March 17, 2015

Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 28221T
1200 Pennsylvania Ave. NW
Washington, DC 20460

Attention: National Ambient Air Quality Standards for Ozone
Docket ID No. OAR–2008–0699

These comments are filed on behalf of the Independent Petroleum Association of America (IPAA), the American Association of Professional Landmen (AAPL), the American Exploration and Production Council (AXPC), the Association of Energy Service Companies (AESC), the International Association of Drilling Contractors (IADC), the International Association of Geophysical Contractors (IAGC), the National Stripper Well Association (NSWA), the Petroleum Equipment Suppliers Association (PESA), and the following organizations:

Arkansas Independent Producers and Royalty Owners Association
California Independent Petroleum Association
Coalbed Methane Association of Alabama
Colorado Oil & Gas Association
East Texas Producers & Royalty Owners Association
Eastern Kansas Oil & Gas Association
Florida Independent Petroleum Association
Idaho Petroleum Council
Illinois Oil & Gas Association
Independent Oil & Gas Association of New York
Independent Oil & Gas Association of West Virginia
Independent Oil Producers' Agency
Independent Oil Producers Association Tri-State
Independent Petroleum Association of New Mexico
Indiana Oil & Gas Association
Kansas Independent Oil & Gas Association
Kentucky Oil & Gas Association
Louisiana Oil & Gas Association
Michigan Oil & Gas Association
Mississippi Independent Producers & Royalty Association
Montana Petroleum Association
National Association of Royalty Owners
Nebraska Independent Oil & Gas Association
New Mexico Oil & Gas Association
New York State Oil Producers Association
North Dakota Petroleum Council

Northern Montana Oil and Gas Association
Ohio Oil & Gas Association
Oklahoma Independent Petroleum Association
Panhandle Producers & Royalty Owners Association
Pennsylvania Independent Oil & Gas Association
Permian Basin Petroleum Association
Petroleum Association of Wyoming
Southeastern Ohio Oil & Gas Association
Tennessee Oil & Gas Association
Texas Alliance of Energy Producers
Texas Oil and Gas Association
Texas Independent Producers and Royalty Owners Association
Utah Petroleum Association
Virginia Oil and Gas Association
West Virginia Oil and Natural Gas Association
Western Energy Alliance

Collectively, these groups represent the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be the most significantly affected by the actions resulting from this regulatory proposal. Independent producers drill about 95 percent of American oil and natural gas wells, produce about 54 percent of American oil, and more than 85 percent of American natural gas.

In addition to the specific comments made herein, we support those comments submitted separately by the participants in these comments.

Key Points

Assessing the need for a revised Ozone National Ambient Air Quality Standard (Ozone NAAQS) hinges on the quality of the health analysis to determine the ambient concentrations of ozone that create adverse effects and on the implications of control strategies to meet the Ozone NAAQS. IPAA's analysis of the Environmental Protection Agency (EPA) material on its proposed revisions to the Ozone NAAQS concludes that EPA fails to justify any change in the current NAAQS.

First, the initial threshold of the process – determining the health basis for the Ozone NAAQS – is flawed. EPA's assessments do not withstand scrutiny.

Second, while EPA has a responsibility to set an Ozone NAAQS at a level to protect public health, it should not act in a manner that imposes unnecessary costs on American citizens. EPA's materials associated with its proposed revision to the current Ozone NAAQS demonstrate that a change is neither necessary nor appropriate. EPA's Regulatory Impact Analysis (RIA) essentially divides the country into two categories:

1. The first category includes the most populated Ozone NAAQS nonattainment areas. These areas are where the greatest health impacts occur. *EPA concludes that these most populated nonattainment areas will fail to meet the proposed Ozone NAAQS – therefore, no predicted health benefits will occur.* Moreover, because these areas have failed to attain any Ozone NAAQS since the Clean Air Act was amended in 1990, the regulatory requirements will be no different from the current Ozone NAAQS.

