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EPA AIR DOCKET

Air and Radiation Docket and Information Center
Docket number A-2001-31
U.S. Environmental Protection Agency
401 M Street, SW
Room 1500 (Mail Code 6102)
Washington, DC 20460

Subject: **8-Hour Ozone NAAQS Implementation**

To Whom it May Concern:

Pinnacle West Capital Corporation (PNW) respectfully submits the following comments on the U.S. Environmental Protection Agency's (EPA's) implementation strategy for the National Ambient Air Quality Standard (NAAQS) for 8-hour ozone.

PNW is a Phoenix-based company with consolidated assets of approximately $7 billion. Through its subsidiaries Arizona Public Service Co., Pinnacle West Energy Corporation, and APS Energy Services, the Company generates, sells and delivers electricity and sells electricity and energy-related products and services to retail and wholesale customers in the western United States. PWN also develops residential, commercial, and industrial real estate projects through its subsidiary SunCor.

PNW's comments can be summarized as follows:

- The Ozone Flex program or the Early Action Compact should be available to all areas that measure attainment of the 1-hour standard regardless of the status of the maintenance plan or redesignation.
- EPA should maximize the use of Subpart 1 for implementation of the 8-hour standard to the extent possible.
- If Subpart 2 is used for implementation of any part of the revised standards, each mandatory requirement should be analyzed carefully for applicability and appropriateness to the 8-hour standard.
- Regardless of the implementation format, the 1-hour standard should be revoked when 8-hour designations are made. Under no circumstances should the two standards be applicable to the same area.

- EPA should use most recent monitoring data for designations and/or design value calculations.
- The impact of the Tier 2 motor vehicle standards should be carefully considered when establishing attainment deadlines.
- Ozone transport must also be considered when establishing attainment dates.
- EPA should reconsider how boundaries are established for the 8-hour standard.
- EPA should use existing planning organizations, such as the Western Regional Air Partnership (WRAP), to address interstate ozone transport, if necessary.

Our comments are detailed in the attached document. If you have any questions regarding this comment, please contact Barbara Lockwood at (602) 250-3361.

Sincerely,

Scott Davis

COMMENTS OF PINNACLE WEST CAPITAL CORPORATION
ON
IMPLEMENTATION OF THE
NATIONAL AMBIENT AIR QUALITY STANDARD
FOR 8-HOUR OZONE

Pinnacle West Capital Corporation hereby submits comments on the implementation of the National Ambient Air Quality Standard for 8-hour ozone.

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Our comments are detailed below:

I. The Ozone Flex program or the Early Action Compact should be available to all areas that measure attainment of the 1-hour standard regardless of the status of the maintenance plan or redesignation.

In October 2000, John Seitz, EPA Director of the Office of Air Quality Planning and Standards, issued a memorandum to Regional Air Division Directors stating that "...EPA will do all it can within the Clean Air Act and consistent with any ruling by the Supreme Court regarding the 8-hour standard to avoid undercutting States that obtain discretionary emission reductions now to reduce 1-hour and 8-hour ozone concentrations." As a result of that commitment, EPA developed the Ozone Flex program that was issued by Director Seitz on June 21, 2001. This program encourages areas to implement air quality improvements prior to dates required by the new 8-hour ozone standard. The program commits that areas that sign such agreements will "...remain designated attainment for the 1-hour ozone standard for a limited period of years, as long as the control measures in the agreement are being implemented." In this program, EPA also states that "...the areas' near-term effort to improve air quality on their own initiative could be recognized in implementing the 8-hour standard."

PNW supports this type of program and applauds EPA for developing it. However, this program appears to be limited to areas that have been designated attainment for the 1-hour standard. In Arizona, we have demonstrated attainment with the 1-hour standard by several years of "clean" data. Our attainment of the 1-hour standard has also been formally

recognized by EPA (see 66 Federal Register 29230). However, due to the technical requirements associated with developing maintenance plans, we have not yet taken the final step to redesignation. We believe redesignation is highly probable in the near future once the technical work is completed. We believe that Arizona should not be prohibited from participating in the Ozone Flex program due to the lack of a maintenance plan and formal redesignation.

