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Recent U.S. Supreme Court Decision Does Not Bode Well for Baton Rouge Area

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CES-RN-2008-1

Keywords: air emissions, environmental policy, EPA, nonattainment areas, ozone

For the Baton Rouge Ozone Nonattainment Area, this means that the area will be required to continue to meet all applicable requirements of its “severe” designation under the 1-hour standard (revoked in 2005), even though air quality in the area had improved enough for it to be classified as a “marginal” nonattainment area (in 2004) under the new, more stringent 8-hour standard.

These applicable requirements include:

- lowering of the definition of major source from 50 to 25 tons per year (e.g. smaller businesses and minor modifications to larger businesses will now require permits);
- requirements for greater emission offsets and more expensive controls for industry;
- further rate-of-progress emissions reductions and implementation of contingency measures if we fail to attain the ozone standard;
- implementation of Section 185 penalty fees on major sources of NO_x and VOCs in the five-parish area (earlier estimates put the potential cost to local industries at \$60 million annually);
- possible transportation control measures; and
- possible measures to introduce...

Particularly perplexing (a “catch 22”) is the fact that the Baton Rouge area essentially achieved attainment with the old 1-hour standard in 2006, but since the standard was revoked in 2005, there is no formal means for EPA to make a finding of attainment and thus terminate the imposition of the annual Section 185 industrial emissions penalties, as would have been done if the 1-hour standard had remained in effect.

To make matters worse, on or before March 12, 2008, EPA will announce a new, probably more stringent (and much harder to achieve) 8-hour standard that practically assures the continuation of the old “severe” requirements for the Baton Rouge area for years to come.