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Environmental Protection Agency
EPA Docket Center
Mailcode 28221T
Attn: Docket ID No. EPA-HQ-OAR-2008-0699
1200 Pennsylvania Ave. NW.
Washington DC 20460

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<http://www.regulations.gov>

RE: National Ambient Air Quality Standards for Ozone
Docket ID Number: EPA-HQ-OAR-2008-0699

To Whom It May Concern:

As a resident of New York City and a public interest law student at The City University of New York School of Law, I am writing to express my support of the EPA's recent announcement to change air quality standards. Specifically, I would like to address the primary standards that affect the most vulnerable in our communities: children, the elderly, the poor, minorities, and those whose health is otherwise compromised. While the cost of implementing these proposed changes seem to be at the forefront of the debate, we cannot risk the health of these communities because of economic concerns. The U.S. Supreme Court has already made clear that cost is not a relative concern when considering the National Ambient Air Quality Standards (NAAQS),¹ and former President Clinton had already articulated in his Executive Order of February 11, 1994 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 programs, policies, and activities on minority populations and low-income populations in the United States..."²

¹ *Whitman v. American Trucking Associations*, 121 S.Ct. 903, 903 (2001).

² Executive Order 12898 of February 11, 1994.

Section 109 of the Clean Air Act (CAA) requires the EPA to set national ambient air quality standards for six air pollutants, including ground-level ozone. Ground-level ozone has negative environmental and public health effects, such as asthma and decreased lung function.³ The CAA requires that national primary ambient air quality standards be “standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.”⁴ Deference is given to the EPA to determine what an “adequate margin of safety” is to protect the public health.⁵ The issue here is a narrow one—that is, determining what is the adequate standard to protect public health. The U.S. Court of Appeals for the District of Columbia has made clear that all that is required by the statutory scheme is evidence in the record to substantiate the EPA Administrator’s conclusions about the health effects on which the standards are based.⁶

The CAA §109(d)(2)(A) requires the Administrator to appoint “an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.” Thus, to comply with this provision, the EPA relies on the Clean Air Scientific Advisory Committee (CASAC), which provides independent advice to the EPA Administrator on the adequacy of the NAAQS based on a formal review of scientific literature.⁷

The CASAC has recommended a lower level standard of 60 ppb which they say would “certainly offer more public health protection than levels of 70 ppb or 65 ppb and would provide an adequate margin of safety” and that therefore, their policy advise is “to set the level of the

³ “What are the National Ambient Air Quality Standards (NAAQS) for Ozone?” Center for Climate and Energy Solutions. Online. 2015. <http://www.c2es.org/federal/executive/epa/Ozone-NAAQS>.

⁴ 42 U.S.C.A. § 7409(b)(1)

⁵ *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 837 (1984). The U.S. Supreme Court found that while the judiciary is the final authority on issues of statutory construction, it must only reject administrative constructions, which are contrary to clear congressional intent. Here, the EPA has not acted contrary to clear congressional intent. The statute is explicit in saying that discretion is left to the judgment of the Administrator to decide what is the adequate margin of safety required to protect public health on the basis of certain criteria. The independent scientific research the CASAC has provided to the EPA has informed the Administrator’s decision such that the EPA’s proposal is not unreasonable and thus, conforms with the language of the statute. See also *Lead Industries Ass’n, Inc. v. Environmental Protection Agency*, 647 F.2d 1130, 1155 (1980).

⁶ *Lead Industries Ass’n, Inc. v. Environmental Protection Agency*, 647 F.2d 1130, 1155 (1980).

⁷ Berman JD, Fann N, Hollingsworth JW, Pinkerton KE, Rom WN, Szema AM, Breyse PN, White RH, Curriero FC. 2012. “Health Benefits from Large-Scale Ozone Reduction in the United States.” *Environ Health Perspect* 120:1404-1410. Online. <http://dx.doi.org/10.1289/ehp.1104851>.

standard lower than 70 ppb within a range down to 60 ppb...”⁸ The EPA’s proposed rule would tighten the current ozone standard from 75 ppb to a range of 65 to 70 ppb. The EPA is also taking comment on a 60 ppb level standard, indicating that it will also consider setting the standard as low as 60 ppb according to the CASAC’s recommendation. Once approved, these rules would take several years to implement, giving local and state governments time to comply with the new regulations.

As a concerned citizen and law student studying administrative law at one of the foremost public interest law schools in the United States, I believe that the health of our communities cannot be bargained against or put at risk. My prior independent research in environmental issues and my graduate studies in global affairs have helped inform my thinking on this important topic. The wellbeing of our communities and loved ones depend on the policies we implement today. It only takes a moment to look at the damaging effects lax environmental policies have had in communities in countries around the world. In China, for example, only three of the 74 cities monitored by the central government met official minimum standards for air quality as of 2013⁹ and, according to the World Health Association, among the leading causes of death in China are chronic obstructive pulmonary disease and lung cancer.¹⁰

In my immediate community—the Upper East Side of Manhattan—there is currently much resistance against the building of a marine transfer station on East 91st Street. The intention behind the proposal to build the marine transfer station was to share the responsibility of waste management among the five boroughs of New York City. However, this project will also increase air pollution in the area. Like many New Yorkers, I believe strongly in sharing the responsibility of waste management, but not at the cost of jeopardizing human health. That is why it is of utmost importance for government agencies like the EPA to set rigid standards to ensure we maintain a high bar for community health. While the goal is not to eradicate air

⁸ Letter to the EPA Administrator by the CASAC dated June 26, 2014. “CASAC Review of the EPA’s Second Draft Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards.” Online. [http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/\\$File/EPA-CASAC-14-004+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/$File/EPA-CASAC-14-004+unsigned.pdf).

