ENERGY AND ENVIRONMENT CABINET
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March 16, 2015

Environmental Protection Agency
EPA Docket Center (EPA/DC), Mailcode 28221T
Attention Docket ID No. OAR–2008–0699
1200 Pennsylvania Ave. NW.
Washington, DC 20460

Attention: Docket ID No. EPA–HQ–OAR–2008–0699

RE: *Federal Register* Vol. 79, No. 242, National Ambient Air Quality Standards for Ozone; Proposed Rule

On behalf of the Commonwealth of Kentucky and Governor Steve Beshear, the Energy and Environment Cabinet (Cabinet) respectfully submits the following comments in response to the December 17, 2014, *Federal Register* notice soliciting comments on the "National Ambient Air Quality Standards for Ozone; Proposed Rule." The Administrator proposes to revise the level of the primary Ozone NAAQS to within the range of 0.065 ppm to 0.070 ppm, but has also solicited comments on levels outside that range.[1]

As Governor Beshear stated in his letter to President Obama on November 21, 2014, the Cabinet is concerned that any reduction below the existing standard of 75 ppb established in 2008 will have a significant detrimental impact to the state's economy. If the ozone NAAQS is revised to 60 ppb, all 29 of the ozone ambient air monitors operated in Kentucky will exceed the standard.[2] This is of critical importance because if a lower standard is selected, counties in Kentucky that have never before experienced the ramifications of a nonattainment designation may be forced into that position. Furthermore, as we explain in more detail below, lowering the standard at this time is not necessary to achieve the desired outcomes because other federal programs that will lead to reduced emissions are currently being implemented. These federal measures should be given time to have effect and accomplish the goal of reducing ozone levels before the additional, and possibly premature, burdens of nonattainment designation are imposed.

[1] *"Given alternative views of the currently available evidence and information expressed by some commenters, the EPA is taking comment on both the Administrator's proposed decision to revise the current primary O3 standard* ***and the option of retaining that standard.*** *" (79 FR 75236)*

[2] This determination is based on DAQ review of 2011-2013 final data sets and 2012-2014 preliminary data sets for design values at 29 active monitors in Kentucky.

Kentucky's economy is heavily dependent upon the continued viability of manufacturing in the state. Opportunities for investment and job creation rely heavily on this sector of the economy and will be impacted most significantly by lowering the ozone standard at this time. A review of existing data suggests that even rural counties, with no significant sources of air emissions, will realize these negative economic impacts through the loss of future desperately needed investment opportunities. Section 160 of the Clean Air Act details the Congressional intent to ensure economic growth in a manner consistent with the preservation of existing clean air resources.

In the Proposed Rule, the option of treating a rural county designated nonattainment as a Rural Transport Area is discussed as a form of relief from the full effects of a nonattainment designation. While many Kentucky counties may technically qualify for this "relief," a determination of an area as a Rural Transport Area would not avoid the actual designation as nonattainment as the rule is written. These areas would still be subject to the requirements and economic disincentives of nonattainment new source review (NNSR) permitting, among other requirements.

In accordance with Section 173(c) of the Clean Air Act, NNSR permitting requires emissions "offsets" from existing sources to allow the construction of new emission sources. For the majority of Kentucky counties, the emissions of VOC and NOx from stationary sources are less than 100 tons per year. The statutory and regulatory "offset" requirements will severely restrict economic development in these rural counties since by definition the areas have no existing offset emissions available for any new sources. Rural counties would be disproportionately negatively impacted with little opportunity for economic development.

The Cabinet requests the Administrator to fully and properly evaluate these potential impacts when revising or considering revising the Ozone NAAQS.

Standard is unnecessary to lower O_3 concentrations and to reduce pollutants

In the preamble of the proposal, EPA refers to several federal measures that are either finalized or proposed that will directly or indirectly reduce ozone precursors (79 FR 75370-75372). Beginning in 2017, the Tier 3 Vehicle Standard will require new vehicle emissions standards and lower sulfur content of gasoline. The vehicle emission standards, combined with the reduction of gasoline sulfur content, will significantly reduce motor vehicle emissions, including the two main ozone precursor pollutants, nitrogen oxides (NO_X) and volatile organic compounds (VOC).

