

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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March 17, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OAR-2008-0699 – National Ambient Air Quality Standards for Ozone

Dear Administrator McCarthy:

The Environmental Protection Agency's (EPA) proposal to lower the National Ambient Air Quality Standard (NAAQS) for ground-level ozone distorts the need for balance between environmental progress and economic growth. While I have always stood in favor of cleaner air, EPA's proposal to tighten the current ozone standard of 75 parts per billion (ppb) could be the most expensive regulation in history. It will place undue burden on counties still working to comply with existing obligations and impose costly regulations on communities across the country. The proposal sets the standard between 65 and 70 ppb, but the Agency is taking comment on 60 ppb. However, should the standard be lowered to 60 ppb, nearly the entire nation could be out of ozone compliance (or in "nonattainment") for the first time ever. Even if the standard is tightened to 65 ppb, 67% of counties could be designated nonattainment; they will face stiff federal penalties, lost highway dollars, restrictions on infrastructure investment, and increased costs to businesses.

The current ozone NAAQS is still being implemented across the country

The current ozone standard, set at 75 ppb in 2008, is not yet fully implemented, nor the benefits fully realized: 227 counties, accounting for 40% of the country, have ozone levels higher than 75 ppb. EPA suspended implementation of the 2008 standard from 2010-2012 while it pursued an out-of-cycle rulemaking effort to make it more stringent. EPA did not restart implementation until early 2012, six months after the White House rejected EPA's attempt, citing regulatory burdens and regulatory uncertainty as reasons the economy couldn't support such an unjustified expense. EPA's delay put state implementation of the 2008 ozone standard well behind the normal schedule, so EPA did not designate counties as nonattainment until April 2012. States are still in the early stages of implementing the 2008 standard. In fact, EPA released its implementing regulations only last month, on February 13, 2015, so states just received guidance on the requirements that will need to meet as they develop their State Implementation Plans (SIPs). Clearly, the full benefits of the 2008 standard have yet to be achieved, calling into question the need to proceed with a restricted standard.

While EPA is precluded from considering costs in setting a standard, the sheer economic magnitude of this rule is unprecedented and cannot be brushed under the rug. EPA's proposal will restrict economic development and destroy jobs across the country, and EPA itself even acknowledges the billions of dollars in new costs the manufacturing, industrial, energy, and transportation sectors will be facing. NERA Economic Consulting analyzed EPA's draft Regulatory Impact Analysis ("draft RIA") and found that EPA's proposal, if finalized at 65 ppb, could cut the GDP by \$140 billion per year, topping \$1.7 trillion by the time it is fully implemented. The cost of compliance could reach \$1 trillion, 1.4 million jobs could be lost, and the average household could lose \$830 each year.¹

Not a single county in Oklahoma violates the current standard. Yet the proposal will put the entire state into nonattainment at 65 ppb. We have spent a significant amount of time and resources to comply with the 2008 standard, but will have to spend \$35 billion to meet EPA's new standard. Each household will lose an average of \$900 each year, and the state will lose 35,503 jobs and \$18 billion in lost GDP.² Many other communities across the country that have worked long and hard to comply with the current standard will be in a similar situation, once again suffering significant adverse ramifications, like lost economic opportunity and jobs, from a nonattainment designation.

As a direct result of restricting the ozone standard, most of the country will experience tremendous hardship through limited business expansion and impaired competitiveness in nearly every region of the U.S. According to Brookings Institute, 18 of the country's top 20 metro economies recovering from the recession won't be able to comply with EPA's proposal, including Oklahoma County, Baton Rouge, Pittsburg, and Nashville.³ These communities have made exemplary economic recovery from the recession – particularly Oklahoma County, ranked fifth overall. However, the inevitable nonattainment designation will negate all of their progress; instead of recovery, these few bright spots in economic development will burn out from nonattainment restrictions. These restrictions will not be lifted even if these communities achieve attainment; instead, they will face a legacy of EPA regulatory oversight.

EPA's proposal nears background levels

Ozone can be difficult to regulate. Many potential nonattainment areas have high levels of naturally-occurring, background-level ozone, like park lands, forests, or high elevation communities, which make compliance with a lower standard difficult, if not impossible. The National Oceanic and Atmospheric Administration released a study showing that Las Vegas would exceed EPA's proposed range of ozone NAAQS almost entirely due to background ozone.⁴ The Grand Canyon would fail the proposed 70 ppb standard, and

¹ NERA Economic Consulting, *Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone ("NERA")*, February 2015, [http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-\(NERA\).pdf](http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-(NERA).pdf)

² *Ibid.*

³ Brookings Institute, *Metro Monitor*, September 2014, <http://www.brookings.edu/research/interactives/metromonitor#/M36420>

⁴ NOAA, "Air from stratosphere makes it tough for Las Vegas to meet surface ozone pollution standards," 25 August 2014, http://www.esrl.noaa.gov/csd/news/2014/154_0825.html

Yellowstone National Park would fail the proposed 65 ppb standard.⁵ Even EPA acknowledges that in some parts of the country and at certain times, background concentrations of ozone approach or even exceed the current 75 ppb standard,⁶ meaning ozone levels in many areas are out of local control: “certain high-elevation sites in the western U.S. are impacted by a combination of non-local sources like international transport, stratospheric O₃, and O₃ originating from wildfire emissions.”⁷

Nonattainment designations may result in conformity process requirements.