⁹ Wong, E., “Most Chinese Cities Fail Minimum Air Quality Standards, Study Says.” New York Times, March 27, 2014. Online. http://www.nytimes.com/2014/03/28/world/asia/most-chinese-cities-fail-pollution-standard-china-says.html?_r=0.

¹⁰ “China: WHO statistical profile.” World Health Organization. Jan. 2015. Online. <http://www.who.int/gho/countries/chn.pdf?ua=1>.

pollution all together, it is to ensure that the NAAQS are set at a level that is requisite to protect public health with an adequate margin of safety. The adequacy of this margin has been determined by the CASAC and it would not only be prudent for the EPA to follow the CASAC's recommendations, but it is also well within the EPA's administrative function to do so.

One of the most prominent concerns against the EPA's proposal has been regarding the cost of implementation, which was estimated to be between \$19 billion and \$90 billion.¹¹ The Obama Administration had already withdrawn the EPA's proposal in 2011 on this basis.¹² However, there has been a well-documented history of exaggerating the costs of implementation and compliance.¹³ Moreover, many of the arguments against the proposal are coming from various state manufacturing and industrial sectors contending that the proposed regulations are unnecessary and would put needless strain on their local economies, forcing them to increase the cost of electric and natural gas as well as laying off employees to be able to invest in resources to accommodate these changes. However, we cannot allow the manufacturing and industrial sectors to determine what is "necessary" or "unnecessary" to human health—certainly, we can continue with the current NAAQS at the level at which they are currently, but not without adverse risk to human health.

The proposed restrictions would have significant health benefits that would far outweigh the costs of implementation and compliance. The EPA's team of experts estimates that the final rule—if set at a standard of 70 ppb— would provide significant health benefits valued at \$6.4 to \$24 billion annually in 2025 and \$19 to \$38 billion annually in 2025 for a standard of 65 ppb.¹⁴ Moreover, the U.S. Supreme Court has held that the CAA bars the EPA from considering implementation costs in setting NAAQS.¹⁵ While economic development efforts may be slowed and local regulations and oversight might increase, the EPA projects that the majority of U.S.

¹¹ National Association of Counties Policy Brief on New Ozone Proposed Rule Released, 2015. Online. http://www.naco.org/legislation/policies/Documents/Energy.Environment.Land%20Use/2015_Spring_Ozone_Fact-Sheet.pdf.

¹² *Id.*

¹³ Lisa Heinzerling, Costs of Mythic Proportions, 107 Yale 1981 (1998); *see also* EPA Retrospective Cost Benefit Analysis of CAA (http://www.epa.gov/cleanairactbenefits/fed11/fullreport_rev_a.pdf); OTA 1995 Report concluding that pre-regulatory cost estimates systematically under-predicted innovative responses and over-predicted impacts. (<http://www.princeton.edu/~ota/disk1/1995/9531/9531.pdf>).

¹⁴ National Association of Counties Policy Brief on New Ozone Proposed Rule Released, 2015. Online. http://www.naco.org/legislation/policies/Documents/Energy.Environment.Land%20Use/2015_Spring_Ozone_Fact-Sheet.pdf.

¹⁵ *Whitman v. American Trucking Associations*, 121 S.Ct. 903, 903 (2001).

counties would meet the standards by 2025 with the CAA rules and programs currently in place and those that are forthcoming.¹⁶ The proposed regulation has gained a wide range of support by organizations such as the American Lung Association, the Illinois Public Health Association, G.A.S.P. (Greater Birmingham Alliance to Stop Pollution), PSE&G, National Resources Defense Council, NACAA (National Association of Clean Air Agencies), among others. If implemented, the proposal will protect public health across the nation and alleviate the strain put on local hospitals and clinics that treat people with ozone-related health problems.¹⁷

I support the EPA's proposal to restrict the NAAQS to a range of between 60 ppb to 70 ppb—and at the very least, to a range of between 65 ppb to 70 ppb—because of the overwhelming health benefits that would result. We must not make policy decisions on the basis of what is most economically profitable or advantageous to our country and succumb to pressure from organizations that have an interest in profit over the health of our citizenry. Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read 'Marcella Marucci', with a stylized flourish at the end.

Marcella Marucci

J.D. Candidate, Class of 2016

¹⁶ National Association of Counties Policy Brief on New Ozone Proposed Rule Released, 2015. Online. http://www.naco.org/legislation/policies/Documents/Energy,Environment,Land%20Use/2015_Spring_Ozone_Fact-Sheet.pdf.

¹⁷ *Id.*