

Congress of the United States
Washington, DC 20515

July 28, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy,

On June 26, 2014, the Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC) issued consensus recommendations on the Second Draft Policy Assessment (PA) for the Review of the Ozone National Ambient Air Quality Standards (NAAQS). In its letter, CASAC acknowledges its duty under Section 109(d) of the Clean Air Act (CAA) to "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." In addition, CASAC states it would be "receptive to a request from EPA to review EPA analyses" of any such adverse effects.¹ While a request from EPA is not a prerequisite to CASAC's compliance with the CAA, EPA is apparently the roadblock to CASAC fulfilling its duties. Transparent advice on these adverse effects is essential to the credibility of a new ozone standard and the ability of our states to develop implementation plans to carry out these regulations.

The CASAC letter confirms EPA's ignoring its responsibility to assist CASAC in fulfilling its duty under Section 109(d). EPA's continued disregard for this critical statutory mandate highlights a systemic bias at the Agency. EPA focuses exclusively on mandates to reduce emissions without examining broader impacts to the American people. Congress spoke clearly to the need for this assessment, but EPA has failed to follow through.

Your Deputy Administrator, Bob Perciasepe, testified earlier this month that EPA's independent science advisors are actually "federal employees" governed by EPA.² This interpretation is wholly inconsistent with Congress' clear direction in establishing CASAC:

¹Letter from Dr. H. Christopher Frey, Chair, Clean Air Scientific Advisory Committee, to Gina McCarthy, Administrator, U.S. Env'tl. Prot. Agency (June 26, 2014) *available at* [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).

²<http://science.house.gov/hearing/full-committee-hearing-navigating-clean-water-act-water-wet>.

“This committee is intended to assist the Administrator, but it is also intended to have complete independence. This independence will help provide an outside mechanism for evaluating whether any pollutant may reasonably be anticipated to endanger public health or environment, for evaluating the scientific and medical data which might bear on this question, and for reviewing gaps in the available data and recommending additional needs for research.”³

However, EPA continues to disregard Congressional intent and put CASAC in an impossible position. EPA and CASAC do not get to pick and choose which parts of the CAA they choose to follow. While not required, it appears CASAC is waiting for your signal that it can carry out their clear statutory obligations. You should do so immediately.

As noted in our respective March 19 and June 3 letters to CASAC Chairman Christopher Frey, CASAC’s advice on any adverse impacts, which may result from strategies to attain and maintain a new standard, must be provided at the same time it undertakes its other advisory duties under the CAA.⁴ Given the December 2014 deadline to propose a new standard and EPA’s commitment to issue implementation guidelines simultaneously with a new standard, we expect a response to our inquiries and the specific issues outlined in CASAC’s letter. This response should include a clear action plan as to EPA’s role in this review before proposing a new ozone standard. As noted in our prior correspondence, the CASAC review must allow ample opportunity for the public—including state representatives responsible for developing and implementing state plans—to testify before CASAC on the effect of strategies to attain and maintain the tighter ozone standards under review. Finally, EPA is to provide CASAC with sufficient technical expertise to conduct the analysis.

The considerations outlined in Section 109(d)(2)(C)(iv) focus on the adverse effects which may result from various strategies for attainment and maintenance of the ozone NAAQS. Further, it is not to be restricted to a consideration of only EPA analyses or draft versions of a Regulatory Impact Analyses for a future proposal (as required under Executive Order 13563). The statute specifically identifies several types of adverse effects that are often excluded from the Agency’s cost analyses, including public health, welfare, social, economic, or energy effects.⁵ Each of these criteria should be specifically addressed. This includes the public health and welfare losses from reduced income and employment that could result from a tighter standard that limits economic growth.

Communication from our state environmental agencies underscores the need to follow this statutory requirement as part of the standard-setting process. For example, the Louisiana Department of Environmental Quality wrote, “Section 109(d)(2)(C) of the Clean Air Act, leads to no other conclusion except that CASAC is to advise EPA on the costs of

³ H.R. Rep. No. 95-294 at 182-83 (1977).

