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CAN NO ONE STOP THE EPA?

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Is the public health best served with changes that may slow down our fight for clean air over the next 10 years?

—Representative John Dingell (D-MI),
during hearing on air quality standards,
April 10, 1997

INTRODUCTION

On June 25, 1997, President Bill Clinton circumvented a long-established White House regulatory review process by endorsing a controversial Environmental Protection Agency (EPA) proposal that would tighten the National Ambient Air Quality Standards (NAAQS) for the allowable levels of particulate matter (PM) and ozone.²

Since 1981, Presidents have used executive orders to require that rules—especially economically significant rules—are reviewed by the Office of Management and Budget (OMB).³ When President Clinton made his announcement, however, the EPA's final rule

- 1 The author would like to thank Alan Silverleib, Heritage research assistant, and Douglas Hamilton, 1997 Heritage intern from Princeton University, for their assistance with the research for this paper.
- 2 Under the Clean Air Act, the EPA is required to review the NAAQS every five years. Ozone and PM, the size of which is less than or equal to 10 micrometers, are two of the six criteria pollutants (carbon monoxide, lead, nitrogen dioxide, and sulfur dioxide are the others) with primary standards. For ozone, the recommended final standard will be updated from 0.12 parts per million of ozone measured over one hour to a standard of 0.08 parts per million measured over eight hours, with four exceedances of the standard allowed before an area is deemed to be out of compliance. For particulate matter, this is the first time the government has set a standard for fine particle pollution (those measuring 2.5 micrometers in diameter and smaller, also known as PM_{2.5}). The new standard will be set at an annual limit of 15 micrograms per cubic meter, with a 24-hour limit of 65 micrograms per cubic meter.

had not been submitted to the OMB as required by the President's own Executive Order 12866 on Regulatory Planning and Review. By ignoring his own requirement, the President made clear his philosophy of the "primacy of federal agencies in the regulatory decisionmaking process."⁴ In the case of these new EPA standards for PM and ozone, this means that the actions and policies of unelected federal regulators, even when highly questionable, can go unchallenged and unchecked.

Perhaps more disturbing is the fact that the Administration would allow the power of the EPA to grow even more dramatically. EPA Administrator Carol Browner currently oversees a staff of more than 17,000. The Clinton Administration's FY 1998 budget request to fund the EPA at \$7.6 billion represents an \$800 million increase over the previous year's appropriations. When President Clinton promised to end the "era of big government," evidently he did not intend for his Administration's federal environmental policy to be part of the deal.

As this regulatory leviathan continues to grow, states and localities face increasingly onerous constraints on their constitutional freedom to determine for themselves what is best for their communities: "the EPA begins to run a city's economy, with help from lawyers suing on behalf of the Sierra Club and other elites."⁵

The White House apparently is willing to give the green light to ideological environmental groups and Carol Browner's EPA even when their activities might *increase* pollution. The EPA has conceded to Representative John Dingell that changing direction in the middle of implementation of the 1990 Clean Air Act amendments may delay or impede efforts now under way to assure reasonable further progress in attaining air quality standards.

The debate over the air quality rules is coming to a head because the American Lung Association, which received \$5 million from the EPA between 1990 and 1995, sued to force the EPA to make a decision about ozone and particulate matter.⁶ All the EPA had to do was review the standards, not necessarily tighten them; it could have decided that the existing standards were sufficient to protect the public health. But as one observer noted, "If you think EPA is upset with the ALA suing them, think again.... Truth be known, the EPA wants to be sued, because every time they are sued, it expands the reach of the Clean Air Act."⁷

The American people, through their elected federal and local officials, asked the President to bring an end to a clear case of agency abuse of discretionary power; but the President's own philosophy of deference to the unelected appointees and 130,000 regulators in 55 federal agencies left him with little choice. Therefore, in deference to 17,000 EPA bureaucrats intent on expanding their budget and authority well into the 21st century, as well as a few well-financed environmental special interests, the President has ignored the

3 On February 17, 1981, President Ronald Reagan issued Executive Order 12291 on Federal Regulation. This order tasked the White House Office of Management and Budget's Office of Information and Regulatory Affairs with responsibility for the review of rules. The Reagan order was rescinded and replaced by Executive Order 12866 on Regulatory Planning and Review, issued by President Clinton on September 30, 1993.

4 Executive Order 12866, preface.

5 Editorial, "Gore's Brownout," *The Wall Street Journal*, June 25, 1997, p. A22.

6 John Merline, "EPA Boosters on the Government Tab," *Investor's Business Daily*, January 28, 1997, p. A1.

7 Scott Segal, attorney with Bracewell & Patterson and professor of environmental management at the University of Maryland, quoted in Merline, "EPA Boosters on the Government Tab."

concerns of an EPA science advisory committee, millions of Americans, state and local officials, and Congress.

