



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

April 12, 2016

TO: Members, Subcommittee on Energy and Power

FROM: Committee Majority Staff

RE: Hearing entitled “H.R. 4775, Ozone Standards Implementation Act of 2016”

I. INTRODUCTION

On Thursday, April 14, 2016, at 10:15 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Energy and Power will hold a hearing entitled “H.R. 4775, Ozone Standards Implementation Act of 2016.”

II. WITNESSES

- **Misael Cabrera**, Director, Arizona Department of Environmental Quality;
- **Bryan W. Shaw**, Chairman, Texas Commission on Environmental Quality;
- **Alan Matheson**, Executive Director, Utah Department of Environmental Quality; and
- **Seyed Sadredin**, Executive Director/Air Pollution Control Officer, San Joaquin Valley Air Pollution Control District.

Additional witnesses may be announced.

III. BACKGROUND

Under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) has established National Ambient Air Quality Standards (NAAQS) for criteria pollutants, including ground-level ozone.¹ Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NOx) and volatile organic compounds (VOC), from either manmade or natural sources, in the presence of sunlight. According to EPA, since 1980 ozone levels have declined by over 30 percent.

¹ Criteria pollutants include ozone, particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, and lead. See EPA [NAAQS website](#).

EPA initially established an ozone standard in 1971, and subsequently revised the standards in 1979, 1997, and 2008.² The standards set in 2008 established an 8-hour standard of 75 parts per billion (ppb), replacing a 1997 standard equivalent to 84 ppb. *See* 73 Fed. Reg. 16,436 (March 27, 2008). In 2012, EPA designated over 230 counties in 26 states and the District of Columbia as being wholly or partially in nonattainment with the 2008 standards.³ EPA did not publish implementing regulations until March 6, 2015, and states are currently in the process of implementing those standards.⁴

In October 2015, EPA also promulgated a new 8-hour ozone standard of 70 ppb.⁵ Based on the most recent monitoring data (2012-2014), 241 counties in 33 states would violate this standard.⁶ This does not include contiguous counties that do not exceed 70 ppb, but that may be designated to be in nonattainment,⁷ or the more than 2,400 counties that do not currently have ozone monitors.⁸ Under the agency's current schedule for implementing the 2015 ozone standards, states must submit designation recommendations by October 1, 2016,⁹ and EPA would designate areas as being in nonattainment by October of next year.¹⁰

² *See* Table of Historical Ozone NAAQS; *see also* 2008 National Ambient Air Quality Standards (NAAQS) for Ozone. For the classifications under the 2008 and 1997 ozone standards, *see* Designations.

³ *See* Nonattainment Designations for the 2008 Standards, Counties by State. *See also* 98 Fed. Reg. 30088 (May 21, 2012). Some areas are also designated nonattainment with the 1997 standard. *See* CRS Report.

⁴ *See* "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule," 80 Fed. Reg. 12264 (March 6, 2015).

⁵ *See* Final Rule (published at 80 Fed. Reg. 65,292 (Oct. 25, 2015)); Regulatory Impact Analysis; Press Release; Overview; "Designations and Permitting Requirements for the 2015 Ozone Standards; 2015 Ozone NAAQS Timelines; Memorandum; Supporting Documents and Ozone (O3) Standards; docket. EPA revised both the "primary" standard to protect public health, and "secondary" standard to protect the public welfare, to a level of 70 ppb.

⁶ *See* EPA County-level Design Values for the 2015 Ozone Standards. Of the 241 counties, 213 are outside of California. The agency states that "EPA will not designate areas as nonattainment based on [2012-2014] data, but likely based on 2014-2016 data which are expected to show improved air quality."

⁷ Under the CAA, states are directed to designate as nonattainment "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." 42 U.S.C. § 7407(d).

⁸ EPA has advised the Committee that in 2014, there were 813 U.S. counties with ozone monitors reporting data to EPA, and 2,407 counties with no ozone data reported.

⁹ *See* EPA memo dated Oct. 1, 2015; *see also* guidance dated Feb. 25, 2016.

¹⁰ The CAA established ozone classification and attainment dates for the initial ozone standards of 3 years for "Marginal," 6 years for "Moderate," 9 years for "Serious," 15 years for "Severe," and 20 years for "Extreme." 42 U.S.C. § 7511. These deadlines have applied to subsequent ozone standards. *See, e.g.* NRDC v. EPA (Case No. 12-1321, D.C. Circuit, Dec. 23, 2014).

States with areas designated to be “nonattainment” will become subject to new emissions control and transportation conformity requirements, and must develop emission inventories and implement a preconstruction permitting program.¹¹ These states will also have an obligation to submit State Implementation Plans (SIPs) that may include Infrastructure and Transport SIPs by October of 2018; for States classified “Moderate” or higher, they will also be required to submit attainment plans in the 2020 to 2021 timeframe.¹² States with nonattainment areas would also have an obligation to address the interstate transport of air pollution, which will significantly contribute to nonattainment or interfere with maintenance of the ozone standard in other states. 42 U.S.C. § 110(a)(2)(D)(i)(I). If EPA finds a state or locality has failed to submit a satisfactory implementation plan, in whole or in part, the state or area is subject to sanctions and the imposition of a Federal plan by EPA. 42 U.S.C §§ 179, 110(c).

For areas designated to be in “nonattainment,” even after monitored air data shows the area meets the standard, they continue to be designated as “nonattainment” areas until such time as EPA approves maintenance plans, which can take years.¹³ A state requesting redesignation must submit a revision to its applicable SIP that provides for the maintenance of the standards for at least 10 years after the redesignation. 42 U.S.C. § 7505a(a). In addition, 8 years after redesignation of any area as an “attainment” area, the state must submit an additional revision to the applicable SIP for maintenance of the standard for another 10 years after the expiration of the initial 10 year period. 42 U.S.C. § 7505a(b). Accordingly, even after achieving the standard and being redesignated as “attainment,” these areas continue to be subject to EPA oversight as they implement maintenance plans and controls under anti-backsliding provisions for the next 20 years.¹⁴

For its 2015 ozone standards, EPA projects all but 14 counties (excluding California) would come into compliance by 2025 under existing regulations and programs.¹⁵ EPA provides

¹¹ 42 U.S.C. §§ 7407, 7410, 7501-7511. For background on the SIP process, *see, e.g.*, Basic Information; Infrastructure SIP Requirements; Guidance on Infrastructure SIP Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2); SIP Development Process; Nonattainment Area & OTR SIP Requirements; SIP Efficiency & Effectiveness Guidance Memos; 2008 Ozone NAAQS Transportation Conformity Guidance and Regulations. For background relating to permits, *see, e.g.* Designations and Permitting Requirements for the 2015 Ozone Standards; Majority Memorandum for May 21, 2014 hearing.

¹² *See* 2015 Ozone NAAQS Timelines. States or localities will be required to meet the primary standard between 2020 to 2037, depending on the severity of the area’s ozone problem. If an area fails to meet its deadline, it will be reclassified to the next higher classification level unless the area is already Severe or Extreme, and be subject to stricter mandatory controls. 42 U.S.C. § 7511.

¹³ *See* EPA Redesignation and Clean Data Policy. *See also* EPA Sept. 4, 1992 Memo.

¹⁴ *See* EPA Redesignation and Clean Data Policy.

¹⁵ In a fact sheet accompanying the final rule establishing the 2015 ozone standards, EPA states: “the vast majority of U.S. counties will meet the [2015 ozone standards] by 2025 just with the rules and programs now in place or underway.” *See also* Counties Projected to Violate the 2015 Primary Ground-Level Ozone Standard in 2025. The 14 counties include: Larimer County, CO (71ppb); ii) Jefferson County, CO (71ppb); Tarrant County, TX (73ppb); Harris County, TX (74ppb); Brazoria County, TX (75ppb);

an annualized cost estimate only for 2025, estimating \$1.4 billion (excluding California), and for California an additional \$800 million post-2025.¹⁶ In making its annualized cost estimates, the agency projects “unidentified controls” would be needed in some areas to meet a 70 ppb standard, including for 100 percent of the NOx emissions reductions needed in California.¹⁷ In its cost estimate, EPA does not include the costs associated with complying with the 2008 standards, which the agency previously estimated would be \$7.6 billion to \$8.8 billion in 2020.¹⁸

Because the 2008 ozone standards have not been revoked by the agency, states now face the prospect of implementing two different ozone standards simultaneously. Prior to EPA’s decision to issue the 2015 standards, nearly 700 national, state, and local organizations and stakeholders had requested that EPA retain the 2008 standards and not establish a new additional lower standard. In comments on the proposed rule, many State environmental regulators also raised concerns about the role of background ozone, both naturally-occurring and internationally transported contributions, and about the limitations to the Clean Air Act tools that EPA had highlighted for regulatory relief to address background ozone.¹⁹

In addition to concerns relating to the implementation of multiple ozone standards simultaneously, general concerns with the NAAQS program have also been raised by state regulators.²⁰ These have included concerns regarding the current 5-year timeline for review of NAAQS,²¹ as well as the failure of the agency to consider the likely technological feasibility or

Sheboygan County, WI (71ppb); Jefferson County, KY (71ppb); Allegheny County, PA (71ppb); Harford County, MD (73ppb); Richmond County, NY (72ppb); Queens County, NY (71ppb); Suffolk County, NY (73ppb); Fairfield County, CT (72ppb); New Haven County, CT (71ppb).

¹⁶ EPA’s cost estimate in the final rule is significantly lower than its estimate in the proposed rule, where it estimated costs for a 70 ppb standard to be \$3.9 billion in 2025. See RIA for Proposed Rule at ES-14, ES-15.

¹⁷ See RIA for Final Rule at Table 4-9 at 4-40, 4A-5 at 4A-6 and 4A-6 at 4A-6; Tables 3-9 and 3-10 (California) at 3-24.

¹⁸ See EPA Fact Sheet for 2008 Final Revisions to the NAAQS for Ozone.

¹⁹ See, e.g. State Environmental Agency Perspectives on Background Ozone and Regulatory Relief (June 2015).

²⁰ Clean Air Act Forum (Part I); Clean Air Act Forum (Part II); Clean Air Act Forum (Part III).

²¹ Under the CAA, EPA is required to complete a review of every NAAQS every 5 years. 42 U.S.C. § 7409. Many air regulators have raised concerns that the review time should be extended. See, e.g. Clean Air Act Forum Response of Thomas Burak, New Hampshire Dept. of Env. Services, July 27, 2012 (“Timing issues can also be challenging: often states are working on SIPs for multiple pollutants for which EPA had established different compliance deadlines. At the same time, EPA may be revising the NAAQS for a particular pollutant, leading to a constant state of flux in which the states and individual sources must try to reconcile complex and potentially conflicting requirements.”); Response of Paul Tait, Southeast Michigan Council of Governments, July 31, 2012 (“The CAA calls for setting standards every five years. While this may have made sense in the 1972, it poses serious challenges today.”); Response of

potential adverse effects associated with implementing revised standards,²² and failure to issue timely implementing regulations and guidance.²³

States, furthermore, also face other Clean Air Act deadlines during the period 2016 to 2021. *See* Appendix 2. These converging deadlines to comply with other regulations, a number of which also impose significant compliance costs, including the EPA's 2012 particulate matter

Teresa Marks, Arkansas Dept. of Env. Quality, July 31, 2012 ("Five years may not allow for enough time for new technology or science to be fully developed . . . With more time between review processes, the States could have adequate time to develop proper SIPs and meet federal deadlines."); Response of Martha Rudolph, Colorado Department of Public Health and Environment, Nov. 23, 2012 ("[T]he ambitious schedule for evaluating and promulgating NAAQS revisions every five years has created an inefficient planning process"); Response of Scott J. Nally, Director of Ohio EPA, Aug. 2, 2012 ("We would recommend a minimum of ten years for the review and possible changes of the ambient air quality standards"); Response of Susan Hildebrand, Texas Council on Env. Quality ("While the concept of a five year review may sound reasonable, in practice it has not served as intended."); Response of Michael Krancer, Pennsylvania Dept. of Env. Protection, Nov. 29, 2012 ("Development of the NAAQS on an interval of five years (Section 109(d)(1)) has created significant resource burdens for both EPA and the states. Furthermore, the cascading standards can create confusion for the public because states and EPA continue to work on [SIP] revisions, determinations of attainment for one standard, while the Air Quality Index is based on another. NAAQS review intervals should be lengthened to 10 years"); Response of Robert Martineau, Jr. Tennessee Dept. of Env. and Conservation, Nov. 29, 2012 ("[T]he review period for the NAAQS needs to be lengthened from the current five (5) year cycle. A ten (10) year cycle should be considered.").

²² Section 109(d)(2)(C)(iv) of the CAA expressly requires that the Clean Air Scientific Advisory Committee (CASAC) "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." 42 U.S.C. 7409(d)(2)(C)(iv). On May 20, 2015, the Government Accountability Office issued a report indicating CASAC has never provided such advice because EPA has never requested it, and that EPA has no plans to ask CASAC to provide advice on potential adverse effects. *See GAO Report*. Concerns have been raised regarding the agency's failure to implement this statutory provision. *See, e.g.* May 14, 2014 Letter from Senator Vitter and Response from Louisiana Dept. of Environmental Quality, Response from Mississippi Dept. of Environmental Quality; Response from North Carolina Department of Environment and Natural Resources; Response from Texas Commission on Environmental Quality.

