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June 29, 2020

Andrew Wheeler, Administrator
US Environmental Protection Agency
Attention: Docket ID No. EPA-HQ-OAR-2015-0072
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Review of the National Ambient Air Quality Standards for Particulate Matter; 40 CFR Part 50; Docket ID No. EPA-HQ-OAR-2015-0072

Dear Honorable Administrator Wheeler:

The National Tribal Air Association (NTAA) has reviewed your agency's proposed Review of the National Ambient Air Quality Standards for Particulate Matter, 85 Fed. Reg. 24094 (Apr. 30, 2020), the Integrated Science Assessment for Particulate Matter (ISA), EPA/600/R-19/188 (Dec. 2019), and the Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter (Policy Assessment), EPA-452/R-20-002 (Jan. 2020). For multiple reasons, EPA's proposal to retain the current National Ambient Air Quality Standards (NAAQS) for particulate matter is not acceptable to the NTAA. We must protect the health of our residents and the well-being of our Tribal culture and lands. The impacts and threats of airborne particulate matter should be mitigated, including through the adoption of protective NAAQS.

The NTAA is a member-based organization with 151 principle member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of Indian Tribes. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions.

Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is important to understand interactions with the organization do not substitute for government-to-government consultation, which can only be achieved through direct communication between the federal government and Indian Tribes.

Protecting the Health of Native People

As required by law, and as noted in the proposal, the primary standards for particulate matter must be protective of public health with an adequate margin of safety. 85 Fed. Reg. at 24096 (citing 42 U.S.C. § 7409(b)(1)). The NAAQS must be set at levels that not only protect average healthy populations, but also vulnerable and

sensitive sub-populations. *See Am. Lung Ass'n v. Env'tl. Prot. Agency*, 134 F.3d 388, 389 (D.C. Cir. 1998). The current NAAQS for particulate matter, and this proposal to maintain these standards, fail to meet this basic principle of the Clean Air Act and our nation's long-standing approach to protecting public health.

The NAAQS must recognize the risks posed by particulate matter to our most vulnerable citizens including those with heart or lung disease, children and older adults, and non-white populations. In addition to exacerbating asthma, COPD, and a wide-range of respiratory diseases, the ISA concludes that inhalation of particulate matter is likely to cause poor lung development in children. ISA at ES-19. Further, the ISA finds causal or likely to be causal relationships between PM_{2.5} and harmful cardiovascular, nervous system, cancer, and mortality effects. ISA at ES-12 to ES-17.

NTAA agrees with EPA Staff's Policy Assessment that, based on the available scientific evidence in the ISA, the current primary standards for PM_{2.5} are inadequate to protect public health including the health of our citizens. Policy Assessment at 3-106. Tribal communities are comprised of a disproportionate number of citizens at great risk from exposure to particulate matter and the proposal to maintain the primary PM_{2.5} NAAQS fails to protect them.

The linear relationship between inhalation of increasing concentrations of PM_{2.5} and many serious health impacts on Tribal citizens, including children, mandates aggressive air quality standards and minimizing exposures. The National Tribal Air Association recently published an updated white paper titled, "Detailing the Science and Connections Between Air Pollution, Tribes, and Public Health." The white paper reminds us that 2020 is the 50th anniversary of the Clean Air Act. During the past 50 years, much has been learned about how the criteria pollutants like PM have adversely impacted the human body. Study after study has shown the detrimental health effects of pollutants on our bodies in the areas of respiration, reproduction, endocrine systems, and more, meaning that reductions of pollutants are important for public health reasons.¹

More specifically, long-term exposures to concentrations of PM_{2.5} at a concentration of 12 micrograms per cubic meter (µg/m³)—the current annual NAAQS—contribute to the serious diseases identified above and in your ISA. ISA at ES-9 to ES-17. This current and proposed annual standard does not protect the health of either Tribal or non-Tribal humans.

Executive Order 12898 mandates that: "[E]ach federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its program, policies, and activities on minority populations and low-income populations." The EPA failed to look at the environmental justice (EJ) implications of their proposed Review pursuant to Executive Order 12898. No Regulatory Impact Assessment (RIA) was performed for this review,

¹ Wiecks, Joy, Dara Marks-Marino, Jaime Yazzie. "National Tribal Air Association's 2020 Update to: A White Paper Detailing the Connections Between Air Pollution, Tribes, and Public Health." [National Tribal Air Association](#), April 2020



in contrast with NAAQS reviews dating back to the 1990s. A RIA would have highlighted the EJ issues associated with exposure to high levels of PM in minority populations, such as links to diabetes, strokes, heart attacks, and hypertension. All of these diseases already occur in higher proportions in minority communities and are exacerbated by exposure to PM. Many EJ communities experience exposures to higher levels of pollutants due to generations of industrialization in their neighborhoods.