The ball is now in Congress's court. Congress can and should act over the next few weeks to prevent the new EPA standards from taking effect. There are five good reasons for doing so:

- The EPA's own scientific advisory committee raised serious concerns about the underlying scientific evidence available to support the standards;
- The White House and several federal agencies have expressed serious economic and scientific concerns;
- States and local communities and businesses are concerned about the significant costs of another unfunded federal mandate;
- More than 25,000 Americans took the time and resources to comment on the proposal; and
- Congress is concerned both that the EPA's action will halt progress already being made through the 1990 Clean Air Act amendments and that this action represents a refusal to comply with numerous "good government" laws recently enacted to hold federal agencies accountable for their actions and to maximize public participation in policy decisions.

Even the EPA acknowledges that air quality continues to improve and will keep improving as a larger number of communities meet the current standards. In addition, more research is needed to understand the effects of PM on human health. Congress should put responsible public policy above short-term political considerations and halt these new standards until further evidence suggests they are necessary.

THE EPA VERSUS THE CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE

I don't think the standards that have been chosen reflect the advice the CASAC has given.

—Dr. George Wolff,
chairman,

Clean Air Scientific Advisory Committee⁸

Dr. George Wolff, an atmospheric scientist who led a review of the data on particulate matter and ozone by the Clean Air Scientific Advisory Committee (CASAC), has observed that the EPA's apparent decision to ignore the committee's suggestion is almost unprecedented.⁹ The CASAC, a committee established under the Clean Air Act to advise the EPA, suggested the EPA *not* change the ozone standard;¹⁰ only 2 of the CASAC's 21

8 Editorial, "Whiter than White," *The Wall Street Journal*, February 14, 1997, p. A14.

9 *Ibid.*

10 "Most panel members who expressed an opinion on the level of the standard preferred one equivalent to the current standard." See *Comments on the Proposed National Ambient Air Quality Standards for Ozone and Particulate Matter*, submitted to the EPA by the Regulatory Analysis Program, Center for the Study of Public Choice, George Mason University, March 12, 1997, pp. ii-6.

members voted for a PM standard as low as the one proposed by the EPA.¹¹

Regarding the ozone standard, the CASAC concluded that “there is no ‘bright line’ which distinguishes any of the proposed standards (either the level or number of exceedances) as being significantly more protective of public health.”¹² Although ozone has been demonstrated in clinical studies to cause undesirable physical reactions at levels that occasionally occur in ambient air, these effects are temporary and largely unnoticeable unless an individual is engaged in moderate exercise.¹³ More important, not all health effects from ozone can be eliminated, because physical responses can be demonstrated to occur at “background levels” (levels produced by natural processes). The level proposed by the EPA (0.08 parts per million of ozone) is very close to natural background levels.¹⁴ In its 1987 review of the ozone standard, the CASAC suggested that mild responses to ozone not be considered an “adverse” respiratory health effect.¹⁵ Since that time, the body of scientific evidence on short-term exposure suggests that the current level of exposure (0.12 parts per million of ozone) produces few or no discernible symptoms for the vast majority of people. Clinical studies of long-term exposure suggest that the effects are similar to those found in short-term studies.¹⁶

Although it appeared obvious that there was no need for a new ozone standard, there was less certainty about the PM standard. Many members of the CASAC were uncertain whether PM exposure induces significant negative health effects, and there was a lack of consensus on the level of the standard (see Table 1). As Dr. Wolff explained, “[o]ur understanding of the health effects of PM is far from complete.... [T]he deadlines did not allow adequate time to analyze, integrate, interpret, and debate the available data on this very complex issue.... [T]he previous NAAQS review took eight years to complete.”¹⁷

Because of ambiguities in the available data, members of the CASAC also could not distinguish between the adverse health effects of PM_{2.5} and the current PM₁₀ standard. One of the problems is a lack of data on actual human exposure to PM. In recent testimony before the Senate Environment and Public Works Committee, Administrator Browner revealed that monitors are measuring the human exposure levels to PM_{2.5} in only 51 cities, whereas there are nearly 1,000 ozone monitors and over 1,700 PM₁₀ monitors.¹⁸

This problem is compounded by the fact that, based on available information, no clear proof exists that human bodies react negatively to PM_{2.5} particles. Former CASAC chairman Wolff concluded that “there does not appear to be any compelling reason to set a restrictive PM_{2.5} NAAQS at this time.”¹⁹

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- 11 Thomas D. Hopkins, “Can New Air Standards for Fine Particle Live Up to EPA Hopes?” Center for the Study of American Business *Policy Brief* No. 180, April 1997, p. 3.
 - 12 Testimony of Dr. George T. Wolff before the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety of the Committee on Environment and Public Works, U.S. Senate, February 5, 1997.
 - 13 Kenneth Chilton and Stephen Huebner, “EPA’s Case for New Ozone and Particulate Standards: Would Americans Get Their Money’s Worth?” Center for the Study of American Business *Policy Study* No. 139, June 1997, p. 4.
 - 14 Kenneth Chilton and Stephen Huebner, “Has the Battle Against Urban Smog Become ‘Mission Impossible’?” Center for the Study of American Business *Policy Study* No.136, November 1996, p. 2.
 - 15 *Ibid.*, p. 5.
 - 16 *Ibid.*, p. 7.
 - 17 Letter from Dr. George Wolff, chairman, Clean Air Scientific Advisory Committee, to the Honorable Carol Browner, administrator, EPA, June 13, 1996, p. 2.
 - 18 Testimony of EPA Administrator Carol Browner before the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety of the Committee on Environment and Public Works, U.S. Senate, February 12, 1997.

