American Road & Transportation Builders Association

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February 18, 2011

Dr. Holly Stallworth, Designated Federal Officer (DFO)
EPA Science Advisory Board (1400R)
United States Environmental Protection Agency
1300 Pennsylvania Avenue, NW
Washington, D.C. 20004

Re: Science Advisory Board Staff Office; Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer the following statement to the Environmental Protection Agency's (EPA) CASAC as part of the February 18 meeting to review EPA's 2008 National Ambient Air Quality Standards (NAAQS) for ozone.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than $200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA's public sector members adopt, approve or fund transportation plans, programs or projects under Title 23 U.S.C. and Title 49 U.S.C. ARTBA's private sector members rely heavily on contracts funded under these titles to plan, design, construct and provide supplies for transportation improvement projects.

According to EPA, the purpose of reviewing the 2008 National Ambient Air Quality Standards (NAAQS) for ozone is "to ensure they are scientifically sound and protective of public health and the environment." President Obama expanded upon this goal when he signed a January 18 Executive Order noting that all regulatory efforts must "protect public welfare, safety and our environment while promoting economic growth, innovation competitiveness and job creation." The President's Executive Order further states all regulations must "be based upon the best available science" and "use the best, most innovative and least burdensome tools for achieving regulatory ends." It is with this meshing of scientific review and anticipated public policy in mind that ARTBA wishes to offer comments on the EPA's recommendation for tightening the current standards for ozone.

Specifically, the President's Executive Order notes agencies must tailor regulations to "impose the least burden on society." With this in mind, EPA and CASAC must be cognizant of the impact more stringent ozone standards would have on other federal initiatives. Nearly 34,000 people die on U.S. highways each year and many federally-funded highway improvements are designed specifically to address safety issues.

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THE ARTBA BUILDING, 1219 28TH ST., N.W., WASHINGTON, D.C. 20007
Phone: (202) 289-4434 • Fax: (202) 289-4435 • Internet: www.artba.org

As such, imposing new ozone standards that lead to highway improvements being denied could be counterproductive to improving public health.

When considering ozone standards, and any possible changes, it is important to note the EPA's own reports have indicated an overall decline in ozone pollution. As EPA reported last year, between 1990 and 2008, gross domestic product increased 64 percent, vehicle miles traveled (VMT) increased 36 percent, energy consumption increased 19 percent, and U.S. population grew by 22 percent. During the same time period, total emissions of the six principal air pollutants dropped by 41 percent.[1] In addition, there has been a decline in the overall concentration level of criteria pollutants for ozone (1-Hour) of 25 percent in the past 20 years.[2] This progress has occurred both prior to and since the implementation of the existing ozone NAAQS. Furthermore, this continuing improvement indicates the current standard is working, and there is no need for any modification.

Ground level ozone (as opposed to the ozone in the upper atmosphere or "ozone layer," which occurs naturally) is formed by the combination of the oxides of nitrogen (NOx) and volatile organic compounds (VOCs) in sunlight. NOx and VOCs are referred to as the "criteria pollutants" for ozone. As levels of NOx and VOCs decline, so will the amount of harmful ground level ozone. Since 1990, NOx levels have decreased by 36 percent and VOC levels have decreased by 35 percent[3]. This decline in pollution is being heavily driven by improvements in the transportation sector. Specifically, NOx emissions from motor vehicle emissions have gone down 41 percent since 1970, while VOC emissions from motor vehicles have declined by 73 percent. Clearly, the transportation community is playing a vital role in reducing ozone levels.

Today's average motor vehicle produces 80 to 90 percent less emissions than it did in 1967.[4] The transportation sector is continuing to take steps, independent of the NAAQS, to build on this success by further reducing all forms of air pollution, including particulate matter. As better motor vehicle and fuel technologies develop, vehicle emissions will continue to go down with increased automobile usage.

Illustrating this point, major automobile manufacturers announced in 2005 a new generation of vehicles that are 99 percent cleaner than vehicles produced 30 years ago. This reduction in emissions comes from a four-part strategy that includes cleaning up the fuel as it goes into the vehicle, burning the fuel more precisely in the engine, removing undesirable emissions with a catalyst, and monitoring all of these systems to ensure minimal emission levels. As these and other new technologies are integrated into both on and off road vehicles, emissions levels in all areas (including ozone) should continue to decline.

