



## WESTERN GOVERNORS' ASSOCIATION

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Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mailcode 28221T  
Attention: Docket ID No. OAR-2008-0699  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Ms. Stone,

The Western Governors' Association (WGA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) proposed rule, National Ambient Air Quality (NAAQS) Standards for Ozone (79 FR 75233, December 17, 2014).

### STATEMENT OF INTEREST

WGA represents the Governors of 19 western states and 3 U.S.-flag islands. The association is an instrument of the Governors for bipartisan policy development, information exchange and collective action on issues of critical importance to the western United States.

Western Governors recognize the critical importance of maintaining good air quality in our states and region and appreciate the opportunity to work with EPA to achieve this objective. As stated in WGA Policy Resolution [2014-13: State Clean Air Act Authority and Air Quality Regulation](#), Western Governors believe EPA should engage the states as co-regulators and ensure state agencies and representatives have a robust voice and meaningful role to play in the development of any EPA rule promulgated under the Clean Air Act (CAA). WGA Policy Resolution 2014-13 also stresses that EPA should provide states and local entities with adequate support and technical assistance to help them comply with regulations promulgated under the CAA.

### Background of WGA Position

WGA recognizes EPA's statutory responsibility to research and propose revisions to the National Ambient Air Quality Standard (NAAQS) for ozone to provide requisite protection of public health and welfare with an adequate margin of safety. In carrying out that responsibility, EPA must be mindful of the burdens multiple complex regulations have on other important aspects of our citizens' lives, such as jobs, opportunity, and the

cost of living. Additionally, EPA must take the necessary time to analyze holistically the results of other regulations (Mercury and Air Toxics Standards, the Regional Haze Program, the Cross-State Air Pollution Rule, the Boiler Maximum Achievable Control Technology Requirements, the Reciprocating Internal Combustion Engines MACT requirements, the proposed Clean Power Plan, and the Tier 3 Motor Vehicle Emissions and Fuel Standards), which will affect ozone levels and place a burden on our economies, the energy sector and, most importantly, our citizens.

Regardless of what EPA ultimately decides on the level of the standard, our comments focus on the need for a balanced approach and, if the standard is lowered, timely EPA implementation guidance and sufficient technical and financial support to states. In addition there are a number of implementation issues that are of particular concern to western states including background levels and transported ozone, and policies for addressing exceptional events outside of state control.

In 2008, EPA strengthened the NAAQS for ground-level ozone from 0.084 parts-per-million (ppm) to 0.075 ppm. In some western states, implementation of the 2008 standard is still ongoing. These states have committed substantial time, money and manpower to comply with that standard. Other western states did not have areas out of compliance with the 2008 standard and some western states currently lack sufficient institutional expertise, money and the public support necessary to develop experimental mitigation measures and craft complex State Implementation Plans designed to achieve compliance with a reduced standard.

Western Governors understand EPA is under a court-imposed deadline to retain or revise the 2008 ozone NAAQS by Oct. 1, 2015.<sup>1</sup> EPA has proposed a new standard in the range of .065 - .070 ppm. This proposal is related in part to the recommendation of EPA's Clean Air Scientific Advisory Committee to again lower the ozone NAAQS.

Western states would face distinct challenges should EPA again lower the NAAQS for ground-level ozone. For this reason we submit the following comments.

### **A Holistic Review of the Current Body of Regulation and its Effects**

EPA recognizes the extraordinary environmental, social and economic impacts that result from changes to the NAAQS. It also recognizes that key evidence, on which it must rely, often comes from new research that raises complex new questions about science, policy and law.<sup>2</sup> Western Governors agree with EPA. Adding to the complexity, the direct and indirect costs associated with lowering the NAAQS raises questions about the necessity of lowering the standard in light

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<sup>1</sup> *Sierra Club, et al. v EPA*, Civ. Action No. 13-2809 (N.D. Calif. April 30, 2014).

<sup>2</sup> EPA's Opposition to Plaintiff's Motion for Summary Judgment, P. 8; filed in *Sierra Club, et al v. EPA* Civ. Action 13-2809 (N.D. Calif. April 30, 2014).

of other, perhaps more dire and immediate problems we face as a society, such as poverty, unemployment and staggering debt. With this in mind, Western Governors believe it is critical for EPA to review and consider the entire body of existing and pending regulations, their costs, and their effects on other issues we currently face.

### **Timely Implementation Guidance Needed**

If EPA determines that it will lower the NAAQS, it is inevitable that new areas in the West will be designated non-attainment areas. Some areas may be in non-attainment largely due to transported ozone originating from outside of non-attainment area boundaries. Further, as compared to eastern states, high levels of naturally-occurring pollutants that contribute to ozone are present in many parts of the West.

States will require a much better understanding of the science for causal factors within the control of states, as well as for exceptional events outside the states' control. Clear and timely implementation guidance by EPA – provided to states early in the rulemaking process – is a critical need. WGA notes that the EPA finalized implementation rules for the 2008 standard in February 2015, and that this delay impaired states' abilities to meet these federal requirements. Factors EPA should address in the new implementation guidance include:

- The contributions to ground-level ozone concentrations from anthropogenic sources, such as cars, power plants, and industrial operations.
- Ground-level ozone present due to exceptional events outside state control, including wildfires, which are increasing in western states, and stratospheric ozone intrusions, which are also particularly unique to the West.
- Interstate and international transport of ozone pollution including from Asia, Canada, Mexico and other western states.
- How western states should account for and address background ozone levels in remote areas of the region, including large counties with low population density and no significant emissions sources and large areas of federal lands in which states may lack authority to undertake mitigation efforts.

### **Increased Technical / Financial Support from EPA**

EPA also needs to provide technical and funding support to help states understand ozone background, transport and the effect of exceptional events in the West. A great deal of support has been provided over the past several decades to support eastern ozone analysis. This support has resulted in the study of ozone precursors and causation, of ozone formation, and of

the effects of ozone – all with a level of confidence necessary to develop applicable regulatory programs, including multi-state emissions trading programs.

Western states have not benefitted from the same longstanding support that has benefitted eastern states. Consequently, many western states lack the deep expertise regarding ground-level ozone possessed by eastern states.

The unique circumstances in the West means that scientific work performed in the East to understand ozone precursors and causation (as well as ozone formation and effects) is not likely to be directly applicable to the West.

As discussed in WGA Policy Resolution 2014-13, to mitigate the lack of sufficient scientific analysis of western ozone formation, timely technical and financial support should be provided to western states so they are able to respond to a lower NAAQS for ground-level ozone.

## **SUMMARY**

Western Governors ask EPA to take a balanced, holistic approach, in determining whether or not to adjust the NAAQS. Should EPA seek to establish a stricter NAAQS for ground-level ozone, implementation in the West would require a better understanding of the role contributory factors – including factors unique to the region – play in this process.

If EPA determines that a reduction to the NAAQS for ground-level ozone is justified, it will be vital that western states receive:

- Timely EPA implementation guidance discussing the impact and effect of – and available mitigation measures for – the various contributing factors enumerated above; and
- Increased technical and financial support from EPA so that western state regulators and other state authorities may be more strongly positioned to develop cost-effective compliance plans.

Sincerely,



Brian Sandoval

Governor of Nevada

Chairman, Western Governors' Association