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Attention Docket No. EPA-HQ-OAR-2005-0172
Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Comments on U.S. EPA's "National Ambient Air Quality Standards for Ozone," 75 Fed. Reg. 2938 (January 19, 2010).

To whom it may concern:

The Ohio Environmental Protection Agency thanks U.S. EPA for the opportunity to comment on the above-referenced proposed federal ozone standard.

Ohio has worked extremely hard to attain the 1997 0.084 ppm ozone standard throughout the entire state and, with its most recent filing for redesignation of the Cincinnati area, Ohio believes it has accomplished that goal. It is noteworthy that in 2008, just about the time Ohio was "seeing the light at the end of the tunnel" with regard to attaining the 1997 0.084 ppm standard, U.S. EPA adopted a significantly more stringent standard of 0.075 ppm.

Against this background of only recently attaining the 1997 0.084 ppm standard, and having now begun the extremely difficult task of attaining the substantially lower standard of 0.075 ppm set in 2008, Ohio is now faced with U.S. EPA's reconsideration of its 2008 standard and a U.S. EPA proposal to lower the ozone standard even further, to a level somewhere between a range of 0.070 and 0.060 ppm. It is with a dedication to making necessary improvements to Ohio's air, and with a sense of the stark realities that would result from the imposition of such a significantly reduced standard, that Ohio EPA makes the following comments.

The Administrator is, of course, charged with setting primary standards "the attainment and maintenance of which in the judgment of the Administrator, based on such [air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health." 42 U.S.C. 7409(b)(1). As described in the preamble to the proposed standard, an adequate "margin" of safety should address uncertainties in the scientific and technical information, while standards that are "requisite" to protect public health

and welfare should be neither more nor less stringent than necessary for these purposes. 75 Fed. Reg. 2938, 2940.

Ohio EPA does not believe that the ozone standard should be further lowered to a level below the 2008 standard of 0.075 ppm at this time. In setting that standard in 2008, U.S. EPA then concluded that it was sufficiently protective of public health with an adequate margin of safety. 73 Fed. Reg. at 16436. Ohio EPA is unaware of any new study or piece of scientific evidence that did not exist in 2008 that compels the setting of an even lower standard. In setting the 2008 standard, U.S. EPA had before it largely the same set of studies as are before U.S. EPA now, and Ohio does not see a scientific basis for arriving at a different conclusion and setting a significantly lower standard. In 2008, the U.S. EPA considered the available information, and a standard as low as 0.060 ppm, but nevertheless chose 0.075 ppm. The Clean Air Act does not require the Administrator to establish a primary NAAQS at a zero risk level or at background concentration levels. Rather, the Act only requires a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety. Id., at 16437.

As indicated by U.S. EPA in both the 2008 adoption of the of 0.075 ppm standard and the current proposal, human studies provide the most directly applicable information for determining causality and controlled human exposure studies provide data with the highest level of confidence. The majority of these studies reviewed by U.S. EPA in 2008 indicated health effects in the 0.080 ppm range. Only one set of studies, the "*Adams studies,*" looked at levels below 0.080 ppm. But, simply stated, the results of the *Adams studies* should not be given such considerable weight. U.S. EPA itself re-analyzed some of the data, which then was newly interpreted by U.S. EPA to support a finding of health effects at the 0.060 ppm level. Dr. Adams himself then commented on U.S. EPA's re-analysis and concluded that the data presented a "gray area." 75 Fed. Reg. at 2950.

In 2008, U.S. EPA placed less weight and reliance on the *Adams studies* then did other parties. However, although U.S. EPA acknowledges in this proposal that the *Adams studies* are indeed limited, U.S. EPA now believes that they nevertheless provide important evidence that adds to the body of evidence that will be used to make a final decision. Ohio EPA continues to believe that because of the previously acknowledged limitations and uncertainties in the *Adams studies*, less weight should be applied to these studies in making the final decision.

U.S. EPA also notes, that following adoption of the 2008 standard the Clean Air Scientific Advisory Committee (CASAC) offered "additional, unsolicited advice" with regard to the ozone standard and urged further consideration of its recommendation of a standard within the range of 0.060 to 0.070 ppm. 75 Fed. Reg. at 2992. Importantly, this additional advice was not a new scientific revelation as much as it was a request for U.S. EPA to consider CASAC's earlier recommendations. Consequently, CASAC's

"advice" is not a significant piece of new information that should compel U.S. EPA to reopen and revise the 0.075 ppm ozone NAAQS. Ohio EPA believes, based on the information considered by U.S. EPA during the 2008 standard promulgation process, setting the standard at 0.075 ppm is appropriate and achieves the goals of the Clean Air Act.