²³ EPA's lack of timely implementing regulations and guidance has raised concerns and challenges for States. *See, e.g.* Clean Air Act Forum Response of Teresa Marks, Arkansas Dept. of Env. Quality ("Too often 'standards' are promulgated without the technical implementation rules in place. This places States in an extremely difficult position-that is to assert that the infrastructure will be in place timely and revise the SIP or other program requirements without the real tools to implement the new requirements."); Response of Susan Hildebrand, Texas Council on Env. Quality, July 31, 2012 ("A common complaint of state regulators is the failure of EPA to provide guidance contemporaneously with the promulgation of a new NAAQS or other standard"); Response of Martha Rudolph, Colorado Department of Public Health and Environment, Nov. 23, 2012 ("The absence of timely implementation guidance produces a lack of clarity on SIP expectations, and often causes considerable uncertainty in the planning process, because states are reluctant to proceed with expensive technical planning activities that are later superseded by belated guidance that may differ significantly from the states' approach").

standards for which EPA has not yet finalized implementing regulations, and 2010 sulfur dioxide standards for which the agency has required multiple rounds of designation submissions and is still in the process of finalizing implementing regulations and guidance.²⁴

IV. LEGISLATION

H.R. 4775 was introduced on March 17, 2016, by Rep. Pete Olson (R-TX), together with Rep. Bill Flores (R-TX), Rep. Bob Latta (R-OH), and House Majority Whip Steve Scalise (R-LA). House Majority Leader Kevin McCarthy (R-CA) and Rep. Henry Cuellar (D-TX) are also original cosponsors of the bill. Provisions include the following:

Section 1. Short Title: This section provides the short title of “Ozone Standards Implementation Act of 2016.”

Section 2. Facilitating State Implementation of Existing Ozone Standards: This section provides a schedule for implementation of the national ambient air quality standards (NAAQS) for ground-level ozone published in 2015. Section 2(a) provides that states shall submit designations to implement the 2015 NAAQS for ground-level ozone not later than Oct. 26, 2024, the Administrator of the Environmental Protection Agency (EPA) shall promulgate final designations with respect to those standards not later than Oct. 26, 2025, and states shall submit implementation plans not later than Oct. 26, 2026.

Section 2(b)(1) provides the standards shall not apply to the review and disposition of a preconstruction permit application required under part C or D of title I of the Clean Air Act (42 U.S.C. 7470 et seq.) if the Administrator or the state, local, or tribal permitting authority, as applicable, has determined the application to be complete prior to the date of promulgation of final designation of an area, or has published a public notice of a preliminary determination or draft permit before the date that is 60 days after the date of promulgation of final designation.

Section 2(b)(2) provides that the section shall not be construed to eliminate the obligation of a preconstruction permit applicant to install best available control technology and lowest achievable emission rate technology, as applicable, or limit the authority of a state, local, or tribal permitting authority to impose more stringent emissions requirements than the NAAQS.

Section 3. Facilitating State Implementation of National Ambient Air Quality Standards: This section includes provisions to facilitate more efficient implementation of NAAQS by states.

Section 3(a)(1) would extend the current NAAQS review cycle for criteria pollutants from 5 years to 10 years. Section 3(a)(2) would provide that no revision of the ozone standards shall be proposed prior to Oct. 26, 2025.

²⁴ See, e.g. EPA Guidance and Data; March 20, 2015 Fact Sheet; February 2016 Draft SO₂ NAAQS Designations Modeling Technical Assistance Document; February 2016 Draft SO₂ NAAQS Designations Source-Oriented Monitoring Technical Assistance Document.

Section 3(b) provides that the Administrator, when establishing or revising a NAAQS, may consider, as a secondary consideration, likely technological feasibility.

Section 3(c) provides that the Administrator, prior to establishing or revising a NAAQS, shall request, and the Clean Air Scientific Advisory Committee shall provide, the advice provided for in CAA Section 109(d)(2)(C)(iv) regarding 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.

Section 3(d) provides that the Administrator, when establishing or revising a NAAQS, shall concurrently publish implementing regulations and guidance as necessary to assist states, permitting authorities and permitting applicants, and that the new or revised NAAQS shall not apply to preconstruction permit applications until such final regulations and guidance have been published.

Section 3(e) provides that in Extreme ozone nonattainment areas, contingency measures are not required to be included in nonattainment plans.

Sections 3(f)(1) and (2) ensure that economic feasibility, in addition to technological achievability, be taken into consideration in certain requirements for plans for Moderate or Serious ozone nonattainment areas. Section 3(f)(3) eliminates certain demonstration requirements in approving provisions of an implementation plan for an Extreme ozone nonattainment and which anticipates development of new control techniques or improvement of existing control technologies.

Section 3(g) provides that, for particulate matter nonattainment areas, the milestones that must be included in plans to show reasonable further progress must take into account technological achievability and economic feasibility.

Section 3(h) provides that with respect to air quality monitoring data influenced by exceptional events, an exceptional event may include stagnation of air masses that are not ordinarily occurring, and may also include a meteorological event involving high temperatures or lack of precipitation.

Section 3(i) provides that within 2 years of enactment of the Act, the Administrator, in consultation with states, shall submit to Congress a report on (i) the extent to which foreign sources of air pollution impact the area designations and the attainment and maintenance of NAAQS; (ii) the EPA's procedures and timelines for disposing of petitions relating to emissions from sources emanating outside the United States that are submitted pursuant to section 179B(b) of the Clean Air Act (CAA); and (iii) the total number of such petitions received by the agency and related information; and (iv) whether the Administrator recommends any statutory changes to facilitate more efficient review and disposition of such petitions.

Section 4. Definitions: This section contains the following definitions:

(1) The term "Administrator" means the EPA Administrator.

- (2) The term “Best Available Control Technology” has the meaning given that term in CAA Section 169(3).
- (3) The term “Lowest Achievable Emission Rate” has the meaning given that term in CAA Section 171(3).
- (4) The term “national ambient air quality standard” means a national ambient air quality standard promulgated pursuant to CAA Section 109.
- (5) The term “Preconstruction Permit” means a permit that is required under part C or D of title I of the CAA for the construction or modification of a major emitting facility or major stationary source, and includes any such permit issued by the EPA or a state, local or tribal permitting authority.
- (6) The term “2015 Ozone Standards” means the national ambient air quality standard for ozone published in the Federal Register on October 26, 2015 (80 Fed. Reg. 65292).

V. ISSUES

The following issues relating to EPA’s proposed rule may be examined at the hearing:

- The provisions of H.R. 4775;
- Practical challenges to implementing existing ozone standards;
- Potential improvements to the NAAQS process;
- Impacts of revised NAAQS on jobs and economic growth; and
- Costs of revised NAAQS to households and consumers.

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Mary Neumayr or Tom Hassenboehler of the Committee staff at (202) 225-2927.

APPENDIX 1

States with Counties That Violate 2015 Ozone Standards Based on Monitored Air Quality Data from 2012-2014

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Georgia
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Mississippi
Missouri
Nevada
New Jersey
New Mexico
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Virginia

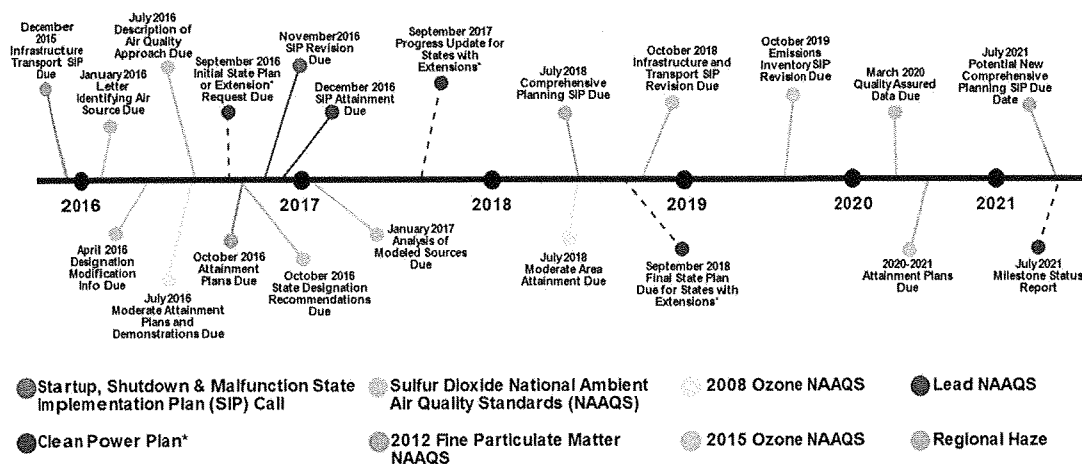
Source: EPA “County-level Design Values for the 2015 Ozone Standards” available at
<https://www.epa.gov/sites/production/files/2016-03/documents/20151001datatable20122014.pdf>

APPENDIX 2

April 2016



State Clean Air Act Deadlines, 2016 - 2021



* On February 9, 2016, the U.S. Supreme Court stayed implementation of the Clean Power Plan. According to U.S. EPA: "EPA firmly believes the Clean Power Plan will be upheld when the merits are considered because the rule rests on strong scientific and legal foundations. For the states that choose to continue to work to cut carbon pollution from power plants and seek the agency's guidance and assistance, EPA will continue to provide tools and support."

The Association of Air Pollution Control Agencies (AAPCA) is a national, consensus-driven non-profit organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. You can find more information about AAPCA at: <http://www.cleanairact.org>

Source: http://www.csg.org/aapca_site/documents/aapca-deadlines-update-april-2016.pdf.

**Written Statement of Janet McCabe
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency**

**Legislative Hearing on H.R. 4775, the Ozone Standards
Implementation Act of 2016**

**Energy and Commerce, Energy and Power Subcommittee
United States House of Representatives
April 14, 2016**

Chairman Whitfield, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to provide written testimony on H.R. 4775, the Ozone Standards Implementation Act of 2016. Although the Administration does not have an official position on this bill, I would like to make several basic points that I hope will assist the committee as you consider this legislation that the EPA views as unnecessary and harmful to public health and the environment.

The bill under consideration would delay designations and implementation of the 2015 ozone health standard for 10 years. The bill would also extend the review cycle for all National Ambient Air Quality Standards (NAAQS) to 10 years and change other aspects of the overall NAAQS process. The delays in this bill would jeopardize progress toward cleaner air and delay health protections for millions of Americans, including children, older adults, and people with asthma. For ozone, EPA estimates that meeting the 70 ppb standard will yield health benefits valued at \$2.9 billion to \$5.9 billion annually in 2025 nationwide, not counting the health benefits that will be achieved in later years in California. These benefits include the value of avoiding 320 to 660 premature deaths, 230,000 asthma attacks in children and 160,000 days when kids miss school. By delaying the designations process, the bill would also deny citizens in potential nonattainment areas the information they need about air quality to protect their families from ozone exposure.

Ozone is one of the criteria pollutants for which the Clean Air Act requires EPA to set national air quality standards. The other criteria pollutants include particle pollution (PM_{2.5} and PM₁₀), carbon monoxide (CO), sulfur oxides (SO₂), nitrogen oxides (NO_x), and lead (Pb). These pollutants are harmful to public health and the environment, and are associated with a

variety of health effects, including asthma, heart attacks and premature death as well as effects on the environment.

The two step process of a science-based NAAQS review every five years followed by implementation is a system that works. The EPA and state, local, and tribal co-regulators share a long history of managing air quality under the Clean Air Act, supported by a wealth of previously issued EPA rules and guidance.

For ozone specifically, existing and proposed federal measures like vehicle standards and power plant rules are resulting in substantial reductions in ozone pollution nationwide, which will not only help improve air quality and public health but also help many areas meet the revised standards. We expect that the vast majority of U.S. counties outside of California will meet the 2015 NAAQS by 2025 without having to take additional action beyond federal measures to reduce emissions.

The overall framework and policy approach reflected in the implementing regulations for the 2008 ozone standards provide an effective and appropriate template for the general approach states would follow in planning for attainment of the 2015 ozone NAAQS. Planning and implementation work to meet the 2015 ozone standard will build on the progress states have already made to implement the 2008 standards. In particular for areas where states are still actively working toward attaining the 2008 ozone NAAQS, the EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards. Following past precedent, the EPA intends to propose to revoke the 2008 standards and provide transition rules to help avoid any potential regulatory inefficiencies as states begin implementing the Clean Air Act's requirements for the 2015 standards.

The bill under consideration would stall that cooperative process and delay implementation of the 2015 ozone NAAQS. People in areas with air quality that would not meet the new standard would breathe unhealthy levels of ozone for longer – 10 years or more. The science tells us that breathing air that contains ozone can cause serious health effects. So do the stories of many Americans who wrote to us during the public comment period on the 2015 ozone standard. Exposure to ozone can harm the respiratory system (the upper airways and lungs), aggravate asthma and other lung diseases, and is linked to premature death from cardiovascular and respiratory causes. People most at risk from breathing air containing ozone include people with asthma, children, older adults, and people who are active outdoors, especially outdoor workers. These health impacts pose significant costs on American families and workers, and can adversely affect their daily lives through missed school and work and the need to constrain regular activities.

