

Congress of the United States
Washington, DC 20515

May 19, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

On November 25, 2014, you issued a proposed rulemaking to tighten the existing National Ambient Air Quality Standard (NAAQS) for ozone from 75 parts per billion (ppb) to a range between 60 and 70 ppb.¹ While we have numerous objections to the proposed rule, today we write specifically regarding background ozone. The ozone levels you have proposed would be unachievable for many states with already high levels of background ozone.

Ozone background levels are caused by natural sources and foreign emissions. The proposed federal standard and accompanying regulatory impact analysis (RIA) acknowledge the challenges caused by ozone background levels, including in western states. The rule states that there are times when ozone levels "approach or exceed the concentration levels being proposed in this notice (i.e., 60-70 ppb) in large part due to background sources."²

The RIA further explains that background ozone is a relatively larger percentage (e.g., 70-80%) of the total seasonal mean ozone in locations within the intermountain western U.S. and along the U.S. border.³ In many of these areas, attaining a lower standard may be impossible, regardless of technology. Rural areas in particular simply do not have as many local emission sources to control. A nonattainment designation could end up being permanent, causing significant economic harm to local economies.

While the proposed rule attempts to address some of these concerns by suggesting that affected areas can seek exemptions, our experience petitioning EPA shows that it can be a resource intensive, lengthy process with an uncertain outcome. For example, given the reoccurring high ozone background levels in some regions, it will be difficult to show that the measured ozone levels exceed "normal historical fluctuations" as required by EPA's current rules.⁴

EPA's Clean Air Scientific Advisory Committee (CASAC) also struggled with addressing the high ozone background levels in formulating its recommendations to the Agency on a new standard. The Committee noted in its final letter to EPA that the Agency had failed to

¹ EPA's National Ambient Air Quality Standards for Ozone, Proposed Rule, 79 FR at 75,234.

² *Id* at 75,382.

³ EPA's draft Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ozone p. 2-16, available at <http://www.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf>.

⁴ *Id* at 3A-60 (referencing EPA's existing Exceptional Events Rule).

provide key advice on how background levels should be considered.⁵ EPA's failure to provide this critical advice to those impacted by the rule is a significant weakness that must be considered in evaluating CASAC's recommended range.

The proposed rule confirms that EPA can consider proximity to background levels in setting a new standard, as it should. However in this case, the current proposal sets some states up to fail due to background ozone beyond their control. This reinforces our belief that the proposed ozone rule is flawed and should be withdrawn.

At a minimum, EPA should not revise the ozone standard until it has assessed and published for public comment the impact of its planned revisions to its Exceptional Events policy, and the extension of that policy to the ozone monitoring season. Without this information, neither EPA nor the public can assess the impact of what EPA is asking western and border states to do.

Sincerely,



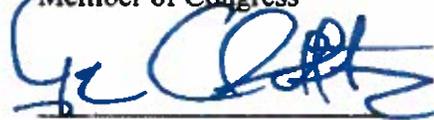
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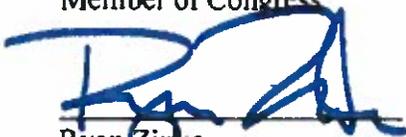
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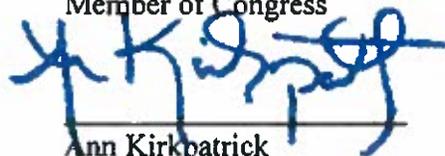
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⁵ CASAC letter, available at

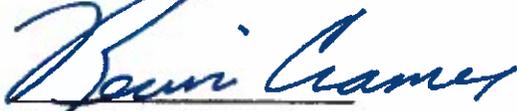
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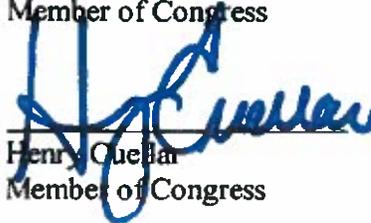
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