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November 13, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

On December 1, 2014, you are scheduled to propose a rule to revise the existing National Ambient Air Quality Standards (NAAQS) for ground-level ozone. Although the Environmental Protection Agency has yet to release its own cost estimate, recent independent analysis suggests that the likely cost could be as high as $270 billion per year,[1] making the rule by far the most costly regulation ever issued by EPA.

As the deadline approaches for EPA to propose this new rule, we write to request that the agency provide, in the information it supplies the public concerning this proposal, the significant and as yet unrealized costs of meeting the existing eight-hour 75 parts per billion (ppb) ozone standard, which was finalized in 2008.

EPA has estimated the costs of meeting the current standard would range from $7.6 billion to $8.8 billion (2006 dollars) in 2020[2] -- a price tag on par with the upper range of EPA's estimates for its recently proposed "Clean Power Plan" for existing power plants. Moreover, EPA indicated that the actual costs could be higher if EPA's assumptions regarding "aggressive technological change" are incorrect.[3] Given that the agency decided to delay implementing the

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[1] "Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone," NERA Economic Consulting, available at http://www.nam.org/Issues/Energy-and-Environment/Ozone-Regulations/NERA-NAM-Ozone-Full-Report-20140726/.

[2] EPA's July 2011 RIA, p. S1-4 available at http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf.

[3] *Id.* EPA explains on p. S-12: – "The extrapolated costs and benefits will only be realized to the extent that unknown extrapolated controls are economically feasible and are implemented. Technological advances over time will tend to increase the economic feasibility of reducing emissions, and will tend to reduce the costs of reducing emissions. Our estimates of costs of attainment in 2020 assume a particular trajectory of aggressive technological

2008 standards for a number of years, it is not evident how much, if any, of the costs included in EPA's estimate for compliance with the current standard have been realized.

According to EPA's May 2012 designations, 232 counties spread over 26 states, two tribal areas, and the District of Columbia have yet to meet the 2008 standard despite continued mobile and stationary source reductions.[4] Although EPA designated over 190 of these counties as "marginal" nonattainment with the expectation that they will meet the 75 ppb standard in 2015, EPA's 2010 to 2012 ozone data tells a different story – that many of these counties will fail to accomplish this goal.

In fact, EPA's data show that, despite a 14 percent reduction between 2009 and 2012 in NOx emissions (a precursor pollutant critical in the formation of ozone) from "all" mobile and stationary sources, [5] ozone levels actually increased over this same time period. Although weather may have played a role, this increase persisted even after the Agency corrected for the effect of weather on ozone levels.[6] This raises the concern that further NOx reductions may not be as effective as EPA predicts in lowering ozone levels.

Moreover, EPA's own analysis shows that 21 counties in four broad geographic regions (Houston, eastern Lake Michigan, the Northeast Corridor, and a large part of California) will not attain the 2008 standard of 75 ppb in 2020, even when assuming the imposition of all known controls with projected improvements in air quality.[7] In other words, several major metropolitan areas may not attain the *current* standard in the *next decade*. For Houston, an area EPA classified in 2012 as "marginal" with three years to attain, EPA estimates that an additional NOx reduction of 69 percent beyond the known control scenario would be needed to bring the area into attainment.[8] In California, local air quality control officials have independently estimated that they will have to cut NOx emissions by another 75 percent just to meet the existing ozone standard of 75 ppb by a 2032 deadline.[9] If meeting the current standard is even attainable during this extended timeframe, its cost to the country will not be small.

In light of this situation, EPA's economic analysis should not assume the existing rule has been met and report only the incremental costs of the proposed new rule. While some may

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change."

[4] A table of EPA 2012 ozone designations can be found at: http://www.epa.gov/airquality/ozonepollution/designations/2008standards/final/finaldes.htm.

[5] EPA's National Emission Inventory (NEI) data for NOx can be found at: http://www.epa.gov/ttnchie1/trends/. According to EPA, NEI provides "a comprehensive and detailed estimate" of air emissions "from all air emissions sources." *See* http://www.epa.gov/ttn/chief/net/2011inventory.html.

[6] Wells, Ben, EPA "Ozone 2013 Update" February 11, 2014 available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.epa.gov%2Fairnow%2F2014conference%2FForecasting%2FTuesday%2FWells-NAQC-Presentation-FINAL-020614v2.pptx&ei=crZbVI_5JKbgsASQ-YKYBw&usg=AFQjCNFVNiVtYCiki4Vq6Fs7NmBpgghLpQ&bvm=bv.79184187,bs.1,d.cGE.

[7] EPA's 2008 RIA, p 4-1 available at http://www.epa.gov/ttn/ecas/regdata/RIAs/452_R_08_003.pdf.

[8] *Id.* at p. 4-7.

[9] L.A Times, "EPA staff recommend significantly lower ozone standard" August 29, 2014, http://www.latimes.com/science/la-me-ozone-20140830-story.html.

find it convenient to focus only on the costs of meeting the new proposal, the American people will surely feel the costs of meeting both the new and existing standards.

Given the enormous costs and implications of this rulemaking for our nation's future economic growth, EPA has an obligation to provide the public with a full accounting of the costs of meeting the proposed standard, including the as yet unrealized cost of the controls needed to meet the existing ozone standard. For purposes of complete transparency, the analysis for both the existing and new ozone standard should fully and clearly report the costs with and without any potential emission reductions and costs associated with other EPA regulations, including EPA's proposed Carbon Pollution Standards for new and existing electric generating units and any mobile source NOx reductions that may result from the corporate average fuel economy standards for Model Year 2022 to 2025 that are dependent on the outcome of the midterm review. Finally, your proposal should answer the following questions:

- What is EPA's estimate of the cost to date to comply with the current 2008 standard?
- What is EPA's current estimate of the remaining cost of attaining the current 2008 standard?
- How many of the 190 counties that EPA classified as marginal nonattainment in 2012 will attain the standard by 2015? How many will likely fail?
- How many existing nonattainment areas will be required to rely on "extrapolated" or "unknown" control costs to meet the current standard? What portion of their total costs will come from these unknown controls?
- What will happen to these areas if they cannot identify control technologies to meet the substantial NOx reductions?
- Why did ozone levels adjusted for weather not fall between 2009 and 2012 even though EPA's National Emissions Inventory base shows significant NOx reductions over this same time period?

We appreciate your attention to this matter and look forward to examining the quality of the information in your proposal when it is issued.

Sincerely,

Fred Upton
Chairman

Ed Whitfield
Chairman
Subcommittee on Energy and Power

Joe Barton
Chairman Emeritus

John Shimkus
Chairman
Subcommittee on Environment and the Economy

Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

Michael C. Burgess
Vice Chairman
Subcommittee on Oversight and Investigations
Subcommittee on Health

Pete Olson

Robert E. Latta

Bill Cassidy

David B. McKinley

Mike Pompeo

H. Morgan Griffith

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Howard Shelanski, Administrator
Office of Information and Regulatory Affairs