

Ozone/Clean Air Act: Louisiana Chemical Association Comments on U.S. Environmental Protection Agency Proposal to Retain Current National Ambient Air Quality Standard



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

10/20/2020

The Louisiana Chemical Association (“LCA”) submitted comments on the United States Environmental Protection Agency’s (“EPA”) proposal titled:

Review of the Ozone National Ambient Air Quality Standards, Proposed Action (“Ozone Proposal”)

The Ozone Proposal is found at 85 Fed. Reg. 49830-49917 (August 14, 2020).

The Ozone Proposal would leave in place the ozone National Ambient Air Quality Standards (“NAAQS”) promulgated by the Obama Administration in 2015.

LCA describes itself as a nonprofit Louisiana corporation composed of 63 member companies with over 100 chemical manufacturing plant sites in Louisiana. It states that the Louisiana chemical industry is one of the largest segments of the Louisiana economy employing approximately 29,000 people.

Ozone is an irritant gas. It is not emitted by any particular source and is, therefore, a secondary air pollutant. The air pollutant is formed in the atmosphere in the presence of sunlight and heat from other precursor air pollutants including nitrogen oxide and hydrocarbons. The photochemical reactions can vary because they are initiated by natural conditions such as sunlight and temperature which can, obviously, change. As a result, the rate of formation can differ on an hourly, daily, or seasonal basis.

Ozone was designated many years ago pursuant to the Clean Air Act 108/109 NAAQS review process as a criteria air pollutant. The Clean Air Act requires that EPA periodically review each NAAQS to determine, based on evolving science, etc., if it should be revised.

Once a NAAQS is established, the states are required to develop and implement state implementation plans (“SIPs”) to ensure that its air quality control regions met the NAAQS. As a result, once EPA has established a NAAQS, each state is required to formulate, subject to EPA approval, SIPs designed to achieve each standard. The SIPs will contain the measures and actions the state proposes to undertake to attain each NAAQS.

A change in a NAAQS may require a revision in the SIP. The SIPs and/or revisions must be adopted pursuant to public notice and hearing and include various substantive requirements.

LCA states that its members conduct activities emitting ozone precursors and are subject to the ozone NAAQS. The organization further states that its member companies “believe that regulatory requirements should be based upon sound science and realistic consideration of risks.” Further, it states that such requirements (including NAAQS):

. . . should be developed through a process that includes scientifically sound, objective and unbiased information.

LCA states by way of introduction that it supports EPA’s proposal to retain the primary NAAQS ozone of 0.070 parts per million (fourth-highest daily maximum 8-hour concentration, averaged across three consecutive years). It notes that industry had objected to the NAAQS as too stringent and environmental groups believed it was too lenient. Nevertheless, this 2015 ozone NAAQS was upheld by the District of Columbia Circuit Court of Appeals in *Murray Energy Corp. v. EPA*, 936 F.3d 597(D.C.) (Cir. 2019). The organization argues that no new information in the most recent review provides a rationale for changing that determination.

The remainder of LCA’s comments discuss:

- Background of Ozone Standards
- Background of Ozone NAAQS and Attainment (Including a detailed history)
- Description of the EPA Proposal
- Primary Standard
- Secondary Standard

A copy of the LCA comments can be downloaded [here](#).