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Environmental Protection Agency
Docket Center (EPA/DC), Mailcode 28221T
Attention Docket ID No. OAR-2008-0699
1200 Pennsylvania Ave. NW
Washington, DC 20460.

Jan. 29, 2015

RE: Docket EPA-HQ-OAR-2008-0699

To Whom It May Concern,

On behalf of the Pennsylvania Chamber of Business and Industry (PA Chamber), the largest, broad-based business advocacy association in the Commonwealth of Pennsylvania representing thousands of members that cross every industry sector, I am writing to express our significant concerns regarding the Environmental Protection Agency's (EPA) proposed revisions to the National Ambient Air Quality Standards for Ozone, as described in Docket EPA-HQ-OAR-2008-0699. The PA Chamber urges that EPA maintain the current standard of 75 parts per billion (ppb). Further revisions to the standard are unwarranted.

EPA Itself Admits that the Current Regulatory Construct is Achieving Significant Reductions in Emissions, Rendering Unnecessary Further Revisions to Ozone NAAQS

Downward revisions to 70, 65 or even 60 ppb are unnecessary, given the tremendous costs of compliance with such low levels and the significant decreases in emissions that have occurred and will continue to occur from mobile point sources of ozone precursors in Pennsylvania over the past decade. In fact, EPA itself admits in documents discussing the newly proposed revisions that any changes at all to the ozone standard are unneeded. To wit: "EPA projections shows the vast majority of U.S. counties would meet the proposed standards by 2025 just with the rules and programs now in place or under way."[1]

The rules and programs that are having or will have the effect of either directly or indirectly reducing ozone precursors (such as NOx and VOC emissions) include federal requirements such as NAAQS for PM 2.5, SO2 and other pollutants; the Mercury and Air Toxics Standards rule; the Cross State Air Pollution rule; New Source and Existing Source Performance Standards for greenhouse gasses for fossil-fueled electric generation units; and the Boiler MACT rule. Further, Pennsylvania statutes currently in effect will increase energy efficiency and renewable deployment requirements through the rest of the decade, and state regulations governing the emissions from various point and non-point sources, such as from natural gas compressor stations and well sites and the state's rigorous vehicle emission inspection requirements, will further reduce emissions. Notably, the state recently proposed its final NOx RACT rule which would result in further reductions in emissions from major sources of NOx and VOCs, and the increased use of natural gas in home heating and power generation can also be expected to reduce emissions in the state in the years to come.

[1] Overview of EPA's Proposal to Update the Air Quality Standards for Ground-Level Ozone, EPA, January 2015. http://www.epa.gov/glo/pdfs/20141125fs-overview.pdf

While not without cost to industry and consumers, these programs are having a noted effect on air quality in the state. According to the most recent emissions inventory submitted by the Pennsylvania Department of Environmental Protection to EPA, Pennsylvania has, between 2008 and 2012, reduced emissions of SOx by 68%, NOx by 29%, volatile organic compounds by 21% and carbon monoxide by 16%.[2] These reductions are having a demonstrated impact on air quality, with DEP forecasting fewer and fewer severe air quality alerts each year. In 2014, on just four days were ozone action days forecasted in one or more regions in Pennsylvania, compared to 28 days in 2012[3] – a significant development considering DEP announced near the end of ozone forecasting season in 2012 it would begin adding forecasting for eight additional regions, for a total of 13 regions.

The Current Regulatory Construct Puts Pennsylvania's Economy at a Disadvantage, and Further Revisions to the Ozone NAAQS Only Exacerbate This Disadvantage

Pennsylvania's economy is already at a significant economic disadvantage to the rest of the country due to the state being placed in the Ozone Transport Region, which was established during the 1990 Clean Air Act Amendments. All regions of Pennsylvania have either been re-designated as attainment for the 1997 ozone standard or have approved "Clean Data" determinations that have the same effect. Preliminary data from the Pennsylvania Department of Environmental Protection shows that all but one monitoring point in the state shows compliance with the 2008 standard. Despite this progress, which has come with significant cost to industry, Pennsylvania's placement in the Ozone Transport Region requires that all sources going through New Source Review must approach compliance as if the state was in non-attainment for ozone, regardless of the actual demonstrated values. For major sources, this means operating with Lowest Achievable Emission Rate (LAER) controls, which add significant costs to projects, some to the point of being rendered uneconomic. This places Pennsylvania at a significant disadvantage to the majority of the rest of the country, which falls outside of the Ozone Transport Rule, when it comes to attracting new and promoting expansion of existing economic development. Anecdotally, some PA Chamber members have indicated that when it comes to selecting sites for new or expanded development, air quality designations are among the first criteria examined for a potential project, and, in particular, a non-attainment designation will in many cases remove a site from consideration.

