Court reversed this decision, stating that the Clean Air Act provision in question "fits comfortably within the scope of discretion permitted by our precedent."

**Cost:** The Supreme Court also affirmed that the Clean Air Act requires EPA to set ambient air quality standards at levels necessary to protect the public health and welfare, without considering the economic costs of implementing the standards. The Court stated that the law “unambiguously bars cost considerations from the [ambient air quality standard-setting]process.” The ruling was consistent with the longstanding interpretation of EPA and the D.C. Circuit.

- The Court noted that EPA and states take costs into account in *implementing* air quality standards.

**Authority to implement ozone standard:** The Supreme Court rejected industry’s arguments that EPA cannot require states to meet a revised ozone standard (like the 1997 ozone standard) that is more protective than the 1-hour ozone standard currently being implemented. The 1990 Clean Air Act Amendments contain detailed implementation provisions for the 1-hour standard.

- Industry petitioners had argued that when Congress adopted a specific timetable for areas to attain the 1-hour standard (in “Subpart 2”), it meant to preclude EPA from ever requiring states to meet a more protective ozone standard – even though the Clean Air Act required EPA to review the ozone standard every five years and, as appropriate, to revise the standard to protect public health
- The Court determined that EPA has authority to implement a revised ozone standard (such as the more protective 1997 standard). However, the court said EPA must reconsider its implementation plan for moving from the 1-hour standard to the revised standard.
- The Court instructed EPA to develop an implementation plan (including a timetable) consistent with the Court’s opinion.

**Remanded issues:** The Supreme Court sent the case back to the D.C. Circuit Court of Appeals on certain issues raised by industry petitioners that the D.C. Circuit did not decide in its earlier, May 1999 opinion.

- The D. C. Circuit has not yet announced its process for resolving the remaining issues, including industry’s claim that EPA did not adequately justify the standards.
- A summary of the D.C. Circuit’s earlier opinion is at <http://www.epa.gov/airlinks/ozpminfo.html>

In May 1999, the D. C. Circuit remanded the 1997 ozone standard to EPA to consider potentially beneficial public health effects of ozone pollution in shielding the public from naturally occurring ultraviolet radiation from the sun. EPA has not yet responded to this remand. This issue was not part of the Supreme Court case.

## **Implications for EPA's Implementation of the New Standards**

While the case was pending before the Supreme Court, the ozone and fine particle standards remained in effect as a legal matter, because the D.C. Circuit had not vacated the standards. The Supreme Court decision does not change this.

**Ozone:** EPA is reviewing the results of the litigation to determine the approach and schedule for moving forward with implementing the ozone standard. EPA will be conferring with states and other interested parties.

**PM:** The litigation over the fine particle standards has not yet affected EPA or state activities related to these standards.

- EPA cannot start implementing the 1997 fine particle standards until EPA and the states collect three years of monitoring data to determine which areas are not attaining the standards. The fine particle monitoring network was completed in 2000. In most cases, areas would not be designated “attainment” or “nonattainment” for fine particles until 2004-5.

### **For more information:**

February 27, 2001 Supreme Court opinion (by Justice Scalia) can be found at:  
<http://www.supremecourt.us/opinions/00pdf/99-1257.pdf>

EPA's Supreme Court briefs can be found at:  
<http://www.usdoj.gov/osg/briefs/2000/3mer/2mer/1999-1257.mer.aa.html>

May 14, 1999 D. C. Appeals Court opinion(s) can be found at:  
<http://www.epa.gov/ttn/oarpg/gen/97-1440a.txt>

Information about EPA's 1997 decision adopting the standards can be found at:  
<http://www.epa.gov/airlinks/ozpminfo.html>

EPA's press release on the Supreme Court decision can be found at:  
<http://www.epa.gov/epahome/r-29.htm>