2. The second category are those remaining areas of the country that may initially be in nonattainment but where EPA concludes they will attain the proposed Ozone NAAQS based on implementation of national, federally mandated requirements. *These areas will be subjected to burdensome, costly, development crushing additional regulatory requirements for no health benefits.*

Consequently, as the following detailed comments will demonstrate, EPA should retain the current Ozone NAAQS and develop cost effective programs – if any exist – for the enduring nonattainment areas

Flawed Health Study Analysis – Recently, Energy In Depth (EID), IPAA's research, education and public outreach campaign focused on getting the facts out about the promise and potential of responsibly developing America's onshore energy resource base, reviewed EPA's Ozone NAAQS health information and its current and past RIAs. It found considerable flaws in the arguments EPA makes to justify the newly proposed NAAQS options. The full information is available on EID's website[1]. However, key components of the materials follow:

> Cass Sunstein, President Obama's former administrator of the White House Office of Information and Regulatory Affairs, has written that economic costs do not form the basis for NAAQS. "Under the Clean Air Act," Sunstein wrote last month[2], "national ambient air quality standards must be based on public health, not on cost-benefit analysis."
>
> Not surprisingly, the EPA argues that new ozone regulations will significantly improve public health, "based on extensive scientific evidence," according to the Agency. Although Sunstein said that EPA does not have to justify the rule based upon costs and benefits, the Agency does argue that the value of the rule's benefits -- which the EPA categorizes as "avoiding asthma attacks, heart attacks, missed school days and premature deaths" -- far exceeds the billions of dollars that the agency admits the rule will cost.
>
> Moreover, Executive Order 13563 – signed by President Obama on January 18, 2011 – decreed that new regulations "must take into account benefits and costs, both quantitative and qualitative." As the President wrote of that policy in the Wall Street Journal that same month:
>
> > "But creating a 21st-century regulatory system is about more than which rules to add and which rules to subtract. As the executive order I am signing makes clear, we are seeking more affordable, less intrusive means to achieve the same ends—**giving careful consideration to benefits and costs**." (emphasis added)
>
> Indeed, there is a monetary value to improving health, and the "public health" basis is certainly incorporated into EPA's overall cost-benefit analysis. Thus, it's possible to understand the public health basis for EPA's new ozone rule by looking at how the Agency determined the monetary value of the tighter standard.

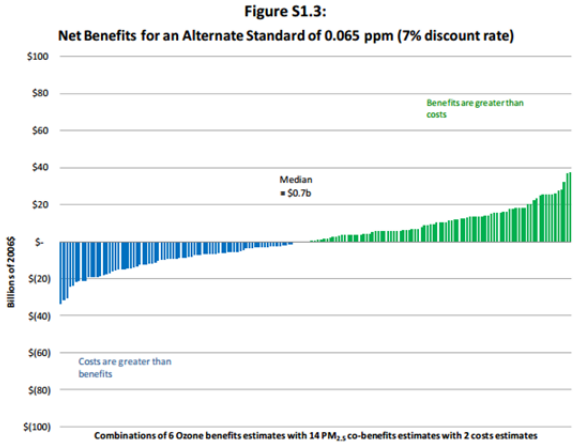
[1] http://energyindepth.org/national/questionable-health-data-epa-ozone/
[2] December 2014

According to a fact sheet released by the EPA, lowering the ozone standard to 70 parts per billion (ppb) -- down from the current 75 ppb -- would deliver benefits valued at between $6.3 billion and $13 billion, but would cost $3.9 billion, creating "net benefits" of between $2.4 billion and $9.1 billion. If the standard were set at 65 ppb, EPA estimates that the costs would jump to $15 billion, but the benefits would also increase to between $19 billion and $38 billion.

Importantly, the EPA is also accepting comments on a standard as low as 60 ppb, although the Agency did not include that threshold in its economic assessment, owing to "increasing uncertainty in the scientific evidence at lower ozone concentrations." The EPA noted that this uncertainty "reduces confidence that ozone standard levels below 65 ppb will result in additional health improvements" relative to the 65-70 ppb range.

The Agency's net benefit numbers, however, are dramatically higher than what the same EPA estimated just a few years ago.

