

OFFICE OF THE COMMISSIONER

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The Honorable John Shimkus, Chairman
Subcommittee on the Environment
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Paul D. Tonko, Ranking Member
Subcommittee on the Environment
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 806, Ozone Standards Implementation Act of 2017

Dear Honorable Chair Shimkus and Representative Tonko:

The State of New York strongly opposes the “Ozone Standards Implementation Act of 2017,” which will substantially harm public health to the detriment of New Yorkers and residents of many other states. The proposed bill would restrict the efficacy of the Clean Air Act in a way that would delay implementation of critical health-based standards for protecting the public from harmful ground-level ozone and other dangerous air pollutants. The result of this proposed bill would be the significant postponement of health and environmental benefits for nearly a decade, inevitably resulting in increased illness and deaths from air pollution.

Introduction

The Clean Air Act (“Act”) addresses the critically important issue of protecting the health and welfare of all Americans from excessive levels of air pollution. It establishes a federal-state partnership under which EPA, informed by established science, sets National Ambient Air Quality Standards (NAAQS) at a level necessary to protect public health, and states develop and implement plans for achieving those standards. This collaborative process has significantly reduced pollutant concentrations to the great benefit of the public. Importantly, the process provided by the sections 109 and 110 of the Act recognizes that air pollution knows no boundaries and that air quality in many states, including New York, is impacted by emissions from sources located upwind.

Section 109 of the Act ensures that implementation of the Act is guided by established science; it charges the Clean Air Scientific Advisory Committee (CASAC) with reviewing the latest “state of the science” relating to public and environmental health, and

conveying its findings to the Administrator. Based on that information, the Administrator establishes the NAAQS at a level necessary to protect public health within a reasonable margin of safety. Under Section 110 of the Act, States then develop plans to achieve air quality that meets the standard in those areas that do not meet the standard, known as “nonattainment” areas.

In its latest review, CASAC determined that the existing 2008 ozone NAAQS was insufficiently protective of public health, particularly for at-risk groups including children, older adults, people of all ages who have lung diseases such as asthma, and people who are active outdoors. Based on CASAC’s scientific findings, EPA determined that implementing the 2015 ozone NAAQS would help prevent a range of harmful health effects each year, including 320 to 660 premature deaths; 230,000 asthma attacks in children; 160,000 days when kids miss school; 28,000 missed work days; 630 asthma-related emergency room visits; and 340 cases of acute bronchitis in children. EPA has identified additional serious health threats from ozone including cardiovascular disease (e.g., heart attacks, strokes, heart disease, congestive heart failure); potential harm to the central nervous system; and potential reproductive and developmental harm. The health benefits from meeting the 2015 ozone NAAQS exceed the costs of controls by 2 to 4 times.

Like many other states, New York strongly supported EPA’s strengthening of the ozone NAAQS in 2015. This support comes even though New York faces a substantial burden of achieving ozone attainment in the New York City metropolitan area. This burden, however, is outweighed by the need to address the serious public health impacts. In New York City, approximately 1 in 10 emergency room visits for asthma are attributable to ozone pollution. Rather than seek to delay its ozone attainment efforts, New York strives to bring the New York City metropolitan area into attainment as expeditiously as possible, in order to provide its residents with cleaner and more healthful air to breathe.

Delaying public health benefits of the 2015 ozone NAAQS

The proposed legislation would harm public health by delaying the implementation of the 2015 ozone NAAQS (and its corresponding health benefits) for eight years and further postponing any future standard for several years beyond when they are necessary. Current law requires EPA to designate states under the 2015 ozone NAAQS according to their monitored air quality by October 2017, and states not meeting the standards would have a number of years to reach compliance proportional to the severity of their ozone problems. However, this legislation would defer action so that designations would not be made until October 2025, thus postponing even the beginning of planning efforts until after attainment would otherwise have been achieved under the current structure of the Act. For New Yorkers and other Americans, this would result in a substantial delay in their ability to breathe clean and healthful air.

Even worse, this proposed bill compounds this public health harm by allowing the construction of new power plants and factories without considering their impact on a region's ability to achieve compliance with the NAAQS. Under current law, such new and modified facilities located in areas designated nonattainment are subject to a control technology review under the Clean Air Act's nonattainment new source review program, which requires a demonstration of control technology that would consider the "lowest achievable emission rate," resulting in the most stringent emission limit for a certain source class. This bill would eliminate these new source reviews, which are critical for advancing a nonattainment area toward NAAQS compliance.