In addition to our having concerns over U.S. EPA's proposed lowering of the 2008 ozone standard, those concerns increase greatly given U.S. EPA's proposal to lower the standard not only below 0.075 ppm, but to a level even below 0.070 ppm. In recommending that the standard should be lowered, even CASAC stated that primary ozone standard should be "no greater than 0.070 ppm" and clearly felt setting the standard at 0.070 ppm would provide the adequate margin of safety. Id., at 2991. Where there is sufficient agreement and justification that any value in a range will provide protection of public health and an adequate margin of safety, the highest level should be chosen. Ohio EPA believes that 0.075 ppm is such a justifiable level. But if U.S. EPA remains committed to setting a standard in the range of between 0.070 and 0.060 ppm, it must choose the 0.070 ppm value. To choose a lower value when the higher value will meet the requirements of Section 109 would be arbitrary and capricious and inconsistent with the Clean Air Act, not to mention potentially debilitating to the states, especially given the current economic crisis.

While Ohio EPA asserts that there is a lack of new significant scientific information justifying a lowering of the 0.075 ppm standard, Ohio EPA equally believes that the timing of the proposal, *i.e.*, reopening the standard just two years after it was set, is ill-considered and inconsistent with the schedule for review of NAAQS contained in the Clean Air Act.

Section 109(d)(1) of the Clean Air Act, 42 U.S.C. 7409(d)(1), calls for a complete and thorough review of NAAQS every five years. The five-year review requirement of Section 109(d)(1) of the Clean Air Act is an extremely demanding and, some might say, disruptive requirement. With each iteration of a NAAQS, a state must impose new or stricter emissions standards or control requirements upon existing or new areas of business and industry and, indeed, everyday life. Attempting to implement a new standard while the previous standard is still being implemented has consistently caused strain, redundancy and inefficiency in the process and has lead to seemingly endless rounds of litigation that takes the focus away from the important task at hand--real air quality improvements. Another review and establishment of a new air quality standard should not begin until, at a minimum, a standard is finalized, the implementation plan requirements are adopted, and certain air quality deadlines are met (*e.g.*, the moderate nonattainment date for ozone standards). Within this framework Ohio has consistently worked hard to meet its obligations under the Clean Air Act and achieve attainment of the ozone standard throughout the state.

U.S. EPA, however, should not add to the uncertainty and strain generated by the existing Clean Air Act obligations for attaining the ozone standard and generated by the five-year review of that NAAQs by prematurely reevaluating and reestablishing the ozone standard when neither law nor science require it. This leads to chaos that inevitably continues to strain those governments, like Ohio's, which must implement the Clean Air Act requirements and those stakeholders, including both citizens and the regulated community, that feel the financial strain and economic impact of those control programs needed to achieve the standard.

Were there significant new scientific and health evidence that compelled such a reopening of the ozone standard, even while Ohio and all states grapple with issues of climate change and obvious economic hardship, then there might be a better justification for deviating from an already demanding five-year review schedule. But as the Administrator herself has recognized, there is no new science that changes the previous assessment performed by U.S. EPA staff. Id. at 2944. This recognition belies the Administrator's statement that there is "serious cause for concern regarding whether the revisions to the primary and secondary O_3 standards adopted in the 2008 final rule satisfy the requirements of the CAA, in light of the body of scientific evidence before the Agency." The same information and body of evidence existed in 2008 as exists now. In light of the disruption and uncertainty that reopening will cause, the reevaluation should not be done when there is essentially the same body of scientific information as existed in 2008 simply because U.S. EPA now views that data or analysis differently. Indeed, in urging further consideration of its earlier recommendations (see above), even CASAC urged that this further consideration occur "*during the next review cycle for the Ozone NAAQs. . .*" 75 Fed. Reg. 2992. (Emphasis added.) Thus, there was not a call by that scientific committee to disregard the five-year review requirement and reopen the ozone standard at this time.