Effective September 2011, the EPA and the National Highway Traffic Safety Administration (NHTSA) established greenhouse gas and fuel efficiency standards for new 2014-2018 model year medium and heavy-duty engines and vehicles. In addition to improving fuel efficiency and reducing greenhouse gas emissions, the rule significantly reduces emissions of NO_X from the subject vehicles.

To address emissions from electric generating units (EGUs), EPA is currently administering the Cross State Air Pollution Rule (CSAPR). The CSAPR is designed as a compliance tool for the previous ozone standards; however, the emission reductions from CSAPR will further reduce ozone concentrations. In addition to CSAPR for regulating EGUs, EPA proposed the Clean Power Plan on June 2, 2014. It is estimated that this plan will reduce precursors for both ozone and particulate matter, leading to decreases in the concentrations of those pollutants of approximately 25% in 2025.

Furthermore, although the federal mercury and air toxics standards (MATS) regulate air toxics, the Cabinet projects that the rule will require the shutdown of 4,000 MW of coal-fired EGUs. These shutdowns will significantly reduce emissions of nitrogen oxides by an estimated 16,000 tons per year.

These federal measures are just a few of the programs listed by EPA that will decrease precursor emissions that contribute to the formation of ozone. States and local communities should not be placed under further economical duress when federal control strategies are already in place to lower emission levels below the current standard.

Comments on Ozone NAAQS implementation guidance

The Cabinet is aware that EPA is not required to issue guidance documents as part of the NAAQS review process. However, EPA states that they "intend to produce appropriate revisions to necessary implementation rules" and provide "additional guidance in time frames that would be more useful to states when developing their implementation plans than has been the case with some previous rules and guidance" for the revised ozone standard. (79 FR 75372) It should be noted that on February 13, 2015, during the comment period for this proposed rule, the Administrator signed the final rule establishing requirements for developing SIPs under the **2008** ozone NAAQS. The Administrator should consider the history regarding timeliness of federal action to set forth the requirements for an approvable SIP submission.

In any SIP development rule for the revised 2015 Ozone NAAQS, the expectations of the Administrator regarding reliance on federal rules as control strategies to meet a revised NAAQS should be thoroughly detailed. The reductions in Ozone precursor pollutants to be achieved by the Mercury and Air Toxics Standards (MATS), the Clean Air Interstate Rule (CAIR), Cross-State Air Pollution Rule (CSAPR), Tier 3 Vehicle Standard, and the proposed federal Section 111 (d) rule for GHG emissions will be of great significance. States should be afforded the ability to utilize such federal rules in SIP submittals regardless of when those control strategies were promulgated.

Prior SIP submittals have been rejected when the proposed state control strategy included reliance on existing federal rules that may have originally been implemented for control of a prior NAAQS limit. This approach fails to give credit to existing and enforceable controls and "time stamps" a pollutant level without regard to the actual cumulative effects that can be achieved through reliance on these rules in a SIP. Federal rules, with direct and co-benefit effects, should be treated the same as existing state rules and control strategies in place as part of prior approved SIPs for control strategies to address a revised NAAQS.

States must address the requirements published by EPA to submit an approvable Nonattainment Area SIP.[3] Though the Cabinet has not had time to conduct a thorough review of the Final SIP Requirements Rule published in February, based on our reading of the preamble to the proposed rule it does not address Section 110(a)(2)(d)(i) transport issues for the 2008 Ozone NAAQS. For states to address the transport portion of the SIP, the proposed SIP Requirements Rule for the 2008 Ozone NAAQS is deficient and does not provide a good

[3] *"EPA believes that the overall framework and policy approach of the proposed SIP Requirements Rule for the 2008 O3 NAAQS provides an effective and appropriate template for the general approach states would follow in planning for attainment of a revised primary O3 standard."* (79 FR 75374)

framework or an appropriate template for states to use. Specifically, states that have CAIR "on the books" and choose to use it as an emission reduction measure have not received approved SIPs.

Comments on Ambient Monitoring Requirements

Kentucky does not currently operate any Photochemical Assessment Monitoring Stations (PAMS) sites within the KDAQ monitoring network. However, the rule proposes to require any nonattainment area with an NCORE site to begin collecting PAMS measurements. This does not affect the Cabinet, but the state's sole local air agency, Louisville Metro Air Pollution Control District (LMAPCD), will be required to expand their current NCORE site to include VOC, carbonyl and direct read NO_2 measurements as per existing PAMS guidance.