The COVID-19 virus is yet another airborne threat to human health. This disease and associated crises are disproportionately affecting many Tribal citizens, economies, and traditional lifeways. This virus and airborne particulate matter (PM_{2.5}) both attack and impair human respiratory systems. In fact, recent research has found increased mortality from COVID-19 in locations with higher PM_{2.5} exposures.² Thus, the PM_{2.5} NAAQS must consider these cumulative effects, and assure that the resulting NAAQS includes an adequate margin of safety.

Length of Review Time

A longer public comment period would have been beneficial in order to give the public ample time to review the documents associated with this proposal. Executive Order 12866 directs EPA to “afford the public a meaningful opportunity to comment on the rule’s content.” The opportunity to comment must be meaningful under the APA, which “means enough time with enough information to comment.”³

More importantly, pursuant to Executive Order 13175, maximum administrative discretion should be afforded to affected Tribes as their ability to respond to this Review shall be impacted by the COVID-19 pandemic. The nation’s COVID-19 response is still underway in Indian Country, which includes many Tribes severely impacted by this pandemic.

Impaired Visibility

The five federally-mandated Regional Haze work groups that cover the entire country and offshore territories have worked for decades to reduce the effects of regional haze-causing pollutants. The many chemicals that are tracked including particulate matter involve pollutants that have been proven to be harmful to humans. If one can see the pollution, then one is breathing it. Haze also contributes to impaired visibility of the outdoor environment for all Americans, and to sacred vistas for many Tribal communities. Many of these areas, such as the Grand Canyon, are Class I Airsheds that are managed under the Regional Haze Rule to prevent any visual impairment. The proposed annual secondary NAAQS standard of 15 µg/m³ does not respect or protect these important cultural values. This numerical standard must be lowered to reduce the frequency and severity of particulate matter in the atmosphere.

² Wu, Xiao, et al., COVID-19 PM_{2.5} A national study on long-term exposure to air pollution and COVID-19 mortality in the United States, MedRxiv (Apr. 27, 2020), <https://www.medrxiv.org/content/10.1101/2020.04.05.20054502v2> (concluding that small increases in long-term exposure to PM_{2.5} lead to large increases in COVID-19 death rate).

³ Prometheus Radio Project v. FCC, 652 F.3d 431, 450 (3d Cir. 2011) (citing Rural Cellular Ass’n v. FCC, 588 F.3d 1095, 1101 (D.C. Cir. 2009)).

Climate Change

The many impacts of climate change on Tribal lands and people are chronicled in numerous studies and reports. Further, newly discovered climate change consequences continue to emerge. Particulate matter in the atmosphere is a factor in climate change and the effects of these changes. Many Tribal communities are disproportionately affected by both ongoing changes and the threats of climate modifications. The NAAQS for particulate matter should be reconsidered frequently and lowered accordingly as additional relational knowledge with climate change is gained.

Scientific Integrity in the NAAQS Process

Scientific review is essential in developing a protective and legally defensible NAAQS. The following are a few examples⁴ of recent EPA actions that have undermined the agency's ability to meet its statutory obligations:

1. Former Administrator Pruitt issued a Directive that prohibited EPA grant recipients from participating on EPA advisory committees. That Directive forced academic scientists off important committees and panels while increasing the participatory number of industry affiliated scientists. Courts have since found the Directive unlawful, *Physicians for Social Responsibility v. Wheeler*, No. 19-5104 (D.C. Cir. Apr. 21, 2020); *Natural Resources Defense Council v. U.S. Environmental Protection Agency*, No. 19-cv-5174 (S.D.N.Y. Apr. 15, 2020), but it has nevertheless impacted the current particulate matter NAAQS review process.
2. Administrator Wheeler disbanded the twenty-four-member CASAC Particulate Matter Review Panel in October 2018, midway through the review, and forced their work on the seven-member CASAC that lacked the requisite expertise or capacity. The CASAC itself explained expert review panels have assisted NAAQS reviews over the past 30 years and recommended that EPA reappoint the panel or appoint a panel with similar expertise.
3. Compounding the problem outlined above, EPA compressed the drafting, review, and public comment of important documents that underpin the NAAQS. Specifically, the Policy Assessment (PA) and the Integrated Science Assessment (ISA) related to this action were only released as first drafts while the Integrated Review Plan (IRP) (2016) planned for two external review drafts for each of these documents, separated by a Regulatory Assessment. Further, the CASAC identified a number of problems with the draft ISA that the EPA has never resolved.⁵ For instance, "Chapters 5-12 do not provide adequate discussions of biological plausibility, omit several relevant studies, and mischaracterize others."