Table 1

Summary of CASAC Panel Members' Recommendations for an Annual PM_{2.5} Standard

| Name | Discipline | PM _{2.5} Annual Standard |
|----------------------|--|-----------------------------------|
| Ayres | M.D. | yes ^b |
| Hopke | Atmospheric Scientist | 20-30 |
| Jacobson | Plant Biologist | yes |
| Koutrakis | Atmospheric Scientist | yes ^{b, c, d} |
| Larntz | Statistician | 25-30 ^e |
| Legge | Plant Biologist | no |
| Lippmann | Health Expert | 15-20 |
| Mauderly | Toxicologist | 20 |
| McClellan | Toxicologist | no ^f |
| Menzel | Toxicologist | no |
| Middleton | Atmospheric Scientist | yes ^{b, c} |
| Pierson | Atmospheric Scientist | yes ^{b, g} |
| Price | Atmospheric Scientist/ State Official | yes ^h |
| Shy | Epidemiologist | 15-20 |
| Samet ^a | Epidemiologist | no |
| Seigneur | Atmospheric Scientist | no |
| Speizer ^a | Epidemiologist | no |
| Stolwijk | Epidemiologist | 25-30 ^e |
| Utell | M.D. | no |
| White | Atmospheric Scientist | 20 |
| Wolff | Atmospheric Scientist | no |
| EPA Staff | | 12.5-20 |

Notes: All units are in micrograms per cubic meter.

a Not present at meeting; recommendations based on written comments.

b Declined to select a value or range.

c Concerned upper range is too low based on national PM_{2.5} / PM₁₀ ratio.

d Leans toward high end of staff-recommended range.

e Desires equivalent stringency as present PM₁₀ standards.

f If EPA decides a PM NAAQS is required, the 24-hour and annual standards should be 75 and 25 µg/m³, respectively, with a robust form.

g Yes, but decision not based on epidemiological studies.

h Low end of EPA's proposed range is inappropriate; desires levels selected to include areas for which there is broad public and technical agreement that they have PM_{2.5} pollution problems.

Source: CASAC Closure Letter on the Staff Paper for Particulate Matter, June 13, 1996, docketed as EPA-SAB-CASAC-LTR-96-008, Table I.

- 19 George T. Wolff, chairman, Clean Air Scientific Advisory Committee, and principal scientist, General Motors Corporation, "The Scientific Basis for a Particulate Matter Standard," *Environmental Management*, October 1996, as cited in *Manufacturers Alliance Legal Analysis & Regulations*, "Environment," January 31, 1997, p. 6.

THE EPA VERSUS THE WHITE HOUSE

Who does she think she is, Joan of Arc?

—Kathleen McGinty,
chair of the White House Council
on Environmental Quality,
quoted in *The Wall Street Journal*,
June 20, 1997,
referring to EPA Administrator
Carol Browner

The President has chosen to support the EPA despite serious scientific, economic, and legal concerns, both inside the White House and in other federal agencies. For example:²⁰

- **The EPA's analysis is flawed.** The OMB said the EPA rules "did not fully conform" to the Clinton Administration's own guidelines for issuing regulations (guidelines that include cost-benefit analysis and risk assessment principles); it also described the standards as not attainable in all areas using current technology and said they were based on a flawed analysis because of a "lack of adequate research on fine particles."²¹
- **The EPA's standards lack scientific justification.** According to the President's Office of Science and Technology Policy,

The database for actual levels of PM_{2.5} is also very poor, and only a handful of studies have actually studied PM_{2.5}, per se. And current data do not support clear associations of PM effects with either fine particles (PM_{2.5}), inhalable particles (PM₁₀ or PM₁₅), or sulfate, so that causality for the observed mortality and morbidity effects can be established.²²
- **The EPA's standards may put lives at risk.** Department of Transportation (DOT) Assistant Secretary for Transportation Policy Frank E. Kruesi warned that the proposed standards could undermine the quality of the country's transportation infrastructure, placing more lives at risk.²³
- **The EPA vastly underestimates the costs, which will be high.** Alicia Munnell of the President's Council of Economic Advisers (CEA) stated that the "costs of fully complying just with the EPA's new ozone standard could reach \$60 billion a year.... [T]he incremental health-risk reduction for more stringent standards is small, while costs are high."²⁴

20 For a more extensive selection of agency comments, see Dana Joel, "Surprising Critics of the New Clean Air Standards: The U.S. Government," Citizens for a Sound Economy *Issue Analysis* No. 47, April 9, 1997.

21 Internal executive branch memorandum from John Beale, deputy director, Office of Air and Radiation, EPA, to Art Fraas, branch chief, Natural Resources Division, OMB, undated.

22 Draft memorandum to Sally Katzen, administrator of OIRA, OMB, from Rosina Bierbaum, acting associate director of the environment, Office of Science and Technology Policy, as cited in Dana Joel, "Surprising Critics of the New Clean Air Standards," p. 3.