Further, due to the increasingly burdensome regulatory agenda that has been set forth by EPA, major sources operating in non-attainment areas are increasingly turning to credits as a means for compliance. Credits must be acquired and consumed by new major sources in non-attainment areas at a greater than a 1:1 ratio. The bulk of credit generation has come from retiring sources, rather than through additional emissions reductions achieved through technology. This is largely a function of Pennsylvania being in the OTR, where new sources must operate with LAER controls which leave no room for lower emission rates beyond those required by law or, by extension, the generation of emission credits resulting from such lower rates. In effect, such a regulatory scheme is increasingly dependent on more sources retiring than being constructed.

Also troublesome is the fact that this proposal to revise ozone standards can jeopardize federal highway funding. States that are not able to achieve timely compliance with NAAQs requirements face sanctions, in particular the potential loss of highway funding. Pennsylvania's economy is largely dependent on a safe and efficient infrastructure system, which is one of the reasons the PA Chamber advocated

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[2] 2012 Natural Gas Emissions Inventory. Pennsylvania Department of Environmental Protection, Air Quality Technical Advisory Committee, April 3, 2014. http://www.dep.state.pa.us/dep/subject/advcoun/aqtac/2014/4-3-14/Marcellus_AQTAC_Unconventional_Gas_03-13-2014.pdf

[3] Action Days. Pennsylvania Department of Environmental Protection, Bureau of Air Quality. http://www.ahs2.dep.state.pa.us/aq_apps/aqpartners/code_red.asp

successfully for the passage of Act 89 of 2013. This state legislation, signed into law more than a year ago, was the first comprehensive funding package for roads and bridges in the Commonwealth of Pennsylvania in a very long time. The American Society of Civil Engineers recently rates the state's infrastructure with a "C-," with bridges and roads receiving failing marks.[4] It is clear that additional support from the federal government will be necessary to bring Pennsylvania's infrastructure into the 21st century. Unfortunately, a drastic revision to the ozone standard such as being proposed here would jeopardize this much needed investment. Pennsylvania is on a path to meet the current ozone standard of 75 ppb across the state. The state's regulatory agenda currently has laid a path for background levels to settle at an even lower level over time. But a lower ozone standard would require Pennsylvania to drastically ramp up the timeframe in which such reductions would occur, with great cost to industry and consumers. Should Pennsylvania not be able to achieve those reductions, the state and its economy would be unfairly punished.

Further, while the Clean Air Act requires that EPA review national ambient air quality standards every five years, the Act does not obligate EPA to *revise* the standards every five years. EPA recently revised the primary standard for ozone in 2008, at which point states were required to submit revised state implementation plans (SIPs). Vital portions of Pennsylvania's plans to achieve or maintain compliance with the 2008 standard have either yet to be approved by EPA or have only been in effect for a few years. Pennsylvania should be given time to achieve the 2008 standard, which all current data indicate that it will, before additional federal mandates are passed on down.

While case law may have established that EPA is not obligated to examine economic impacts in its deliberations on national ambient air quality standards, that does not mean EPA should ignore such impacts. It was on economic grounds that the Obama administration in 2011 directed EPA to reconsider a similar proposed rulemaking for the primary ozone standard. While several years and elections have passed since then, the costs of this proposal on our nation's economy have not gone down.

In closing, the PA Chamber thanks the EPA staff for their time and attention in considering our comments on this important matter.

Sincerely,

Kevin Sunday
Manager, Government Affairs
Pennsylvania Chamber of Business and Industry

[4] 2014 Report Card for Pennsylvania's Infrastructure, American Society of Civil Engineers, June 25, 2014. http://www.infrastructurereportcard.org/pennsylvania/pennsylvania-overview/