This bill would specifically delay the next ozone review until 2025, which would potentially delay further public health benefits and also potentially delay benefits to ecosystems and public welfare. Ozone has serious implications for important natural resources such as our National Parks, and can affect plant diversity, damage vegetation and crops, and reduce carbon sequestration.

This bill has other implications for the ozone NAAQS process. It would delay infrastructure State Implementation Plan (SIP) submissions for ozone, including measures to address interstate transport, by 8 years (to 2026 rather than 2018). This would delay requiring new efforts by states to improve downwind air quality in areas that are not meeting or are having trouble maintaining the 2015 ozone NAAQS.

The bill also says that the 2015 ozone NAAQS shall not apply to the review and disposition of certain preconstruction permit applications. In effect, areas with unhealthy ozone levels would for a substantial period of time lack significant planning requirements and new source review requirements for meeting the health-based standard. This would mean that for 10 years, new significant sources of the pollutants that cause ozone pollution could be constructed and operated without regard for the public health standard that has been established by the EPA as necessary to protect public health.

The bill's effects are not limited to the Ozone NAAQS. It also makes a number of changes to the process for reviewing and implementing all six existing NAAQS. These changes would introduce uncertainty into a long-standing, proven approach for protecting public health and welfare. These changes would extend the mandatory, science-based review cycle for all six NAAQS from 5 to 10 years; change the definition of exceptional events to allow inclusion of certain events, including droughts, that may have not been previously considered exceptional events for air quality planning purposes; allow the Administrator to consider technological feasibility as a secondary consideration when revising a NAAQS; and limit consideration of preconstruction permit applications until after EPA has issued final NAAQS implementation and guidance; among others.

A 10-year NAAQS review cycle would delay incorporation of the latest science into Agency decision making. Experience shows that a substantial amount of new relevant research can become available in 5 years. For example, the 2015 ozone standard review included more than 1,000 new studies that were published since EPA last reviewed the standards in 2008. A 10-year review cycle would deny the American public any additional health protection indicated by the latest science. It is worth noting that under the current schedule, when the scientific evidence does not support a revision to the standard, EPA has the option and has exercised the option, both to streamline the review and to retain the existing standard.

Changing definitions to allow more events to qualify as "exceptional events" could allow regularly occurring events, such as hot summer days or recurring drought conditions to be ignored when determining whether an area is violating the NAAQS. Defining them as exceptional events does not change the impact that these conditions have on human health. In addition, these changes are not necessary because EPA is already making efforts to improve the exceptional events process and make sure that states are able to apply the existing tools in the Clean Air Act to when considering the impact of certain events on air quality.

Adding consideration of technological feasibility as a secondary consideration under section 109 would undermine the health-based decision-making which has been central to the success of the NAAQS. Setting a primary NAAQS is about defining what clean, healthy air is. The current NAAQS implementation process allows for consideration of costs as well as technical feasibility. Despite repeated assertions that achieving clean air was just not feasible, American

ingenuity has consistently risen to the challenge and made our country the leader in both clean air and clean air technology. That approach has been very successful for both the health of Americans and our economy. Based on the Agency's experience it is highly likely that new emissions controls or strategies are developed and deployed over time, but we may not have the data to include those technologies in our analysis at the time of the review.

One provision would require EPA to issue implementation rules and guidance concurrent with a revision to the NAAQS. The requirement is based on a false premise. New EPA implementation guidance and rules are not always necessary to enable a new or revised NAAQS to be implemented. EPA has existing rules and guidance that were put in place when implementing prior standards for ozone that can be useful in implementing the new standard. Furthermore, requiring such guidance to be issued concurrently with the standard could lead to an outcome in which EPA would effectively have to decide what the standard was before completing the public process in order to determine whether such guidance was necessary for that standard and develop it in time to be released with that standard. This would also make it challenging for the public to provide informed comment on proposed implementation guidance. We have been working successfully to streamline and make more timely the issuance of necessary implementation rules and guidance.

In closing, the Clean Air Act requires the EPA to set primary air quality standards that protect public health with an "adequate margin of safety" including the health of at-risk groups. Science-based air standards have a proven record of success. Setting and implementing national standards for air pollution has made the air cleaner for all Americans, which in turn has helped Americans live longer, healthier lives. Since 1970, the economy has grown over 200 percent while emissions of key pollutants have decreased nearly 70 percent. National average ozone levels have gone down 33 percent since 1980, and 95 percent of areas originally designated nonattainment for the 1997 ozone standards now meet those standards. The NAAQS process works to improve public health protection across the country and provide the requisite margin of safety the law requires – including for children, who are one of the groups most at risk from air pollution. Forty-five years of clean air regulation have shown that a strong economy and strong environmental and public health protection go hand-in-hand. In fact, as the world's largest producer and consumer of environmental protection technologies worldwide, the United States' environmental technologies and services industry supported 1.7 million jobs in 2008, generating approximately \$300 billion in revenues and exported goods and services worth \$44 billion. EPA is committed to ensuring that these successes will continue while we work to deliver clean air for Americans across the country.

Testimony
Subcommittee on Energy and Power
House Committee on Energy and Commerce
Thursday, April 14, 2016
by
Misael Cabrera, Director
Arizona Department of Environmental Quality

Mr. Chairman, members of the Committee. My name is Misael Cabrera. I am the Director of the Arizona Department of Environmental Quality and I greatly appreciate the opportunity to offer testimony today.

As the lead state challenging the 2015 ozone standard in the courts, Arizona does not support 70 parts per billion (ppb) as the appropriate ozone standard. We believe that the new standard is simply not achievable in many areas of our State. Although the Clean Air Act has five mechanisms to bring nonattainment areas in to compliance, these mechanisms are inadequate for Arizona and likely other Western states. These mechanisms include: improving air quality through State regulation until the new standard is attained; designating rural transport areas; designating interstate or international transport areas; and demonstrating exceptional events. I will discuss each mechanism and its shortcomings in the context of a small county in rural Arizona.

Yuma County is located in the southwest corner of Arizona, bordered by both California and Mexico. The county contains a few small towns and the City of Yuma, which has an estimated population of about 100,000 and an unemployment rate of almost 20%. Yuma is predominantly an agricultural community, and despite its lack of urbanization, Yuma County is projected to be designated as nonattainment for the 2015 ozone standard.

As you may know, volatile organic compounds (VOCs) and oxides of Nitrogen (NOx) in the presence of sunlight react photo-chemically to produce ozone. According to EPA's 2011 National Emissions

Inventory, industrial sources account for only 0.2% of total VOC emissions, and 5.3% of NOx emissions within the County. All other sources are either naturally occurring, or not regulated by the State. No matter how many local emissions reductions are achieved, Yuma County simply will not be able to achieve compliance with the new standard.

In addition, Yuma County would not qualify for the rural transport mechanism because the Clean Air Act states that a rural area seeking relief cannot be adjacent to or include any part of a Metropolitan Statistical Area (MSA), defined by the U.S. Census as an entire county comprising of 50,000 people or more.

The Cross-State Air Pollution Rule often mentioned as a relief mechanism is yet another option that does not apply to Yuma County. Although 20% of ozone concentrations in Yuma County emanate from California manmade sources, the rule only helps downwind nonattainment areas receive emissions reductions from upwind *attainment* areas. This approach will not work for Yuma County because California has already implemented the most stringent controls in the Country, is still unable to achieve compliance with the standard, and has no emissions reductions to contribute downwind (see Attachment A).

Further, the exceptional events rule is of dubious value to Yuma County, if not the whole country. Although Arizona has been a national leader in the development of exceptional event documentation for dust events, the process for documenting and receiving EPA approval of ozone exceptional events has not been explained, will be almost certainly resource intensive, and is difficult to predict.

The best case scenario for Yuma is that our agency can make an international transport demonstration given that EPA's own modeling shows that international sources¹ are responsible for 68% of ozone emissions affecting Yuma on modeled exceedance days (Attachment B – EPA Ozone Map & Data).

¹ Includes natural and manmade sources outside of the modeling domain.

Unfortunately, that demonstration is only valid after the three year marginal attainment deadline is exceeded and Yuma would still have to comply with higher nonattainment classification requirements – requirements that would limit economic growth in a high unemployment area in perpetuity as a consequence of emission sources that originate primarily outside of Arizona or outside of Arizona’s jurisdiction and control.

Yuma County is but one of many such counties in Arizona and the West. For all these reasons, Arizona is challenging the new ozone standard. We also request that consideration be given to interstate and international transport demonstrations before areas are classified as nonattainment.

Thank you and I am happy to answer any questions.

Alan Matheson
Executive Director
Utah Department of Environmental Quality

Testimony before the
Energy and Power Subcommittee of the
Energy and Commerce Committee

*“A state perspective on implementing the 2015 Ozone standard
revision”*

April 14, 2016

**Alan Matheson
Executive Director
Utah Department of Environmental Quality**

**Testimony before the
Energy and Power Subcommittee of the
Energy and Commerce Committee
*“A state perspective on implementing the 2015 Ozone standard revision”***

April 14, 2016

Mr. Chairman Whitfield, Ranking Member Rush, and Members of the Committee:

I am Alan Matheson, the Executive Director of the Utah Department of Environmental Quality. Improved air quality is a high priority for Utah. Under the direction of Governor Gary Herbert, we have taken aggressive action to clean our air: imposing new control requirements; expanding public transportation; implementing travel-reduction strategies and a public education campaign; and conducting research to understand Utah's unique atmospheric chemistry.

In the appropriate pursuit of cleaner air, we need to ensure that our regulatory system is rationally aligned with that goal. Today, I share Utah's concerns with the periodic review cycle of the National Ambient Air Quality Standards (NAAQS), the implementation schedule for the ozone standard, and the challenges our state has in meeting the new 70 ppb threshold.

Q In general, extending the 5-year NAAQS review cycle so that it better aligns with the prescribed NAAQS implementation timelines is appropriate. An area designated as moderate nonattainment for ozone has eight years from the date the NAAQS is set to achieve attainment. At the very least, there should be eight years between NAAQS

reviews to accommodate this compliance schedule. Extending the review cycle to 10 years would more closely align it with the prescribed planning period of an area designated as serious nonattainment for ozone.

Further, EPA has been unable to provide states with timely and necessary implementation guidance under the current 5-year NAAQS review cycle. The implementation rule for the 2008 Ozone NAAQS was published in March, 2015, only 7 months before the ozone standard was lowered to 70 ppb in October. As another example, new PM_{2.5} nonattainment areas were designated in 2009; State Implementation Plans for those areas were due to EPA December, 2014, but EPA has yet to promulgate the guidance establishing what is required in the plans. EPA cannot even review for completeness the plans they received.

- Q Extending the timeline for implementing the 2015 Ozone NAAQS will allow better coordination among the State, tribes, and the federal government. One of the areas in Utah expected to be classified as nonattainment is the energy-rich Uinta Basin, which suffers from wintertime ozone. The unique chemistry underlying winter ozone formation differs from the typical summer urban chemistry anticipated by the Clean Air Act (CAA) of 1990. In addition, this region has a complex mix of state, tribal, and EPA air jurisdictions. Utah has coordinated a significant multi-agency study into the causes of winter ozone and is working with EPA and the Ute Tribe in developing a SIP/FIP/TIP for the area. These efforts take an extraordinary amount of time, and an extension of the implementation period is needed. Under the

CAA, another review of the ozone NAAQs will occur in 2020. If EPA sets a new standard then, it will hamper the coordination efforts that are already under way.

- Q Background ozone levels present an additional challenge in meeting the new 70 ppb standard. International transport can, at times, account for up to 85% of the 8-hour ambient ozone concentrations in western states. Many areas in the west have little chance of identifying sufficient controls to achieve attainment, leading to severe consequences. Utah recommends that EPA work with states to determine what portion of ozone pollution and its chemical precursors is coming from background ozone and to clarify how exceptional events and international transport will affect attainment designations and compliance.
- Q Making the right choices to improve air quality in ozone nonattainment areas will depend on how well we understand the science; and our understanding of the science needs to improve. The tools available to states to account for non-anthropogenic ozone are administratively burdensome and subject to second guessing, often due to a lack of reliable supporting data. Effort spent analyzing uncontrollable pollution to satisfy EPA's administrative requirements is simply administrative overhead that does nothing to improve air quality or people's health.

The Department of Environmental Quality's mission is to safeguard public health and our quality of life by protecting and enhancing the environment, a mission we take seriously. We must address the public health impacts of ozone with reasoned approaches. As we move forward with this more stringent ozone standard, EPA needs to have in place the necessary tools to allow states to succeed. The remainder of this

testimony, submitted in written form, provides more detail regarding Utah's perspective on implementing the 2015 Ozone standard.

Written testimony submitted to the Energy and Power Subcommittee of the Energy and Commerce Committee

“A state perspective on implementing the 2015 Ozone standard revision”

The effect of jurisdictional complexity in the Uinta Basin.

The Uinta Basin lies in the northeast corner of Utah and is bounded on the north by the Uinta Mountains, on the south by the Tavaputs Plateau, on the west by the Wasatch Range, and on the east by elevated terrain that separates it from Piceance Basin in Colorado. Duchesne and Uintah Counties occupy most of the Basin, and the Uintah and Ouray reservation covers a significant portion of Basin lands.