Together, these aspects of the legislation will have even worse additional adverse impacts on states like New York that are victimized by upwind air pollution. First, this legislation will impair New York's relief from ozone transport from upwind locations. EPA modeling indicates that between 75% and 94% of the ozone in the New York City metropolitan area comes from sources outside of New York. Although New York will continue actions to reduce emission of ozone precursors, it cannot achieve healthful ozone levels without a substantial reduction in emissions from states located upwind, which are responsible for most of New York's ozone levels. Many of these states encompass areas that are currently monitoring as nonattainment, and these areas would have to achieve emission reductions under current law if designated nonattainment. Postponing a nonattainment designation for the New York City metropolitan area will have the unacceptable effect of postponing the "good neighbor" obligation of upwind areas to reduce their significant contribution to New York's nonattainment until sometime after the nonattainment designation.

Moreover, postponing compliance with nonattainment New Source Review in areas that would otherwise be designated as nonattainment with the ozone NAAQS establishes an inequitable outcome for New York and other states that have already been designated nonattainment. Under this proposed bill, new industrial facilities in areas currently designated nonattainment with the 2008 ozone NAAQS or in the Ozone Transport Region -- including all of New York -- will have to comply with nonattainment NSR requirements, yet facilities located in regions with comparable or worse air quality and much higher emissions will not have to do so for a decade or more. As such, states that would otherwise be designated nonattainment would gain an unfair advantage in attracting business development under this bill.

Delaying public health benefits from reducing other criteria pollutants

Aside from ozone, provisions of this proposed bill would affect future NAAQS reviews for all criteria pollutants, thus compounding negative public health impacts. For example, the bill would irresponsibly extend the NAAQS review time from five years to ten for all criteria pollutants. Retaining the five-year review schedule ensures that the Administrator reviews the relevant state of the science while it is timely and germane.

Health science moves quickly; by the time one NAAQS revision is reaching completion, other pertinent clinical studies are being published.

This proposed bill weakens public health protection by making cost and technological feasibility larger factors in the establishment and implementation of NAAQS. The Supreme Court has already upheld the notion that the consideration of costs has no place in the setting of a NAAQS (*Whitman v. American Trucking Associations, Inc.*, 2001). Instead, questions of technological and economic feasibility are considered at the stage of implementing the NAAQS. For example, the Act's nonattainment area classifications recognize that areas with more difficult ozone pollution problems require more time to comply. Unfortunately, Section 3(b) of the proposed bill would change the long-standing practice of how an Administrator determines the NAAQS by allowing him or her to analyze, as a secondary consideration, the likely technological feasibility of a revised NAAQS. Section 3(c) would expand CASAC's role to providing advice to the Administrator on adverse economic effects (among others) prior to the setting of the NAAQS. Taken together, these proposed revisions would have the effect that NAAQS would no longer be set at levels that are protective of public health and welfare.

Finally, the proposed bill unnecessarily redefines ordinary expected conditions as "exceptional events" that need not be considered by a state in demonstrating attainment. The intent of the "extraordinary event" exception is to allow a state to discount NAAQS exceedances that result from one-time, unpredictable, and uncontrollable events such as wildfires. The proposal, however, would allow commonplace conditions such as stagnant air masses and "meteorological event[s] involving high temperatures or lack of precipitation" to be considered exceptional. In their ozone planning, states should anticipate these conditions, which are expected to occur each year and promote the formation of ozone when public health is at the greatest risk.

We also disagree with the proposal to allow sources to avoid nonattainment new source review until release of the implementation guidance. EPA's delay in issuing guidance should not be an excuse to allow new sources in nonattainment areas to contribute to further air quality degradation. In addition, the bill's reduction of the time allotted for states to formulate and submit attainment plans from the current three years to one year reflects a misunderstanding of the laborious process for developing these plans.

Conclusion

The Clean Air Act is a bipartisan success story. Citizens across the country have benefited from the Act's clean air requirements over the last few decades. People can breathe easier due to the clean air standards that have resulted from rigorous reviews

that are guided by the latest scientific evidence. Passage of this proposed bill would deprive the American people of those benefits, worsen air quality and harm public health substantially.

Sincerely,

A handwritten signature in black ink, appearing to read "Basil Seggos", with a long horizontal line extending to the right.

Basil Seggos