

**Attorneys General of New York, Maryland, New Hampshire, New Mexico, and
Rhode Island**

November 25, 2014

By electronic mail and first class mail

Howard Shelanski, Administrator
Office of Information and Regulatory Affairs
The White House Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Re: *National Ambient Air Quality Standards for Ozone*

Dear Administrator Shelanski:

The Attorneys General of New York, Maryland, New Hampshire, New Mexico, and Rhode Island (together, “States”) write to urge that the Office of Information and Regulatory Affairs support the Environmental Protection Agency’s timely proposal of national primary and secondary standards for ozone pollution that adequately protect public health and public welfare. Specifically, EPA should propose by December 1 primary and secondary standards that are fully consistent with the recommendations of the agency’s independent public health and environmental science advisors (the Clean Air Scientific Advisory Committee, or CASAC).

The States have been battling ozone pollution (smog) for decades. EPA has found significant health effects in individuals exposed to elevated levels of ozone, including throat irritation, lung tissue damage, and aggravation of existing conditions such as asthma, bronchitis, heart disease, and emphysema. Exposure to ozone has also been linked to premature mortality. Some individuals are particularly at-risk from exposure to ozone pollution, including children, the elderly, and those with existing lung diseases, such as asthma. In addition to harming public health, ozone pollution also harms public welfare. By interfering with the ability of plants and trees to produce and store food, ozone renders them more susceptible to disease, insect pests, and other stressors. EPA has documented, among other adverse impacts, visible injury to trees in national parks, stunted growth in tree seedlings of several species, and decreased crop production. Ozone further can inhibit the ability of vegetation to absorb carbon dioxide, thereby making it more difficult for plants and trees to mitigate harms from climate change.

Although we have made strides recently to reduce smog levels that harm public health in areas such as New York City and that harm our natural resources in areas such as the Adirondacks, smog remains a persistent threat. Much of this pollution is generated in upwind states and carried by prevailing winds into our States. To attack the problem of transported pollution, beginning in the late 1990s several of the States joined forces with other downwind states to sue the owners of fossil-fueled power plants and in intervening in court to help EPA defend its regulations implementing the Clean Air Act’s

“good neighbor” provision, most recently in the EME Homer City v. EPA case before the U.S. Supreme Court.

Additionally, we have acted to ensure that the national standards EPA periodically sets for ozone adequately protect public health and welfare, including keeping up-to-date with advances in scientific evidence. Most recently, our States (joined by others) sued EPA over the 2008 ozone primary and secondary standards. We argued that EPA’s primary eight-hour standard of 75 parts per billion (ppb) was insufficient to protect public health and that the agency erred by adopting an identical secondary standard to protect public welfare (principally forest ecosystems and crops). Although adoption of the 75 ppb standard represented a strengthening of the standard previously in place, CASAC had recommended an even more protective standard in the range of 60-70 ppb. Also, CASAC had recommended adoption of a secondary standard that used a weighted average to better reflect the cumulative adverse effect of ozone pollution on crops and trees. When President Obama took office, EPA announced that it would voluntarily reconsider and strengthen the standards. The agency subsequently proposed revised standards consistent with CASAC’s recommendations (a primary standard in the range of 60-70 ppb and a secondary standard specifically tailored to protect crops and forests from cumulative ozone exposure). In September 2011, however, EPA announced it would not revisit the standards before the next mandatory review under the statute, and the litigation proceeded. Ultimately, the D.C. Circuit in Mississippi v. EPA concluded that at the time of EPA’s decision, there was adequate support in the record to uphold the 75 ppb primary standard, but agreed with us that the identical secondary standard should be vacated. EPA is responding to that decision as part of its statutorily-mandated review to ensure that the current standards adequately protect public health and welfare.

In its review of the current standards, CASAC concluded that the 75 ppb is inadequate to protect public health from the adverse effects of ozone pollution, and again recommended that the agency revise the primary standards in the range of 60-70 ppb. Strengthening the primary standard within this range will have significant public health benefits according to EPA data. For example, EPA estimated that by 2020, between 1,500 and 12,000 premature deaths would be avoided and between 770,000 and 2.5 million fewer missed work and school days would occur.¹ Regarding the secondary standard, CASAC has advised EPA to adopt a cumulative average standard to protect crops and forests in the range of 7-15 part per million-hours.

The Supreme Court has unanimously ruled that “EPA may not consider implementation costs in setting primary and secondary [standards].” Whitman v. Am. Trucking Ass’ns, 531 U.S. 457, 486 (2001). Instead, EPA must set the standards based solely on the scientific evidence of harm. 42 U.S.C. § 7409(b)(1). We respectfully urge that OIRA support EPA in timely proposing revised standards that are fully consistent with the CASAC’s recommendations and with the agency’s charge under the statute to set standards for ozone pollution that adequately protect public health and welfare.

¹ EPA Fact Sheet, Supplement to Regulatory Impact Analysis for Ozone (Jan. 7, 2010), available at: <http://www.epa.gov/glo/pdfs/fs20100106ria.pdf>.

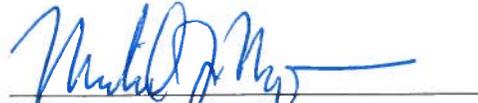
Thank you for your attention to this critical matter.

Sincerely,

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cc: Gina McCarthy, EPA Administrator