Increased oil and gas exploration and production in the Uinta Basin has contributed to the increase in the precursor gases that lead to the formation of ozone during wintertime temperature inversions. Most scientific studies of ozone have focused on summertime ozone in urban areas; and the summer ozone-formation chemistry is well characterized. Wintertime ozone, on the other hand, is a relatively new phenomenon, limited to a few isolated basins in the intermountain west, and its causes are not fully understood. Preliminary evidence suggests that high concentrations of ozone in the Basin during the winter only occur when the ground is snow-covered, a temperature inversion traps emissions close to the ground, and the skies are sunny. The traditional strategies for solving summertime ozone pollution will not work in the Uinta Basin because of the unique nature of wintertime ozone.

The Utah Division of Air Quality (DAQ) is leading a multi-year effort to bring together knowledgeable scientists to study the wintertime ozone phenomenon. DAQ has partnered with local governments, industry, local health departments, the Bureau of Land Management (BLM), EPA, the Ute Tribe, National Oceanic Atmospheric Administration (NOAA), Utah State University, University of Utah, and a number of other universities in both the United States and Canada to determine the causes of wintertime ozone, identify control strategies to reduce emissions, and encourage industry to take proactive steps to cut emissions.

The Uinta Basin Winter Ozone Study (UBOS) began in 2011 to characterize emission sources, identify chemical pathways unique to the Basin, and develop effective mitigation measures. This collaborative study continues to bring together the best and the brightest in the fields of atmospheric research, air modeling, emissions source testing, and analysis.

This ongoing study is important for understanding the atmospheric chemistry responsible for winter ozone and developing control strategies that reduce the precursor gases that contribute to its formation. Over the past few years of study, much has been

learned about the unique winter chemistry that exists in the Basin. Research has shown that VOCs are the ozone precursor most likely to produce ozone in the region. Scientists are working to determine which VOCs are key to forming ozone in the Basin, where these emissions are located in the atmosphere, how their location impacts their ability to mix and react, and which meteorological conditions set the stage for the formation of ozone.

Due to the complex chemistry that creates ozone and the vast variation in VOC reactivity, ozone-control strategies must target reductions of specific emissions. Otherwise, there is the potential that emissions reductions will not be effective or can even be counterproductive. Research continues in the Uinta Basin today.

In combination with understanding the chemistry, a significant effort is underway to collect an emissions inventory for the oil and gas production in the Basin. This has required coordination with the oil and gas producers, EPA, the Ute Tribe, and the BLM. The goal is an emissions inventory that spatially, temporally, and chemically characterizes the entire Basin. This inventory will allow development of appropriate and effective mitigation strategies for ozone and other air pollutants that can form via this unique wintertime chemistry. This effort has required multiple resources, immense coordination, and will require continued support to maintain.

Jurisdictional issues complicate air pollution regulation in the Basin. Energy production areas are scattered over federal, state, and tribal lands. Each of these agencies has jurisdiction over the production areas located on their respective lands, and each has differing air regulations that apply depending on the amount of pollution emitted. Utah has jurisdictional responsibility for the lands outside of Indian Country, where approximately 90 percent of the population is located.

Approximately two-thirds of currently producing oil and gas wells, three quarters of the gas production, and half of the oil production in the Uinta Basin are located in Indian Country where the tribes and the EPA have regulatory authority. The Tribe is challenged with educating and training staff to support the increased need for an air program and increased regulation. As EPA looks to develop site-specific rules in the form of a Federal Implementation Plan, its resources to support implementation of a minor source permitting program are also limited.

Significant time and effort is required to address the co-challenges of a fairly new and complex winter ozone issue that is just beginning to be understood, and coordinating a sound regulatory approach among different agencies with sometimes-unclear jurisdiction within the same airshed. The ozone pollution issue in the Basin was just being discovered when the 2008 ozone standard was promulgated. EPA designated the area as unclassifiable due to a lack of certified air monitoring data. Nevertheless, the state began to address the ozone levels in the Basin. The Division of Air Quality

performed scientific studies, developed new statewide rules, joined the Ozone Advance program, and established voluntary seasonal ozone controls. H.R. 4775, Ozone Standards Implementation Act of 2016, which would change the mandatory review of ozone NAAQS from 5 to 10 years, would allow time for additional research, appropriate coordination among the jurisdictions, and full operation of the proactive ozone-reduction measures prior to the next designation process. With the promulgation of the 2015 ozone standard, EPA stated that with the implementation of recent regulations, the majority of areas that would be nonattainment for that standard would reach attainment by 2025. The additional time provided by H.R. 4775 would allow resource-limited states to focus on attainment strategies before having to evaluate their air monitoring data for the next designation process.

Recent scientific developments regarding background ozone levels in the United States, including summaries of the relevant portions of EPA's Integrated Science Assessment of Ozone and Related Photochemical Oxidants.

The EPA has been studying ozone in the eastern U.S. for decades, and the mechanisms of ozone formation and transport pathways are well understood there. This process is just beginning in the western U.S. where mountainous topography, unique meteorology, forest fires, stratospheric intrusion, distinct emissions sources, highly variable emissions density, and international transport play an important role in ozone formation. Unfortunately, just at the time when improved models, emission inventories, and research on western ozone issues are needed, EPA is facing funding constraints that will limit its ability to support new technical work, and will likely decrease its current efforts. Funding is also decreasing for important research activities at the National Oceanic and Atmospheric Administration (NOAA) and for grants to support research at universities. States such as Utah do not have the resources to make up for the decreases in federal funding for these important technical tools.

Emissions from Asia are affecting ozone levels in the western U.S., especially in the spring, and this impact is increasing. Cooper, 2010 estimated an increase of 0.63 ppbv per year, which would be around 6 ppb over ten years. This Asian impact is often cited as the reason the west is not seeing the reductions in ozone trends over the last 20 years that have been observed in the eastern states.

- *Increasing springtime ozone mixing ratios in the free troposphere over western North America*, O. R. Cooper, et al., published in *Nature* (Vol 463, January 21, 2010) examines the influence of Asian transported ozone on western North America. The rate of increase in ozone concentrations over the last 20 years is greatest when measurements are more heavily influenced by direct transport from Asia with an average increase of 0.63 ppbv/yr. The paper suggests that western North America is particularly sensitive to rising Asian emissions and that

the observed increase in springtime background concentrations may hinder compliance with its ozone air quality standard.

- *Long-term ozone trends at rural ozone monitoring sites across the United States, 1990–2010*, Cooper, O. R., R.-S. Gao, D. Tarasick, T. Leblanc, and C. Sweeney (2012), J. Geophys. Res. (Vol 117, Issue D22, 27, November 2012), reports on long term ozone trends (1990–2010) across the U.S. and finds that while eastern sites are generally seeing decreases in ozone concentrations as a result of national emissions controls, the western sites are not. The paper discusses the concept that increasing background ozone flowing into the western U.S. is counteracting domestic emission reductions.

Western wildfires significantly affect ozone levels throughout the intermountain west. This impact is highly variable and can positively, or in some cases negatively, effect ozone formation as the fire emissions plume ages. Though complex, understanding this impact is increasingly important as the ozone standard becomes more stringent.¹ Ozone levels can increase significantly due to “stratospheric intrusions” under specific meteorological conditions. This phenomenon typically occurs in spring and summer seasons in mountainous terrain where energetic storm systems can fold a pocket of stratospheric ozone into the lower troposphere (ozone levels are much higher in the stratosphere). This entrained ozone can radically increase ozone levels locally and significantly increase surface level ozone over multi-state regions downwind of the event. Researchers have found that stratospheric intrusion can play a major role (at times reaching 50 to 60 percent) in elevating springtime ozone events over high altitude regions in the western U.S., posing a challenge for meeting the ozone standards.² Ozone increases with elevation because its concentration increases vertically through the lower atmosphere (troposphere). Near-surface ozone tends to be titrated by oxides of nitrogen released from sources at the surface and subject to other scavenging processes, while ozone aloft can be enhanced by stratospheric ozone intrusion and ozone that has been transported long distances without loss. Mountainous terrain pushing into this higher-elevation ozone band can, therefore, experience higher ozone concentrations that cannot be controlled by local actions.

¹ *Ozone production from wildfires: A critical review*, Daniel A. Jaffe and Nicole Wigder, Atmospheric Environment, Vol 51 (2012) 1–10.

² *Springtime high surface ozone events over the western United States: Quantifying the role of stratospheric intrusions*, Lin M., A. M. Fiore, O. R. Cooper, L. W. Horowitz, A. O. Langford, Hiram Levy II, B. J. Johnson, V. Naik, S. J. Oltmans, C. Senff, *Journal of Geophysical Research*, Vol 117, November 2012.

The interpretation of background and “policy relevant background” for ozone in the NAAQS process.

Background ozone is important to consider in addressing ozone. In general, it refers to the level of ozone that is not controllable by a regulatory agency and would include ozone precursor emissions from biogenic and other non-anthropogenic sources. It could also include precursor emissions from anthropogenic international sources. This latter definition is termed policy relevant background (PRB). PRB is determined using a photochemical transport model.

PRB from non-anthropogenic sources is not constant. It varies from season to season and from episode to episode. It also varies from place to place. In the Integrated Science Assessment for the current ozone NAAQS review, EPA uses the mean PRB for broad regions and this may not be reflective of the PRB that is occurring during high ozone episodes in the intermountain west. PRB also increases with elevation. Higher ozone levels in the upper troposphere are more readily mixed to ground level at higher elevations and this could be an important factor in ozone levels in mountain communities and also higher-elevation forests.

While the concept of PRB considers the impact from international sources, there is no domestic mechanism to address this increasing impact. Asian emissions are increasing background ozone concentrations in the intermountain west in the spring. Cooper (Nature, 2010) estimated an average increase of 0.63 ppbv/yr from 1995-2008. EPA has considered the current impact from Asia through the concept of PRB, but the final NAAQS is a fixed standard even though the PRB continues to increase. Modeling to determine PRB has shown the highest values occur in the intermountain west where the 4th high values are estimated to be 50 to 60 ppb.³

³ *Improved estimate of the policy-relevant background ozone in the United States using the GEOS-Chem global model with 1/2 x 2/3 horizontal resolution over North America*, Atmospheric Environment, Vol 45, (2011) 6769-6776.

The Utah Department of Environmental Quality’s assessment of background ozone concentrations and their importance relative to the NAAQS, including the consequences of a “nonattainment designation.”

Ozone levels in the intermountain west are not decreasing as much as would be expected based on the significant emission reductions that have occurred over the last twenty years. Figure 1 shows ozone trends at rural western national parks. Many of these parks, such as Canyonlands in Utah, are located far from any significant emission sources. The current ozone standard is shown. As can be seen from this figure, ozone values have remained fairly constant over the last 20 years and are routinely above the 70 ppb standard. It is also apparent from this figure that the problem is widespread throughout the intermountain west and is not limited to parks that are close to urban areas or to energy-producing areas.

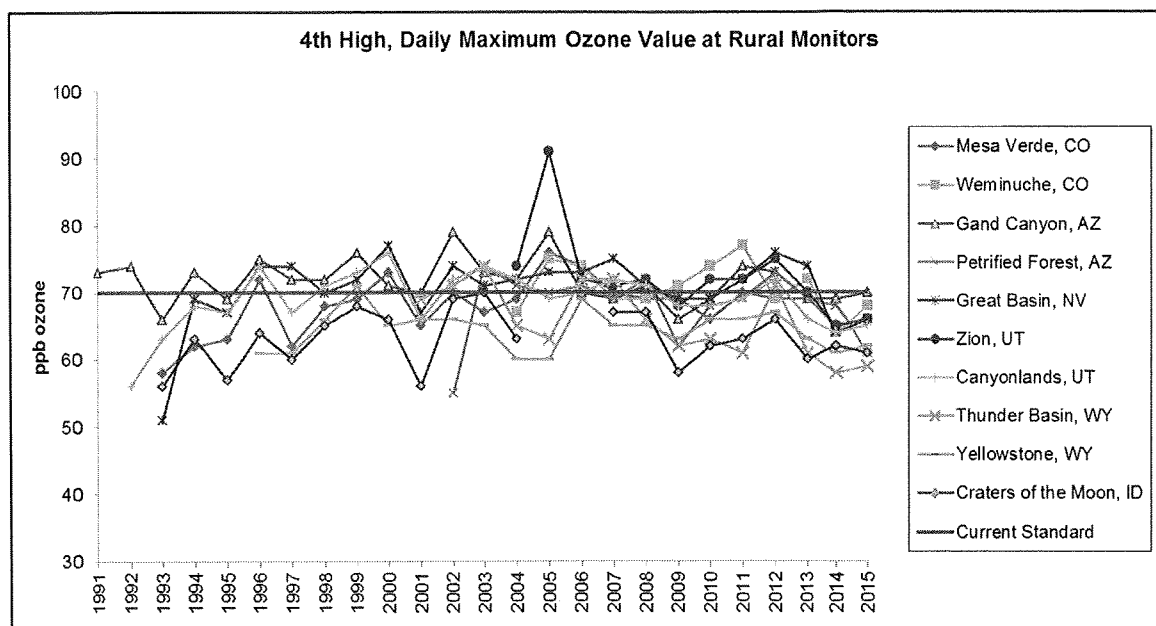


Figure 1

Source: EPA Air Quality System

Additionally, the Utah Division of Air Quality (DAQ) conducted a special ozone study focused on monitoring ozone in three regions of Utah: the mountain valleys east of the Wasatch Front with a focus on the Park City area; the Tooele Valley; and rural western Utah. Ozone concentrations at the mountain valley sites during 2012 were moderate to high with eight of ten sites having at least one day when ozone concentrations exceeded 75 ppb. The highest ozone was found at three sites in the Park City area (Parleys Summit, Snyderville and Silver Summit) and Heber where there were four to ten days with ozone exceeding 75 ppb. For comparison, Salt Lake City experienced seven days with ozone exceeding 75 ppb. In general, ozone in the Park City area of Summit County was equal to or higher than ozone in Salt Lake City and at other urbanized Wasatch

