

March 22, 2010

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S. William Becker

Docket ID No. EPA-HQ-OAR-2005-01722
Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to comment on the proposal to revise the National Ambient Air Quality Standards for Ozone, which was published in the *Federal Register* on January 19, 2010 (75 *Federal Register* 2938). NACAA is the national association of air pollution control agencies in 52 states and territories and over 165 metropolitan areas across the country.

As we have stated in our previous comments on National Ambient Air Quality Standards (NAAQS) proposals, it is critically important to maintain a firewall between the setting of the NAAQS and implementation of the NAAQS. The level of the standard must be based on health considerations alone, and costs and implementation concerns cannot factor into the setting of the standard, per the Supreme Court decision, *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457 (2001). Notwithstanding, whereas these comments focus on the setting of the ozone NAAQS, they also address important implementation issues. We also note that it is not just the setting of a NAAQS that protects public health and welfare, but also state and local air agencies' success in reducing emissions to reach the standard.

I. NACAA Supports the Levels for the Primary and Secondary Ozone NAAQS Proposed by EPA

Exposure to ground-level ozone is clearly linked to adverse effects on public health and welfare. Breathing air contaminated with ozone reduces lung function and inflames airways, which can increase respiratory systems and aggravate asthma and other lung diseases. Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Ozone exposure also elevates the risk of premature death from heart or lung disease. Children are at a higher risk from exposure to ozone because their lungs are still developing and they are more likely to be

active outdoors, which increases their exposure. With respect to public welfare, scientific evidence shows that repeated exposure to ozone damages sensitive vegetation. Cumulative ozone exposure can lead to reduced tree growth, visibly injured leaves, and increased susceptibility to disease, damage from insects and harsh weather. Since plants are exposed to ozone levels in the air 24 hours a day throughout the entire year, they face substantial cumulative exposure risks.

EPA proposes that the level of the 8-hour primary ozone NAAQS, which was set at 0.075 parts per million (ppm) in 2008, should instead be set at a lower level within the range of 0.060 to 0.070 ppm. EPA's proposal coincides with the range recommended by the Clean Air Scientific Advisory Committee (CASAC)¹ during the previous review of the standards.² In fact, CASAC recently reaffirmed its recommendations to EPA in a letter of February 19, 2010, stating that "CASAC fully supports EPA's proposed range of 0.060 – 0.070 parts per million (ppm) for the 8-hour primary ozone standard" as this range is "justified by the scientific evidence."³

In NACAA's October 2007 comments on EPA's previous proposed revisions to the ozone NAAQS, NACAA stated that it believed, in setting the levels for the standard, the agency should "follow the science—the learned, informed advice of CASAC."⁴ We are pleased that EPA is following the science in this proposal. Accordingly, we support EPA's proposed range for the primary NAAQS since it coincides with CASAC's recommendations.

EPA proposes that the secondary ozone standard, which was set identical to the revised primary standard in 2008, should instead be a cumulative, seasonal standard expressed as an annual index of the sum of weighted hourly concentrations (W126), cumulated over 12 hours per day (8 a.m. to 8 p.m.) during the consecutive 3-month period within the ozone season with the maximum index value, set at a level within the range of 7 to 15 ppm-hours. NACAA notes that this proposed secondary standard is similar to what EPA proposed in 2007; however, in the final rule, the agency rejected this approach and instead set the secondary standard identical to the primary one. In its October 2007 comments, NACAA supported establishing a distinct cumulative standard for the secondary NAAQS, noting that CASAC also supported this approach (but also pointing out that the range of levels proposed by EPA included levels less stringent than recommended by CASAC).⁵ One difference in this (the 2010) rulemaking is that the agency is proposing to use the three highest months of ozone readings for use in

¹ CASAC is EPA's Congressionally-chartered body of independent scientific advisers and is specifically charged in section 109 of the Clean Air Act with giving advice to the EPA Administrator on the setting and revising of NAAQS.

² Dr. Rogene Henderson, CASAC Chair, Letter to the Honorable Stephen L. Johnson regarding CASAC's Peer Review of the Agency's 2nd Draft Staff Paper, (Oct. 24, 2006).