For areas currently designated as non-attainment based on the 2008 standard, the proposal requires agencies to include the PAMS requirements in the 2016 network plan and begin PAMS monitoring by June 1, 2017. EPA is currently field testing six autoGC systems in four locations. This study is due to run through the fall of 2015. Depending on when the results of this study are released, the June 1, 2017, roll-out could be difficult because the agencies will be required to purchase new equipment, train employees, and develop QAPPS and SOPs. These efforts take time and resources from agency budgets that are already stretched thin.

In regard to the autoGC study, the purpose is to challenge the systems at various concentrations of PAMS target compounds and at differing temperatures and relative humidity. The four locations chosen are Research Triangle Park, Baton Rouge, Los Angeles, and New York. The conditions in these sites may not be representative of all areas across the nation that will be required to begin PAMS monitoring.

Areas designated as non-attainment that do not operate an NCORE site will be required to develop an Enhanced Monitoring Plan. This plan is designed to allow monitoring agencies flexibility in determining and collecting the data they need to understand their O_3 problems. The proposal requires these Enhanced Monitoring Plans to be included in the annual network plans submitted by the agency and further require approval from the EPA Regions. How will EPA determine the acceptability of an Enhanced Monitoring Plan if the states are allowed this flexibility? Will there be consistency across the regions?

If you have any questions or need clarification regarding the Cabinet comments, please contact Mr. Sean Alteri, Director, or Ms. Andrea Smith, Assistant Director, with the Division for Air Quality at (502)564-3999.

Sincerely yours,

Leonard K. Peters
Secretary

Attachment: Governor's letter to President, November 21, 2014

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November 21, 2014

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D. C. 20502-0001

Dear Mr. President:

I am writing concerning the anticipated Environmental Protection Agency's (EPA) proposed rule related to the ground-level ozone standard. I appreciate the great challenge that EPA faces in setting health-based standards. As you are aware, protecting the health of Kentuckians is of critical importance to me. However, I must share with you the concern I have that the new ozone standard could create a hardship for many of our communities.

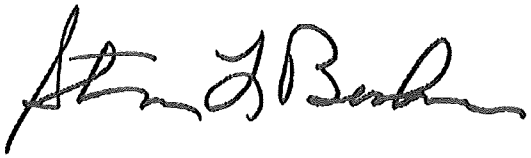
I understand the Clean Air Science Advisory Committee has recommended that the EPA adopt a standard within the range of 60-70 parts per billion (ppb). Any point within that range would be below the existing standard of 75 ppb, and any such reduction would have a significant impact.

The impact of the new standard will vary depending whether or not the standard is reduced from the current 75 ppb and how extreme the reduction is. For example, if 60 ppb is promulgated as the new standard, all 29 of the air monitors that Kentucky operates will exceed the standard. If the highest end of the range is selected, nonattainment will be limited to major metropolitan areas. Currently at 75 ppb only one metropolitan area exceeds the standard. This is of critical importance because if a lower standard is selected, counties in Kentucky that have never before experienced the ramifications of a nonattainment designation may be forced into that position.

I must remind you that other EPA rules either finalized or proposed have been touted for their direct or indirect impact of reducing ozone precursors. The Corporate Average Fuel Economy and Tier 3 standards will affect ozone-forming pollutants from the mobile sector. The Clean Power Plan, which was proposed on June 2 of this year, is expected to reduce 407,000-428,000 tons of nitrogen dioxide in 2030 as reported by the EPA. Thus, there are already extant or proposed ancillary standards that will significantly lower ozone-producing criteria pollutants. Therefore, my advisors recommend the ozone standard should remain unchanged for the time being.

There are many environmental rules driving up costs in Kentucky that will negatively impact the economy. A new ozone standard does not have to contribute to these costs. Kentucky is a manufacturing state. For example, Kentuckians produce many of the vehicles and much of the aluminum and steel manufactured in the U.S., and our manufacturers rely on low-cost electricity to produce these products. I, therefore, ask you to retain the current ozone standard which will continue to protect the health of our citizens without burdening our communities with costly nonattainment compliance programs. The growth of our economy is dependent on it.

Sincerely,



Steven L. Beshear

cc: Gina McCarthy, Administrator
United States Environmental Protection Agency