23 Alec Zaccaroli, "Byrd Seeks Independent Assessments of Ozone, PM Proposals from Agencies," *Bureau of National Affairs Daily Report for Executives* No. 58, March 26, 1997, p. A26.

In addition, a DOT analysis of the impact of the EPA's proposed standards on the states warns that areas failing to comply will face "economically strangling restrictions to daily operations." If the current plan takes effect, for example, California's "economic recovery...could grind to a halt as prospective new industries discover a host of additional air quality obstacles."²⁵

- **The EPA's standards will have a significant impact on small businesses.** Administrator Browner certified that the standards would not have any significant impact on small businesses. According to the Small Business Administration, however, they are "one of the most expensive regulations, faced by small business in 10 or more years."²⁶

A Different Interagency Review Process for the EPA?

In April 1997, Sally Katzen, administrator of the Office of Information and Regulatory Affairs (OIRA), testified that an "alternative interagency review process" had been established to handle the PM and ozone standards.²⁷ This process was different from the role OIRA usually plays in reviewing regulations under President Clinton's Executive Order 12866.²⁸ An electronic (e-mail) message sent within the Department of the Treasury alluded to this possibility by stating that the EPA held only "one briefing—albeit a long one—for interested agencies" and that the OMB would give the proposals only a " cursory review" before being made public.²⁹

In a February 26, 1997, letter to OMB Director Franklin Raines, House Commerce Committee Chairman Thomas Bliley (R-VA) claimed that the EPA had been less than forthcoming in responding to his requests for information about the interagency and OMB review process. Attached to this letter was a copy of a memorandum written by John Beale, an EPA deputy director within the Office of Air and Radiation, and sent to the OMB manager in charge of reviewing the EPA rule. According to this memo, "As written, the OMB's response could be very damaging to the PM and Ozone NAAQS effort. Thus we strongly recommend that the OMB employ language much more similar to language previously submitted by the EPA to the OMB in their response to Chairman Bliley."³⁰

Thus, considering the OMB's position on the proposed rules, it is no surprise that the White House did not use the normal OMB review process. The EPA claims that the proposed standards have been subjected to an "intensive interagency review process." But this process could not have been carried out under the usual White House regulatory

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- 24 Draft CEA comments on ozone standards to Office of Information and Regulatory Affairs, OMB, from Alicia Munnell, member, Council of Economic Advisers, December 13, 1996, as cited in Dana Joel, "Surprising Critics of the New Clean Air Standards," p. 3.
 - 25 James Gerstenzang, "Clean-Air Plan Fuels Backstage U.S. Fight," *Los Angeles Times*, April 20, 1997, p. A1.
 - 26 *Ibid.* See also Michael Fumento, "Polluted Science," *Reason*, August-September 1997, p. 32.
 - 27 Letter from Representative David M. McIntosh (R-IN), chairman, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight, U.S. House of Representatives, to Sally Katzen, administrator of OIRA, OMB, April 28, 1997.
 - 28 Under President Clinton's Executive Order 12866 on Regulatory Planning and Review, all economically significant rules (in general, rules with annual costs in excess of \$100 million) are submitted to the OMB for review before they can be published in the *Federal Register*.
 - 29 Gerstenzang, "Clean-Air Plan Fuels Backstage U.S. Fight."
 - 30 Letter from Representative Thomas J. Bliley (R-VA), chairman, Committee on Commerce, U.S. House of Representatives, to Franklin D. Raines, director, OMB, February 26, 1997.

review procedures observed by OIRA. The proposed rule went to the OMB for review on November 4, 1996, and the proposal was published on November 27, 1996, two days before the court-ordered deadline of November 29 imposed as a result of the American Lung Association lawsuit. When one considers that between 1981 and 1991, the OMB's average review time for EPA major rules was 72 days,³¹ it seems most improbable that one of the most expensive EPA regulations in recent memory could have the subject of a thorough OMB review, with this review coordinated with the reviews and comments of other executive branch agencies.

The slightly revised final rule announced on June 25 by President Clinton evidently is going to OIRA for an approximately one-week review. Such a review is meaningless, considering the President's announced decision to back the EPA's proposal.

THE EPA VERSUS THE AMERICAN PEOPLE

Are we going to tell the American people the truth or are we not going to tell the truth? Now, that is the process we are involved in, and I don't think any of us have been far enough into it to reach a conclusion.

—EPA Administrator Carol Browner,
testifying before the Senate Committee
on Environment and Public Works,
February 12, 1997

Air Quality

Administrator Browner contends that the new PM and ozone standards will help provide the "American public with more accurate information about the quality of the air they breathe."³² The truth is that air quality in the United States has improved over the past ten years, but the public would never know it by listening to Browner. Many Americans believe that air pollution increased over the past ten years. According to the EPA's own air trend report, however, the six major air pollutants (carbon monoxide, lead, nitrogen oxide, ground-level ozone, particulate matter, and sulfur dioxide) have decreased nationally by almost 30 percent despite growth in the population and the economy (see Table 2).

