

**Statement of the Utility Air Regulatory Group to the
Clean Air Scientific Advisory Committee
NOx & SOx Secondary NAAQS Review Panel**

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Good morning. My name is Aaron Flynn, and I am an attorney representing the Utility Air Regulatory Group, or UARG, in matters related to the U.S. Environmental Protection Agency's ("EPA") review of the Secondary National Ambient Air Quality Standards ("NAAQS") for oxides of sulfur ("SOx") and nitrogen ("NOx"). UARG appreciates the opportunity to provide these comments for consideration by the Clean Air Scientific Advisory Committee ("CASAC") panel charged with reviewing EPA's second draft of the *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for NOx and SOx*.

UARG has a number of significant concerns with the procedural, legal, scientific, and policy choices that EPA appears to be pursuing based on the information contained in the current draft of the Policy Assessment. I will address only a few of those concerns in these comments.

Procedural Concerns

The regulatory options EPA is considering during this review represent significant departures from established practices under the NAAQS program. Accordingly, it is essential that EPA provide the public with adequate time to review and comment on the various draft documents that will inform the Administrator's development of any new Secondary NAAQS for NOx and SOx. The Second Draft Policy Assessment was only made available 19 days before this meeting. This has prevented UARG from fully developing comments for presentation to CASAC, and we hope the Panel has had more time within which to assess the document. We anticipate submitting more extensive comments to EPA by the November 12, 2010 deadline for such comments.

Policy and Implementation Concerns

At each stage of this review, EPA has introduced new concepts fleshing out some of the policy positions under development as part of this review. Even at this relatively late stage of the NAAQS review process, however, there remain significant issues that have not been addressed in this second draft of the Policy Assessment. The document itself notes that a number of

additional analyses and policy issues will likely be included in the final draft, although what they might entail or address is not necessarily clear. Moreover, despite new additions to this draft of the document, it remains very difficult to envision precisely how the Administrator is to piece together and jointly assess the various potential components of the standard EPA staff describes.

In addition, how the staff's recommended standard will be implemented and the policy questions that must be resolved to allow for implementation remain exceptionally vague. The Policy Assessment notes, for instance, that the nation's monitoring networks are largely inadequate to fulfill implementation needs for a NAAQS such as the one EPA staff recommends. Similarly, the document notes that Federal Reference Method ("FRM") and Equivalence Methods ("FEM") designations remain a substantial stumbling block. It also remains entirely unclear how designation of attainment and nonattainment areas will take place or how the spatial extent of nonattainment will be determined. And how states will determine what steps to take to provide for attainment (and to demonstrate that it will be achieved) remains an open question. Nor is it clear how states are to establish in the future whether the NAAQS has been attained. These crucial matters should not continue to be a mystery at this phase. UARG believes that these matters must be fully assessed and presented by EPA in this document and that they merit CASAC review and input to the Agency. UARG therefore urges CASAC to request that Agency provide a draft Policy Assessment that completely analyzes the relevant issues for CASAC review and comment.

Legal Concerns

Finally, UARG remains highly skeptical of the legality of EPA staff's recommended secondary NO_x and SO_x NAAQS. An acidification-based standard will likely conflict with the Title IV Acid Rain Program. Further, UARG is concerned that the "Atmospheric Acidification Potential Index," or AAPI, conflicts with the Clean Air Act's requirement that a NAAQS prescribe a single, nationally uniform minimal level of acceptable atmospheric concentrations of a particular criteria pollutant. The AAPI is designed to do just the opposite. Whatever the scientific merit of the staff's recommended standard, it must be consistent with the Act.

Conclusion

In sum, the current draft of the Policy Assessment continues to suffer from what UARG believes are real and very considerable deficiencies. The document still does not address issues that are crucial to state regulators, the regulated community, and EPA itself. UARG hopes that this CASAC Panel will take these concerns into account and request revisions to the Policy Assessment.

Thank you very much for your consideration. If you have any questions, I would be pleased to address them.