

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 19, 2014

Dr. H. Christopher Frey
Chair, EPA Clean Air Scientific Advisory Committee
Distinguished University Professor
Department of Civil, Construction, and Environmental Engineering
North Carolina State University
Raleigh, NC 27695-7908

Dear Dr. Frey:

As the Environmental Protection Agency (EPA) considers revisions to the National Ambient Air Quality Standards (NAAQS) for ozone, I write to ensure that the Clean Air Scientific Advisory Committee (CASAC) has been empowered to provide a robust assessment of possible revisions. Recent interactions between EPA and its Science Advisory Board indicate that the Agency may be undercutting independent scientific review. Available evidence suggests that this may be a systemic problem, affecting CASAC as well.

An ozone NAAQS below the existing standards may place large swaths of the United States in non-attainment with the Clean Air Act and result in severe economic sanctions. Lowering the ozone NAAQS to the range being discussed by CASAC could represent the most expensive regulation in history, with EPA's own cost estimates approaching \$100 billion per year. Consequently, it is imperative that CASAC conduct a comprehensive review of both positive and negative effects of lowering the NAAQS—as intended by Congress and required by law.

CASAC was established by the 1977 Clean Air Act Amendments to review and make recommendations to the Administrator of the EPA concerning NAAQS. With this goal in mind, the statute requires that CASAC examine the NAAQS from a variety of perspectives. In addition to providing recommendations on new or existing standards, CASAC is required to advise the Administrator on: 1) areas in which “additional knowledge is required” to assess the adequacy of the NAAQS; 2) “the research efforts necessary to provide the required information”; 3) the “relative contribution to air pollutant concentrations of natural as well as anthropogenic activity”; and 4) “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.”¹

Congress created CASAC to provide the Administrator with a broad view of a NAAQS and the possible effects—both good and bad. This includes an assessment of the possible health benefits associated with lowering an air pollutant to a specific ambient concentration. But it also includes an assessment of the possible socioeconomic and public health implications of actions taken to achieve compliance with a NAAQS. In so doing, Congress sought to ensure decision-makers and the public are provided with a comprehensive assessment of potential adverse consequences in addition to potential benefits.

Unfortunately, a review of publicly available materials indicates that CASAC has not been consistently meeting all of these statutory obligations. This was confirmed by recent testimony received by the Committee on Science, Space, and Technology. In particular:

- Former Assistant Administrator for the Office of Air and Radiation at EPA, Jeff Holmstead, testified that: “It appears that, until recently, most CASAC members were not aware that they have a statutory obligation to advise the head of EPA on certain issues.... As far as I know, CASAC had never fulfilled this requirement as it relates to the ozone standard or any other [NAAQS].”²
- Former Chair of CASAC, Dr. Roger McClellan, stated that “I am not aware that CASAC has ever advised EPA to take account of the role of socioeconomic factors, unemployment or other risk factors influencing the health endpoints under consideration.”³
- Even more alarming, a member of the CASAC panel on fine particulate matter, Dr. Robert Phalen, testified that “CASAC was not allowed to discuss any of the adverse consequences associated with setting new standards” and that “the subcommittee that I was on did not adequately inform the Administrator on the pitfalls, the scientific limitations, and even the adverse health consequences that would flow from a more stringent regulation.”⁴

Given these concerns and in order to assist in understanding of whether Clean Air Act obligations have been complied with, please respond to the following questions by March 25, 2014:

- 1) What information or guidance has EPA provided on CASAC’s obligations under Section 109(d)(2) of the Clean Air Act? Has the Agency indicated that CASAC or

¹ 42 USC 7409 (Section 109(d)(2)(C)(iv) of Public Law 95-95)

² Committee on Science, Space, and Technology, Background Check: Achievability of New Ozone Standards, 113th Cong., 1st sess., 12 June 2013, <https://science.house.gov/hearing/subcommittee-environment-background-check-achievability-new-ozone-standards>.

³ Committee on Science, Space, and Technology, Quality Science for Quality Air, 112th Cong., 1st sess., 4 October 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg70587/html/CHRG-112hrg70587.htm>.

⁴ Ibid.

the CASAC Ozone Review Panel cannot 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 a new ozone NAAQS?

- 2) In establishing CASAC, Congress indicated that "[t]his committee is intended to assist the Administrator, but it is also intended to have complete independence."⁵ What steps has CASAC or the CASAC Ozone Review Panel taken to carry out its duties under Section 109(d)(2) of the Clean Air Act?
- 3) Does CASAC or the CASAC Ozone Review Panel plan to 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 a new ozone NAAQS during the CASAC meeting on March 25-27, 2014 or the public teleconference scheduled for May 28, 2014? Does CASAC or the Ozone Review Panel plan to advise the Administrator of any adverse effects prior to EPA's proposal of a revised ozone standard in 2015? If not, why not?
- 4) If CASAC or the CASAC Ozone Review Panel does not intend to advise the Administrator of any adverse effects of a revised ozone standard as part of the current advisory process, when and how do you plan to advise the Administrator?
- 5) Please identify all specific instances historically in which CASAC or an individual CASAC Review Panel has advised an EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of NAAQS?

Sincerely,



Lamar Smith
Chairman
Committee on Science, Space, and
Technology

cc: Dr. Holly Stallworth, CASAC Designated Federal Officer
Members of the CASAC Ozone Review Panel

⁵ H.R. Rep. No. 95-294 at 182-83 (1977).