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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Stephen Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments on Implementation of Revised NAAQS for Ozone

Dear Administrator Johnson:

The Local Government Advisory Committee appreciates having the opportunity to work with you and the U.S. Environmental Protection Agency on a wide range of issues of interest and concern to local governments. More specifically, the committee is particularly grateful for having had the opportunity to participate in two recent intergovernmental listening sessions for the proposed revision of the National Ambient Air Quality Standards (NAAQS) for ozone. In that vein, and pursuant to its charter, the committee would like to offer the following comments on this proposal.

EPA's responsibilities for setting air quality standards that are protective of human health and the environment are clearly spelled out in both statute and case law. Conversely, the nation's states and local governments are left with the challenge of developing plans and implementation strategies which ultimately must lead to the attainment of these Federally-mandated goals. Recognizing our respective roles, it should be noted that the LGAC has been advised that the Clean Air Act requires the agency to disregard comments which specifically address implementation costs associated with various levels of stringency, regardless of the extent to which such standards are demonstrably protective of human health. With this in mind, the LGAC will forego direct comment on the cost-related aspects of this proposal.

The Primary Standard

The LGAC has learned that EPA's Clean Air Scientific Advisory Committee (CASAC) was unanimous in recommending that the standard for ambient ground level ozone be revised from .084 parts per million (ppm) to something more stringent. Based on this recommendation, as

well as other data and information, the agency has proposed tightening the primary standard to a range between .070 and .075 ppm, while at the same time soliciting comment on the advisability of standards both above and below that range. As you well know, several areas in the U.S. are having difficulty achieving compliance with the current standard. A more stringent standard will not only make compliance more difficult for areas currently seeking attainment, it will also move several other areas into non-attainment. With this in mind, we would encourage you to set a new standard that is still within the attainment horizon of areas that continue to struggle with the current requirement.

EPA's Air Policy Framework

Considering the totality of EPA responsibilities relating to air quality, the standard for ground level ozone is only one component of a long and complicated equation of national policies that are designed to protect and improve our nation's air. Ideally, each of the elements of this equation should work together to help provide state and local governments, as well as the regulated community, with the tools they need to achieve the desired outcome. However, certain elements of the equation are not, in our opinion, being implemented in a way likely to achieve the best results. For example, the Clean Air Interstate Rule (CAIR) is viewed as having great potential for addressing a range of air pollution concerns, ozone being among them. Several non-attainment areas have air quality problems that originate in parts of their airshed that are located in another state, and the CAIR may offer real promise toward addressing this. Yet, in terms of its sequence, the CAIR does not come fully into effect until 2015.

As another example, the agency does not seem to have fully pursued effective Maximum Achievable Control Technology (MACT) standards in several areas, including industrial boilers and certain wood manufacturing processes. MACT standards for these and other activities could prove to be invaluable tools for helping states and communities with their air problems.

With a more stringent standard for ozone likely to become effective within the next few years, state and local governments may increasingly find themselves at a disadvantage – if not in outright jeopardy – when it comes to regulatory compliance and, hence, eligibility for Federal highway funds. Recognizing this fact, the LGAC would encourage EPA to carefully consider how existing program components, such as those mentioned here, could be more effectively employed so as to obviate the need for more drastic enforcement measures.

Mobile Sources

The greatest adverse impacts to many communities' air quality result from mobile sources, with effects that are well beyond the reach of reformulated gasoline or inspection and maintenance requirements. States have no (or very little) direct control over the manufacture of gasoline and diesel engines in automobiles and trucks. The same is true of heavy construction equipment and small engines. With this in mind, EPA must

become a more effective leader in identifying ways that it can increase its impact on the manufacturing end of the "ozone equation."

Flexibility is Essential

Since its creation in 1994, the LGAC arguably has been one of the foremost champions of regulatory flexibility in environmental protection. Its members understand that flexibility does not tolerate, much less suggest, any disregard for environmental or public health standards. To the contrary, they know that such regulations are indispensable tools, complete with identifiable targets, for the achievement of national environmental and public health goals. With this in mind, the LGAC encourages EPA to recognize the great diversity of this country and to explore ways to maximize state and local flexibility in meeting the new ozone standard, if you decide to revise it.

For example, there seems to be virtual unanimity that the Los Angeles area will never attain the current standard for ozone, let alone a more stringent one. Having acknowledged this reality, however, EPA has worked closely with the State of California to develop protocols which will ensure continued progress toward the ultimate goal. The LGAC strongly commends EPA for employing this "glide-path" approach in addressing southern California's air problems, and strongly encourages the agency to employ similar approaches to addressing regional air problems in other metropolitan areas such as Atlanta, Chicago, Houston and New York, to name a few.

As another example, Early Action Compacts (EACs) have been recognized as a valuable tool for helping problem areas move closer to attainment. However, there is ongoing debate as to how, or even if, EACs can be employed. In short, "tools" such as EACs should not only be allowed but, rather, encouraged when and wherever appropriate.

As you know, a basic principle of federalism is that states and localities be allowed to experiment with solutions, when appropriate, within a defined framework. With this in mind, the LGAC would ask for EPA's support as creative, innovative solutions to these problems are explored.

Ideas for the Future

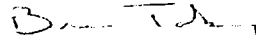
Once you have finalized the ozone rule, you will have fulfilled your statutory obligation for setting the standard. However, the implementation challenges will remain. To assist states and local governments in meeting the range of challenges that occur between rule promulgation and implementation, the LGAC would encourage you to continue your personal involvement and hold one of your listening sessions for the specific purpose of addressing intergovernmental implementation concerns, with a focus on achieving maximum flexibility and addressing the sequencing issue.

The LGAC has come to appreciate your style of leadership, especially with regard to your willingness to listen to concerns up-front. We look forward to working with you, as partners, on this and other important matters.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Roy Prescott', with a long horizontal line extending to the right.

Roy Prescott,
Chairman
LGAC

A handwritten signature in dark ink, appearing to read 'Bruce Tobey', with a long horizontal line extending to the right.

Bruce Tobey
Chairman
LGAC Regulatory Subgroup