Table 2

The EPA's Ten-Year Air Quality and Emissions Trends, 1986-1995

| | Air Quality Change | Emissions Change |
|--------------------|--------------------|------------------|
| Carbon Monoxide | -37% | -16% |
| Lead | -78% | -32% |
| Nitrogen Dioxide | -14% | -3% (NOx) |
| Ozone | -6% | -9% (VOC) |
| PM ₁₀ * | -22% | -17% |
| Sulfur Dioxide | -37% | -18% |

Note: * PM₁₀ changes are based on 1988-1995 data.
Source: EPA, *National Air Quality and Emissions Trend Report*, 1995.

31 Executive Office of the President, *Regulatory Program of the United States Government, April 1, 1992–March 31, 1993* (Washington, D.C.: U.S. Government Printing Office, n.d.), p. 619.

32 Browner testimony, February 12, 1997.

Most Americans expect the air to get dirtier over the next ten years, and it is not at all clear that the EPA's actions will do much to change that expectation. According to the Foundation for Clean Air Progress, air quality will continue to improve up to the year 2015 and beyond without these new standards. This is because the 1990 amendments to the Clean Air Act have yet to be fully implemented; as new controls are put in place, reductions in emissions—including emissions associated with fine PM—will continue. It is expected that, by 2015, pollution levels will be 50 percent of the 1970 levels.³³

How the New Rules Affect Real People

The EPA claims that the new standards will produce major health improvements for millions of Americans. The reality is that they will impose real costs on Americans while their benefits remain at best uncertain. Administrator Browner continues to maintain that the EPA need not consider costs in making its decision; it must decide only whether standards are needed, based on a determination that they will protect public health.

Costs and Benefits of the Ozone Standard. The EPA's own estimates suggest that the new ozone standard's costs exceed their benefits. To estimate the benefits, the EPA projected the reduction in adverse health effects that would result from improved air quality under the new standard. Most notably, the Clinton Administration and its supporters claim a more restrictive standard will improve the health of children with asthma. The EPA relies heavily on a single 1992 study³⁴ to make the connection between hospital admission and ozone concentrations, extrapolating from the study to estimate the reduction of asthmatic hospital admissions in New York City that would result from attaining the proposed NAAQS compared to reaching the current standard. According to the EPA's recent risk assessment, the proposed standard would prevent about 30 asthmatic admissions in New York City during the ozone season. This represents only *one-tenth of 1 percent* of New York City's 28,000 asthmatic admissions each year.³⁵

While claiming that the new ozone standard will help asthmatic children might be very appealing, both politically and emotionally, several reports show that problems other than outdoor air also cause asthma:

- *Chemically Speaking*: "The leading cause of asthma by far was...proteins in the droppings and carcasses of the German cockroach."³⁶
- *New England Journal of Medicine*: "Our findings provide evidence that exposure to cockroach allergen has an important role in causing morbidity due to asthma among inner city children"³⁷
- American Thoracic Society: "Poverty may be the number one risk factor for asthma.... As with many of the health problems facing society today, education

33 Foundation for Clean Air Progress, "U.S. Air Quality: Perceptions and Facts," undated fact sheet.

34 George D. Thurston, Kazuhiko Ito, Patrick Kinney, and Morton Lippmann, "A Multi-Year Study of Air Pollution and Respiratory Hospital Admissions in Three New York State Metropolitan Areas: Results for 1988 and 1989 Summers," *Journal of Exposure Analysis and Environmental Epidemiology*, Vol. 2, No. 4 (1992), pp. 429-450.

35 Chilton and Huebner, "EPA's Case for New Ozone and Particulate Standards," p. 7.

36 *Chemically Speaking*, July 1996, cited by Dr. Susan E. Dudley in *Comments on the Proposed National Ambient Air Quality Standards for Ozone and Particulate Matter*, pp. ii-10.

37 David Rosenstreich, M.D., et al., "The Role of Cockroach Allergy and Exposure to Cockroach Allergen in Causing Morbidity Among Inner City Children With Asthma," *New England Journal of Medicine*, Vol. 336, No. 19 (May 8, 1997), pp. 1356-1384.

and prevention are the keys to controlling asthma in the inner city.”³⁸

These observations suggest that factors other than pollution are responsible for triggering asthma. The EPA estimates that pollution has decreased 29 percent on average since 1970, but the incidence of asthma has *increased* appreciably—from approximately 29.5 Americans per 1,000 in 1970 to 56 per 1,000 in 1994; deaths from asthma increased 40 percent from 1982 through 1991; and among children younger than 15 years of age, hospitalizations caused by asthma rose by 56 percent in the 1980s.³⁹

Not surprisingly, after reviewing the scientific information on ozone, the CASAC concluded that the “weight of the health effects evidence indicates that there is no threshold concentration for the onset of biological responses due to exposure to ozone above background levels.”⁴⁰ In other words, the proposed standards are unlikely to provide any real health benefits.

