



Wyoming Outdoor Council

wyomingoutdoorcouncil.org

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U.S. Environmental Protection Agency
Docket No. EPA-HQ-OAR-2005-0172
Mail Code 6102T
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Comments on the Proposed Rule, National Ambient Air Quality Standards for Ozone

To whom it may concern:

These comments are submitted in response to the proposed rule for revision of the National Ambient Air Quality Standards (NAAQS) for ozone that was published in the Federal Register on January 19, 2010.

I. A Petition for Rulemaking Submitted by Wyoming Citizens to the State of Wyoming Shows a Primary Standard Set in the Range of 0.060 to 0.070 Parts Per Million is Justified. The Primary Standard Should be Set at 0.060 ppm.

In the spring of 2009, several citizens and groups from the Upper Green River Valley in western Wyoming submitted a petition to the Wyoming Environmental Quality Council (EQC) where they asked the EQC to set a primary Wyoming Ambient Air Quality Standard for ozone at a level of 0.065 parts per million (ppm) averaged over an 8-hour period in Sublette County, Wyoming. Exhibit 1. They asked that this be done due to the very high 8-hour ozone levels that have been recorded in the vicinity of the Town of Pinedale in Sublette County, with levels reaching as high as 0.122 ppm in the winter, 2008. This level of course is far in excess of the current primary NAAQS of 0.075 ppm. Due to these high levels of ozone, the State of Wyoming has recommended to the EPA that Sublette County and portions of Sweetwater and Lincoln Counties be designated in nonattainment with the current primary ozone NAAQS.

However, in August, 2009 the EQC denied the citizens' petition and dismissed it. Exhibit 2. Significant reasons for the refusal of the EQC to consider the petition further was that EPA was reviewing the current NAAQS and would potentially pursue new direction in that regard based on its report to the court, and EPA was also beginning its five-year review of the ozone standard. *See id.* Thus, the EQC dismissed the petition largely as a matter of workload management and not wanting to intervene in ongoing efforts related to ozone pollution in Wyoming, but it did not do so because of any substantive disagreement with the claims made in the petition.

While this citizen petition was denied by the State, we nevertheless submit it herewith and ask that it be fully considered by the EPA as part of this federal rulemaking effort. Exhibit

1. As the EPA can see, this petition represents an exhaustive review of underlying scientific and technical documents and related policy statements of numerous entities that relate to setting the primary ozone NAAQS. This petition establishes a very strong technical basis for setting the ozone standard in the range that EPA has proposed, at a level of 0.060 to 0.070 ppm. Thus, we ask that EPA consider this petition as an **independent** analysis that fully supports setting the ozone standard in the range that EPA is proposing, 0.060 to 0.070 ppm. We believe the petition is technically credible and offers strong **independent** support for EPA's proposed course of action. We ask that this petition, Exhibit 1, be considered in this light: as an **independent** source that supports EPA's proposed course of action relative to the primary ozone NAAQS.

In addition to the petition, we enclose herewith statements made at an EQC hearing held in Rock Springs, Wyoming on June 3, 2009 as part of its consideration of the petition. Exhibit 3. These statements include, but are not limited to, a resolution of the Town of Pinedale, Wyoming that supports setting an ozone standard at the 0.065 ppm level requested in the petition. They also include the written statement of Dr. Michael Kramer in support of this standard, and the statement of a local resident who suffers from asthma who recounts the implications of high ozone levels for his health. Again, we would like for this information to be considered by the EPA as providing new, **independent** support for the course of action it is proposing relative to the primary standard. Moreover, we enclose herewith the statement of a second physician, Dr. Thomas Johnston, from Pinedale, Wyoming supporting establishment of an ozone primary standard at a level of 0.065 ppm. Exhibit 4. Dr. Johnston is the Sublette County, Wyoming Public Health Officer.