In 2011, when the EPA proposed a 70 ppb standard, its median "net benefits" estimate for a 65 ppb standard was only $700 million, with a high possibility that the costs could outweigh any benefits. Those also included "co-benefits" of reducing particulate matter, or PM2.5, meaning the benefits of the ozone reductions alone would be less than what EPA presented. Here's the chart that accompanied EPA's 2011 proposal, as part of its final regulatory impact analysis (RIA):



In 2011, EPA estimated that the costs and benefits of a 65 ppb ozone standard were essentially equal. But three years later, the agency claimed the benefits of the exact same standard exceeded the costs by more than $4 billion. SOURCE: EPA

In fact, Cass Sunstein later admitted that the 2011 proposal was by no means an economic winner, which was a key reason for the White House telling EPA to reconsider the proposed rule:

> "...the public-health benefits -- mostly reflecting the monetized value of deaths and illnesses prevented -- of a new ozone regulation would have been significant and, by the EPA's

> estimates, in the same general vicinity as the costs (at least at 70 ppb). But on some of the agency's estimates, **the net benefits would have been zero**. Moreover, a strong majority of the benefits would have resulted not from ozone reductions but from 'co-benefits' -- reductions in particulate matter, which come as an incidental benefit of the technologies that reduce ozone emissions." (emphasis added)

But in 2014, the EPA changed its mind, claiming net benefits of a lower ozone standard are now as high as $23 billion – *a 3,100 percent increase in net benefits for the exact same standard*.

So, what explains the change?

In its "Ozone and Health" fact sheet, the EPA says it "examined thousands of scientific studies" before proposing the new rule, including "more than 1,000 new studies published since EPA last revised the standards in 2008."

But the fact sheet says nothing of the 2011 RIA, much less the scientific studies that were used to justify its previous claims about benefits and costs.

Could it be that EPA was able to review a significant quantity of reports published since 2011 that better established the health benefits of a 65 ppb standard? Perhaps, but it would be difficult to make that claim based upon a review of the scientific references in EPA's final Health Risk and Exposure Assessment for Ozone, which was published in August 2014.

There are 263 reports and studies listed in the reference sections of that Assessment. But nearly 70 percent of those sources were published prior to 2011, meaning they were part of the broader scientific understanding of ozone when EPA determined the net benefits from a 65 ppb standard were essentially zero. Moreover, many of the sources published during or since 2011 are literature reviews from EPA, which examine research published in previous years.

Curiously, as William Yeatman at the Competitive Enterprise Institute has observed, much of the "science" behind EPA's latest ozone proposal was actually developed by the EPA itself. The Clean Air Scientific Advisory Committee – whose review of the latest science is what informed EPA's public health basis for the new ozone rule – actually endorsed a 60 ppb standard, or 5 ppb lower than what EPA is even considering. As one might suggest, if a 60 ppb standard could be justified scientifically, then a 65 ppb or even 70 ppb standard could be seen as merely a "moderate" approach.

But as Yeatman details, the story is far more complicated:

> "Given the stakes, you'd think EPA and CASAC would rely on only the latest, most independent science, right? Alas, that isn't the case. Instead, all of the clinical studies cited by CASAC in support of the 60 ppb standard were created by the EPA—the organization that proposed the limit. Thus, the science on which the economy's fate hinges suffers from a troubling absence of independence. Moreover, all of the non-EPA literature (on health impacts of 60

> ppb ozone) cited by CASAC does NOT support a 60 ppb standard." (emphasis added)

It is altogether possible that the EPA reviewed "more than 1,000 new studies" that were published since EPA's 2008 ozone standards were finalized. But many of those studies were available -- and presumably also reviewed -- in 2011 when EPA said the 65 ppb ozone standard came with a far higher price tag than it does now. And if the EPA is relying on its *own research* to justify its rules, then why even bother with an "independent" body to review the available scientific literature?

Also troubling is that, in 2011, EPA admitted that its cost estimates for new ozone standards "assume a particular trajectory of aggressive technological change," meaning the Agency had assumed compliance would come quicker and cheaper than a typical baseline scenario might suggest. As EPA further noted:

> "An alternative storyline might hypothesize **a much less optimistic technological trajectory**, with **increased costs, or with decreased benefits** in 2020 due to a later attainment date..." (emphasis added)

If compliance required "aggressive technological change" with "optimistic" assumptions to make the 65 ppb ozone standard barely break even in terms of net benefits, then it's possible -- and indeed likely -- that a more reality-based set of assumptions would show the rule actually imposing a net cost on the economy. Yet in EPA's latest proposal, the Agency makes it appear as if the exact same standard now delivers greater health benefits -- by several orders of magnitude.

Negative Impacts on Public Health?