In addition, it is possible that the new standard might have negative health effects that the EPA has not considered. A recent study of the EPA analysis by the Regulatory Analysis Program at George Mason University,⁴¹ using data provided by the U.S. Department of Energy (DOE), suggests that the EPA’s proposal to reduce ground-level ozone threatens to undermine its responsibility to protect public health and welfare because it will:

- **Cause an increased rate of penetration of ultraviolet B (UV-B) rays.** The negative health effects of increased UV-B rays could exceed by over \$300 million the annual positive health effects attributed to ozone reductions by the EPA.
- **Cause an increase in malignant and non-melanoma skin cancers and cataracts, as well as other health risks from UV-B.** The DOE predicts the proposed ozone standards could result in 25 to 50 new melanoma-caused fatalities annually, in addition to 130 to 260 new incidents of cutaneous melanoma, 2,000 to 11,000 new cases of non-melanoma skin cancer, and 13,000 to 28,000 new incidents of cataracts.
- **Create a poorer general population.** As goods and services become more expensive because of the increased regulatory burden, disposable family income will decline. Studies linking income and mortality find that every \$9 million to \$12 million drop in income induces one statistical death. Based on the EPA’s own predictions, *partial* implementation of the new standard could cause an increase in mortality of 50 to 700 deaths annually; using the George Mason estimates of the cost of *full* implementation, it can be estimated that this rule could result in over 7,000 deaths annually.

The EPA refuses to factor in these negative health effects in determining the net benefits of its new standard. In the past, the EPA has predicted high incidences of skin cancer and

38 American Thoracic Society, 1996 Conference Articles, cited in *Comments on the Proposed National Ambient Air Quality Standards for Ozone and Particulate Matter*, pp. iii–10.

39 National Heart, Lung, and Blood Institute Data Fact Sheet, “Asthma Statistics,” p. 3, figure 4.

40 Clean Air Scientific Advisory Committee closure letter to EPA Administrator Carol Browner on the primary portion of the OAQPS Staff Paper for Ozone, November 31, 1995, as cited in Chilton and Huebner, “EPA’s Case for New Ozone and Particulate Standards,” p. 4.

41 See *Comments on the Proposed National Ambient Air Quality Standards for Ozone and Particulate Matter*, Appendix B, section 3.

cataracts from decreased ozone protection in order to generate support for its decision to accelerate the phasing out of stratospheric ozone-depleting chemicals. Now, when these health concerns become an impediment, they are overlooked.

Even though this standard might do more harm than good, the costs of implementing it are real. The EPA's economic impact analysis presents only the costs of *partial* attainment of the ozone standard levels. The EPA counts only the costs of implementing conventional pollution control measures, but an area that fails to meet the standard and has exhausted conventional controls will have to find other ways to reduce its ozone levels. The EPA estimates that partial attainment will cost between \$600 million and \$2.5 billion (see Table 3); the costs of full attainment obviously would be considerably higher. For example, the CEA estimates that the cost of full attainment could run as high as \$60 billion annually, and the Reason Public Policy Institute projects similar costs.⁴² A report from the Regulatory Analysis Program estimates an annual cost of \$83 billion or more for full compliance with the proposed ozone standard.⁴³

Table 3

Proposed Ozone and PM NAAQS Annual Benefit/Cost Estimates in 2007 (Billions 1990 Dollars)

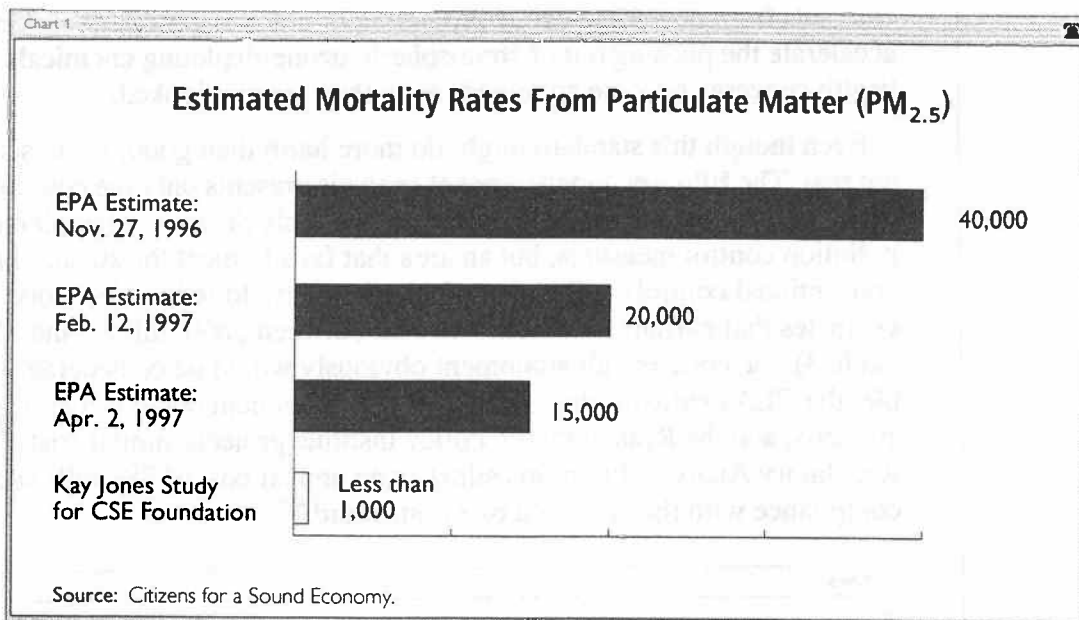
| Pollutant/Standard | Monetized Annual Benefits of Partial Attainment | Annual Costs of Partial Attainment* |
|--|---|-------------------------------------|
| Ozone | | |
| 8-hours, 0.08 ppm, 1 exceedance | \$0.1 - \$1.5 | \$2.5 |
| 8-hours, 0.08 ppm, 4 exceedances | \$0 - \$0.6 | \$0.6 |
| PM_{2.5} | | |
| Annual 15 µg/m ³ , 24-hour 50 µg/m ³ | \$58 - \$119 | \$6 |

