



State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

May 27, 2014

Senator David Vitter
Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

RE: Response to AAPCA Letter; Views on the CASAC Process

Dear Sirs:

This letter, from the State of Louisiana, through its Department of Environmental Quality, is in response to a May 14, 2014 letter addressed to Mr. Michael Vince, President of the Association of Air Pollution Control Agencies (AAPCA), regarding the Clean Air Scientific Advisory Committee (CASAC). As indicated in our preliminary response on Friday, May 23, 2014, Mr. Vince has communicated this request to AAPCA's member states, but developing a response from AAPCA as a whole, although forthcoming, was not possible in the timeframe needed. As your letter acknowledges, the states are responsible for demonstrating and coming into attainment, and therefore, responses from individual states in this situation are necessary and appropriate. In recognizing the importance of this issue, the State of Louisiana, individually and through the Louisiana Department of Environmental Quality (LDEQ), is responding to your May 14, 2014 letter.

1. *Is the CASAC process open and transparent? Does the process enable CASAC to sufficiently consider all viewpoints on the science of ozone and its impacts on public health and welfare? Are there specific changes you would recommend to make it more open to the public, and more conducive to scientific inquiry and debate?*

No, the process is not open or transparent. While all materials the CASAC used by to make final recommendations to the EPA Administrator are available in the Federal Docket, most of the documents are not placed into the record until a draft document has been released for review. Based on this, it is difficult to believe that the CASAC considers all viewpoints on the science of ozone or the impacts to public health and welfare. Furthermore, the process deters public participation until after the process is well underway. EPA will argue that the new "kick-off workshop" allows for early input and/or comment into the integrated review plan; however, Louisiana has not found that to be the case.

The Clean Air Act Amendments of 1990 (CAAA) section 109(d)(2)(A) directs the Administrator to appoint an independent scientific review committee with a member from the National Academy of Sciences, one physician, and one person representing State air pollution control agencies. In order to make the committee more conducive to scientific inquiry and debate, the committee make-up should also include those with industrial, manufacturing, and transportation experience as well as a member of the state environmental regulatory sector. By adding members such as these, the review of standards would be more equitable to the nation as a whole.

2. *Has CASAC and EPA adequately considered the practical problems involved in lowering ambient concentrations of ozone in some areas beyond regional background levels?*

Louisiana believes that these issues have not been adequately addressed. Setting the standard at or below the Policy Relevant Background (PRB) makes economic growth of any sort impossible because there is no room in air for additional emissions of any sort.

There is confusion among EPA staff and CASAC as to the relevance of the policy level background and how it is to be used in the independent scientific process in the setting of new standards. On December 3, 2009, CASAC member, Dr. Michelle Bell, Associate Professor, School of Forestry and Environmental Studies, Yale University, New Haven, CT, offered the following to then Administrator Jackson about establishing policy relevant background (PBR) levels:

“Establishing the policy relevant background (PRB) level [see page 39] is by no means trivial, and the draft Review Plan acknowledges some of these limitations. The Plan notes that greater emphasis will be placed on understanding the contribution of different components that contribute to PRB [see page 40]. However, given the complexities of establishing a PRB and the wide range of approaches available, it would be helpful to have more information on how the PRB will be determined and how sensitivity analyses might be conducted. As the document is a plan, not a detailed methods design, some general information may be appropriate, as opposed to specifics, although the current document could use more information.”¹

Following this request and subsequent reviews by both parties of EPA’s Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards (First External Review Draft –August 2012), the following comment was made by a member of CASAC:

This reviewer does not agree with the interpretation that the staff have apparently taken relative to the suggestion by CASAC during the previous NAAQS review cycle where they state starting on page 4-34 “In taking this approach, the REA noted CASAC members, who recommended in the last review that EPA move away from using background in calculating risks (Henderson, 2007)”. This reviewer believes staff misinterpreted CASAC’s advice, and this reviewer does not recall that the advice was a consensus view.

Since the last review cycle, a great deal more of information about background levels of O₃ excluding anthropogenic sources has become available from a combination of measurements and atmospheric models. Moreover, there is a better understanding of how these levels vary during seasons of the year in different geographical regions. This translates into increased confidence in the Agency being able to incorporate adequately region specific background levels into their risk assessments and account for different cities in epidemiology studies having different background O₃ levels and, therefore, different percentage reductions in risk values when considering alternative standard levels² (emphasis added)

This type of miscommunication between EPA staff and CASAC is detrimental to the process; it could further lead to EPA setting a standard that would be unattainable due to the regional differences in background levels. Setting the standard at or below the PRB restricts economic growth of any sort because all current sources of emissions would have to emit negative emissions in order to reach attainment. This means that all sorts of transportation, local businesses, manufacturers, and chemical

¹ December 3, 2009 letter to The Honorable Lisa P. Jackson, Administrator; Subject: Consultation on EPA’s Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter. (While the subject addresses particulate matter, the body of the document addresses ozone.)

