



Timothy Hunt's Responses to House Subcommittee on Environment, Manufacturing, and Critical Material's Questions for the Record related to the September 19, 2023, Hearing on "Protecting American Manufacturing: Examining EPA's Proposed PM2.5 Rule"

Questions from Chairman Johnson

EPA's cost modeling for its Reconsideration Proposal runs out to 10 years in the future. EPA has been quick to point out that more stringent PM2.5 standards won't go into effect for another 2 years after finalizing the proposal.

a. Would those new standards be effective almost immediately for air permits all over the country?

Yes, EPA's current practice is to make any lowering of a NAAQS immediately effective (60 days from publication) for projects being contemplated in the cleaner, attainment areas that trigger Prevention of Significant Deterioration (PSD) thresholds for any criteria pollutant (e.g., PM, NO_x, SO₂). However, EPA has the discretion to select the appropriate effective date under the Clean Air Act to account for implementation challenges to industry and states. We outlined this rationale in our March 28 comments to EPA (previously provided to the Committee, see NR3 comments) and a longer timeframe aligns with the schedule for states and EPA to determine which areas will be designated as non-attainment.

In fact, given known problems with many of the ambient PM monitors that over-predict PM levels, it may take states and EPA an extra year to address the Federal Emissions Measurement (FEM) bias issue that several stakeholders have raised including states. Given the FEM bias issue and other changes AF&PA and AWC have suggested to EPA to improve and modernize permitting tools, we believe three years is needed given the scale of the challenges if the NAAQS is set much closer to background air quality levels.¹ EPA recently proposed changes to its modeling regulations (so called Appendix W)² but it fails to address several critical issues, such as improving test methods, accounting for emissions variability over time and space, and modeling to where people live and work rather than at fence lines or roadways. Given these challenges, it will take EPA time to propose and finalize a workable implementation plan that

¹ In our comments to EPA on the proposal and in my testimony, we recommended the effective date be pushed out two years, but now, as we recognize more of the implementation challenges and the time it will take EPA, states and industry to get ready for any lower NAAQS, a minimum of three years is needed.

² See 88 FR 72826-72868, October 23, 2023

protects public health while allowing economic growth. I have attached a more detailed paper that outlines why three years is needed for any lower of the PM NAAQS.

b. Do we need to be concerned that EPA’s regulatory agenda could hurt businesses in 10 years or 2 years – or is this a problem now?

The concern is immediate. The forest product industry is facing an unprecedented number of very significant regulations beyond the PM NAAQS that have been issued or about to be finalized. These rules disregard unintended outcomes, stray beyond the bounds of the law and threatens U.S. manufacturing, including the forest products industry. As I mentioned in my testimony, we are concerned about other Clean Air rules, such as the final Good Neighbor Plan (see 88 Federal Register 36654 to 36918, June 5, 2023) that could impose a half a billion dollars in new costs on dozens of paper mills while not significantly improving air quality in downwind ozone non-attainment areas. We are concerned that EPA’s listing of PFOA/PFOS as hazardous substances under CERCLA could adversely impact the beneficial use of wastewater residuals and would cost over a billion dollars and increase greenhouse gas emissions. Similarly, EPA’s recent Clean Water regulations like the Human Health Water Quality Criteria for Washington State could result in unachievable water quality levels.

Our shared goal must be sustainable regulation that keeps and creates sustainable manufacturing jobs in America. There is no better place for a robust manufacturing sector.

2. EPA projects costs from the Reconsideration Proposal all the way out to a decade from now – and just in areas that cannot attain its stringent standards. But those standards would immediately impact permitting even in communities that meet the standards.

a. Did EPA do anything to assess the proposal’s near-term costs in the average American community due to permitting gridlock?

No, EPA ignores these very important costs in attainment areas due to the implementation of the PSD permitting program including the significant opportunity costs for projects that cannot be built since they cannot “model compliance” with a standard that is set close to background. In fact, one of the attachments to our coalition’s March 28 comments to EPA (and provided to the committee) outlined how the rule could cost the forest products industry alone between \$2 and \$5 billion in added capital for emission reductions beyond the requisite Best Available Control Technology that gets installed of new process or combustion equipment. Scaling up these costs for projects from other industries in attainment areas could reach \$20 billion in added capital.

But most importantly, many projects may not be able to get permitted at all so there would be significant opportunity costs in terms of the foregone production of products and the jobs that would have been created if the current NAAQS was retained. As outlined in my

written testimony, more than three quarters of recent PSD projects would not qualify for permits if the NAAQS was lowered to 9 ug/m³ (50% if lowered to 10 ug/m³). These projects represent tens of billions in new investments and thousands of new jobs, including ones supported by the Inflation Reduction Act or Build Back Better programs that are on the White House's Invest in America website.

b. Do you think EPA should consider these costs when deciding whether to finalize this reconsideration?