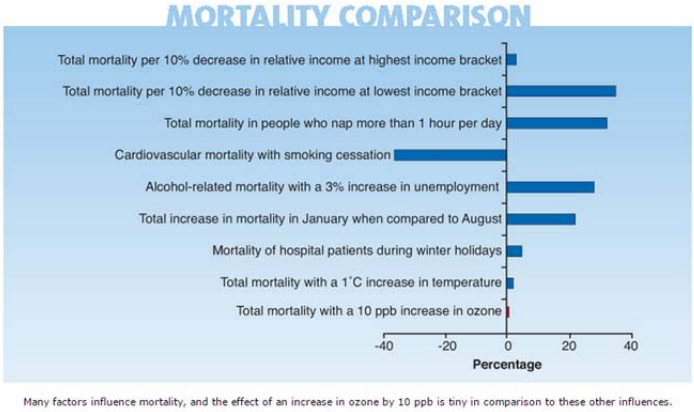
The EPA cites "asthma attacks" as one of its key health indicators, suggesting that imposing a stricter ozone standard would reduce asthma attacks, and thereby delivering health benefits. But as noted by the Center for Regulatory Solutions -- a project of the Small Business & Entrepreneurship Council -- EPA's own documents show that **asthma-related mortality could increase in certain areas if ozone levels decrease**.

As Dr. Michael Honeycutt, director of TCEQ's toxicology division, observed last year:

> "Either this indicates that lowering the ozone standard defeats its stated purpose of protecting human health, or it indicates that something is wrong with the EPA's interpretation of the data. Either way, it's not a good argument for lowering the ozone standard."

Honeycutt looked at EPA's own data sets and found that, in Houston, adjusting the ozone standard to 70 ppb or 65 ppb would result in 48 or 44 *more* premature deaths, respectively. The reason for this counter-intuitive conclusion is anyone's guess, ranging from flawed data analysis to an acknowledgment that less economic opportunity can worsen individuals' health.

Honeycutt's analysis also included a chart showing the relative health impacts from a variety of outside factors and lifestyle choices. Notably, the health impact from lost employment was far larger than what could potentially be associated with higher ozone levels.



SOURCE: TCEQ

The connection between employment and health is well documented. As the Robert Wood Johnson Foundation has noted, laid-off workers are 54 percent more likely to have fair or poor health than those who are continuously employed, and 83 percent more likely to develop a stress-related condition, including heart disease.

In fact, it was the threat to the economy -- and by extension the threat to public health -- that caused such intense criticism of EPA's 2011 ozone proposal. B. Keith Overcash, the air quality director for then-Gov. Bev Perdue (D-N.C.), provided "one of the strongest appeals" for EPA to scrap the rule, according to the *New York Times*. "Lack of employment, loss of health care, and in some cases, loss of a home, also affect the health of our citizens," Overcash wrote to EPA in 2011.

Other recent analyses suggest that even EPA's focus on ozone and asthma is flawed. A recent study published in The Journal of Allergy and Clinical Immunology points to other significant factors in asthma impacts. The study, "Neighborhood poverty, urban residence, race/ethnicity, and asthma: Rethinking the inner-city asthma epidemic", reports:

> The prevalence of current asthma was 12.9% in inner-city and 10.6% in non–inner-city areas, but this difference was not significant after adjusting for race/ethnicity, region, age, and sex. In fully adjusted models black race, Puerto Rican ethnicity, and lower household income but not residence in poor or urban areas were independent risk factors for current asthma. Household poverty increased the risk of asthma among non-Hispanics and Puerto Ricans but not among other Hispanics. Associations with asthma morbidity were very similar to those with prevalent asthma.

In some cases, ozone can influence the onset of asthma, but other factors can be far more compelling. Setting an Ozone NAAQS does not result in attaining an Ozone NAAQS and the public should not be deluded into believing that setting a NAAQS will result in improved health

benefits. The reality is that EPA should be assessing the real world implications of its actions. Its unrealistic justifications of a lower Ozone NAAQS discount the realities of achieving health benefits and create unrealistic expectations. EPA's own materials demonstrate why it should retain the current Ozone NAAQS and focus on its attainment – if that is possible.

Following is an elaboration of the reasons why EPA should retain the current Ozone NAAQS.