² Letter dated November 26, 2012 to the Honorable Lisa P. Jackson, Subject: CASAC Review of the EPA’s Policy Assessment for the Review of Ozone National Ambient Air Quality Standards (First External Review Draft—August 2012)

industries would have to cease all emissions of pollutants. It would be the de-industrialization of the state with little or no added health benefit.

3. *Are you confident, based on the record thus far, that CASAC and EPA will arrive at conclusion that accurately reflect the current state of all scientific research on the effects of ozone? What actions could CASAC and EPA take to improve confidence that they are basing their decisions on appropriate scientific research?*

The state is not confident in the conclusions and would like to refer the reader back to the discussion of policy relevant background. EPA staff and CASAC must come to an understanding of which information is relevant to either the Integrated Science Assessment or the Risk/Exposure Assessment in order for the states to become more confident in the conclusions that are reached.

Furthermore, changes made by former Administrator, Lisa P. Jackson, make it difficult to believe that conclusions will reflect the current state of scientific research on the effects of ozone. Instead of continuing with the Advanced Notice of Proposed Rulemaking (ANPR), she instructed her staff to follow a new process for reviewing the NAAQS. Removing the ANPR from the process was a detriment to an open and transparent method for the public to be involved in the setting of new standards. It also limits the input from scientists other than those on CASAC to comment on the various positions taken by either CASAC or the EPA Administrator.³

4. *In your view, is CASAC required by the Clean Air Act to report on economic impacts when it advises the Administrator on implementing—as opposed to setting—a new standard? As the CAA reads, CASAC “shall also ...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 standards.” Do you agree that having CASAC provide advice to the Administrator in this regard would assist you and your states in developing implementation plans to meet a new standard?*

Yes, Section 109(d)(2)(C) of the Clean Air Act, leads to no other conclusion except that CASAC is to advise EPA on the costs of implementation. The attainment and maintenance of the NAAQS is where the true cost comes in as there is no cost in setting the standard. Louisiana agrees that CASAC is required to review all pertinent information and data before advising the Administrator on NAAQS revisions.

Louisiana agrees that having CASAC provide advice to the Administrator in this regard would greatly assist the state in developing implementation plans to continue to meet the current standard, as well as, a new, more stringent standard.

5. *Please describe some of the practical and economic difficulties your states could face in implementing new measures to meet a more stringent ozone standard.*

In a recent meeting of the Baton Rouge Clean Air Coalition, members of the Baton Rouge Area Chamber of Commerce and the State Department of Economic Development were brought up-to-date with the current state of air quality in the Baton Rouge 5-Parish Nonattainment Area. The representatives of the Chamber and Economic Development believed that since the area was now in attainment for the 2008 ozone standard that there would be an opportunity to introduce new business and industrial opportunities to the area. What the representatives did not understand is that the area must maintain the current air quality for the next 20 years as defined in the CAAA. Following that discussion, members of the coalition also introduced the idea that EPA would be introducing rulemaking at the end of this year to strengthen the current ozone standard, making the introduction of new business and industry into the area difficult if not impossible. The first question a company asks when looking at new locations is whether

³ Memorandum from Lisa P. Jackson, Administrator, dated May 21, 2009, Subject: Process for Reviewing National Ambient Air Quality Standards

or not the area is in nonattainment for the NAAQS. When the answer is yes, the location is quickly scratched off the list and the company moves on to the next.

Furthermore, with the onset of a new ozone standard, the state will have more nonattainment areas. If the ozone standard is set at 70 parts per billion (ppb), the Shreveport, Baton Rouge, Houma-Thibodaux, and New Orleans-Metairie-Kenner Metropolitan areas would be designated as nonattainment using the current design values. If the ozone standard is set at 65 ppb, these same areas would be designated as nonattainment along with the Lafayette, Lake Charles, and Monroe Metropolitan areas.

Industries in these areas would have to install costly controls and find emission reduction credits to proceed with new projects and modifications. Some industries may elect to shut down their facilities instead of install costly controls or will move outside of the United States where there are little or no air quality control requirements. Based on this, the potential is great that Louisiana will see a decline in facilities trying to locate in the state, which would also lead to a lack of job opportunities.

Again, thank you for this opportunity to share our thoughts on CASAC and the upcoming rulemaking on the Ozone NAAQS. The State of Louisiana agrees that lowering the standard will restrict the state's ability to grow economically, attract new businesses, and create jobs with little or no health improvements. If you have any questions, please contact Sam Phillips, Assistant Secretary of Office of Environmental Services at (225) 219-3177.

Sincerely,



Peggy M. Hatch,
Secretary

C: John Cornyn, Senator
James M. Inhofe, Senator
Jeff Sessions, Senator
Tim Scott, Senator

Attachments: (2)
Holmstead letter to Frey
Ozone Nonattainment Maps