³ Dr. Jonathan Samet, CASAC Chair, Letter to the Honorable Lisa P. Jackson regarding CASAC's Review of EPA's Proposed Ozone National Ambient Air Quality Standard (*Federal Register*, Vol. 75, Nov. 11, Jan. 19, 2010), (Feb. 19, 2010), at 1.

⁴ NACAA Comments on EPA's Proposal to Revise the Ozone National Ambient Air Quality Standards (NAAQS), (Oct. 9, 2007).

⁵ *Id.* at 4.

calculating attainment of the secondary standard, whereas CASAC previously had recommended using the three highest months that occurred during the growing season.⁶ Nevertheless, in its letter of February 19, 2010, CASAC stated that it supported the standard as proposed by EPA, specifically noting the use of the “consecutive 3-month period within the ozone season with the maximum index value.”⁷ NACAA defers to CASAC and thus supports EPA’s proposal.

II. NACAA Has Concerns About EPA’s Proposal to Treat Data Affected By Exceptional Events

NACAA believes that the schedule EPA proposes for flagging data affected by exceptional events is unrealistic. Exceptional events that occur in the first or second quarter of 2010 would need to be flagged and fully documented prior to EPA finalizing the ozone standard.⁸ The Exceptional Events Rule, however, limits data that may be flagged to data that exceed the standard, and this cannot be determined until the standard has been finalized (August 2010). In addition, EPA proposes to allow states only 60 days after the end of the calendar quarter in which the event occurred or March 1, 2011, whichever date occurs first, for flagging 2010 data.⁹ Sixty days is insufficient time to identify the events, gather data, prepare the extensive analysis that EPA requires to demonstrate an exceptional event, hold the mandatory 30-day public comment period and respond to comments. In addition, NACAA members are concerned with the November 1, 2010, deadline for finalizing exceptional events submissions for 2007-2009 data. Again, since the standard will not be finalized until August 2010, this gives states at most 3 months to complete the laborious process outlined above for submissions.

Furthermore, some EPA regions have not responded to previous submissions from our agencies and the backlog of exceptional events submissions continues to grow. With the proposed lowering of the primary standard and the setting of a distinct secondary standard, we expect the number of exceptional events submissions to increase greatly. EPA needs to refine its process for reviewing exceptional events submissions and expedite the review of past and future submissions. We understand that EPA is currently reviewing its process and we encourage EPA to implement revisions to the process so that they will be in effect for the new ozone standards.

In addition, the forthcoming revised fire policy will bear on exceptional events related to fire. Accordingly, NACAA requests that EPA release the revised policy soon so that state and local air agencies can begin their reviews as quickly as possible.

⁶ Dr. Rogene Henderson, CASAC Chair, Letter to the Honorable Stephen L. Johnson regarding CASAC’s Review of the Agency’s Final Ozone Staff Paper, (March 26, 2007) at 3.

⁷ Samet letter, *supra* note 3, at 2

⁸ See chart at 75 *Federal Register* 3033.

⁹ *Id.*

III. NACAA's Comments on Implementation Issues

a. NACAA Supports the Rationale for the Expedited Designation Schedule, But Expresses Concerns That Some States May Find It Difficult to Meet an Accelerated Schedule

The Clean Air Act provides up to two years for designations to be finalized after a NAAQS is set or revised.¹⁰ It also provides that “[b]y such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised” NAAQS, each governor shall submit to EPA his or her list of designation recommendations for his or her respective state.

For the primary standard, EPA proposes to promulgate final designations on an accelerated schedule to allow designations to be effective in one year in order to “help limit any delays in health protections associated with the reconsideration of the standards.”¹¹ Governor designation recommendations would be due 129 days after promulgation of the primary standard,¹² instead of the usual one year after promulgation.