⁴ <http://science.house.gov/sites/republicans.science.house.gov/files/images/03-19-2014%20Science%20Committee%20Letter%20to%20Dr.%20Frey.pdf>; Letter from Sen. David Vitter, Ranking Member, S. Comm. on Env’t & Public Works, to Dr. H. Christopher Frey, Chair, CASAC & Ozone Review Panel (June 3, 2014) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=feb1ebf6-34ff-441e-a6dc-e4cd4694c9f8.

⁵ 42 U.S.C Section 7409(d).

implementation...Louisiana agrees that CASAC is required to review all pertinent information and data before advising the Administrator on NAAQS revisions.” Furthermore, Louisiana explained that “having CASAC provide advice to the Administrator in this regard would greatly assist the state in developing implementation plans to continue to meet the current standard, as well as, a new, more stringent standard.”⁶

Similarly, the Texas Commission on Environmental Quality notes that the Clean Air Act “does require CASAC to advise the Administrator on the economic impacts from both the setting and implementation of a new standard.” Texas also described the need for this type of advice in light of the complexity of NAAQS implementation and the potential, unexplored consequences of a more stringent ozone standard, highlighting that “some pollution control strategies targeting one pollutant can actually cause an ancillary increase in other pollutants.”⁷

In order to assist our Committees in fulfilling our oversight obligations, responses to the following outstanding matters are necessary:

- On March 19, 2014, the Committee on Science, Space, and Technology called on you to address the “potential conflicts of interest and a lack of transparency within a panel intended to provide the Agency with independent scientific advice” before moving forward with a new ozone NAAQS. That letter also requested communication between EPA staff, CASAC staff, and the CASAC Ozone Review Panel by March 25, 2014, and that EPA ensure an archived webcast of CASAC Ozone Review panel’s meetings. To date, the Committee has yet to receive a response to this letter or request.⁸
- On the same day, the Committee on Science, Space, and Technology sent a letter to CASAC Chair Christopher Frey asking five detailed questions about how CASAC and CASAC Ozone Review Panel intended to carry out their Section 109(d) obligations. The Committee has received no response to these questions.⁹
- Similarly, on June 3, 2014, Senator Vitter sent the Chair of CASAC a letter outlining a number of key unresolved issues in the ozone review process, including the failure to assess the impact of attainment and maintenance strategies, the use of a threshold model

⁶Letter from Peggy Hatch, Sec., La. Dep’t of Env’tl. Quality, to Sen. David Vitter, Ranking Member, S. Comm. on Env’t & Public Works, (May 27, 2014) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=78659f58-83aa-4c06-9832-86d90efb0b7d. See also Letter from Sens. Vitter, Sessions, Cornyn, Scott and Inhofe to Michael Vince, Air Permits Division, La. Dep’t of Env’tl. Quality, and President, Association of Air Pollution Control Agencies, (May 14, 2014) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=999cb305-9457-4fdd-a918-aebf11658e14

⁷Letter from Bryan Shaw, Chairman, Tx. Commission on Env’tl. Quality, to Sens. Vitter, Cornyn, Inhofe, Sessions, and Scott (May 23, 2014) *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=e3c917db-ccf9-4c22-8d8b-d783458fd5fe.

⁸<http://science.house.gov/sites/republicans.science.house.gov/files/documents/03-19-2014%20Smith%20to%20Administrator%20McCarthy.pdf>.

⁹<http://science.house.gov/sites/republicans.science.house.gov/files/images/03-19-2014%20Science%20Committee%20Letter%20to%20Dr.%20Frey.pdf>.

in examining mortality risks, persistent errors and lack of data quality in EPA estimates, and the need for CASAC to review additional, updated health risk and exposure assessments and policy assessments. Resolution of these issues appears to remain outstanding.¹⁰

It is careless and unacceptable to move forward with this rulemaking in contravention of both Congressional requests and clear statutory language in the CAA. By August 4, 2014, please provide our respective offices with a complete timeline for both the Agency's request for CASAC to carry out its legal obligations under Section 109(d) as well as responses to the questions and information requests contained in the March 19 and June 3 communications with EPA and CASAC.

Sincerely,



Lamar Smith
Chairman
Science, Space, and Technology



David Vitter
Ranking Member
Environment and Public Works

¹⁰ Vitter June 3 Letter, *supra* note 4