DISSENTING VIEWS
on
H.R. 806, the Ozone Standards Implementation Act of 2017

The Clean Air Act (CAA) has driven important progress in improving air quality and public health. The history of the CAA continues to demonstrate the success of our nation's current approaches and utilization of valuable tools for measuring air quality.

House Republicans claim that the goal of H.R. 806, the "Ozone Standards Implementation Act of 2017" is to facilitate a more efficient implementation of the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards (NAAQS) by states and to provide states additional time to implement the new ozone standards. But, H.R. 806 is an irresponsible compilation of attacks that in reality strikes directly at the heart of the CAA. This bill would undermine decades of progress on cleaning up air pollution and protecting public health from all criteria pollutants – not just ozone. It would cause irreparable harm to public health and the environment.

EPA's 2015 National Ambient Air Quality Standard for Ozone

The CAA requires EPA to set NAAQS for certain pollutants that endanger public health and the environment.[1] These health-based standards are the cornerstone of the CAA. EPA sets primary NAAQS at concentration levels sufficient to protect the public health with an "adequate margin of safety." For the six criteria pollutants – lead, particulate matter ($PM_{2.5}$ or PM_{10}), ozone, nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and carbon monoxide – the primary NAAQS identifies the level of ambient air pollution that is "safe" to breathe. While costs are not considered in establishing these standards, costs can be and are considered in developing plans to achieve the necessary pollution reductions to meet the standards. EPA must review each NAAQS every five years and make revisions as appropriate.

On October 1, 2015, EPA issued a final rule strengthening the ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[2] This decision was based on the review of thousands of studies showing ozone's effects on public health and welfare. Ozone, also known as smog, has a number of health impacts, ranging from increased asthma attacks and cases of acute bronchitis in children to premature death. Ozone also damages vegetation, including crops and ecosystems. The revised standard is consistent with the recommendations of the independent Clean Air Scientific Advisory Committee (CASAC), which had concluded that the science supports a standard within a range of 70 ppb down to 60 ppb.[3] The estimated net benefits of the updated ozone NAAQS are up to $4.5 billion, excluding California where the estimated net benefits are up to $1.3 billion.

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[1] Clean Air Act at § 109.

[2] U.S. Environmental Protection Agency (EPA), *National Ambient Air Quality Standards for Ozone*, 80 Fed. Reg. 65292 (Oct. 26, 2015) (final rule) (hereinafter "ozone NAAQS").

[3] *See* U.S. EPA, *Overview of EPA's Updates to the Air Quality Standards for Ground-Level Ozone* (Oct. 1, 2015) (www.epa.gov/sites/production/files/2015-10/documents/overview_of_2015_rule.pdf).

EPA Administrator Pruitt has been a vocal opponent of the 2015 ozone NAAQS, and has directed the Agency to review and potentially revise the final rule.[4] To that end, EPA recently announced a one-year delay of its statutory deadline to make final attainment area designations, citing the need for more time to complete its review of the standard.[5] Drastic cuts proposed by EPA's FY 2018 budget would also undermine the 2015 ozone NAAQS, especially for states who depend on critical grant funding to improve air quality and implement the CAA.[6]

Analysis

The overall effect of the proposed changes to the CAA included in H.R. 806 will be to delay the implementation of health-based air quality standards, make achievement of more protective standards more difficult, and inject cost and technological feasibility considerations into the standard-setting process. The bill would also fundamentally alter those CAA provisions that ensure EPA's decisions to protect public health are informed by the most up-to-date scientific data, findings, and knowledge about air pollutants and their health and environmental impacts. Below is an analysis of the most egregious provisions of H.R. 806.

Section 2(a) would drastically extend statutory deadlines associated with implementing the 2015 ozone NAAQS by up to eight years.[7] This would ensure that the outdated ozone standard would remain in effect – a standard that was found to be insufficient to protect public health.

Section 3(a) extends the review period for all criteria air pollutant NAAQS from every five years to every ten years. A NAAQS review cycle of ten years would subvert the purpose of these standards, which is to establish a level of emissions that adequately protects public health based on the latest scientific knowledge. The current five-year cycle provides a reasonable amount of time for the development and review of new studies, and EPA is only required to make changes to a NAAQS if the latest information supports doing so to protect public health with "an adequate margin of safety." Extending the deadline would result in fewer reviews, and less up-to-date scientific information supporting air quality decisions. The longer review period would also result in much longer periods of exposure to dangerous air pollutants in cases where scientific studies demonstrate the need for stronger standards to protect public health.

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[4] *See Pruitt v. EPA: 14 Challenges of EPA Rules by the Oklahoma Attorney General*, New York Times (Jan. 14, 2017) (www.nytimes.com/interactive/2017/01/14/us/politics/document-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html#document/p335/a334755); *Trump may change for scrap Obama ozone standard*, Greenwire (Apr. 10, 2017) (www.eenews.net/greenwire/stories/1060052869/).

[5] U.S. EPA, *EPA to Extend Deadlines for 2015 Ozone NAAQS Area Designations* (Jun. 6, 2017) (www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations).