Note: The projections are for "partial attainment" because existing control measures are not yet available for attainment of all areas by 2007.
 * Ozone costs and PM_{2.5} costs cannot be added together since controls overlap, which would result in double counting.

Source: The Committee for the National Institute for the Environment website <http://www.cnie.org/nle/air-15.html>. Source data from the EPA's Regulatory Impact Analyses (RIA) for Ozone and PM. The RIAs contain extended discussions of the assumptions, uncertainties, and methods involved in making these estimates, and include benefit/cost estimates for other levels of uncertainties.

Costs and Benefits of the PM Standard. The EPA has estimated that the PM_{2.5} standard would prevent 15,000 premature deaths each year. When the standard was proposed in November 1996, the estimate was 20,000 lives saved. Dr. Kay Jones, formerly a Carter Administration environment official and now a private consultant, caught the EPA's statistical error; he estimates that the real benefits are somewhere below 1,000 premature deaths avoided (see Table 3 and Chart 1).⁴⁴

- 42 See Reason Public Policy Institute and Decision Focus Incorporated, "Costs, Economic Impact, and Benefits of EPA's Ozone and Particulate Standards," *Policy Study* No. 226, June 1997.
- 43 *Comments on the Proposed National Ambient Air Quality Standards for Ozone and Particulate Matter*, pp. iii-18, and subsequent personal conversation with author Susan Dudley.
- 44 Kay Jones, Michael Gough, and Peter Van Doren, "Is EPA Misleading the Public About the Health Risks from PM_{2.5}? An Analysis of the Science Behind EPA's PM_{2.5} Standard, Addendum," Citizens for a Sound Economy Foundation, May 12, 1997, cited by Joel Bucher in "The EPA's Exaggeration of the Health Risks from PM_{2.5}: A Summary of an Analysis by Dr. Kay Jones," Citizens for a Sound Economy *Issue Analysis* No. 53, June 6, 1997, p. 1.



The supposed benefits of the PM standards are highly suspect because of serious concerns about the two primary underlying epidemiological studies on mortality—the 1993 Harvard Six Cities Study and the 1995 American Cancer Society (ACS) study—upon which the EPA relies:

- **Confounding variables.** Such factors as participants' smoking history, physical fitness, and exact levels of exposure to pollutants, as well as levels of humidity and allergens in the air, may not have been taken into account.⁴⁵
- **Limited accuracy.** Because these studies are ecological in nature, their accuracy is limited by the fact that the sample population's exposure to PM is estimated and cannot be known exactly. Therefore, it is not known whether the people who died prematurely had any significant exposure to particulate matter, and there is no established biological mechanism to explain how fine particles cause death.⁴⁶
- **Contradictory reports.** One recent study of PM mortality in Birmingham, Alabama, concluded that the connection between mortality and higher levels of PM in Birmingham is statistically insignificant. The only difference between this study, which was completed by the Institute of Statistical Science in 1996, and the two studies cited by the EPA is that it took humidity into account. Its results cast doubt on the assumption that fine particulates have anything to do with adverse health effects and premature death.⁴⁷

As is true with the ozone standard, the PM standard presents both highly questionable benefits and significant compliance costs. Once again, the EPA estimates costs only for

45 Environmental Protection Agency, *In the Matter of 1997 Federal Register Notice of Proposed Rulemaking: Docket No. A-95-98 and Docket No. A-95-54*, comments filed by Citizens for a Sound Economy, March 12, 1997, p. 3.

46 *Ibid.* See also Chilton and Huebner, "EPA's Case for New Ozone and Particulate Standards," pp. 13-16.

47 Jerry M. Davis, Jerome Sacks, *et al.*, "Airborne Particulate Matter and Daily Mortality in Birmingham, Alabama," National Institute of Statistical Sciences, November 20, 1996, cited in comments filed by Citizens for a Sound Economy before the EPA, March 12, 1997, p. 5.

partial attainment but benefits for both full *and* partial attainment. The EPA projects partial attainment costs of \$6.3 billion per year for its proposed PM_{2.5} standards (see Table 3); but in developing these estimates, it did not factor in any estimates of administrative costs that states will bear. By way of contrast, a report from the Regulatory Analysis Program estimates an annual cost of \$55 billion for *full* compliance with the proposed PM standards. The Reason Public Policy Institute's estimates are similar to these estimates.