Health Benefits Will Not Occur Where Needed – EPA has not provided an assessment of the geographical distribution of health benefits from meeting the Ozone NAAQS, but it is logical to conclude that the greatest benefits would occur in the most populous areas. Ozone has consistently been the most difficult primary NAAQS for certain areas to meet. The following figures demonstrate the reality of Ozone NAAQS nonattainment. Figure 1 presents EPA's assessment of the areas of the country that fail to meet the 1997 Ozone NAAQS of 84 ppb (8 hour). Figure 2 presents EPA's assessment of the areas of the country that will fail to meet the current Ozone NAAQS of 75 ppb (8 hour) in 2020. Figure 3 presents EPA's assessment of its proposed Ozone NAAQS by 2025.

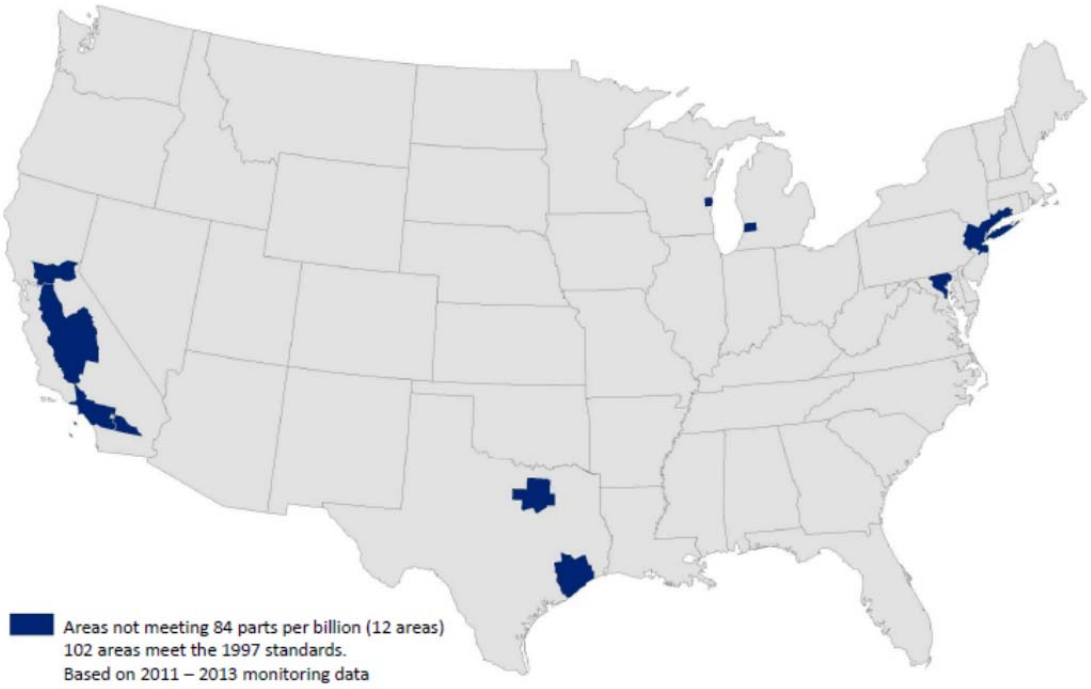


Figure 1

Source: Environmental Protection Agency

Figure 2

Source: Environmental Protection Agency

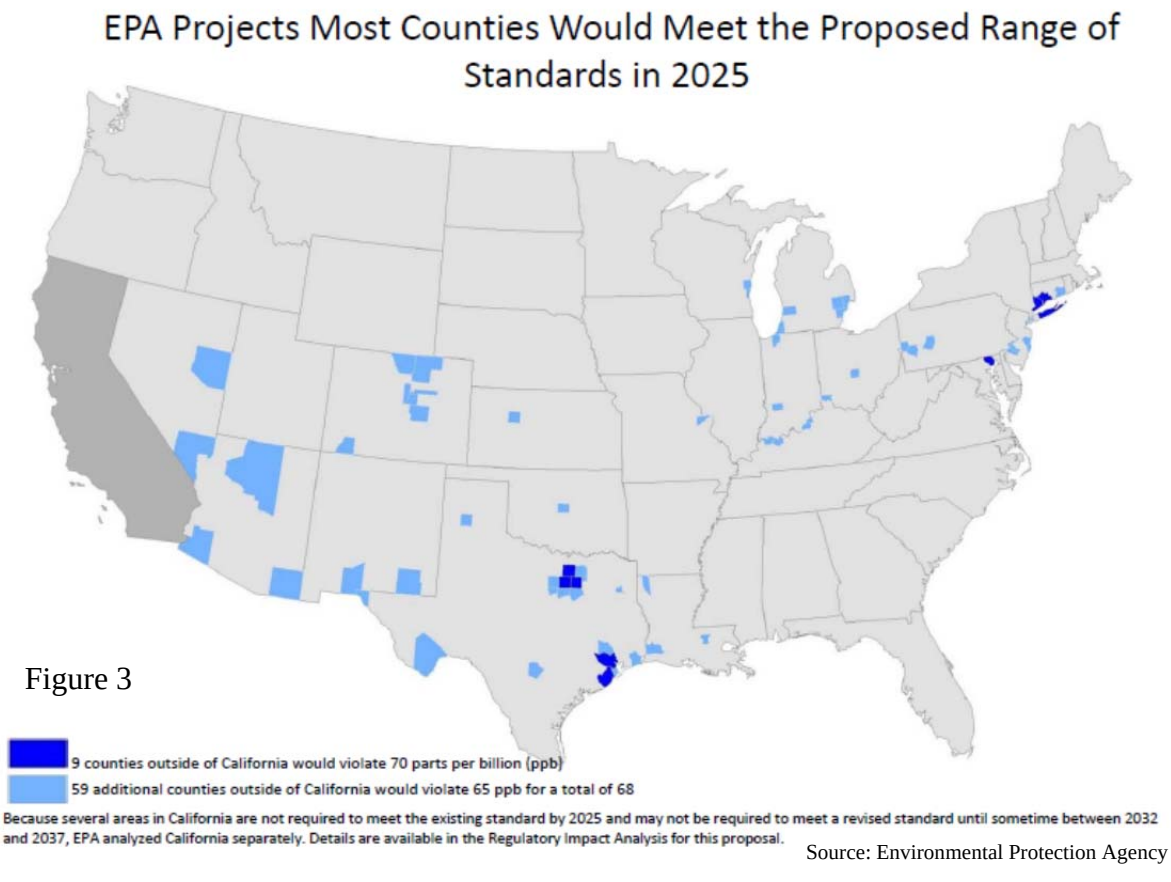


Figure 3

Source: Environmental Protection Agency

EPA's analysis shows that there are certain areas of the country that are enduring Ozone NAAQS nonattainment areas – areas that cannot meet any Ozone NAAQS that has been promulgated. The same areas that failed to meet the 1997 Ozone NAAQS and the 2008 Ozone NAAQS will also fail to meet the proposed NAAQS by 2025 and, realistically, it seems unlikely any time until well after 2030. What this means is that EPA's claimed health benefits from the proposed NAAQS will not occur in these enduring nonattainment areas.

