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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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June 23, 2016

The Honorable Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable Thomas Burke
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Comments on Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, 81 Fed. Reg. 22977, Docket No. EPA-HQ-OAR-2015-0072

Dear Acting Assistant Administrator McCabe and Deputy Assistant Administrator Burke:

I write in regards to the U.S. Environmental Protection Agency's (EPA) Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter (hereinafter Draft IRP), released on April 19, 2016.¹ The Draft IRP was prepared by staff in your offices² and "contains the current plans for the review of the air quality criteria for particular matter (PM) and the primary and secondary national ambient air quality standards (NAAQS) for PM."³ Given the significance of this document to the NAAQS process, it is critical EPA ensure the final IRP is transparent and based on sound legal and scientific grounds.

At the outset, I am concerned by EPA's failure to properly describe the Clean Air Scientific Advisory Committee's (CASAC) statutory responsibilities in the first chapter of the draft IRP. Specifically, the draft IRP states:

[Clean Air Act] Section 109(d)(2)(A) and 109(d)(2)(B) require that an independent scientific review committee 'shall complete a review of the criteria . . . and the national primary and secondary ambient air quality standards . . . and

¹ Release of the Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, Notice of availability and public comment period, 81 Fed. Reg. 75, Apr. 19, 2016, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0072-0001>.

² Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, U.S. Env'tl. Prot. Agency, April 2016, at ii, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0072-0002>. "This draft integrated review plan has been prepared by staff in the U.S. Environmental Protection Agency's (EPA) Office of Air Quality Planning and Standards (OAQPS) and National Center for Environmental Assessment (NCEA)."

³ *Id.*

shall recommend to the Administrator any new . . . standards and revisions of existing criteria and standards as may be appropriate⁴

However, CASAC's responsibilities are more than EPA suggests in the draft IRP. Section 109(d)(2)(C) of the Clean Air Act, states:

(C) *Such committee shall also (i) advise* the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, *(ii) describe* the research efforts necessary to provide the required information, *(iii) advise* the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and *(iv) advise* the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards⁵ (emphasis added).

These are mandatory requirements for CASAC to perform. Given that only three Clean Air Act provisions (i.e. Section 109(d)(2)(A)-(C)) pertain to CASAC, it is troubling that EPA ignored these other mandatory duties in describing CASAC's responsibilities in the draft IRP. Indeed, it is important that EPA include these mandatory duties in any discussion of CASAC's statutory responsibilities in the final IRP so that CASAC is fully informed of its responsibilities established by Congress. If the IRP were to be finalized without an accurate and complete description of CASAC's statutory authority, CASAC's involvement in the NAAQS process could be compromised and the EPA Administrator may not be provided the full benefit of CASAC's expertise, as envisioned by Congress.

Notably, this is not the first time EPA has ignored these CASAC requirements. In the most recent review of the NAAQS for ground-level ozone, several members of Congress, including myself, identified similar problems with EPA impermissibly limiting the scope of CASAC's review.⁶ Former CASAC chairman, Dr. Christopher Frey, raised similar concerns.⁷ As such, I am deeply concerned by EPA's failure to correct this error for this draft IRP.

⁴ *Id.*

⁵ 42 U.S. Code § 7409(d)(2)(C).

⁶ See Letter from Hon. David Vitter & Hon. Lamar Smith to Hon. Gina McCarthy, July 28, 2014, available at <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=EB600A91-D85B-8BD2-75A6-4BA7E4D58238>; Letter from Hon. James Inhofe & Hon. Lamar Smith to Hon. Gina McCarthy, June 9, 2015 (on file with Committee).

⁷ Letter from Dr. Christopher Frey, Chairman, Clean Air Scientific Advisory Committee, to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency, June 26, 2014, available at [https://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/\\$File/EPA-CASAC-14-004+unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/$File/EPA-CASAC-14-004+unsigned.pdf).

Fully and accurately describing CASAC's statutory responsibilities would also address issues raised in a June 2015 report by the U.S. Government Accountability Office (GAO).⁸ According to the GAO report, a senior-level EPA official stated CASAC "has never provided advice on adverse social, economic, or energy effects related to NAAQS because to date EPA has not asked CASAC to do so."⁹ The GAO report further explained, "[a] senior-level EPA official stated that EPA continues to examine this issue and is considering how to proceed."¹⁰ EPA Acting Assistant Administrator Janet McCabe echoed this response in a July 9, 2015, letter to Congress stating, "[w]ith respect to requesting advice from the CASAC related to CAA section 109(d)(2)(C)(iv), we are continuing to examine the issue and are considering how to proceed."¹¹ Nearly a year since the GAO report and EPA's commitment to "proceed" on this issue, it is evident by the deficient text in the draft IRP that EPA has not taken meaningful steps to ensure CASAC is aware of and performs this statutory charge.

In fact, during a May 23, 2016, teleconference call on the draft IRP, it was Dr. Frey, the former CASAC chairman—not EPA—who advised current CASAC members of their statutory mandate, including those in Section 109(d)(2)(C) to consider contributions of natural and anthropogenic activity to air quality as well as the advice on adverse effects of a revised standard.¹² Current CASAC chairman, Dr. Ana Diez Roux, acknowledged Dr. Frey's advice on the call, but suggested it was an issue to return to on a future CASAC call. It is not acceptable for EPA to unnecessarily delay including a complete and accurate statement of CASAC's statutory responsibilities in the final IRP. Accordingly, in order to ensure that moving forward CASAC is fully informed of its statutory charge and will take steps necessary to fulfill these mandates, EPA should include the CAA Section 109(d)(2)(C) provision in the final IRP.

Thank you for your consideration. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

⁸ U.S. GOV'T ACCOUNTABILITY OFFICE: EPA'S SCIENCE ADVISORY BOARD – IMPROVED PROCEDURES NEEDED TO PROCESS CONGRESSIONAL REQUESTS FOR SCIENTIFIC ADVICE, June 2015 at pg. 13, available at <http://www.gao.gov/assets/680/670647.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Hon. Janet McCabe, Assistant Adm'r, Office of Air & Radiation, U.S. Env'tl. Prot. Agency, to Hon. James Inhofe, Chairman, S. Comm. on Env't & Public Works, July 9, 2015 (on file with Committee).

¹² Former CASAC Chairman Says Panel Should Consider Costs of NAAQS, June 8, 2016, available at <http://insideepa.com/daily-news/former-casac-chairman-says-panel-should-consider-costs-naqs>