Lowering the standard will not only create significant implementation challenges for the states and local air agencies overseeing nonattainment areas, but transportation agencies and local planning organizations: any project in a county that is nonattainment must go through a conformity process under the Clean Air Act. States are mandated to offset any ozone-forming emissions from new projects or projects undergoing major modifications by reducing emissions from other existing sources in the nonattainment area. If there are no offsets available, the project is halted indefinitely. The costs and burdens associated with expanding roads and bridges and attracting new businesses will be exponential. Communities will face severe restrictions on their ability to grow and promote economic development. Every sector will be impacted, and the nation’s manufacturing comeback could be placed in jeopardy.

EPA hides the true cost of compliance

When EPA first proposed this revision in 2011, the draft RIA estimated the cost at upwards of \$90 billion. In this proposal, however, EPA artificially lowered the cost to \$39 billion using a variety of mechanisms and assumptions.

In an effort to downplay the impacts and burdens of a lower standard, EPA relies on a number of mechanisms to obfuscate the true cost of compliance. If EPA simply allowed the current standard of 75 ppb to be fully implemented, ozone emissions would decrease 36% from where they are now, proving that all of these burdens are unnecessary.⁸ In the proposed rule, the EPA identifies dozens of recent regulations on vehicles, industrial processes, and the electric power sector that will help reduce ozone formation, like fuel economy standards for cars and trucks (CAFE), the Cross-State Air Pollution Rule, Tier 3 tailpipe emissions standards, and the recently-proposed Clean Power Plan. The sheer number of additional regulations – even ones that are not law – required to account for ozone control shows how much EPA struggled to falsely bring down compliance costs.

EPA also lowers compliance costs by arbitrarily capping costs for known controls at \$14,000/ton for NO_x and \$15,000/ton for VOCs.⁹ Private sector analyses, however, show that EPA is ignoring expensive and politically unpalatable known measures, such as early retirement of stationary sources and replacement of higher emitting mobile sources. EPA’s estimate for the cost of “unknown” controls is even more significant: at 70 ppb,

⁵ NERA

⁶ National Ambient Air Quality Standards for Ozone; Proposed Rule, 79 Fed. Reg. 242 (proposed December 17, 2014).

⁷ *Ibid.*

⁸ NERA

⁹ *Regulatory Impact Analysis of the Proposed Revision: the National Ambient Air Quality Standards for Ground-Level Ozone (“RIA”)*, November 2014, at 7-4

over 60 percent of the total costs of the program is based on the costs of unknown controls, while at 65 ppb, unknown control technologies account for 75 percent of the program's total costs.¹⁰ As in past RIAs, EPA assumes that innovative strategies and new control options not known today will appear in the near future. However, many counties in California, Texas, and New England have failed to meet the existing standards despite decades of struggle, meaning these innovative technologies have not been developed despite decades of incentives.

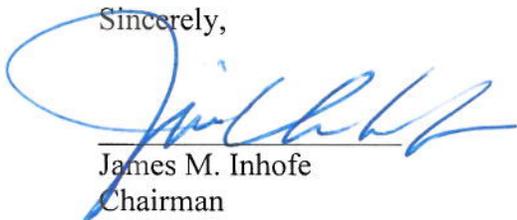
As EPA lowers the standard, more areas in the country, including many in the Northeast and Southeast, will have to adopt California-level controls before facing the uncertainty of unknown controls. Emission trading markets in California and Texas provide a market-based projection of how expensive these controls might actually be. For Houston, the 2013 annualized offset prices for nitrogen oxide (NOx) emissions, a precursor for ozone, was \$97,000 per year. In the California South Coast, annualized offset prices for NOx have averaged over \$106,000.¹¹

Additionally, the draft RIA overestimates the singular benefits of ozone reduction. Compliance with a lower ozone standard will also reduce fine particulate matter (PM_{2.5}) and other criteria pollutants, which will register increased health benefits. EPA falsely inflated the benefits estimates with co-benefits of reducing PM_{2.5} despite it already being subject to its own regulations. EPA's failure to isolate the health benefits of reduced ozone from the co-benefits further provides a disingenuous portrayal of the proposed rule's impact.

EPA needs to withdraw its proposal

EPA's proposal to tighten the ozone standard, if implemented, will impose significant costs on communities across the country for questionable health and environmental benefits. Oklahoma, like many states, has made tremendous progress in cleaning up its air, and we will continue to make progress in the years ahead. At this time, a new standard is not only irresponsible, it's impractical and economically destructive. Today, as our nation faces difficult economic times, we must pursue every opportunity to create jobs and strengthen American industry – the last thing we need is EPA imposing more regulations that will drive up costs for families while destroying jobs. EPA needs to withdraw its proposal and allow the current standard to be fully implemented, which will continue to protect the health of our citizens without needlessly burdening our communities.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and
Public Works

¹⁰ RIA at 7A-7 and 7A-8

¹¹ RIA at 7-24