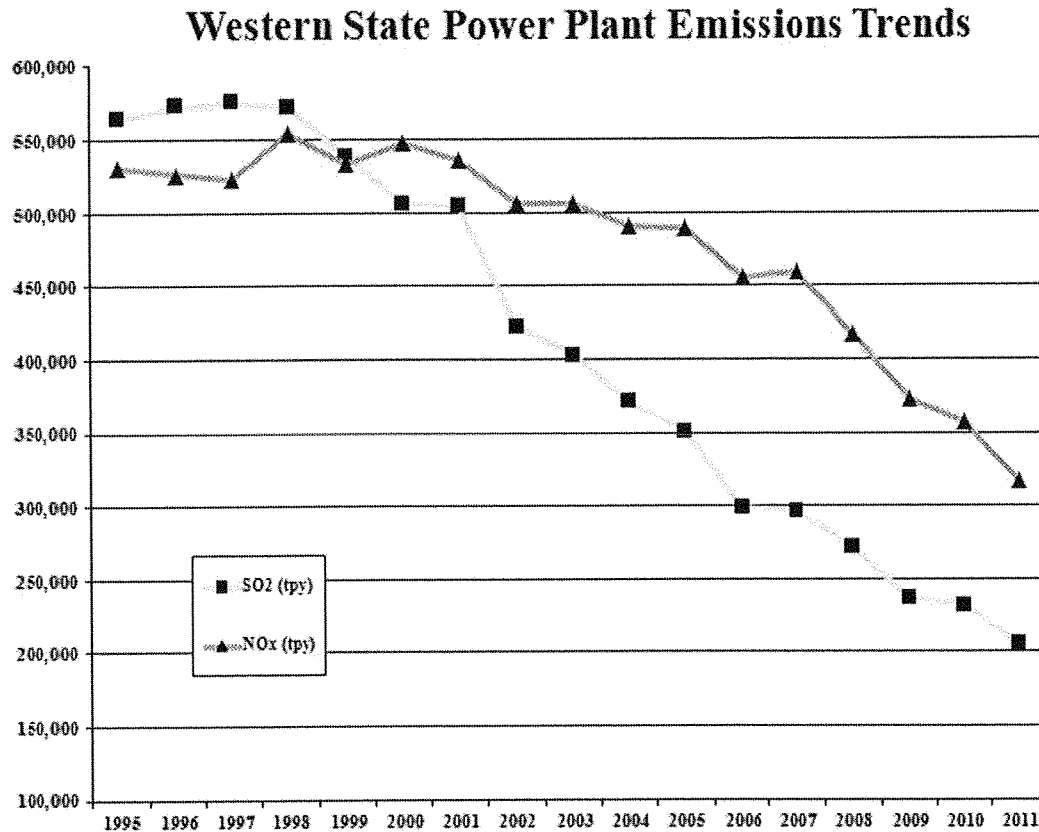
Front sites. Ozone in Morgan and Huntsville was moderately high, but generally lower than ozone observations at the DAQ site in Harrisville. High ozone in the Park City area was most strongly influenced by transport of ozone and ozone precursors from Salt Lake City. Analysis of dominant wind patterns and timing of maximum daily ozone suggests clear transport of pollutants from Salt Lake City, up the Parleys Canyon corridor and into the Park City area and Kamas. Ozone formation at all mountain valley sites was also likely enhanced by increased ultraviolet radiation at higher elevation sites, which is supported by solar radiation data. Smoke from wildfires and biogenic emissions volatile organic compounds in mountain forests also may have impacted ozone at mountain valley sites.

In the Tooele Valley, ozone concentrations in Erda and East Erda were significantly higher than ozone at the DAQ site in Tooele. Erda was one of the highest ozone sites in all of Utah during 2012 and the three-year average of the 4th highest 8-hour ozone concentrations was 77 ppb, equaled only by the DAQ site in Salt Lake City. High ozone in the northern portion of the Tooele Valley was likely influenced by Great Salt Lake; high albedo off the lake surface likely enhanced ozone formation and routine off-shore lake winds blew air from Great Salt Lake into Tooele Valley. Ozone concentrations at Badger Island, a site on a causeway in the middle of Great Salt Lake, were the highest observed in Utah with thirteen days exceeding 75 ppb. Ozone concentrations at Badger Island typically formed earlier in the day and persisted longer into the afternoon than at Tooele Valley sites.

Ozone concentrations at rural Utah sites, except at Antelope Island where ozone was very high, were typically lower than other Utah sites. Peak seasonal ozone concentrations occurred in May and early June at all rural sites and maximum 8-hour ozone concentrations exceeded 75 ppb at least once at all sites except Nephi where ozone concentrations peaked at 75 ppb. Badger Springs, in extreme southwestern Utah, was one of the highest ozone sites in Utah; 8-hour ozone concentrations exceeded 75 ppb on ten days. The 4th highest 8-hour ozone concentration exceeded 70 ppb at all rural Utah sites. High ozone concentrations in rural Utah were potentially influenced by regional transport of ozone, springtime emissions of biogenic volatile organic compounds, stratospheric ozone intrusion and wildfire smoke.

The eastern U.S. has seen significant improvements in ozone levels. One of the major strategies to reduce regional ozone levels in the eastern U.S. has been to reduce nitrogen oxide (NO_x) emissions from power plants. Federal motor vehicle standards and non-road engine standards have also reduced NO_x emissions substantially throughout the country. As a result of these significant emission reductions, ozone levels have been improving throughout the eastern U.S.. Equivalent NO_x emission reductions have also been occurring at western power plants as can be seen in Figure 2, and mobile source

emission reductions have also been substantial, but there have not been corresponding decreases in ozone levels in the west.



Data from EPA Clean Air Markets Division

Figure 2

One explanation of ozone trends in the intermountain west is that U.S. anthropogenic emissions are only part of the problem. Current research suggests that increased international ozone transport is counteracting domestic emissions reductions in the west (Cooper, et. al. *Long-term ozone trends at rural ozone monitoring sites across the United States, 1990-2010*, J. Geophys. Res., 117).

The consequences prescribed in the CAA for a nonattainment area are significant. Nonattainment area permitting rules require offsetting emission reductions for any new major source in a nonattainment area. The reductions must occur within the nonattainment area. These rules would effectively prevent development in rural areas that are designated nonattainment because there are no existing sources that could provide this offset. For example, the monitor in Canyonlands National Park, located in San Juan County, Utah, has measured ozone levels above 70 ppb. San Juan County is the largest county in the state measuring 7,933 square miles. This is close in size to the

entire state of New Jersey (8,722 sq miles). San Juan County's population was 15,772 in 2015.⁴ The point source inventory for the entire county is less than 400 tons/yr NOx and less than 100 tons/yr VOC. Economic opportunity in this part of Utah, including portions of the Navajo Nation, could be stifled because there would be no possibility to construct a new major source even though ozone levels at Canyonlands are not caused by local emissions.

Mandatory measures are established for moderate, serious, severe, and extreme ozone nonattainment areas.⁵ If an area starts as a marginal area but is not able to attain the standard, it is progressively bumped up to a higher classification over time, requiring progressively more stringent control measures, even if those measures do not help the ozone problem in the area.⁶ These measures include a 15% mandatory VOC reduction for moderate areas followed by a 3% reduction per year for serious and above areas, vehicle emission and inspection programs, fuel reformulations, reasonably available control technology requirements for stationary sources, and traffic control measures.⁷ These measures make little sense in rural western counties, may be impossible to implement, and may do little to reduce ozone levels even in the urban areas where background levels are high. In rural areas where biogenic (natural source) emissions are the majority of the inventory, the mandatory VOC reductions are especially problematic because reductions in anthropogenic VOC are unlikely to have any effect on ambient ozone concentrations.

If an area is unable to attain a NAAQS, mandatory sanctions apply to highway funding for the state.⁸ These sanctions would have severe consequence on an area that had no ability to solve the underlying ozone problem.

Another consideration in meeting the ozone standard in the western states is a significant correlation between high wildfire years and high ozone years. EPA has indicated that this impact could potentially be addressed through the exceptional event process used to exclude infrequent exceedances of the standard that do not have an

⁴ "State & County Quick Facts", United States Census Bureau (retrieved April 7, 2016).

⁵ 42 U.S.C. § 7511a (2015).

⁶ 42 U.S.C. § 7511.

⁷ 42 U.S.C. § 7511a.

⁸ 42 U.S.C. § 7509(b).

anthropogenic origin.⁹ This approach is problematic for several reasons, even with the recently promulgated rule revisions and guidance for exceptional events.

- The technical demonstrations that are required to show that high pollution levels are due to an exceptional event are extensive; and it has been very difficult to get EPA's concurrence, even for relatively straightforward cases of particulate matter exceedances caused by high-wind events. Utah does not have the resources to develop an exceptional event demonstration for every potential event during a high fire year. EPA would need corresponding resources to review the demonstrations and would also need to implement internal policies to ensure that demonstrations could be approved.
- During a high fire year, it is likely that many days or weeks could be affected by fire smoke and it would strain the exceptional event process to address longer-term events.
- During high fire years, it is likely that regional impacts affect multiple states. However, the current exceptional event process is best suited to address local impacts within a single state's jurisdiction.

Recommendation

Mechanisms to account for background ozone that cannot be controlled should have been put in place, including technical and regulatory tools, before the more stringent ozone standard was implemented. Funding is also needed to improve the technical tools that are available to western states when developing their SIPs, as well as to support the important research currently underway to better understand the causes of background ozone in the intermountain west. Otherwise, states such as Utah will not be able to develop successful state implementation plans and will be set up to continuously violate the ozone standard.

⁹ U.S. Env'tl. Prot. Agency, *Overview of EPA's Updates to Air Quality Standards For Ground-Level Ozone* 1 (Oct. 1, 2015); see also 40 C.F.R. § 50.14 (Dec. 28, 2015).



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TESTIMONY OF ALI MIRZAKHALILI
ON "H.R. 4775, OZONE STANDARDS IMPLEMENTATION ACT OF 2016"
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER
APRIL 14, 2016

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee, my name is Ali Mirzakhilili and I serve as Delaware's Director of Air Quality. I also serve as Chairman of the Ozone Transport Commission's (OTC) Stationary and Area Sources Committee and Co-Chair of National Association of Clean Air Agencies' (NACAA) Permitting and New Source Review Committee. In addition, I am the immediate past Chair of the Mid-Atlantic Regional Air Management Association (MARAMA). Thank you for the opportunity to testify on H.R. 4775, the Ozone Standards Implementation Act of 2016.

Since the Clean Air Act was last amended over 25 years ago, it has prevented literally hundreds of thousands of premature deaths, as well as averted millions of incidences of morbidity, including, for example, heart disease, chronic bronchitis and asthma. The health benefits associated with this landmark legislation have far outweighed the costs of reducing

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pollution by more than 30 to 1. Moreover, we have accrued these health benefits over the same period as our nation's gross domestic product has grown. It is fair to say that the Clean Air Act has not only been one of our nation's most effective environmental statutes, it will likely go down in history as one of the most effective domestic laws ever passed.

Accordingly, it is imperative that consideration of any significant amendments to the Act be deliberate and thoughtful, and ensure that the fundamental tenets of the legislation—protection of public health and welfare—remain intact. Unfortunately, after reviewing H.R. 4775, Delaware has concluded that it cannot support this bill. I believe the bill substantially weakens the existing Clean Air Act by delaying important deadlines and considerably altering the process for setting health-based National Ambient Air Quality Standards (NAAQS). My perspective is based on over three decades of struggle to bring healthful air to Delaware citizens, notwithstanding the fact that our state is downwind of most others and subject to significant air pollution transport. I would like to spend the next few minutes sharing my perspective with you.

One of my primary concerns with H.R. 4775 is Section 3(b), which would revise the criteria in the Act for establishing health-based NAAQS by allowing the consideration of “technological feasibility” in determining the level of the standards. I believe this provision could unravel the entire framework of the Clean Air Act.

Congress and the courts, including the United States Supreme Court, have been very clear over the past several decades on the issue of setting the NAAQS. Under the existing Clean Air Act, EPA is required to set NAAQS solely on the basis of health so that communities will know whether or not the air they are breathing is safe. Costs and other factors, such as

“technological feasibility,” have never been allowed to be considered in these critically important decisions. Once the health-based standards are set, the Act appropriately allows costs and other factors, including technological feasibility, to be considered as states develop implementation strategies to meet these standards. By removing this important “firewall” separating the setting of the standards from their implementation, the public will never know what level of air quality is truly safe. Imagine an oncologist discovering, through the best medical tests, that her patient has cancer but, because the treatment is not “feasible,” she tells the patient he simply has a bad case of the flu. The diagnosis is not dependent on the feasibility of the treatment.

