



March 10, 2015

*Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>*

U.S. Environmental Protection Agency,  
EPA Docket Center (EPA/DC)  
Mailcode 28221T  
Attn: Docket ID No. EPA-HQ-OAR-2008-0699  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Re: Comments of Association of Commerce and Industry on Proposed Revision of  
Primary and Secondary National Ambient Air Quality Standards for Ozone,  
Docket ID No. EPA-HQ-OAR-2008-0699

Dear Administrator McCarthy:

The Association of Commerce and Industry (“ACI”), New Mexico’s state-wide chamber of commerce, urges the Environmental Protection Agency (“EPA”) not to lower the current level of the primary and secondary national ambient air quality standards (“NAAQS”) for ozone but to instead leave both standards at the current 0.075 ppm level. ACI is deeply concerned about the harmful impact that the EPA’s proposal to lower the ozone standards could have on both the New Mexico and the national economy. Lowering the ozone NAAQS to a range between 0.065 and 0.070 ppm could push much of the country into “nonattainment” – imposing burdens on commercial and industrial activity not only vital to creating jobs, but also to providing tax revenue that support important local services like public safety and education. Therefore, ACI strongly urges EPA to retain the current primary and secondary ozone standards at 0.075 ppm.

ACI believes that EPA has not set forth a reasoned basis to lower the existing standards. In its Federal Register notice concerning this proposal, 79 Fed. Reg. 75,234-75,411, EPA relies heavily on studies and data that were available and relied upon when EPA set the current standard in 2008. EPA concedes that there have been few new controlled human exposure studies since the last O<sub>3</sub> assessment concerning the effects of exposure to low levels of ozone, and that there have been only two such studies that examine respiratory effects of “prolonged 6.6-hour exposure to levels of 72 ppb and 60 ppb.” 79 Fed. Reg. at 75,246. Beyond that, EPA concedes the limited value of the studies it does rely upon. For instance, EPA admits that “none of these studies reported



a statistically significant increase in respiratory symptoms, compared to filtered air controls.” 79 Fed. Reg. at 75,304 (citing Adams (2006a), Schelegel et al. (2009), and Kim (2011)). EPA further admits that a “level of 70 ppb is also below the lowest exposure concentration at which the combined occurrence of respiratory symptoms and lung function decrements have been reported . . .,” 79 Fed. Reg. at 75,298, and that “[w]ith regard to lower exposure concentrations [below 72 ppb], the Administrator notes that the combination of statistically significant increases in respiratory symptoms and decrements in lung function has not been reported,” 79 Fed. Reg. at 75,304.

The Texas Commission on Environmental Quality (“TCEQ”) has independently evaluated EPA’s proposal and concluded that “there will be little to no public benefit from lowering the current standard.” Dr. Michael Honeycutt, “Will EPA’s Proposed New Ozone Standard Provide Measureable Health Benefits,” *Natural Outlook* (Oct. 2014). TCEQ’s analysis reveals that EPA’s proposal to lower the ozone NAAQS may cause harm to the public health. According to that study, “EPA’s own modeling in 12 cities across the country indicates the net result will be *increased* mortality in some areas, including Houston and Los Angeles.” *Id.* (emphasis in original).

Beyond that, studies show that by increasing the costs of goods and services such as energy, and decreasing disposable incomes, regulation can inadvertently harm the socio-economic status of individuals and, thereby, contribute to poor health and premature death. Further, the loss of employment and the attendant stresses, together with the other adverse economic consequences that likely will flow from this proposal, will cause or contribute to adverse health consequences, which, when weighed against the meagre benefits of the proposed revision, do not support EPA’s decision.

The significant adverse economic consequences of EPA’s proposal weigh heavily against lowering the ozone standards at this time. First, lowering the ozone NAAQS now will place large portions of the country into non-attainment, which will significantly curb, if not prevent, economic expansion. In some areas, EPA’s proposed range for the ozone standard is at or near the level of background ozone, pushing even remote counties far from industrial activity into nonattainment. For instance, according to EPA’s own data, even the Grand Canyon and Yellowstone National Parks would not meet the proposed ozone standards. In New Mexico, a predominantly rural state, setting the standard at 0.070 ppm could result in up to 15 of the state’s 33 counties (Bernalillo, Chaves, Dona Ana, Eddy, Lincoln, McKinley, Otero, Quay, Sandoval, San Juan, Sierra, Socorro, Torrance, Union, and Valencia) being designated non-attainment areas. Setting the standard at



0.065 ppm would result in at least 7 more counties being designated non-attainment. The increased costs associated with restrictive and expensive non-attainment area permit requirements would likely deter companies expanding existing facilities and prevent new facilities from being located in these counties.

Second, the compliance costs will outweigh the claimed benefits of EPA's proposal. EPA currently estimates that compliance cost for a 70 ppb standard will be \$3.9 billion annually. That estimate likely is understated. In 2011, the White House estimated that the compliance cost for a standard between 60 and 70 ppb would be between \$19 and \$90 billion annually. A 2013 NERA Economic Consulting study projected that a standard of 65 ppb would cost \$26 billion per year. On the other hand, EPA's current Regulatory Impact Analysis identifies the ozone-only benefits from a 70 ppb standard in the year 2025 as being between \$2.0 and \$3.4 billion. Accordingly, using EPA's current estimated annual compliance cost of \$3.9 billion, the costs of the EPA's proposal plainly outweigh the ozone-only benefits (\$3.9 billion in costs vs. \$2 to 3.4 billion in benefits); using EPA's 2011 compliance cost estimate (between \$19 and \$90 billion), the costs dwarf the EPA's estimated ozone-only benefits. EPA has not explained its departure from its earlier cost compliance projections, and has not shown that its proposed standard is warranted.

Third, by EPA's own estimates, the proposal to lower the ozone standards may not be necessary. EPA has concluded that over the next several years most of the country will have ozone levels well below the current 0.075 ppm standard, without having to lower the NAAQS and throw large areas into non-attainment. EPA's own modeling predicts that by 2025 virtually every county in the United States will have ozone levels well below 0.070 ppm, based solely upon regulatory programs (like Clean Air Interstate Rule, Mercury and Air Toxics Standards, the Tier 3 Vehicle Emissions and Fuels Standards) that EPA has already put in place, many of which are just beginning to be implemented. Moreover, the current ozone standards are behind schedule due to EPA effectively suspending their implementation over several years while the Agency unsuccessfully pursued reconsideration. In fact, EPA's final SIP Requirements Rule concerning the 2008 ozone standards was just published in the Federal Register on March 6, 2015. The country can expect to see continued reductions in ground-level ozone as states make up lost ground in putting the current standards into effect. EPA has not explained why it should not wait to evaluate whether the existing regulatory measures result in reductions in ozone, as EPA predicts they will, over the next several years, rather than throwing a significant portion of the country into non-attainment.



In light of the EPA's failure to provide a reasoned basis to lower the existing standard, the uncertain health benefits and potential harm to public health, and the economic hardships that will flow from EPA's proposal, ACI calls on EPA to leave the existing primary and secondary ozone standards at 0.075 ppm.

Sincerely,

A handwritten signature in black ink that reads 'Beverlee J. McClure'. The signature is fluid and cursive, with the first name being the most prominent.

Beverlee J. McClure  
President & CEO  
Association of Commerce and Industry