Yes. EPA is authorized to look at costs and implementation challenges when undertaking a discretionary reconsideration of a NAAQS that has not yet passed the deadline for its statutorily required 5-year review. For the current PM_{2.5} NAAQS (issued in 2020), that deadline has not yet passed (see sections II and III of the NR3's comments previously provided). EPA is rushing the PM NAAQS, moving too quickly on a rulemaking process that would significantly tighten the current standard without a clear path to achieve it.

3. Stringent NAAQS previously forced businesses to move economic development from one part of the country to another. But between nonattainment potentially reaching half the population and nation-wide permit gridlock, I don't see many places where businesses have left to move their projects under EPA's Reconsideration Proposal. **Could companies just move offshore?**

Yes, we are very concerned that in a globally competitive marketplace especially for forest products, production could shift to countries that have less protective environmental standards or less stringent permitting procedures that encourage investment and economic growth. This shifting could actually increase global emissions including of greenhouse gases. The rule would thwart the President's promise to grow and reshore U.S. manufacturing jobs and could push more U.S. manufacturing jobs overseas. We are asking the EPA, once again, to work with us on an achievable, credible implementation plan.

4. In reflecting on the issues addressed at the hearing, are there any points you would like the Committee to also consider?

Given that any new project must install Best Available Control Technology (BACT) as a condition of getting a permit, creating a three-year glidepath for the effective date of any new NAAQS will not materially impact air quality around a facility. The amount of PM emitted by new process or combustion equipment at a mill is relatively small -- ten to perhaps a few hundred tons a year -- and will not change the "background" air quality in any meaningful way. Moreover, EPA models "impacts" calculated at fence lines or roads and streams where no one is exposed for significant periods of time. In other words, allowing these projects to proceed does not impact meeting or maintaining compliance with the NAAQS level; it usually helps. Most modernization projects at mills (and other facilities) will reduce the amount of emissions per ton of production which should be encouraged rather than thwarted. I am familiar with projects that would install the best available controls, improve the overall efficiency of a mill, and

reduce particulate matter and other emissions – even reduce greenhouse gases – yet would fail under the current permitting protocols. That doesn't make sense for business or the environment.

I also wanted to highlight an analysis we did looking at recent air permits that was in my written testimony. For anyone who might think this "permit headroom" problem is a theoretical problem and not real, we did an audit of 36 actual PSD permits that were approved for real projects across many U.S. manufacturing sectors under the current 12 ug/m³ standard. We then determined what percentage of those projects would have "flunked" under a lower standard – from 11, 10, 9 and 8 ug/m³. As shown in attachment 2 (Circle chart), the results are alarming:

- 36% would have flunked under a lowering to 11 ug/m³ standard;
- Half would have flunked under a 10 ug/m³ standard;
- 78% would have flunked under a 9 ug/m³ standard; and
- 86% would have flunked under an 8 ug/m³ standard.

Setting an unrealistic standard without a workable implementation plan runs counter to the President's promise to promote and reshore U.S. manufacturing jobs and to support our workers. Ironically, many U.S. manufacturers want to do exactly what the administration says they want to do – decarbonize. But a PM_{2.5} standard so close to background levels would block many such projects. This shows the serious unintended harms that can result when there is a lack of focus on trade-offs and unachievable regulatory policy.

On another topic, EPA has entered into a Memorandum of Understanding with USDA/Forest Service, DOI and CDC concerning wildfires. It acknowledges that using forest management techniques like prescribed burns can avoid catastrophic wildfires that emit huge amounts of PM and are the largest source of PM emissions today as we have seen with the wildfires this year in Quebec and elsewhere. However, it remains unclear exactly how states and EPA can address the need for prescribed burns when they are planned and different than EPA's approach to "exceptional events" like unplanned wildfires. We continue to encourage the Federal government to have a workable implementation strategy in place at the time of issuing any NAAQS revisions that encourages prescribed burns as well as the other identified limitations in the permitting programs, such as, modeling deficiency, monitoring flaws, and better test methods that accurately measure PM. Again, we now believe EPA will need a minimum of three years to address the many known issues that jeopardize smooth implementation

Finally, a report by the U.S. Chamber of Commerce³ published on November 9 looks at how the 2023 wildfire season will substantially increase the number PM NAAQS non-attainment areas

³ <https://www.globalenergyinstitute.org/heres-why-epas-proposed-air-quality-standards-will-cause-permitting-gridlock-across-our-economy>

across the country (as much as 30% of counties) furthering permitting gridlock and threatening investment in manufacturing and critical infrastructure projects.

Questions from Representative Fulcher

In the answer to my question on the lack of a bang for the buck with the EPA's proposed PM2.5 rule on new NAAQS standards to address reductions in particulate matter by focusing so heavily on the small source of particulates (16% from industrial sources and power plants) versus addressing the source of 84% of the particulates – wildfires and dust from unpaved roads – you noted you have reduced NOx emissions by 50% and SOx emissions by more than 80%. You further noted the EPA's lack of an implementation plan for this proposed rule means it could be harder for your other mills to install more efficient equipment that could further reduce these pollutants.