I am also very troubled by Section 2 of the bill, which would delay deadlines for implementation of the 2015 ozone standard by up to eight years. By arbitrarily extending the compliance deadlines, it would leave the old, outdated ozone standard in effect. This action would not only provide citizens with a false sense of “health” security, but also unnecessarily subjects them to serious health and welfare problems, including premature mortality. According to EPA, every year of delay in meeting the 2015 ozone standards can cause hundreds of premature deaths, on top of many thousands of morbidity and related impacts. Under this provision, my seven-year-old son would not be afforded the protection of the revised ozone standard until he is about to enter college. This is just wrong. To make matters worse, Section 3(a) would permanently lengthen the NAAQS review cycle from five years to 10 and, in fact, bar EPA from completing any review of the ozone standard before October 26, 2025.

I am also concerned with Section 3(d) of H.R. 4775, which appears to reward the regulated community—with no consideration for the health of our citizens—for EPA delays in publishing important guidelines. The bill would allow industries to meet preconstruction permit requirements based upon outdated standards if EPA were unable or unwilling to publish its rules and guidance at the same time it promulgated its health-based standards. While states have long urged EPA to expedite its process for issuing guidance to accompany new or revised health-based air quality standards, these delays have not significantly interfered with our ability to work with industry to comply with important permitting requirements. One way for Congress to overcome these delays is to ensure that EPA has sufficient resources to do its job. Additionally, the amnesty provided to sources that submit a “complete application” prior to the designation under Section 2(b)(1) is contrary to long-standing practices; moreover, the exemption is so open-ended that it appears permanent and thus subject to abuse.

The provisions in Sections 3(f) and (g) of the bill are also troubling because they would weaken the “progress” requirements of the Clean Air Act. By allowing states, under the guise of “economic feasibility” and “technological achievability,” to circumvent these important requirements, it will seriously interfere with Delaware’s and other downwind states’ ability to provide our citizens with clean air. Economic feasibility is already addressed under Section 172(c)(1) of the Clean Air Act under the definition of “reasonably available control technology.” In Delaware, we are meeting all of our deadlines and taking our responsibilities seriously. We fully expect the same from others.

Finally, the proposed amendments to Section 319(b)(1)(B) appear to be an attempt to allow rebranding of poor air quality by excluding data that may have been caused by inversions,

hot days or dry days. The implication is that air quality professionals only need to concern themselves with providing good air quality on good days.

In conclusion, the proposed legislation would undercut requirements of the Clean Air Act that are crucial to obtaining healthy air quality as expeditiously as practicable. Further, the proposed amendments would wholly change the thrust of the Clean Air Act from expeditious protection of public health to one of delay. Delaware supports efficient and expeditious implementation of National Ambient Air Quality Standards. H.R. 4775, however, would weaken and delay public health protection. My state, therefore, must oppose this bill. If Congress were to amend the Clean Air Act, I would urge you to instead consider amendments to directly address climate change, control legacy fleets and grandfathered sources, and strengthen the “good-neighbor” provisions dealing with air pollution transport.

Thank you for the opportunity to testify. I am happy to answer any of your questions.

**Testimony of Seyed Sadredin
Executive Director/Air Pollution Control Officer
San Joaquin Valley Air Pollution Control District**

**Before the U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power**

**Written Testimony on “H.R. 4775, Ozone Standards Implementation Act of 2016”
April 14, 2016**

Chairman Whitfield, Ranking Member Rush, and Members of the Committee, my name is Seyed Sadredin and I currently serve as the Executive Director/Air Pollution Control Officer of the San Joaquin Valley Air Pollution Control District. It is an honor and a pleasure to be here before you today to provide testimony and answer your questions. For nearly 35 years, I have served as a public health official charged with implementing air quality management programs in the bountiful and beautiful central valley of California.

I am here today to express my gratitude to your committee for taking thoughtful and reasonable action to enact common sense changes to the Clean Air Act. As a public health official and on behalf of all of the elected officials serving on the Governing Board of the San Joaquin Valley Air Pollution Control District, I urge strong and bipartisan support for H.R. 4775, Ozone Standards Implementation Act of 2016.

The *Clean Air Act Modernization Proposal* developed by the San Joaquin Valley Air Pollution Control District presents a five prong legislative solution that preserves the federal government’s ability to routinely reevaluate and set health protective air quality goals based on sound science while avoiding current duplicative requirements and confusion (see Attachment). The proposed changes would also require strategies that lead to the most expeditious air quality improvement while considering technological and economic feasibility. We are pleased that many of our recommendations for modernizing the Clean Air Act are included in H.R. 4775, which we feel will update the Clean Air Act in a manner that reflects today’s realities without any roll back of health-protective measures. More specifically, the San Joaquin Valley Air Pollution Control District supports the H.R. 4775 provisions that accomplish the following:

Streamlines the Transition Between Standards: Since the 1970’s, EPA has established numerous ambient air quality standards for individual pollutants. We have now reached a point where various regions throughout the nation are subject to multiple iterations of standards for a single pollutant. Currently, we are subject to four standards for ozone and four standards for PM2.5. Each of these standards requires a separate attainment plan which leads to multiple overlapping requirements and deadlines. For instance, in the San Joaquin Valley we are on the verge of having to promulgate a total

of 10 active State Implementation Plans. This results in a great deal of confusion, costly bureaucracy, and duplicative regulations, all without corresponding public health benefits.

H.R. 4775 helps reduce the current chaotic nature of the transition between standards by requiring that EPA issue guidance on implementing new standards in a timely manner and extending the timeframe to review new standards from 5 years to 10 years. In the San Joaquin Valley, these provisions will reduce the current chaotic nature of the transition between standards. The streamlining remedies provided in H.R. 4775 will not delay aggressive efforts to reduce air pollution and improve public health in the San Joaquin Valley.

Reinforces Economic Feasibility Considerations in Implementing Clean Air Act

Mandates: Although the Clean Air Act is currently silent on considering economic feasibility in setting new air quality standards, EPA and others have argued that economic feasibility is incorporated in the implementation phase. Our experience, however, shows that meaningful consideration of economic feasibility is nearly impossible when faced with formula-based milestones and deadlines in the Clean Air Act that are set without considering technological achievability and economic feasibility.

Meeting the new standards that approach background concentrations call for transformative measures that require time to develop and implement. These transformative measures require new technologies that in many cases are not yet commercially available or even conceived. The formula-based deadlines and milestones that were prescribed in the Act 25 years ago now lead to mandates that are impossible to meet. H.R. 4775 will amend the Clean Air Act to require control measures that lead to the most expeditious attainment of health based standards while taking into account technological achievability and economic feasibility.

Eliminates a Contingency Mandate that is Detrimental to Expeditious Attainment of Standards and Public Health Improvement:

A classic case of the well-intentioned provisions that were included in the Clean Air Act over 25 years ago that are now leading to unintended consequences is the requirement for contingency measures in areas classified as “extreme” nonattainment. By definition, a region is classified as extreme nonattainment if, despite implementing all available control measures, reductions achieved are not enough to meet the standard. The only way a region can meet the contingency requirements is to hold back on implementing clean air measures and save them for later as a contingency. Of course, this would result in delays in cleaning the air and reducing air pollution. As currently written, the requirements in the Clean Air Act that require extreme areas to include all available measures to ensure expeditious attainment and the requirement for holding back measures as contingency are contradictory. H.R. 4775 eliminates the mandate for holding back measures as contingencies in areas classified as extreme nonattainment.

Allows for Consideration of Drought and Extraordinary Stagnation as Exceptional Events: Currently, the Clean Air Act does not allow stagnation or lack of precipitation to qualify as exceptional events. The west coast recently experienced drought conditions that had not been experienced since the late 1800s with some locations breaking records over 100 years old. The extended stagnation associated with the weather emergency overwhelmed the state's control strategy and will drive particulate matter planning for years to come. Until the exceptional weather conditions experienced due to the recent drought, the San Joaquin Valley Air Pollution Control District was on track to attain the 1997 annual PM_{2.5} standard before the federally mandated deadline of December 2014. The District's 2008 PM_{2.5} Plan satisfied all federal implementation requirements for the 1997 PM_{2.5} standard at the time of adoption and demonstrated attainment based on projected 2012-2014 PM_{2.5} levels. All emission reduction commitments under that plan have been fulfilled. Due to the extreme drought, stagnation, strong inversions, and historically dry conditions experienced over the winter of 2013/14, the Valley could not show attainment even if the Valley eliminated all sources of air pollution and had zero emissions of PM_{2.5} released into the atmosphere for the following year (2014).

In excluding stagnation as exceptional events, we believe that the intent of the Congress at the time was to only prohibit consideration of regularly occurring stagnant weather conditions which could vary on a day-to-day basis. Extraordinary circumstances that arise from 100-year droughts should qualify as exceptional events. H.R. 4775 allows consideration of extraordinary stagnation as a potential exceptional event if all the necessary findings and documentation as prescribed by EPA are prepared and submitted.

In addressing challenges related to implementing the new national ambient air quality standard for ozone recently promulgated by the United States Environmental Protection Agency (U.S. EPA), it is important to hear from regions throughout the nation that have worked over the last four decades to comply with the federal mandates under the Clean Air Act and attain the previous standards. In my opinion, a closer examination of those efforts can provide valuable lessons as we continue our work to chart an effective course for expeditious attainment of the health-based ambient air quality standards and the resulting benefit in improved public health.

Since its adoption, the Clean Air Act has led to significant improvements in air quality and public health benefits throughout the nation. With an investment of over \$40 billion, air pollution from San Joaquin Valley businesses has been reduced by over 80%. The pollution released by industrial facilities, agricultural operations, and cars and trucks is at a historical low, for levels of all pollutants. San Joaquin Valley residents' exposure to high smog levels has been reduced by over 90%.

After more than 25 years since the last amendments to the Clean Air Act in 1990, our experience shows that many well-intentioned provisions are leading to unintended

adverse consequences. Without action to address these issues, the Clean Air Act sets many regions up for failure and economic devastation as the new federal standards encroach on background pollution concentrations. The antiquated provisions of the Clean Air Act are now leading to confusion, and lack of updated congressional directive has rendered courts and non-elected government bureaucrats as policy makers. We urge the Congress and the President to take bipartisan action to modernize the Act.

The new ozone and PM_{2.5} standards established by EPA approach the background pollution concentrations in many regions throughout the nation including the San Joaquin Valley. As currently written, the Act does not provide for consideration of technological achievability and economic feasibility in establishing deadlines for attaining the associated federal mandates. When enacting the last amendment to the Act over 25 years ago, Congress did not contemplate the reality that we face today. It is hard to imagine that the Congress, with a nearly unanimous vote to pass the Clean Air Act, envisioned a scenario where after reducing pollution by over 80% and imposing the toughest air regulations on stationary and mobile sources of emissions, a region is left with an enormous gap in meeting the new standard – a gap so large that it cannot be filled by the formula-based deadlines prescribed in the Act. Through decades of implementing increasingly stringent air quality regulations, even the smallest sources have not been immune from regulation and the costs associated with implementation of the Clean Air Act. During most of the winter, Valley residents are banned from using their fireplaces, and other regulations impose limits on consumer products and the time that lids can be off of paint cans, just to name a few examples.

The reality that we face today sets up regions such as the San Joaquin Valley for failure leading to costly sanctions and severe economic hardship. We face these dire consequences despite having already done all of the following:

- ✓ Toughest air regulations on stationary sources (600 rules since 1992)
- ✓ Toughest air regulations on farms and dairies
- ✓ Tough air regulations on what residents can do within the confines of their homes (residential water heaters, residential HVAC furnaces, charbroilers, ban on fireplace installation and use)
- ✓ \$40 billion spent by businesses on clean air
- ✓ Over \$1 billion dollars of public/private investment on incentive-based measures reducing over 100,000 tons of emissions
- ✓ Toughest regulations on cars and trucks
- ✓ Toughest regulations on consumer products
- ✓ Reduced emissions by 80% - but need another 90% reduction in emissions to meet the new standard

The background ozone concentration in the San Joaquin Valley is estimated to be greater than 50 ppb with some estimates as high as 60 ppb. The new ozone standard set at 70 ppb leaves little or no room for man-made local emissions. Additionally, the latest federal PM_{2.5} standards of 35 µg/m³ (24-hour) and 12 µg/m³ (annual) also

approach natural background levels. Meeting these new standards requires a virtual ban on fossil-fuel combustion or emissions (see Figures 1 and 2).