While many of the signatories to this letter were party to the petition for rulemaking filed in Wyoming that asked that the primary Wyoming Ambient Air Quality Standard be set at 0.065 ppm, for purposes of this rulemaking we request that EPA set the primary ozone NAAQS at 0.060 ppm. We believe that there is increasing and very persuasive scientific support for setting the ozone standard at this level, as reflected by the positions of the American Lung Association, American Academy of Pediatrics, American Medical Association, American Thoracic Society, EPA's Children's Health Protection Advisory Committee, and many others that support setting the level at 0.060 ppm. These sources of authority supporting setting the standard at 0.060 ppm are reviewed in the petition as well as in material presented at the EQC hearing in Rock Springs. Exhibits 2 and 3. We thus join in the request of others to set the standard at 0.060 ppm. We believe the scientific support for this position is very strong and counsels in favor of setting the standard at this level, not a higher 0.065 ppm level, as was asked for a year ago in the petition. Since this is a nationwide rule, as opposed to the county-level rule proposed in the petition, we think it is even more important to ensure that the standard is set at a level that is adequately protective of all vulnerable populations, with an "adequate margin of safety." Setting the primary standard at 0.060 ppm will help ensure that there is an adequate margin of safety for *all*, and thus we ask for a standard set at 0.060 ppm.

II. The Secondary Standard Should be Set at 7 to 15 ppm-hours.

We also support the EPA's proposal to set the secondary NAAQS for ozone as a cumulative, seasonal standard set at a level of 7 to 15 ppm-hours. EPA proposes to take this

adopting the 0.075 ppm standard in 2008 and rejecting the CASAC's advice was thoroughly analyzed and critiqued in our petition, Exhibit 1 at 36-34, and provides further support for following the CASAC's advice.

The *American Farm Bureau* court also recognized the EPA's overarching obligation to protect sensitive subpopulations. The court rejected too-hasty rejection of studies just because they did not have widespread scientific confirmation yet. 559 F.3d at 524-26. Here, studies such as the Adams studies may not have been widely replicated to date, yet they nevertheless show that sensitive subpopulations could be harmed if the ozone primary standard is not set at a level of 0.060 ppm. No one has ever indicated the Adams studies were scientifically invalid; criticism has only focused on the fact they are the only studies to date at the 0.060 ppm level. But under *American Farm Bureau* that kind of rationale may not pass muster. The EPA should heed the decision in *American Farm Bureau* and ensure the primary ozone NAAQS provides, "as required by the [Clean Air Act], an adequate margin of safety against morbidity in children and other vulnerable subpopulations," *id.* at 526, even if the studies underlying this needed level have not been validated repeatedly to date. If this is done, we believe that setting the primary standard at 0.060 ppm is justified.

Furthermore, the *American Farm Bureau* decision also has import regarding the secondary standard. In *American Farm Bureau* the court rejected the EPA's effort to set the secondary standard for particulate matter identical to the primary standard. 559 F.3d at 528-31. This decision provides strong support for the need to set the secondary standard for ozone in a way that is distinctly different from the primary standard so as to adequately protect the public welfare. In *American Farm Bureau* the court rejected claims by EPA that the primary standard provided adequate protection of the public welfare, and here the CASAC (and EPA staff) has also made it clear the primary ozone standard does not adequately protect the public welfare and a distinctly different secondary standard is needed. Thus, *American Farm Bureau* provides strong support for EPA's proposed course of action relative to the secondary standard, and we urge the EPA to remain on the proposed course for the secondary standard.

In conclusion, the ultimate take home message from *American Farm Bureau* is that the view originally announced in *Lead Industry Association v. Environmental Protection Agency*, 647 F.2d 1130, 1154-55 (D.C. Cir. 1980) must be followed: EPA is to "err on the side of caution." When that is done we believe it is appropriate for the EPA to set the primary ozone NAAQS at a level of 0.060 ppm and to set the secondary standard with a distinctly different form and level as a cumulative, seasonal standard set at a level of 7 to 15 ppm-hours.