In addition, the Early Action Compact proposed in Texas in March 2002, is another model program that should be available to Arizona. This program is consistent with the Ozone Flex program but also proposes the added benefit that areas that enter into the Early Action Compact and meet the necessary milestone are deferred from designation under the 8-hour standard. If attainment is not achieved by December 31, 2007, the area would revert directly to the non-attainment designation and all the accompanying requirements. PNW believes that the deferral of designation is a real incentive and should also be incorporated into the Ozone Flex program.

PNW believes that both the Ozone Flex Program and the Early Action Compact should be available to Arizona and other areas that have achieved the 1-hour standard regardless of the status of the maintenance plan or redesignation.

II. EPA should maximize the use of Subpart 1 for implementation of the 8-hr standard to the extent possible.

In Whitman v. American Trucking Association, the Supreme Court (Court) declared the EPA's Subpart 1 implementation plan unlawful, but they did not mandate that EPA implement the new standard entirely under Subpart 2. In fact the court states that "(i)t may well be....that some provisions of Subpart 2 are ill fitted to implementation of the revised standard." The opinion goes on to discuss specific areas of concern with Subpart 2 including using the old 1-hour averages to establish the new 8-hour averages and the gap in the classification system for areas that attain the 1-hour standard but do not attain the more stringent 8-hour standard.

In particular, the court seemed concerned about attainment deadlines noting that "...if EPA's interpretation were correct (in applying Subpart 1), some areas of the country could be required to meet the new, more stringent ozone standard in at most the same time that Subpart 2 had allowed them to meet the old standard." However, the court also notes that the method of establishing attainment dates under Subpart 2 "...seems to make no sense..." In the end, the court states that "...it is left to the EPA to develop a reasonable interpretation of the nonattainment implementation provisions insofar as the apply to the revised ozone NAAQS."

Although the court made it clear that EPA can not totally ignore the applicable requirements of Subpart 2, PNW believes that EPA has been left with substantial flexibility in implementing the new standard. PNW also believes that it is more beneficial to most areas with less severe ozone levels to be subject to the more flexible Subpart 1 as opposed to the more prescriptive Subpart 2. Consequently, PNW requests that EPA maximize the use of Subpart 1 to the extent possible.

PNW suggests that EPA consider two options for implementing the 8-hour standard. The first option would be to defer implementation of the 8-hour standard until an area has achieved the 1-hour standard. From a technical perspective, it is logical to address the 1-hour "spike" concentrations prior to moving to the more pervasive elevated 8-hour levels. In addition, this approach will satisfy the Court's requirement that EPA not nullify Subpart 2. Once Subpart 2 requirements are fully satisfied for the 1-hour standard, there can be no argument that Subpart 1 should apply.

The second option would be to revoke the 1-hour standard immediately upon designation of the 8-hour nonattainment areas and implement only the 8-hour standard. This approach also leaves room for partial implementation under Subpart 1. With this option, PNW suggests that EPA designate non-attainment areas based on a direct translation from the 1-hour standard to the 8-hour standard. Those areas that are currently attaining the 1-hour standard but not yet attaining the 8-hour standard, and therefore fall below the statutory classifications, would be designated sub-marginal and implemented under Subpart 1. PNW believes this approach is a reasonable reconciliation between Subpart 1 and Subpart 2.

III. If Subpart 2 is used for implementation of any part of the revised standards, each mandatory requirement should be analyzed carefully for applicability and appropriateness to the 8-hr standard.

If Subpart 2 is used to implement any part of the revised standards, EPA is obligated to review each requirement for applicability to the new 8-hour standard. As previously stated, the Court acknowledges that Subpart 2 can not be directly applied to the new standard. EPA must carefully review each requirement associated with Subpart 2 and make a reasoned determination as to it applicability.