Figure 1: San Joaquin Valley NOx Emissions and Targets for Attainment of Federal 8-hour Ozone Standards

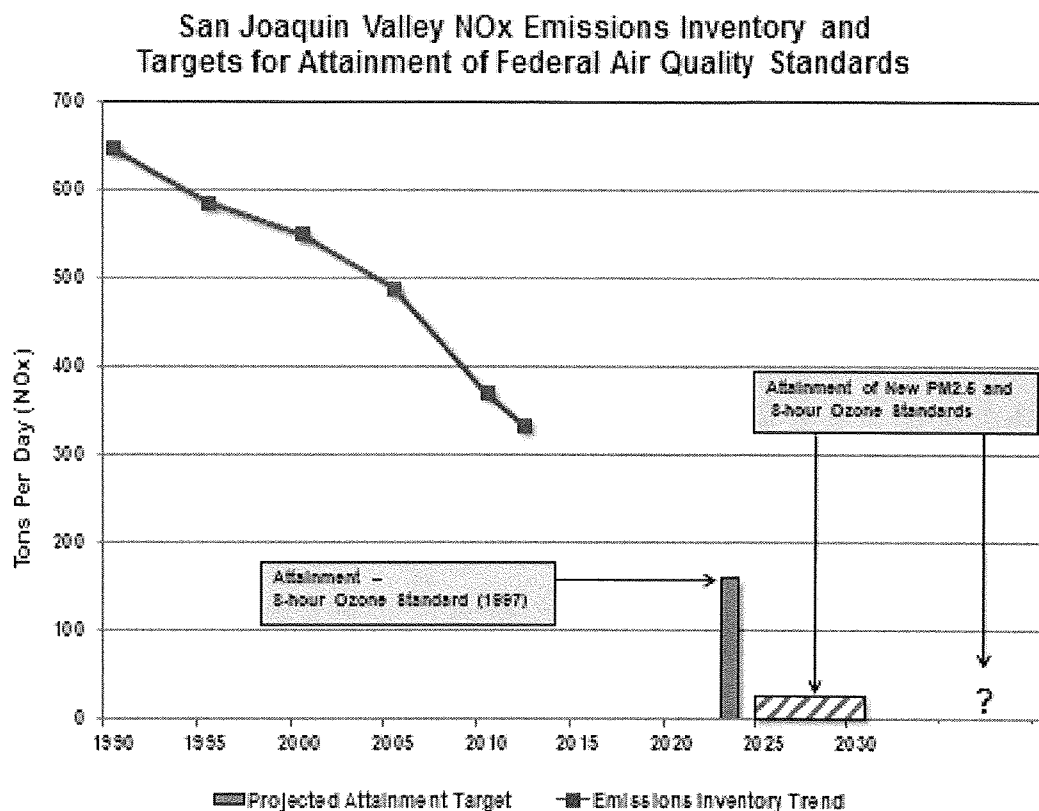
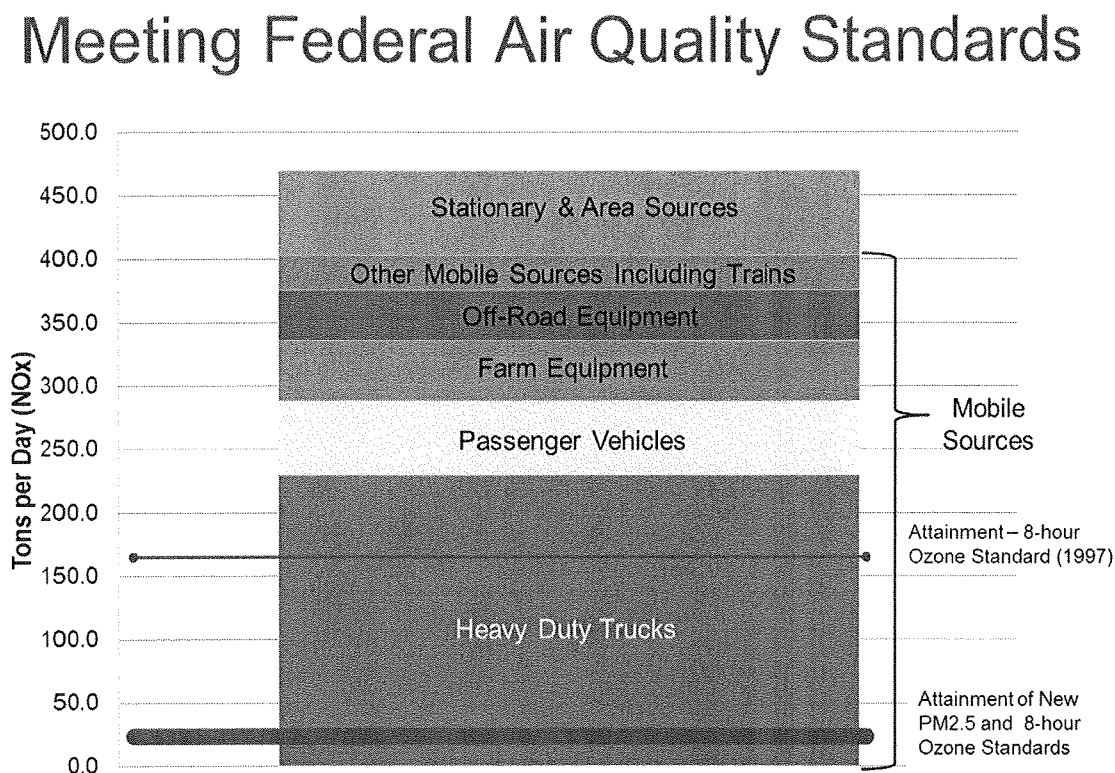


Figure 2: San Joaquin Valley NO_x Emissions by Source Category and Targets for Attainment of New Federal Ozone and PM_{2.5} Standards



Eliminating fossil fuel emissions from all industrial, agricultural, and transportation activities is a daunting task. Nonetheless in our region, we are committed to develop and deploy the needed transformative measures as expeditiously as possible. We support the well-intentioned concepts in the Clean Air Act that call for routine review of health-based air quality standards, clean air objectives that are technology-forcing, and clean-air deadlines that ensure expeditious clean-up and timely action. However, success requires fine-tuning of the federal Clean Air Act to ensure rapid progress towards meeting the standards without unduly penalizing regions with mature air quality programs and disadvantaged communities.

I thank you for considering this important legislation. We support and want to retain the core elements in the Act that serve to protect public health through the establishment and pursuit of science-based ambient air quality standards. The modifications proposed in H.R. 4775 will provide the administrative relief that is necessary without delaying our ongoing efforts to clean the air as expeditiously as possible and improve public health.

Attachment: Clean Air Act Modernization Proposal (8 pages)

Federal Clean Air Act Modernization Proposal

Since its adoption, the Clean Air Act has led to significant improvements in air quality and public health benefits throughout the nation. In many areas of the nation, air pollution levels have been reduced to historical lows. We support the well-intentioned concepts in the Clean Air Act that call for routine review of health-based air quality standards, clean air objectives that are technology-forcing, and clean-air deadlines that ensure expeditious clean-up and timely action.

The Clean Air Act was last amended in 1990. Over the last 25 years, local, state, and federal agencies and affected stakeholders have learned important lessons from implementing the law and it is clear now that a number of well-intentioned provisions in the Act are leading to unintended consequences. This experience can inform efforts to enhance the Clean Air Act with much needed modernization. The following proposal is designed to provide specific language aimed at improving the Act's effectiveness and efficiency.

1. PROBLEM: Since the 1970's, EPA has established numerous ambient air quality standards for individual pollutants. We have now reached a point where various regions throughout the nation are subject to multiple iterations of standards for a single pollutant. For instance, there are currently 4 pending standards for ozone and 4 pending standards for PM_{2.5}. Each of these standards requires a separate attainment plan which leads to multiple overlapping requirements and deadlines. This in turn results in a great deal of confusion, costly bureaucracy, and duplicative regulations, all without corresponding public health benefits.

SOLUTION: When a new standard is published, the old standard for that pollutant should be subsumed. States should be allowed to develop a single attainment plan that harmonizes increments of progress and other milestones without allowing for any rollback or backsliding.

PROPOSED AMENDMENTS: To avoid duplicative requirements and confusion, the RFP milestones must be synchronized when a new standard is published, for any region with a pending implementation plan for an older version of the standard for that pollutant. Towards that end, the first RFP milestone for the new standard should be aligned with the next required milestone for the old standard. The reductions required for aligned milestones shall be either 3 percent of the baseline for the new standard or the RFP emission reduction targets established under the existing plan, whichever is greater.

For ozone, add new subsection 182(k) as follows:

(k) RFP Milestone Alignment for Areas with Pending Attainment Plans

Notwithstanding any other provisions of this section, the RFP milestones and emission reduction targets in areas that have submitted a plan to the Administrator for the older version of a standard for the same pollutant being addressed by a new standard shall be set as follows:

The first RFP milestone for the new standard shall be set at the next RFP milestone date for the existing standard addressed in the current plan. Subsequent milestones will be every three years from the first milestone until attainment. The reductions required at the aligned milestones that address more than one standard shall be either 3 percent of the baseline for the new standard or the RFP emission reduction targets established under the current plan for the older standard, whichever is greater.

For particulates, add new subsection 189(c)(4) as follows:

(4) RFP Milestone Alignment for Areas with Pending Attainment Plans

Notwithstanding any other provisions of this section, the RFP milestones and emission reduction targets in areas that have submitted a plan to the Administrator for the older version of a standard for the same pollutant being addressed by a new standard shall be set as follows:

The first RFP milestone for the new standard shall be set at the next RFP milestone date for the existing standard addressed in the current plan. Subsequent milestones will be every three years from the first milestone until attainment. The reductions required at the aligned milestones that address more than one standard shall be either those required for the new standard or the RFP emission reduction targets established under the current plan for the older standard, whichever is greater.

2. PROBLEM: Mobile and stationary sources throughout the nation have now been subject to multiple generations of technology forcing regulations that have achieved significant air quality benefits. Meeting the new standards that approach background concentrations call for transformative measures that require time to develop and implement. These transformative measures require new technologies that in many cases are not yet commercially available or even conceived. The formula-based deadlines and milestones that were prescribed in the Act 25 years ago now lead to mandates that are impossible to meet.

SOLUTION: In establishing deadlines and milestones, the Act should be amended to require control measures that lead to the most expeditious attainment of health based standards while taking into account technological and economic feasibility. These deadlines and milestones should also consider background pollution concentrations and

the region's geography, topography, and meteorology that affect pollutant formation and dispersion.

PROPOSED AMENDMENTS:

In relation to RFP targets for ozone, amend subsection 182(b)(1)(A)(ii)(III) as follows:

the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability and economic feasibility.

In relation to RFP targets for ozone, amend subsection 182(c)(2)(B)(ii) as follows:

an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability and economic feasibility.

In relation to RFP targets for ozone, amend subsection 182(e) as follows:

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) of this section (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. ~~The provisions of clause (ii) of subsection (c)(2)(B) of this section (relating to reductions of less than 3 percent),~~ ~~The provisions of paragraphs [6] (6), (7) and (8) of subsection (c) of this section (relating to de minimus [7] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (relating to reductions of less than 15 percent)~~ shall not apply in the case of an Extreme Area. For any Extreme Area, the terms "major source" and "major stationary source" includes [8] (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

In relation to RFP targets for particulates, amend subsection 189(c)(1) as follows:

Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, and which take into account technological achievability and economic feasibility, toward attainment by the applicable date.

In relation to the attainment deadlines for ozone:

Amend section 181(a) by adding the following new subsection 181(a)(6):

Notwithstanding table 1, if an area is already classified as extreme for an existing standard, then the area shall be classified as extreme at the time of designation for the new standard.

Amend section 181(a) by amending table 1 as follows:

TABLE 1		
Area class	Design value*	Primary standard attainment date**
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990 <u>As prescribed in section 181(a)(7)</u>

Amend section 181(a) by adding the following new subsection 181(a)(7):

Areas shall attain the standard as expeditiously as possible with the most effective measures that take into account technological achievability and economic feasibility. The area shall quantify reductions needed to achieve attainment consistent with section 182(e)(5). Every 5 years after the plan is approved by the Administrator, the area shall demonstrate that all measures that are technologically achievable and economically feasible are implemented or will be included in the plan to ensure expeditious implementation. The plan shall also include measures for advancing the development and deployment of new technologies.

Amend section 182(e)(5) as follows:

(5) New technologies

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, ~~if the State demonstrates to the satisfaction of the Administrator that—~~

~~(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and~~

~~(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.~~

~~Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) of this section and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2) of this section, and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2) of this section.~~

~~Any reference to the term "attainment date" in subsection (b), (c), or (d) of this section which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.~~

3. PROBLEM: The Act as it relates to the demonstration of Reasonable Further Progress or Rate of Progress treats all precursors the same, regardless of their potency in harming public health or achieving attainment. Driven by a rapidly expanding body of scientific research, there is now a growing recognition within the scientific community that from an exposure perspective, the National Ambient Air Quality Standards metrics for progress are a necessary but increasingly insufficient measure of total public health risk associated with air pollutants. In particular, control strategies for sources of PM_{2.5} and ozone do not necessarily account for qualitative differences in the nature of their emissions. For PM_{2.5}, toxicity has been shown to vary depending on particle size, chemical species, and surface area. In the case of ozone, differences in the relative potency of ozone precursors, VOCs in particular, is not captured by a strict, mass-based approach to precursor controls.