NACAA recognizes the sound public health protection reasons for accelerating the designation schedule. NACAA agrees that a lower standard should have been set in 2008 and understands that the accelerated schedule is designed to speed the transition to a more protective standard. However, there are significant challenges for states in meeting the accelerated deadlines for designating nonattainment areas for a lower ozone standard, especially for areas newly designated nonattainment (for which extensive public outreach will be necessary to explain the consequences of a nonattainment designation) and for rural areas (especially a consideration if EPA selects a number in the lower bound of the 0.060-0.070 ppm range). Whichever schedule EPA chooses, EPA needs to revise its designations guidance to account for rural nonattainment areas where there may be no traditional sources to control. EPA should involve NACAA in developing this guidance.¹³

With respect to the secondary standard, EPA presents two options: 1) an accelerated schedule to mirror the accelerated schedule for the primary NAAQS; or 2) the normal two-year schedule for designations, thus providing governors one year to develop designation recommendations.¹⁴ NACAA notes that an accelerated schedule poses the same challenges as noted above, and additional ones since EPA is proposing a distinct cumulative standard with which states have no experience. However, NACAA is also concerned that if the primary and secondary standard designation schedules differ, then two SIPs with different deadlines will need to be prepared, further straining the resources of already overwhelmed states and localities.

¹⁰ Clean Air Act section 107(d)(1)(B)(i).

¹¹ 75 *Federal Register* at 3036.

¹² *Id.*

¹³ We address other issues associated with implementation of the primary standard below.

¹⁴ 75 *Federal Register* at 3037.

b. NACAA Notes Other Implementation Challenges Associated with the Proposed Standards

NACAA supports the ranges for the levels of the primary and secondary standards, as set out above, but there will be significant implementation challenges associated with them, some of which have been described above. These should not influence the setting of the standard, but call for further EPA action.

For example, if EPA selects a standard close to 0.060 ppm, states will need guidance on how to address background levels that may approach the level of the standard. In the Southeast, biogenic emissions are significant contributors to background levels. Rural monitors in North Carolina's CASTNET system, for instance, show average winter concentrations in the range of 50 to 65 percent of the proposed range for the primary standard. Levels of about 40 parts per billion are recorded during this least photochemically active time of year, which is indicative of background levels of ozone. Furthermore, in most of the country, transported emissions are an issue. State and local air pollution control agencies are not the only ones concerned about transport and background levels – CASAC is as well. CASAC noted that “as levels for ozone standards move closer to ‘background’ levels, new issues may arise with implementation. ... [EPA should] carefully consider any new monitoring or implementation issues that may arise, particularly as background levels vary throughout the country.”¹⁵

NACAA has several suggestions for how the agency could help state and local air pollution control agencies in implementing the proposed revisions to the primary and secondary ozone NAAQS:

- EPA needs to develop and implement strong national strategies and controls to help state and local air agencies achieve the revised standards. These include, but are not limited to, stringent controls on power plant emissions, stringent limits on industrial, commercial and institutional boilers and tighter emissions standards on motor vehicles. We will follow up with the agency in a separate communication to further explain our views on EPA's obligations and legal authorities in this regard.
- States, particularly those in the West, need EPA assistance in modeling to gauge the extent to which transported emissions contribute to ozone problems in the area, and which sources are the contributors.
- As noted above, EPA needs to revise its designation guidance to account for rural nonattainment areas, especially large ones in the West.
- EPA needs to quickly issue an implementation rule to assist state and local air agencies in promptly beginning the development of attainment SIPs.

¹⁵ Samet letter, *supra* note 3, at 2. CASAC said these issues should be considered in the next ozone review cycle, but as implementation experts, we think they should be considered in implementation of the 2010 standards.

Guidance on meeting requirements for a distinct secondary standard is especially needed. EPA should provide our agencies an opportunity to help develop and refine the implementation strategy.

- As always, work by state and local agencies to monitor, design and implement SIPs, enforce control requirements and educate the public on the revised standards and their implications requires significant additional funding. We appreciate the President's budget request for Fiscal Year 2011, which proposes to increase state and local air pollution grants by \$82.5 million, including a \$45 million increase to support expanded core state and local activities for implementing revised and more stringent NAAQS and for reducing public exposure to toxics. In difficult budgetary times, we applaud the President's recognition of the need for additional funding for state and local air pollution control agencies. However, while we appreciate the proposed increase, we note that it falls short of addressing our actual funding needs, which we have estimated at an additional \$550 million per year to carry out state and local clean air responsibilities.

Thank you for the opportunity to comment on EPA's proposal. Please feel free to contact us or S. William Becker if we can provide additional information.

Sincerely,



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NACAA Criteria Pollutants Committee



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