Equally important, the regulatory requirements in these enduring nonattainment areas will be no different under the proposed NAAQS than they are under the current NAAQS. These areas are subject to regulation under Part D – Plan Requirements for Nonattainment Areas of the Clean Air Act (CAA).

Part D was created in the 1990 CAA amendments. It creates a series of specific minimum requirements for each area in Ozone NAAQS nonattainment initially based on the area's ozone monitoring values relative to the Ozone NAAQS. Areas are classified as Marginal, Moderate, Serious, Severe and Extreme. Each classification is given a specific time frame in which to attain the Ozone NAAQS. Importantly, if an area fails to meet the NAAQS in its allotted compliance period, it is reclassified to a higher classification, required to implement the mandatory requirements and given an extension of time to meet the NAAQS. Part D requires were initiated after the 1990 CAA amendments with attainment dates ranging from 1993 to 2010. Even with attainment date extensions, these dates have passed.

The significant impact of Part D is that perpetual nonattainment eventually produces a baseline of regulations and requirements of additional annual percentage reductions. Since these areas have been subject Part D for 25 years, their future regulatory requirements will be the same iterative percentage reductions under the current NAAQS or any new one. Adopting the proposed NAAQS will produce the same regulatory requirements for these areas as the current NAAQS.

Consequently, for these enduring Ozone NAAQS nonattainment areas, changing the current NAAQS will neither achieve the health benefits identified by EPA nor alter the regulatory pathway.