⁴ For additional examples, see Joe Goffman and Laura Bloomer, *The Legal Consequences of EPA's Disruption of the NAAQS Process*, Harv. L. Sch. Envtl. & Energy Law Program (Sept. 30, 2019), <https://eelp.law.harvard.edu/2019/09/the-legal-consequences-of-epas-disruption-of-the-naaqs-process>.

⁵ Letter to EPA Administrator Wheeler, April 11, 2019, from Dr. Louis Anthony Cox, Jr. Chair, CASAC.



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4. The EPA has failed to present adequate evidence of a causal relationship between long-term PM exposure and a number of negative health impacts, such as cancer, nervous system effects and mortality.⁵
 5. The EPA Administrator has imposed an artificially reduced timeline for this review process. This review was originally slated to be released as a draft proposal in 2020 and finalized in 2021. Instead, the Administrator, without providing any explanation or justification, notified the CASAC that they needed to complete their review 18-24 months earlier than planned.⁶
 6. By cutting the review process short, the EPA is not considering the latest science but only looking at studies that were published before the end of 2017. More recent studies could have helped provide evidence of causality.

EPA must restore scientific integrity to the current PM NAAQS review process as well as ongoing and future NAAQS review processes. Further, EPA must listen to the expert advice provided by members of the disbanded Particulate Matter Review Panel, who continued their work independently and found that, “based on the scientific evidence, that the annual standard should be revised within a range of annual average concentrations of 10 $\mu\text{g}/\text{m}^3$ to 8 $\mu\text{g}/\text{m}^3$,” and “[b]ased on the scientific evidence, the Panel recommends that the level of the PM_{2.5} 24-hour standard be revised to a range between 30 $\mu\text{g}/\text{m}^3$ to 25 $\mu\text{g}/\text{m}^3$.”⁷

NTAA Recommendations:

1. The annual average NAAQS for PM_{2.5} (primary) should be changed to 8 $\mu\text{g}/\text{m}^3$. *See* Policy Assessment at 3-117 to 3-118; Advice from the Independent Particulate Matter Review Panel, at B-29.
2. The 24-hour average NAAQS for PM_{2.5} (primary) should be reevaluated to reflect the cumulative effects of particulate matter and COVID-19 and set between 30 $\mu\text{g}/\text{m}^3$ to 25 $\mu\text{g}/\text{m}^3$. Advice from the Independent Particulate Matter Review Panel, at B-30.
3. The secondary NAAQS for PM_{2.5} should be identical to the primary standards, including the changes in recommendations 1 and 2.
4. The EPA must follow the procedures and methods of review it has used for the last 45 years. This starts with re-instating the CASAC Particulate Matter Review Panel, followed by issuing final versions of the PA and ISA, that include changes recommended by the IPMRP and must include recently completed studies that were left out of this review. EPA must also consider implications of this proposal on EJ communities through a Regulatory Impact Assessment.

⁶ Letter to Dr. Louis Anthony Cox, Jr. Chair, CASAC, July 25, 2019, to Adm. Wheeler.

⁷ Advice from the Independent Particulate Matter Review Panel, at B-29, B-30.

EPA must implement a continuous review process for all particulate matter standards. The process must restore the reliance on scientists with expertise in the field and plan enough time and capacity to perform the necessary work within the five-year statutory review period. Knowledge of these particulate matter and other pollutants' many adverse impacts on human health, climate, and environmental welfare is rapidly increasing and EPA must continuously promulgate new standards to reflect this emerging scientific information.

If you have any questions or require clarification of these recommendations, please contact the NTAA's Project Director, Andy Bessler at 928-532-0526 or Andy.Bessler@nau.edu.

Sincerely,



Wilfred J. Nabahe
Chairman
National Tribal Air Association
Executive Committee

cc: Anne Idsal, Principal Deputy Assistant Administrator, OAR
Pat Childers, EPA OAR
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