SOLUTION: The Act should be amended to allow states to focus efforts on meeting new standards in the most expeditious fashion through deployment of scarce resources in a manner that provides the utmost benefit to public health. Towards that end, we recommend a more strategic approach in which public health serves as the key factor in prioritizing control measures, regulated pollutants, and sources of emissions. In establishing Reasonable Further Progress or Rate of Progress, the Act should give a greater weight to pollutants that have greater impact on achieving attainment and improving public health. Additionally, in evaluating Reasonably Available Control Technology (RACT), measures that reduce precursors with more impact on ozone formation should be given higher scores than measures that may reduce greater amounts of less potent ozone precursors.

For example, VOC compounds vary significantly in their contribution to the formation of ozone in the San Joaquin Valley. Similarly, NOx emissions reductions have been demonstrated to be approximately 20 times more effective than VOC emissions reductions in reducing the formation of ozone in the San Joaquin Valley. We therefore recommend that in demonstrating Reasonable Further Progress, EPA allow for an alternative approach that can demonstrate equivalent reductions in ozone concentrations as compared to the straight requirement of 3% per year reduction of VOCs and/or NOx.

PROPOSED AMENDMENTS:

Amend Section 182:

(C) NOx control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D) of this section), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NOx control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection. The Administrator shall allow the use of NOx reductions in lieu of VOC reductions. The credit for NOx reductions shall be weighted in proportion to their effectiveness in reducing ozone concentrations in relation to the effectiveness of VOC reductions as demonstrated by the attainment modeling submitted with the plan.

4. PROBLEM: Requiring contingency measures in extreme nonattainment areas is irrational and unnecessary. The Act requires all attainment plans to include contingency measures, defined as extra control measures that go into effect without further regulatory action, if planned emissions controls fail to reach the goals or targets specified in the attainment plan. While requiring backup measures was a well-intentioned provision, it does not make sense in areas that have been classified as "extreme" non-attainment for ozone. These areas, by definition, have already implemented all available and foreseeable measures and still need a "black box" of future measures to define and employ. The term "black box" refers to reductions that are needed to attain the standard, but technology to achieve such reductions does not yet exist. No measures are held in reserve in areas that are classified as "extreme" non-attainment for ozone. With no stones left unturned in such plans, requiring contingency measures in such areas makes no sense.

SOLUTION: We recommend that the Act be amended to eliminate the requirement for contingency measures in areas classified as “extreme” non-attainment by EPA.

PROPOSED AMENDMENTS:

Add to 172(c)(9) as follows:

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

Notwithstanding this or other sections, contingency measures shall not be required for extreme ozone nonattainment areas.

5. PROBLEM: The Act requirements for severe and extreme ozone nonattainment areas to address vehicle-related emissions growth must be clarified. Section 182(d)(1)(A) requires such areas to develop enforceable transportation control measures (TCMs) and transportation strategies “to offset any growth in emissions from growth in vehicle miles traveled ... and to attain reduction in motor vehicle emissions as necessary.” An area’s vehicle miles traveled (VMT) may increase due to increases in population (i.e., more drivers), people driving further (i.e., sprawl), or increases in pass-through traffic (i.e., goods movement).

Historically, EPA’s section 182(d)(1)(A) approach has allowed the use of vehicle turnover, tailpipe control standards, and the use of alternative fuels to offset the expected increase in VMT. This has allowed for the actual emissions reductions occurring from motor vehicles to be considered in meeting the applicable requirements. A recent Ninth Circuit Court decision, however, has called EPA’s current approach for demonstrating the offsetting of vehicle mile-related emissions growth into question, and has forced EPA to reevaluate its approach. Any change in approach that would require regions to offset vehicle growth regardless of population growth, and without recognition of emission reduction measures such as vehicle turnover and tailpipe control standards, would have a significant impact on many regions’ ability to develop an approvable attainment strategy and, under a strict interpretation, would actually render attainment impossible. Many TCMs and transportation strategies have already been implemented in nonattainment areas, and remaining opportunities are scarce and extremely expensive to implement, with relatively small amounts of emissions reductions available. A less inclusive section 182(d)(1)(A) approach would effectively penalize nonattainment areas for having population growth, and would not give credit to the significant emissions reductions being achieved from motor vehicles.

To illustrate this issue, such an interpretation applied to the District’s 1997 8-hour ozone standard attainment plan would require the elimination of 5.1 million vehicles, while the vehicle population of the Valley is projected to be only 2.6 million vehicles in 2023.

EPA recently established new guidance to address this issue that provides a potential path for reasonably addressing this CAA requirement. However, the path provided under this guidance will undoubtedly be challenged in court as it is utilized by regions like the San Joaquin Valley in the coming years. To provide certainty moving forward, the CAA should be amended to clearly include the methodology for reasonably satisfying this requirement.

SOLUTION: The Act should be amended to allow states to take credit for all transportation control measures and strategies and not punish areas that have implemented transportation control measures and strategies that have achieved early reductions in emissions.

PROPOSED AMENDMENTS:

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection [5] (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. As new ozone standards are established, for areas that have implemented early transportation control strategies and transportation control measures, the baseline for demonstrating compliance under this subsection shall remain fixed at 1990 independent of the baseline date for the new plan.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TESTIMONY OF CHAIRMAN BRYAN SHAW, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DELIVERED TO THE UNITED STATES HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY
AND COMMERCE, SUB-COMMITTEE ON ENERGY AND POWER

April 14, 2016

Chairman Whitfield, Ranking Member Rush, members of the committee:

Good morning, and thank you for the opportunity to visit with you this morning about HR 4775, "The Ozone Standards Implementation Act of 2016" sponsored by Vice-Chair Olson.

My name is Dr. Bryan Shaw, and I am the Chairman of the Texas Commission on Environmental Quality (TCEQ). My agency's mission is to protect Texans' public health and their environment in a way that is consistent with sustainable economic development. In carrying out that mission, we seek to bring together common sense, sound science, and the law to ensure that environmental regulations are safe, fair, and predictable.

The 2015 Standard

I am here today because the Environmental Protection Agency's (EPA) recent action lowering the National Ambient Air Quality Standard for ground level ozone is not consistent with those principles. As you all know, the EPA finalized their proposal to lower the standard from 75 to 70 parts per billion on October 26, 2015. The States' initial designation recommendations are due on October 1, 2016.

The TCEQ detailed our disagreements with the EPA's conclusions in formal comments during the rulemaking process. We even travelled to Washington to meet personally with Administrator McCarthy to make her aware of significant flaws in the studies EPA relied on in promulgating the new standard. The EPA nonetheless lowered the standard, and now my agency is challenging the validity of this standard in court.

While our voluminous comments and legal filings elaborate in great detail on the myriad scientific and legal vulnerabilities with the new standard, I would like to briefly raise a few of the most troubling issues.

First, the EPA claims that the new standard will provide annual health benefits between \$2.9 billion and \$5.9 billion, with a cost of only \$1.4 billion. My agency's

analysis suggests those figures are dramatically incorrect. For example, the EPA only includes industry's costs in their analysis, not the states' or taxpayer's costs. Nor do they look at economic impacts like increased electricity costs.

Another major flaw in the EPA's analysis is their quantification of the benefits that would flow from this new standard. The EPA's own analysis show that lowering the standard even to 65 ppb will not significantly reduce asthma attacks. In addition, approximately two-thirds of the benefits the EPA claims would result from this new standard are not based on ozone reductions at all. In fact, they are based on reductions of an entirely different pollutant that is not the subject of this Rule. Specifically, the EPA reasons that in taking the actions necessitated by this standard, states will also lower levels of fine particulate matter, or PM_{2.5}. The flaw in that reasoning is that, at least in Texas' case, levels of PM_{2.5} are already below the standard set by the EPA. Chief Justice Roberts recently questioned this practice when the EPA's Mercury and Air Toxics Standard was reviewed and rejected by the Supreme Court. While the Court ultimately rejected the rule on other grounds, the Chief Justice suggested that EPA's co-benefits analysis might be "an illegitimate way" of muddling the differing regulatory schemes for each pollutant under the Clean Air Act.¹

HR 4775

HR 4775 is a welcome step in the right direction. It seeks to defer the implementation of the new standard until 2024, and it requires the EPA to spend more time studying and reviewing scientific literature and other factors before implementing new standards.

By suspending the applicability of the new standard, this legislation will allow states to focus their limited resources on fully implementing the 2008 standard, as well as the cascade of other new and expensive regulations coming out of EPA. Especially considering the cost and the negligible health and environmental benefits embodied by the new standard, a delay in implementing this standard is helpful indeed.

More broadly, HR 4775 also seeks to make the NAAQS program, applicable to all six criteria pollutants, more efficient and effective. By lengthening the required review period from five to ten years, it will ensure the EPA does not rush to lower a given standard only to comply with a statutory deadline. Furthermore, it will give states more time to comply with previous standards before getting saddled with more stringent standards and/or facing economic or developmental sanctions for nonattainment.

I also support this legislation's addition of technological feasibility and possible adverse welfare, social, and economic effects to the list of factors the EPA can consider in revising a standard. As the Act is currently written and interpreted by the Supreme Court, the EPA is prohibited from considering whether or not the state of our technological capabilities would even make getting the required reductions possible.

¹ Transcript of Oral Argument at 64. *Michigan v. EPA*, No. 14-46 U.S. (2015).

Put simply, the EPA could require states to make reductions that are literally impossible to achieve.

The Act's requirement that the EPA ignore technological and economic considerations might have made sense forty years ago when it was initially passed. However, pollution levels have been lowered to such a degree that the law of diminishing returns has made it more and more difficult to continue to reduce pollutant levels at all, much less in a way that is not burdensome economically.

Finally, HR 4775's directive to the EPA to begin timely issuance of implementing regulations and guidance solves a major issue that often confronts states like Texas. Without this protection, the EPA can, and does, require states to develop and propose new standards before the EPA itself has given states specific guidance for the standard's implementation.

There is some language in the bill that I bring to your attention as potentially problematic, and that I discuss in more detail in my written comments to the subcommittee. For example, the term "not later than" in Section 2, subsection(a)(1) would allow states to submit designation recommendations to the EPA before October 2024, which could become a source of confusion due to differing designation, implementation, and attainment dates across the country. At the same time, I am cognizant of the fact that that was not the intent of this legislation, and I look forward to working with the members of the subcommittee to avoid any confusion.

I understand how charged the issue of air quality regulation can be, so I appreciate Vice-Chair Olson's efforts to streamline this process.

Comments on Draft Federal Legislation: H.R. 4775 by Rep. Olson

Section 2, subsection (a)(1), Page 2, lines 1-2:

The language “not later than” would not prevent states submitting designations to EPA earlier than October 26, 2024, which could create confusion and differing designation dates, implementation dates, and attainment dates across the country, since the same language appears in subsection (a)(2). EPA would not be prohibited from (and might be required to) act on earlier submissions. This could result in transport reductions being required from states that have not been designated yet that potentially impact states that chose to submit designations earlier than the specified date. Suggested fix: change the phrase “not later than” to “no earlier than.”

Section 2, subsection (b), page 3, line 3:

This section of the draft bill specifies that the 2015 ozone standards shall not apply to the review and disposition of a “preconstruction permit” application if specified criteria are met. “Preconstruction permit” application is defined in section 4 of this bill to mean a permit that is required under part C or part D of title I of the Clean Air Act (i.e., PSD and NNSR permits for major stationary sources). However, EPA interprets FCAA, §110 to also require that preconstruction permits be obtained from minor sources. Because the draft bill does not address applicability for minor sources, the 2015 ozone standard would apply to preconstruction permitting for those sources, while major stationary sources could be exempt. Also, when you read this section together with the definition in section 4, we think that it means that any new or modified source subject to major NSR (PSD or nonattainment) permitting requirements would not be subject to the 2015 standard, including in the case of PSD, a modeling analysis of whether they meet the new standard. This would mean that we would only be looking at the older 75 ppb standard for those sources. We are not sure if this is what was intended by the bill and it would be different from how we have conducted permit reviews during previous standard transitions. It would also mean that we would not be conducting a nonattainment review for any area that might be designated nonattainment under the new standard, nor would we be requiring lower major source thresholds or higher offset ratios for any area that is potentially a higher nonattainment classification under the new standard – we believe that this was the intention of the bill.

Section 2, subsection (b), page 3, line 6:

One of the criteria for determining whether the 2015 ozone standard does not apply to the requirement for a “preconstruction permit” is that the application has been determined to be “complete” on or before the date of promulgation of the final designation. Completeness criteria is not specified by the draft language.

Section 3, subsection (e)(4), page 8, lines 7-15:

As discussed above, “preconstruction permit” application is defined to mean a permit that is required under part C or part D of title I of the Clean Air Act (i.e., PSD and NNSR permits for major stationary sources). However, EPA interprets FCAA, §110 to also require that preconstruction permits be obtained from minor sources. Because the draft bill does not address applicability for minor sources, the 2015 ozone standard

would apply to preconstruction permitting for those sources, while major stationary sources could be exempt.

Section 4, subsection (5), page 11, lines 24-25 and page 12, lines 1-5:

As discussed above, “preconstruction permit” application is defined to mean a permit that is required under part C or part D of title I of the Clean Air Act (i.e., PSD and NNSR permits for major stationary sources). However, EPA interprets FCAA, §110 to also require that preconstruction permits be obtained from minor sources. Because the draft bill does not address applicability for minor sources, the 2015 ozone standard would apply to preconstruction permitting for those sources, while major stationary sources could be exempt.