Further, the EPA must consider reductions in ozone levels will occur as a direct result of existing regulations and those yet to take effect. Dramatic improvements in ozone levels will continue to come from implementation of regulations enacted in 2007 on sulfur levels in gasoline, as well as

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[1] U.S. EPA, Our Nation's Air, Status and Trends through 2008 (February 2010).
[2] United States Environmental Protection Agency, National Trends in Ozone Levels, Ozone Air Quality 1980-2008, available at http://www.epa.gov/air/airtrends/ozone.html.
[3] Id.
[4] United States Department of Transportation, "Transportation Air Quality Selected Facts and Figures." (1999).

measures affecting heavy-duty diesel engines and highway vehicles. In fact, in 2006, regulations took effect requiring refiners to meet a 30-parts per million (ppm) average sulfur level for gasoline with a cap of 80-ppm. This fuel enables vehicles to use emissions controls which are projected to reduce tailpipe emissions of NOx by 77 percent from passenger cars and as much as 95 percent for pickup trucks, vans and sports utility vehicles. When fully implemented by 2030, these regulations are expected to have the effect of removing 164 million cars from our nation's roadways.[5]

In addition, EPA also will continue implementation of its rule to make heavy-duty trucks and buses run cleaner. Beginning with the 2007 model year, pollution from heavy-duty highway vehicles has been reduced by more than 90 percent[6], resulting in an additional reduction in NOx levels of 2.6 million tons per year. In addition, EPA also recently implemented its rule to regulate emissions from nonroad diesel engines by integrating engine and fuel controls as a system to gain the greatest emission reductions. Engine manufacturers are expected to produce engines with advanced emission-control technologies similar to those upcoming for highway trucks and buses. Exhaust emissions from these engines are estimated to decrease by more than 90 percent.[7] This is estimated to result in an additional reduction of 738 thousand tons of NOx per year.

Thus, there are currently four different regulatory efforts underway, all of which aim to result in significant ozone reduction.

The revisions to the ozone NAAQS proposed by the EPA would greatly increase the stringency of the ozone regulation at a time when implementation of existing standards is already resulting in noticeable progress. Currently, 48 percent of the counties monitored for ozone levels are out of compliance. Tightening the current standard to levels put forth by EPA could increase this to 96 percent (at the .060 ppm end of EPA's proposal), almost doubling the amount of monitored counties that are out of compliance. As a result, these counties would then face the prospect of having highway funds put in jeopardy.

Counties are focusing on addressing existing ozone standards and any further changes to the standards will undermine these efforts. Local officials need some sense of predictability in order to develop long-range transportation plans to achieve ozone reduction. If counties are to effectively comply with current standards, additional requirements will only serve to hamper these efforts by opening the door to possible litigation and sanctions potentially resulting in the loss of federal funding for transportation improvement projects. This would be self-defeating, as the federally-funded highway projects underway in these and other counties are a driving force behind the dramatic reductions in ozone and other pollutants which are already taking place.

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[5] United States Federal Highway Administration, *Transportation Air Quality Selected Facts and Figures*, p. 36 (2006).

[6] EPA Heavy Duty Highway Diesel Program, information available at http://www.epa.gov/otaq/highway-diesel/index.htm.

[7] EPA Clean Air Nonroad Diesel Rule, information available at http://www.epa.gov/nonroad-diesel/2004fr/420f04032.htm.

In addition to the aforementioned increases in VMT and population, Federal Highway Administration data shows substantial increases overall numbers of motor vehicles (58 percent) and licensed drivers (41 percent) since 1980. During this same time period, the number of lane miles in the United States has only increased by six percent. The nation's road system is not keeping up with an ever growing congestion problem. Jeopardizing highway funding for these areas through implementation of the EPA's proposal would exacerbate this problem by imposing new obstacles for needed transportation improvements that can cut both harmful emissions and billions of dollars in wasted motor fuel caused by traffic congestion.

Any tightening of the ozone standard would result in the increased possibility of federal highway funding being placed at risk. Such a development would delay critically needed improvements to our nation's infrastructure network which has already reached "critical mass" in terms of being able to serve the needs of our citizens and economy. As such, ARTBA strongly feels recent recommendations to tighten ozone standards ignore the public health and welfare of those citizens in areas where transportation improvement projects will be placed at risk. We urge the EPA and CASAC not to alter the 2008 ozone NAAQS.

Rather than face the prospect of transitioning to these newer standards, state and local entities instead must be given the time and flexibility needed to implement already existing ozone standards. It would be more appropriate for the EPA to focus on helping counties meet existing ozone standards and avoid tightening ozone standards and forcing many more counties out of compliance with federal Clean Air Act requirements.

In conclusion, ARTBA urges EPA to take notice of the current progress that has been and will be made in cutting the overall levels of ozone before approaching public policy decisions resulting in further regulation. Counties attempting to take a step forward to meet the 2008 standards should not be forced to take two steps back and adjust to new standards less than two years later. Current programs are reducing ozone and must be given a chance to be implemented before new standards or initiatives are considered. Additional regulation at this point is akin to "moving the goalposts" and would run the risk of diluting current compliance efforts and should not be pursued. ARTBA remains committed to helping to achieve a cleaner environment through the continuation of proven technological and regulatory efforts.