IV. Ozone in Yellowstone National Park.

According to the National Park Service, monitored ozone levels in Yellowstone National Park (YNP) are in the range of 61 to 75 parts per billion (ppb) for ozone levels presented as the average five-year (2003-2007) 4th-highest 8-hour ozone concentrations. See http://www.nature.nps.gov/air/Pubs/pdf/AQ_Trends_In_Parks_2008_Final_Web.pdf (National Park Service, Air Quality in National Parks, 2008 Annual Performance & Progress Report, Sept., 2009). This indicates the Park could exceed the new primary ozone standard. Yellowstone

National Park would have a maximum 3-month SUM W126 index reading of 10 ppm-hours, indicating the new secondary standard might also be exceeded. *Id.* However, the “policy relevant background” level of ozone in YNP is estimated to be approximately 35 to 38 ppb. *See* http://www.gfdl.noaa.gov/cms-file-system-action?file=user_files/aff/presentation_pdfs/giss_web.pdf (Arlene M. Fiore, Background Ozone in Surface Air: Origin, Variability, and Policy Implications, National Atmospheric and Oceanic Administration, May 20, 2005).¹ These modeled policy relevant background levels are well below any proposed standard. The data presented in Exhibit 5 reinforces these monitored and background level data, showing that fourth-highest 8-hour averages for ozone in YNP are approximately 65 ppb and annual average daily means are approximately 42 ppb.

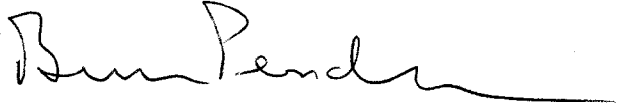
The implications of these data include the following. First, some have suggested that EPA’s proposed rule would essentially set the ozone standard at a level that is unreachable, unrealistic, or absurd because, they claim, it does not differ from the natural or background level of ozone in YNP. But EPA’s proposed standard would be far above the current background level in YNP, as represented by the estimated policy relevant background level, and of course natural ozone levels would be even lower than the policy relevant background level. Thus, any claims that the proposed new primary and secondary NAAQSs are somehow unjustified because they do not differ from “natural” (or even background) levels are unjustified. The monitored 8-hour ozone levels in YNP show that ozone levels in that area are indeed well above background levels. The standard, even if set at 0.060 ppm, would be far above these background levels, and therefore there would be ample opportunity to achieve compliance with it through any number of modifications to human-caused emissions originating in North America. The proposed standards are not unrealistic or absurd when viewed against the “natural” or background levels of ozone in YNP.

Second, even if YNP proves to be out of compliance with the new primary or secondary standards, that is not particularly disturbing, although of course we might all think that a remote area like YNP would be a “clean air area” and in compliance with the NAAQS. However, lack of attainment of the new standard would likely primarily be due to ozone precursors drifting into the park from emissions sources in the Snake River Plain in Idaho, not emissions in the park itself. Thus, remedial action would likely need to be focused in the agricultural and urban areas in southern Idaho, not on activities in the park. At a minimum, Ada County Idaho will likely need to reduce its emissions of ozone precursors to remain in compliance with the new standard, regardless of the attainment status in YNP. And if ozone levels in YNP prove to be out of compliance with the new NAAQS, all that demonstrates is how pervasive ozone problems are, and thus the need to aggressively address them, not a need to set ozone standards at levels the science shows are insufficient to protect the public health and welfare, with an adequate margin of safety.

¹ *See also* Environmental Protection Agency, Air Quality Criteria for Ozone and Related Photochemical Oxidants, Volume I of III Feb., 2006 at § 3.7 (discussing policy relevant background ozone levels, including those in Yellowstone National Park).

Thank you for considering these comments and we urge the EPA to finalize this rulemaking by August 31, 2010, as it is committed to do.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Pendery". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce Pendery
Wyoming Outdoor Council
And on Behalf of:

Elaine Crumpley
Citizens United for Responsible Energy Development (CURED)

Stephanie Kessler,
The Wilderness Society, Wyoming Office

Lloyd Dorsey
Greater Yellowstone Coalition

Dan Heilig
Western Resource Advocates