New Nonattainment Areas Will Have All Costs and No Benefits – EPA has stated in its support documents for its proposed Ozone NAAQS that:

> Existing and proposed federal rules…will help states meet the proposed standards by making significant strides toward reducing ozone-forming pollution. EPA projections show the vast majority of U.S. counties with monitors would meet the proposed standards by 2025 just with the rules and programs now in place or under way.

Consequently, these national, federal requirements will essentially protect the overwhelming number of areas which would be placed in Ozone NAAQS nonattainment by a lower NAAQS without any of the local actions that would be required from such categorization.

For these areas that EPA projects would reach attainment using only national, federal mandates regardless of the NAAQS, promulgating a lower NAAQS would compel them to be subject to the requirements of Part D of the Clean Air Act. Because Part D imposes a series of minimum requirements, the proposed NAAQS would impose on those areas emissions controls on new sources, including offsets, which would be burdensome, cost ineffective and unnecessary since

EPA believes these areas would reach attainment using only its national regulations. Similarly, the Part D requirements could impose on numerous communities the implementation of costly, burdensome and unnecessary vehicle inspection and maintenance programs. And, then, these areas would have to maintain these regulatory burdens for years awaiting EPA to determine that the area is in attainment.

Once an area becomes subjected to Part D, minimum requirements are mandated. For example, all new construction must not only comply with rigorous emissions controls, but all remaining emissions must be "offset" by reductions in existing emissions that are not otherwise regulated. Many of the areas that would fall into initial Ozone NAAQS nonattainment but would later attain the NAAQS are largely rural or with smaller municipalities. These areas will likely have limited existing emissions sources to regulate. The areas would face either an effective construction prohibition or the choice of shutting down existing operations that employ current workers.

A particularly compelling situation arises if an area is initially classified as Moderate or fails to meet its initial attainment if classified as Marginal because of the timing of the national, federal requirements that EPA indicates will bring these areas into attainment by 2025. Part D Moderate areas must implement both Stage II Vapor Recovery and Vehicle Inspection and Maintenance (I&M) programs. Both programs are costly, require significant investments by small businesses and communities, and would be unnecessary in the long run.

A specific example where these requirements make no sense is Brewster County, Texas. This large county in the Big Bend area of the Rio Grande has a population of approximately 9,500. EPA's projected nonattainment maps show it would meet a 70 ppb Ozone NAAQS by 2025 using national, federal requirements only. While there are some constraints on the application of Stage II Vapor Recovery – which could have the effect of requiring some fueling stations to have systems while others would not in the same community, the I&M requirements are rigid. But for this county, a nonattainment designation results in a requirement for this burdensome program for the limited number of vehicles that a population of 9,500 supports. And, once in place, even after the federal, national requirements bring the area into attainment in could require a useless program to be maintained in perpetuity or an attainment demonstration could result in dismantling the I&M program. Clearly, compelling these costly programs is an example of federal regulatory overkill.

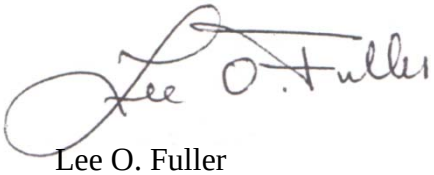
For these areas, EPA's own analysis demonstrates that a lower Ozone NAAQS would be all costs for no added health benefits.

What EPA Should Do – EPA should retain the current Ozone NAAQS because it would be the most cost effective choice for the same health benefits. For two reasons:

1. Because a lower NAAQS would not alter the regulatory requirements in enduring nonattainment areas and would not achieve additional health benefits; and,
2. Because a lower NAAQS is unnecessary to achieve health benefits in other areas according to EPA but would impose unnecessary regulatory costs and burdens,

EPA should direct its attention to developing cost effective – if they exist – measures to reach attainment in the enduring nonattainment areas – those that have failed to meet every Ozone NAAQS since enactment of the Clean Air Act – before it launches a revised and equally unattainable Ozone NAAQS.

IPAA appreciates the opportunity to present these comments on the EPA Ozone NAAQS proposal. If there are any questions or if additional information is needed, please contact Lee Fuller at 202-857-4722 or at lfuller@ipaa.org.



Lee O. Fuller
Executive Vice President