However, EPA is not authorized to rewrite the statute by rule. The only determination possible is whether or not a single requirement is applicable to the new 8-hour standard. EPA can not and should not attempt to rewrite the requirements found in Subpart 2 for the new standard.

IV. Regardless of the implementation format, the 1-hour standard should be revoked when 8-hour designations are made. Under no circumstances should the two standards be applicable to the same area.

The 1-hour standard should be revoked when the 8-hour designations are made. Regardless of the implementation format, no area should be subject to two standards at one time. The application of both standards at the same time could easily result in different non-attainment boundary areas and different control measures within the same geographical area. Two SIPs would be required in addition to two maintenance plans when an area achieves attainment. In addition to the unnecessary work, the complexity would generate great confusion with no added benefit.

V. EPA should use most recent monitoring data for designations and/or design value calculations.

EPA has proposed to use various mechanisms for establishing designations, but we believe the only fair and equitable method of establishing designations is to use the three most recent years of data. By using the most recent data, areas will receive full credit for the reductions in ozone concentrations already attained. Any other method would unnecessarily penalize areas that have achieved reductions in recent years.

VI. The impact of the Tier 2 motor vehicle standards should be carefully considered when establishing attainment deadlines.

The Tier 2 motor vehicle standards that were published on February 10, 2000 (see 65 FR 6697) were developed primarily because additional NOx and VOC reductions were required for many areas to meet the 1-hour ozone standard. In the preamble to the final rule, EPA states "...we project that there will be 26 metropolitan areas which will be unable to attain and maintain the NAAQS, in the absence of additional reductions." The reductions mandated by this rule go into effect beginning with the 2004 model year. With regard to VOCs, EPA predicts that "...reductions as a percent of emissions from cars and light trucks will be 7 percent in 2007 and grow to 17 percent in 2020." EPA also predicts the total NOx emission reduction from vehicles and fuels will be over 850,000 tons by 2007.

These reductions are very significant for mobile source-dominated areas like the Phoenix metropolitan area. In addition, data from the Phoenix metropolitan area shows that the 8-hour standard is being exceeded only marginally. If the Tier 2 standards alone can bring Phoenix into attainment, EPA should do everything within its authority to allow this to occur and not impose additional measures.

Consequently, PNW believes that the attainment dates should be developed for all areas carefully considering the impacts of the Tier 2 standards. In addition, if an area can demonstrate the Tier 2 standards alone will bring them into attainment, EPA should provide a mechanism for extensions of attainment deadlines based on this demonstration.

VII. Ozone transport must be considered when establishing attainment dates.

As EPA is aware, the 8-hour standard is subject to fundamentally different influences than the 1-hour standard. One of those differences is long-range transport of ozone. In the Phoenix metropolitan area, background concentrations appear to be higher than expected and may actually be due to the long-range transport of ozone. PNW believes that it is vital for EPA to consider transport when establishing attainment dates. Obviously, areas that are seriously impacted by ozone transport are constrained by the timing of reductions in the areas from which the ozone is originating.

VIII. EPA should reconsider how boundaries are established for the 8-hour standard.

EPA needs to reconsider how boundaries are established for the 8-hour ozone standard. Due to the nature of the standard, violations may be measured in areas that are not contributing and where control strategies would not be effective in reducing concentrations. In addition, EPA should not continue to rely on the metropolitan statistical areas (MSA) or consolidated metropolitan statistical area (CMSA) as default boundaries. As stated previously, the 8-hour standard is fundamentally different from the 1-hour standard and many of the old approaches are no longer logical or valid.

IX. EPA should use existing planning organizations, such as the Western Regional Air Partnership (WRAP), to address interstate ozone transport, if necessary.

EPA should use existing planning organizations, such as the Western Regional Air Partnership (WRAP), to address interstate ozone transport, if necessary. The WRAP has demonstrated its effectiveness and should be allowed to continue to address western region air issues. Establishment of additional organizations would be costly and time consuming.