With respect to the proposed revised secondary standard, Ohio EPA believes that U.S. EPA should select a level no lower than 21 ppm-hour and maintain the same averaging time. The 2007 Staff Paper suggested a range for the secondary standard of 7 to 21 ppm-hour based on all the scientific and technical information evaluated. Ohio EPA believes there is still significant uncertainty in determining the risk associated with various levels of ozone exposure associated with establishing a secondary standard; and therefore, where the upper boundary of values has been found scientifically acceptable, the upper boundary should be selected.

Ohio EPA does support the selection of a 3-year averaging period that promotes stability in the secondary standard, rather than an annual averaging period.

Ohio EPA also has serious concerns with the ambitious implementation schedule U.S. EPA is proposing. U.S. EPA intends to make final area designations within one year after final promulgation of the revised standard rather than allow for the two years

allowed by statute. Once again, states like Ohio would feel the pinch as a result of U.S. EPA's desire to revisit the ozone standard, when neither law nor science requires such a reevaluation. Specifically, Ohio EPA disagrees with U.S. EPA's proposed approach to shorten this schedule because recommended nonattainment area designations were already submitted by states under the 2008 revised standard. U.S. EPA now asserts that recommended nonattainment designations "may not need much further evaluation." To the contrary, depending on how low a new standard is set, some states could find themselves making recommendations for the very first time. At a minimum, many states could find themselves with numerous additional areas that would need evaluated using the 9-factor analysis. Nonetheless, U.S. EPA proposes to promulgate the final revised standard on August 31, 2010 and then to provide states with only 129 days to submit recommended designations (by January 7, 2011). A minimum of 30 days of that 129 will have to be dedicated to a public comment period. Therefore, states will need to have their recommendations prepared by at least mid-November, essentially two and a half months after final promulgation. U.S. EPA intends to base final designations on 2007-2009 or 2008-2010 air quality data if it is quality assured and certified. It is unlikely that 2010 air quality data will be quality assured and certified by January 7, 2011. It is therefore likely that states will be given an opportunity to re-submit recommendations with newer air quality data later in the process, similar to the procedure used for the 2006 PM2.5 standard. And all of this activity would be packed into a one-year period, rather than two.

With respect to the implementation schedule for the secondary standard, Ohio EPA believes it is completely unreasonable to attempt such an accelerated schedule if a distinct secondary standard is promulgated. U.S. EPA acknowledges that due to the unique and distinct nature of the proposed secondary standard, implementation issues will arise that will take additional time to resolve. As U.S. EPA states, it is favorable that both standards are implemented on the same schedule so that planning for both standards would occur on the same schedule. Ohio EPA agrees and urges U.S. EPA to retain the implementation timeframes afforded by the Clean Air Act and typical for revised standards and apply those time frames to both the primary and secondary standard. Again, the increased burden upon states should not be exacerbated in an effort for U.S. EPA to rush to implement the revised standards more quickly than the statutory obligation.

Finally, Ohio EPA has concerns with the proposal to require states to perform daily reporting of the Air Quality Index (AQI) in metro and micro-politan statistical areas where ozone monitoring is required. U.S. EPA should recognize that any revised standard with increased monitoring and reporting will put an increased burden on states. In these difficult financial times, states' financial and staff resources continue to be strained. The cost of implementing and maintaining increased monitoring, analysis and reporting must be funded by U.S. EPA. Ohio and other states are already faced with expanding monitoring networks for the various NAAQS and numerous more

requirements are expected in the near future. Preliminary estimates made by Ohio and others indicates that the cost for the new monitoring requirements in U.S. EPA Region V is on the order of 12 to 14 million dollars. This will impose a large financial burden on states. Adding an expanded requirement for AQI monitoring based on the above criteria is overly burdensome and may not be necessary in some cases. States are capable of working with our communities to determine which areas are necessitating expanded AQI reporting.

In conclusion, the previous ozone standard adopted in 1997 was 0.08 ppm, which allowed concentrations of up to 0.084 ppm. The 2008 standard of 0.075 ppm already requires cleaner air and additional control programs. I urge you to maintain the standard at 0.075 ppm. It is a standard that U.S. EPA very recently found to be protective of public health and to provide an adequate margin of safety. U.S. EPA should allow the states to have some degree of regulatory certainty and not require them to deal with a quickly-changing set of standards. Ohio EPA disagrees with the need to reopen the 2008 ozone standard and finds this reconsideration of the recently-adopted standard to be arbitrary and capricious and not consistent with the intent of the Clean Air Act.

Again, Ohio EPA thanks you for this opportunity to comment.

Sincerely,

Chris Korleski
Director
Ohio EPA