



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

March 17, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator McCarthy,

In the four decades since the Clean Air Act was signed into law, North Carolina has implemented a comprehensive air quality program that has resulted in unprecedented improvements in air quality. North Carolina's success is due to our commitment to rely on sound scientific data and implement environmental programs in an economically responsible manner. Your agency's proposed ozone standard for ground level ozone raises a number of troubling concerns.

First, the EPA is required to set the NAAQS at a level that protects public health with an adequate margin of safety. Economic considerations, while they play a role in implementation of the NAAQS, are not relevant to the establishment of the NAAQS itself. This prohibition on relying on economics in establishing a NAAQS is well established and is in contrast with President Obama's September 2011 request that EPA withdraw its proposed ozone standard based on his concerns about "the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover." However, the Clean Air Act (CAA) does require the Clean Air Scientific Advisory Committee (CASAC) to "advise the Administrator of any *adverse public health, welfare, social, economic, or energy effects* which may result from various strategies for *attainment and maintenance of such national ambient air quality standards.*" To date CASAC has not provided the EPA with economic impacts of a revised NAAQS and the chair of CASAC has stated that economic considerations are not part of the review cycle for any existing NAAQS. North Carolina urges your agency to require CASAC to fulfill its obligation to provide economic impacts of a revised NAAQS.

Second, CASAC has expressed concern about the uncertainty of the science that is the basis for determining whether a revision to the ozone standard is necessary. In June of 2014, the chair of CASAC provided comments on the EPA's Second Draft Policy Assessment for the Review of the Ozone National Ambient Air Quality Standard. The chair noted that "the Second Draft PA outlines key uncertainties and research that needs to be addressed for future

reviews of the health-based standards. Specifically, we underscore the need for research to address the characterization of the exposure-response function; the identification of population thresholds; the role of co-pollutants and temperature in modifying or contributing to ozone effects; alternative modeling specifications; population-based information on human exposure for at-risk populations; time-activity data to improve population-based exposure and risk assessment; and the characterization of background levels.”

These areas of uncertainty, like the exposure-response function, are critical elements necessary to establish a scientifically defensible standard. There is greater confidence and less uncertainty in the upper end of the ranges that were relied upon in your proposed rule. In fact, there is a lack of statistically significant data for establishing a NAAQS at concentrations less than 72 parts per billion.

Third, there has been a decided lack of transparency during the development of this revision. This lack of transparency is partly the result of your agency’s decision to replace the Advanced Notice of Proposed Rulemaking (ANPR) stage from the NAAQS review process with a closed door “staff paper” process. The ANPR approach, which required public notice, ensured that decisions about the NAAQS were informed by the best available science and provided for broad participation among experts in the scientific community. In contrast, the staff paper process relies on senior agency policy makers to interpret highly scientific information and manufacture recommendations for your consideration, without oversight or input from the outside scientific community. This backroom process allows for bias to enter the process and for you to see only what the senior policy makers in your administration want you to see. You should reinstate ANPR to bring transparency back into the process.

Thank you for the opportunity to comment. I look forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald R. van der Vaart". The signature is written in a cursive style with a large, looping initial "D".

Donald R. van der Vaart