[6] *See* National Association of Clean Air Agencies, *Impacts of Proposed FY 2018 Budget Cuts on State and Local Air Quality Agencies* (May 22, 2017) (www.4cleanair.org/sites/default/files/Documents/NACAAFundingReport-FY2018.pdf).

[7] State recommendations on nonattainment areas would not be due to EPA until October 26, 2024, and EPA would have until October 26, 2025, to finalize designations. SIPs would then be due to EPA by October 26, 2026. The statutory deadlines under the CAA are October 1, 2016, October 1, 2017, and October 1, 2020 to October 1, 2021, respectively. EPA recently announced a one year delay of their October 2017 deadline for finalizing designations.

Section 3(b) changes the long-standing criteria for establishing an air quality standard from one that is based solely on protecting public health to one that includes a consideration of the "technological feasibility" of the standard. This provision removes the important firewall separating the setting of the standards from their implementation, turning a NAAQS into a reflection of how much public health protection we can afford, not what is "safe" to breathe. Although the bill's sponsors assert this would be a minor change, adding this consideration would fundamentally alter the CAA in a manner that would erode public health and environmental protections. Considerations of cost and technological feasibility are – and should remain – separate from the identification of the appropriate standard to ensure the air we breathe is safe. Costs and technological feasibility as well as other non-risk factors are already considered in the selection of options for attaining the necessary standard.

Section 3(d) would create a loophole in the preconstruction permitting process, by establishing arbitrary procedural requirements for EPA to follow when setting a new air quality standard. If EPA does not issue rules and guidance concurrently with an updated NAAQS, then a new or expanding facility can apply for a preconstruction permit based on the old air quality standard, which is not adequate to protect public health. As a practical matter, it is not always feasible or advisable for EPA to issue concurrent implementation regulations and guidance when revising a NAAQS, since most guidance develops organically as result of consultation with state and local air agencies and affected sources after they begin the process of implementing the NAAQS. Ultimately, this section could give new sources of pollution "amnesty" from new air quality standards leaving existing facilities with a burden to do more to reduce their emissions if the area is near or in nonattainment –worsening air quality and raising the economy-wide cost of cleaning up pollution.

Section 3(e) would exempt extreme nonattainment areas from having to establish contingency measures if they fail to make progress toward achieving the ozone standard. Without these contingency measures, there would be no incentive for extreme nonattainment areas to even attempt to control their emissions. This may result in the area not meeting the ozone standard indefinitely or having to make any progress toward achieving the standard.

Section 3(h) drastically expands the list of circumstances that are included in the definition of "exceptional events" to include common conditions and occurrences that are **not**, in fact, exceptional – such as high temperatures or drought. Allowing states to seek relief by claiming additional exceptional events will artificially reduce reporting on the severity of air pollution in the area. It would also all but ensure that areas having stagnant air masses; experiencing meteorological inversions, heat waves, or droughts; and that have poor air quality would remain in nonattainment. Further, changing air quality monitoring protocols in ways that lead to underreporting of poor air quality conditions will cause areas with poor air quality to appear much better under conditions of extreme heat and drought. Given that ozone levels are often higher on hotter days, such an expansion of the exceptional events definition would be a significant change.

Finally, section 4 would give two areas in extreme nonattainment a free pass on pollution that comes from outside the state, from exceptional events, and from pollution beyond their regulatory control. These exemptions would apply to states that are simply not trying to improve

air quality, as well as those acting in good faith. This section amounts to a regulatory giveaway, allowing high levels of dangerous air pollution to continue, without any incentive to fix the problem. Further, EPA already has a process in place to ensure states aren't penalized for what they can't control, so there is no need for the broad exemption provided in this section.

Ultimately, H.R. 806 does nothing to address the real constraints that states and the EPA face in their efforts to implement the new ozone standards – resources. In fact, section 5 actually blocks any additional funds from being appropriated to carry out this act. Much of the permitting and implementing of air quality standards is done by the states, with the experts at EPA providing guidance and technical assistance. Without adequate funding and staff, it is difficult for EPA to do this in an efficient manner, and the additional requirements of this bill only make this situation worse. Taking into account the proposed draconian cuts to EPA's FY 2018 budget, section 5 would make it virtually impossible to ensure the American public is protected from dangerous air pollution, or that state and local governments would receive federal assistance to achieve healthy air quality for their residents.

We could and should do far more to support states' efforts to control dangerous air pollution by providing EPA with adequate resources to support state activities rather than by providing regulatory relief to polluters.

H.R. 806: An Irresponsible, Cynical and Unnecessary Attack on the Clean Air Act

In conclusion, H.R. 806 offers no constructive improvements to the CAA. It is designed to erode public health and environmental protections in the guise of regulatory relief. Poor air quality is a significant threat to human health and the environment. Other nations are realizing now what we learned long ago, that unregulated emission of dangerous air pollutants is unsustainable. The CAA has helped us to make dramatic improvements in air quality over the past decades. Our economy has grown during this same period demonstrating that we can have both healthy air and a vibrant economy. H.R. 806 is an unnecessary and dangerous bill that should not become law. For the reasons stated above, we dissent from the views contained in the Committee's report.

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