A. What rulemaking process changes, such as preventing EPA from moving forward without an implementation plan based on stakeholder input, can you suggest? Any rule streamlining efforts would you suggest?

We agree that EPA must develop a workable implementation plan that would mitigate the permit gridlock before proceeding with the NAAQS revisions. EPA has not provided an achievable NAAQS implementation plan to provide realistic modelling or implementation tools to accurately reflect actual exposures. EPA should:

- Address all PM emission sources (industrial and non-industrial).
- Assess the accuracy and distribution of ambient monitors measuring background air quality.
- Work cooperatively with states and other stakeholders on achievable and efficient implementation.
- Avoid unintended outcomes, such as increasing greenhouse gases, by not allowing modernization projects to move forward.

We have offered solutions to EPA over the last decade on how to use better data, more realistic assumptions, and updated modeling tools and stand ready to work with them.

During the implementation of the many programs under the Clean Air Act, air quality has substantially improved in the United States and is among the best in the world. Stationary sources that are the focus of this rule constitute just 16% of overall particulate matter emissions and will continue to reduce emissions in the years ahead under current air quality programs. This permitting gridlock would hurt American workers, businesses and ultimately the environment as modernization projects that would lessen impacts are scaled back or thwarted.

b. Finally, what about companies receiving partial waivers (or “credited” as having met current air quality standards) if they invest in some of the new – and less polluting equipment – you mentioned?

Unfortunately, projects that would reduce the amount of emissions per ton of production get caught up in the same gridlock as any other project. Even if the equipment that is being replaced or upgraded is lower emitting, the permitting process requires a facility to look at many other existing emissions sources that are unaffected by the change but must be counted. Thus, there is a disincentive to making upgrades if it drags in the whole mill; even though the facilities is in compliance with all other Clean Air Act obligations of which there are often a dozen or more.

2. In your written testimony, you mentioned needing a two-year effective date, regardless of the NAAQS level selected by the EPA. Can you talk about the immediate impact on the forest products industry if the EPA were to ignore your request for a two-year implementation?

Industry relies on detailed EPA implementation guidelines so they can demonstrate compliance during the permitting process. Emissions from projects must not cause or contribute to a violation of the NAAQS under section 165(a)(3) that is “in effect” at the time of the Prevention of Significant Deterioration (PSD) permit. The *Murray Energy* case (936 F. 3d) prohibits EPA from grandfathering projects that have not received their PSD permits. However, EPA retains the authority to set a different effective date than 60 days from promulgation since that is not required by law.

Thus far, EPA has not developed rules on how the new NAAQS standard would be implemented given unrealistic air modeling assumptions and limited “headroom” for permitting new projects. This uncertainty jeopardizes current investment projects — many projects in the pipeline will be unable to demonstrate compliance with the new rule when the lower standard becomes effective immediately. Furthermore, projects in rural areas could feel the effects of this permitting gridlock sooner, with projects already in the pipeline having to re-start their permitting process due the shrinking of the “headroom” which may result in the cancellation of the project. We believe addressing the number and breadth of these implementation challenges will take three years to accomplish so the effective date should be set three year after promulgation.

3. Many sawmills are in rural America, like the ones in my district in Idaho. What sort of economic impact would such an immediate implementation have on rural Idahoans?

The first district of Idaho would face severe restrictions on new greenfield projects as well as projects contemplated at existing facilities. The headroom is already limited in parts of the state and lowering the NAAQS to 9 or 10 ug/m³ would shrink it further to halt many new

investments. A recent analysis by the U.S. Chamber⁴ that looks at how 2023 wildfires might influence air quality and background levels shows a further shrinking of headroom and adding 50% more non-attainment areas including in the southwest part of Idaho if the NAAQS is lowered to 9 ug/m³.

Sawmills, wood product and paper mills are part of the solution to combatting climate change given that sustainable practices are the foundation of the forest products industry. We make products that sequester carbon in the built environment and are essential for everyday living.

Attachments Relevant to PM NAAQS for Inclusion in the Hearing Record

1. AF&PA and AWC October 24, 2023, letter to Jeffrey Zients, White House Chief of Staff
2. Failed Permits from PM2.5 NAAQS Changes: an analysis of 36 recent PSD permits from 13 industries in 19 states (PowerPoint slide)
3. AF&PA and AWC White Paper on “Three Year Effective Date for PM NAAQS and Actions EPA Should Take to Address Expected Permitting Gridlock”
4. Trade Association October 31, 2023, letter to Jeffrey Zients, White House Chief of Staff
5. State Trade Association November 16, 2023, letter to Jeffrey Zients, White House Chief of Staff
6. Pulp and Paperworkers’ Resource Council (PPRC) October 9, 2023 letter to Jeffrey Zients, White House Chief of Staff
7. Labor Management Council (LMC) November 9, 2023 letter to Jeffrey Zients, White House Chief of Staff

⁴ <https://www.globalenergyinstitute.org/heres-why-epas-proposed-air-quality-standards-will-cause-permitting-gridlock-across-our-economy>