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Submitted by email

Dr. Holly Stallworth
Designated Federal Officer (DFO)
Clean Air Scientific Advisory Committee (CASAC)
U.S. Environmental Protection Agency
Washington, DC

Subject: CASAC Ozone Review Panel

Dear Dr. Stallworth:

I am writing to request that you provide these comments to the members of the CASAC Ozone Review Panel who will be meeting by teleconference on November 5, 2012 to discuss four documents related to national ambient air quality standards (NAAQS) for ozone. I would like to make a brief oral presentation during this conference call and request that my name be placed on the list of public speakers for the teleconference.

Background

I have worked on Clean Air Act issues since 1989, when I joined the White House Staff during the Administration of President George H.W. Bush. In that capacity, I worked closely with EPA and a number of other stakeholders on the implementation of the 1990 Amendments to the Clean Air Act. I also had the opportunity to serve as the EPA Assistant Administration for Air and Radiation (OAR) for more than 4 years, from 2001 to 2005. Since that time, I have been a partner at the law firm of Bracewell & Giuliani, where I work with many different companies and industry groups on a variety of issues

related to the Clean Air Act. From these various vantage points in both the government and private sector, I have closely followed the work CASAC for many years.

I have been especially interested in CASAC's review of the ozone standard because of the long history of EPA and state efforts to deal with ozone under the CAA. As you know, EPA and state environmental agencies have been focused on reducing concentrations of ozone for more than 40 years (although the term ozone was not used in the early years). As a country, we have probably spent more money to address ozone than to address any other air pollutant – and it is certainly true that ozone concentrations have been reduced substantially in most parts of the U.S.

Even though there has been considerable progress in reducing ozone formation, there are many areas of the country that have not attained the current ozone NAAQS of 75 ppb. In fact, there are several major urban areas that, although they have made dramatic improvements in air quality, are still a long way from meeting this standard. Based on the most recent EPA data, there are 9 areas with design values of 90 ppb or above – meaning that they are still 20 percent or more above the current standard and well above the 84 ppb standard that was established back in 1997.

These areas have not been negligent in their efforts to regulate sources of air pollution. In fact, many of them – in California, Texas, and the mid-Atlantic region in particular – have been extremely aggressive (and creative) in regulating virtually every imaginable source of ozone precursors. In my discussions with regulatory officials, they say that there is little more that they can do.

To be sure, ozone concentrations in these areas will continue to decrease gradually as lower-emitting cars, trucks, and non-road engines replace older vehicles and engines. But these decreases will fall far short of what will be needed in many areas to attain even the current ozone standard. Thus, there are at least two important questions facing regulators and policymakers:

- 1) What more can be done to reduce ozone formation – especially in areas that have already been regulating aggressively for many years?
- 2) If there are additional things that can be done, what are the impacts (both positive and negative) of doing them?

As discussed below, Congress intended for CASAC to play a role in answering both these questions.

CASAC's Statutory Responsibilities

As you know, Congress created CASAC back in 1977, when it enacted what has now been codified as section 109 of the Clean Air Act. In this section, Congress also gave CASAC a specific list of responsibilities, but CASAC has largely overlooked two of the things on this list.

Section 109(d)(2)(C) specifically states that CASAC “*shall*” (1) “advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity” and (2) “advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.”

Some CASAC observers have downplayed the importance of these responsibilities, arguing that they are not relevant to the question of where the NAAQS should be set. But Congress clearly wanted CASAC to play a broader role than simply advising EPA on the level of the NAAQS.

Virtually everyone agrees that, in the effort to regulate ozone precursors, regulators have already picked most of the low-hanging fruit. And in many areas, regulators believe that they have picked essentially all the fruit that can be reached. Under these circumstances, it is important for CASAC to advise the Administrator – and through her, other policymakers – about “the relative contribution to [ozone] concentrations of natural as well as anthropogenic activity.” In considering the contribution from anthropogenic sources, CASAC should distinguish between (i) sources that are within the U.S. and therefore subject to control under the CAA and (ii) anthropogenic sources from outside the U.S., which are not. As a practical matter, the contribution from non-U.S. anthropogenic sources is essentially part of the uncontrollable background. Policymakers and regulators around the country need a valid source of information about background concentrations (attributable to both natural and non-U.S. anthropogenic sources) and the degree to which they effect the ability of certain areas to achieve the ozone NAAQS.

It is perhaps even more important for CASAC to advise the Administrator and other policymakers about the “adverse public health, welfare, social, economic, or energy effects which may result from” further efforts to reduce ozone formation. If, as most experts believe, the low hanging fruit has been picked, additional actions will be ever more costly in terms of the cost-per-unit of ozone reduced. CASAC clearly has a role in advising policymakers about the tradeoffs that we all face as our society spends more resources to achieve a goal that may not even be achievable in certain parts of the country.

Need for an Honest Evaluation of PM2.5 and Ozone

Although EPA does not consider costs and benefits when setting the NAAQS (for ozone or any other pollutant), it does perform cost-benefit analyses of the NAAQS in order to provide such information to policymakers and the public. In recent years, however, these efforts have done little to provide meaningful information about the true costs and benefits of efforts to reduce public exposure to ozone. At the very least, it is puzzling to see that the benefits of lowering the ozone standard, according to EPA, come almost entirely from reducing concentrations of PM2.5.

As others have noted, EPA’s statements on the health benefits of lowering the ozone NAAQS are misleading. The claimed health benefits have very little to do with benefits of reducing exposure to ozone. In fact, all the analysis done by EPA and others shows that the cost to society of lowering the ozone standard will be higher than the health benefits of reducing public exposure to ozone. But EPA asserts that a lower ozone standard is justified on cost-benefit grounds because actions taken to meet a lower ozone standard will also have a side-benefit of reducing concentrations of PM2.5. And this side-benefit, according to EPA, is substantially greater than the benefit of reducing public exposure to ozone.

Perhaps even more troubling, EPA claims, in the context of ozone, that there are tremendous health benefits in reducing concentrations of PM2.5 below the level of the NAAQS for PM2.5. Thus, EPA seeks input on PM2.5 health science from a CASAC PM2.5 Review Panel and sets a standard at a level that is requisite to protect public health (including sensitive subpopulations) with an adequate margin of safety. Then, in the context of reviewing the ozone standard, EPA asserts that lowering the ozone standard will save thousands of lives by reducing PM2.5 concentrations in areas that are

already below the PM2.5 NAAQS.

As others have pointed out, EPA has used the purported benefits of reducing PM2.5 to justify virtually all its regulatory actions over the last few years. See Anne E. Smith, *NERA Economic Consulting, Summary and Critique of the Benefits Estimates in the RIA for the Ozone NAAQS Reconsideration* (July 22, 2011). This approach makes a mockery of the standard-setting process and misleads the public and policymakers about the true costs and benefits of various CAA programs. I hope that the CASAC Ozone Review Panel will encourage EPA to conduct a more transparent and honest evaluation of the costs and benefits of reducing public exposure to ozone.

Sincerely,

Jeffrey R. Holmstead
Bracewell & Giuliani