

**TESTIMONY OF ANNA GARCIA
ON BEHALF OF THE
OZONE TRANSPORT COMMISSION
BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
ON THE ESTABLISHING A NEW NATIONAL AMBIENT AIR QUALITY STANDARD
FOR OZONE**

40 CFR Part 50

August 30, 2007

Good Morning and thank you for the opportunity to testify on the U.S. Environmental Protection Agency's (EPA's) July 11, 2007 proposed rule to revise the National Ambient Air Quality Standard for Ozone. My name is Anna Garcia, and I am the Acting Executive Director of the Ozone Transport Commission (OTC). OTC was created by Congress under the Clean Air Act Amendments of 1990 to coordinate ground-level ozone pollution control planning in the Northeast and Mid-Atlantic region of the U.S. Members of the OTC include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, New Hampshire, New Jersey, New York, Massachusetts, Pennsylvania, Rhode Island, Virginia, and Vermont. In addition to today's oral testimony, OTC will submit written comments by the October 9, 2007 deadline.

OTC is following the EPA's progress toward establishing a new ozone national ambient air quality standard (NAAQS) with great interest and concern. As an ozone centric organization, we have a profound understanding of its importance, and are conducting a careful review of the proposed rule with our member states. As EPA moves forward with a new primary and secondary ozone NAAQS, EPA must recognize that ozone is a regional problem, not a local one,

particularly in the northeast and mid-Atlantic states. Transport of pollutants across large geographic areas must be considered in order for downwind areas to have any possibility of coming into attainment. The ozone in the air our citizens breathe is formed in the atmosphere, downwind from the emission source. As a result, the citizens of the OTC states not only suffer from pollution created in the OTC region, but also from precursor emissions and ozone transported from upwind states.

Science and Process

OTC is concerned that EPA has subverted the standard-setting process that the Clean Air Act lays out for proposing a new NAAQS. Rather than proposing a specific limit for the primary standard within the scientifically supported, health protective range identified by the Clean Air Scientific Advisory Committee (CASAC), the EPA's proposal fails to follow the strictly science-based and unanimous recommendations of this independent body of scientific advisors, and proposes a range between .070 and .075 parts per million (ppm), instead of a precise value. The CASAC's recommendation, however, indicates that to protect public health with an adequate margin of safety and in accordance with the latest scientific studies, the NAAQS would need to be within the range of .060 to .070 ppm. In setting a range that has only one point of intersection with the upper bound of CASAC's recommendation, EPA is largely ignoring the science. In its review, CASAC cited recent single-city and multi-city studies that show significant health impacts, including morbidity and mortality, from ozone concentrations much lower than the current standard, and recent clinical studies that show adverse lung function impacts in individuals at ozone levels as low as .060 ppm.¹ Additionally, EPA left the door open for

¹ Dr. Rogene Henderson, CASAC Chair Letter to the Honorable Stephen L. Johnson regarding CASAC's Peer Review of the Agency's 2nd Draft Staff Paper, (Oct. 24, 2006) at 2.

retaining the current standard, clearly above a health-protective level, by asking for comments on that option.

In establishing the ozone NAAQS, OTC advises EPA to follow the provision of the Clean Air Act (CAA), which calls on EPA to rely heavily on the science and CASAC recommendations in setting both the primary and secondary NAAQS. OTC supports the work of the CASAC and urges EPA to give great weight to its recommendations.

Health and Costs

The CAA also sets forth, and the U.S. Supreme Court affirmed in *Whitman v. American Trucking Associations, Inc.*,² that the NAAQS shall be set at a level necessary to protect public health and welfare, with an adequate margin of safety and without consideration of economic impacts. Economic issues are important, but are to be taken into consideration as part of the implementation of a new NAAQS rather than in the standard setting stage. Cost considerations only apply after the new ozone standard is set, and then are considered in selecting among various strategies to meet the revised primary and secondary standards.

However, shortly after EPA announced the proposal for a new ozone standard, the agency issued its associated regulatory impact analysis (RIA), which includes cost information. Although EPA reiterated that it did not use the cost analysis in selecting the proposed ozone standards, we think that publication of such cost calculations during the comment period is a distraction to the key issue of public health. Nevertheless, we note from the RIA that in a comparison of the average of the range of EPA's estimated benefits with the average of the range of estimated costs, the

² *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001)

benefits of a revised NAAQS would significantly outweigh the costs. We also note that while the RIA purports to assess the overall societal costs of new controls required to achieve a new standard balanced against the health benefits of the standard, EPA has seriously undermined that assessment by eliminating from consideration any reductions that go beyond EPA's Clean Air Interstate Rule. The RIA already excludes, as a matter of policy, any additional controls from the electric generating sector, which are highly cost-effective compared to many other control options.

Implementation and Solutions

As we prepare for these new requirements, a critical issue in the implementation of any new ozone standard that addresses the regional nature of the ozone problem is the designation of regional non-attainment areas. In designating ozone non-attainment areas, it is critical that EPA look at ozone air sheds in the largest geographic area. The boundaries of the non-attainment areas should not be limited by Consolidated Metropolitan Statistical Areas (CMSA) and state lines. An appropriate non-attainment area designation scheme should allow for a broad enough area to be designated such that most, if not all, sources contributing to the non-attainment status of the area are included. Another critical consideration in the implementation of a new ozone standard is to identify and implement cost-effective controls on a regional basis, since local controls alone will not achieve attainment. EPA recognizes in its proposal that ozone is a regional problem; however the Agency continues to focus its attention on local controls.

OTC has already advised EPA on several options for additional reduction strategies that are available from several source categories. Among these are cost effective ozone precursor emissions reductions from several stationary, mobile and areas source categories. OTC analysis

has shown that more stringent and timely emissions limits, fuel standards, and broader, tighter caps on pollutants in trading programs would yield significant air quality benefits in our region. Support for these programs would give much needed relief to the millions of citizens in the northeast that are breathing polluted air. Additionally, States will need assistance, resources and tools from EPA to ensure the effective implementation of any new ozone NAAQS.

Closing

Protecting the public health by relying on science and innovation on a level playing field demands that reductions in ozone and its precursors be a top priority for EPA and our states. With nearly two decades of experience in dealing with this issue, the OTC has ideas and suggestions on how to address meeting a tighter ozone standard which we will be glad to share as implementation guidance is developed once the standard is adopted. This will require a renewed partnership between the states and federal government, since there are cost-effective area-wide controls available to the federal agencies to effectuate that individual states are precluded from undertaking by law or for other reasons.

We stand ready to work with you to achieve healthful air as expeditiously as possible. We encourage EPA to follow the recommendations of CASAC in finalizing the Ozone NAAQS. We will be submitting more detailed comments in the upcoming weeks. Thank you for the opportunity to provide OTC's testimony.