



**Statement  
On Behalf of the  
American Road and Transportation Builders  
Association**

**Submitted to the  
United States House of Representatives  
Energy and Commerce Committee  
Subcommittee on Environment**

**Hearing on Modernizing Environmental Laws: Challenges and  
Opportunities for Expanding Infrastructure and Promoting  
Development and Manufacturing**

**February 16, 2017**

Chairman Shimkus and Ranking Member Tonko thank you for holding this hearing on Modernizing Environmental Laws: Challenges and Opportunities for Expanding Infrastructure and Promoting Development and Manufacturing. ARTBA, now in its 115<sup>th</sup> year of service, provides federal representation for more than 6,000 members from all sectors of the U.S. transportation construction industry. ARTBA's membership includes private firms and organizations, as well as public agencies that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

Because of the nature of their businesses, ARTBA members undertake a variety of activities that are subject to environmental laws and regulations. ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects which are all subject to multiple federal regulatory requirements. ARTBA's private sector members plan, design, construct and provide supplies for federal-aid transportation improvement projects. As the committee examines the various environmental laws under its jurisdiction, ARTBA wishes to highlight areas in the federal Clean Air Act (CAA) where we have been a consistent advocate for sensible regulatory reform.

**National Ambient Air Quality Standards (NAAQS)**

Under the CAA, the United States Environmental Protection Agency (EPA) must review the NAAQS for six different pollutants every five years. NAAQS compliance is a particularly important issue for the transportation construction sector as counties which do not meet CAA standards can have federal highway funds withheld. These funds are important to areas aiming to improve air quality through transportation improvements which ease congestion.

Overall, EPA must reform the manner in which it reviews NAAQS. Local officials need some sense of predictability in order to develop long-range transportation plans to achieve emissions reduction goals. In many instances, counties are focusing on addressing existing NAAQS and any additional changes to the standards are akin to “moving the goalposts in the middle of the game.” If counties are to effectively comply with current NAAQS, new requirements will only serve to hamper these efforts by opening the door to possible litigation and sanctions potentially resulting in the withholding of federal funding for transportation improvement projects.

Regulations do not operate in a vacuum. Before deciding whether or not to tighten existing standards, EPA should take account what has already been achieved as well as expected air quality improvements from already approved initiatives. EPA’s own data indicates overall concentrations of the pollutants monitored through the NAAQS have dropped “significantly” since 1990 and “[d]uring the same period the U.S. economy continued to grow, Americans drove more miles and population and energy use increased.”<sup>1</sup>

Further, EPA should also consider the consequences of proposed NAAQS changes on other federal activities that promote public health and economic stability. Tightening CAA standards could result in the withholding of federal highway funds in areas forced out of compliance with the new standards. This, in turn, would have negative effects on both employment and development for impacted counties where transportation improvements are delayed or cancelled. In many instances, these federal-aid projects are intended to improve demonstrated public safety threats. Once completed, transportation improvements can reduce congestion and improve air quality. Such improvements will not be realized if projects cannot go forward. A complete analysis of potential NAAQS revisions should include the effects of the potential for increased unemployment, reduced congestion relief and weakened public safety.

### **Transportation Conformity**

Transportation conformity refers to the efforts of counties to conform to CAA standards and is arguably one of the most confusing aspects of the statute. The problem with the existing conformity process is caused by the fact that some have tried to turn these determinations into an exact science, when they are not. Rather, conformity findings are based on assumptions and “modeling of future events,” not often reflecting reality. Very few conformity lapses occur because a region has a major clean air problem. They occur because one of the parties involved cannot meet a particular deadline. Thus, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on “crossing the t’s and dotting the i’s” than on engaging the public in true transportation planning that is good for the environment and the mobility of a region’s population.

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<sup>1</sup> United States Environmental Protection Agency, *Our Nation’s Air: Status and Trends through 2015*, available at <https://gispub.epa.gov/air/trendsreport/2016/>.

The problems with the conformity process are amplified by transportation plans and the State Implementation Plans (SIPs) with which they are intended to conform often being out of sync with one another. Largely, this is due to transportation plans having very long planning horizons requiring frequent updates, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions used for conformity determinations of transportation plans and programs are not consistent with the assumptions used in the air quality planning process to establish emissions budgets and determine appropriate control measures. In other words, because transportation plans must use the most recent air quality data, a perceived increase in emissions and possible conformity lapses can occur simply because the numbers of models relied on in the transportation plan differ from those in the air quality plan—not because an area’s air quality has changed.

Additionally, according to Federal Highway Administration (FHWA) guidance, “transportation conformity regulations specify that an air quality conformity determination can only be made on a fiscally constrained metropolitan transportation plan.”<sup>2</sup> In practical terms, this means an area trying to achieve CAA standards can only do so through projects where the funding has already been fully committed. This type of restriction actually discourages long-range planning by forcing counties to forego long-term solutions in favor of stop-gap measures because they may not have enough dedicated funding.

### **Conclusion**

The NAAQS process and transportation conformity are just two areas of the CAA in need of reform – there are many others. As the subcommittee continues its discussion of modernizing the CAA it should do so with a view towards maximizing results while minimizing excessive regulatory requirements.

With air quality already improving, further regulation may not be necessary and, perhaps, thought should be given to altering existing requirements in a manner which would reduce regulatory burdens without sacrificing the success which has already been achieved. We look forward to continuing to work with the subcommittee towards achieving cleaner air through efforts which strike the proper balance between environmental protection and our nation’s infrastructure needs.

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<sup>2</sup> Federal Highway Administration, “Financial Planning and Fiscal Constraint for Transportation Plans and Programs Questions & Answers,” available at: [https://www.fhwa.dot.gov/planning/guidfinconstr\\_qa.cfm](https://www.fhwa.dot.gov/planning/guidfinconstr_qa.cfm).