By proceeding in this fashion, the Clinton Administration is moving forward with these standards while acknowledging that considerably more research is needed to determine the health effects of particulate matter. The President's own FY 1998 budget requested "\$26.4 million for PM research, a 37 percent increase over 1997. To reduce the great uncertainty about PM's health effects, EPA will continue its efforts to identify the mechanisms by which particulates affect human health."⁴⁸ If anything, however, rewarding the EPA for its incompetence without first seeing to it that these standards do not take effect merely assures its ability to "shoot arrows in the air" as it looks for new ways to expand its reach.

Responding to Public Comments

We take very seriously our obligation to carefully consider all public comments on these proposals before making a final decision.... We want to hear from small businesses, industry, state and local governments, and other citizens like the elderly, children, doctors and people with asthma.

—EPA Administrator Carol Browner,
testifying before the Senate Committee
on Environment and Public Works,
February 12, 1997

I will not be swayed.... I will not be swayed.

—EPA Administrator Carol Browner,
addressing the Children's Environmental
Health Network Research Conference,
February 21, 1997

The EPA's openness to and handling of public comments have raised serious legal concerns. Only after Members of Congress and the public pressed it did the agency go to court to seek an extension of the 90-day comment period. The court granted a three-week extension of the period for comment on the proposed particulate matter standard to March 12, 1997. By the close of this period, the EPA had received more than 25,000 comments.

On March 12, 1997, the Washington Legal Foundation (WLF) petitioned Administrator Browner to disqualify herself from further participation in the rule-making process because her comments during the public comment period showed clearly and convincingly "that she had made up her mind on the two proposals and thus, will be unable to give, or will not give, meaningful consideration to the comments of WLF and others who advocate a contrary position."⁴⁹ During the public comment period, Browner made numerous speeches suggesting that the EPA would not budge from its original position.

48 Office of Management and Budget, *Budget of the United States Government, Fiscal Year 1998*, p. 81.

A week before the President's announcement, on June 18, 1997, Representative Bliley sent a followup to a May 29, 1997, letter to Browner asking the EPA to inform Congress when it would send its draft rules and completed economic analyses to the OMB for inter-agency review under Executive Order 12866, and asking also for more information about who at the EPA reviewed the public comments submitted and how the public would have access to those comments in the EPA's public docket. In the end, however, the President's announcement was made before the rule went to the OMB. Only time will tell whether the EPA will be subject to legal challenges related to its response to public notice and comment under the Administrative Procedure Act.⁵⁰

THE EPA VERSUS THE STATES

It is true. If you do a simple cost benefit analysis, getting your car inspected will turn out to be the cheapest way to clean up the air. That is true. That is what cost benefit analysis will tell you—\$500 per ton as opposed to something on the order of \$2,000 to \$10,000 a ton for any other solution out there today.... But we recognize for some communities...they want to make a different choice.... I think it is important to understand, when given the flexibility, many communities did choose to have automobiles inspected.

—EPA Administrator Carol Browner,
testifying before the Senate Committee
on Environment and Public Works,
February 12, 1997

During the public comment period, the EPA and the Clinton White House heard from more than half the country's governors, dozens of mayors (including the U.S. Conference of Mayors), and hundreds of other local officials from around the country who have serious concerns about either the need for these new standards or the way in which they were developed.

Chicago Mayor Richard Daley (D) opposes the new standards because the city does not believe they will achieve their intended result.⁵¹ Chicago's environment commissioner has argued that, before the federal government burdens cities with new air pollution regulation, it should try to alleviate the burden of the existing standards.⁵² West Memphis, Arkansas, highlighted the absurdity of the new standards: "If West Memphis were leveled, with no one speck of industry left, just a barren cotton field where our thriving community now stands, we would still be out of attainment with the new standards."⁵³

One of the major concerns for state and local communities is that the new standards are being layered on top of existing standards that are still in the early implementation stages.

49 Paul D. Kamenar and Daniel J. Popeo, *Petition of the Washington Legal Foundation to Disqualify EPA Administrator Carol Browner from Further Participation in the Rulemaking Proceeding to Revise the Particulate Matter and Ozone NAAQS and Comments of the Washington Legal Foundation Opposing the Proposed Rules to Revise the PM and Ozone NAAQS*, 40 CFR Part 50, Docket Nos. A-95-54 and A-95-58, March 12, 1997, p. 14.

50 The Administrative Procedure Act establishes the formal process an agency must go through before a regulation can take effect, including publishing it for public comment.

51 Daniel J. Murphy, "EPA Attacked from...the Left?" *Investor's Business Daily*, May 9, 1997, p. A28.

52 Dennis Byrne, "Cutting Through the Bureaucratic Smog," *Chicago Sun-Times*, April 9, 1997.

53 *Ibid.*

Many of the state plans implementing the 1990 Clean Air Act amendments are only now being implemented. As the president of the National League of Cities recently testified, "If significant additional resources are to be committed to further reductions in pollutants, there also must be adequate assurances that these investments will yield, at a minimum, commensurate, or, at a maximum, appreciable health benefits."⁵⁴

The EPA's estimates of the number of communities that will be designated as "nonattainment" areas are subject to considerable controversy. Depending on the scenario selected, somewhere between 37 and 75 areas (202 and 427 counties) would be designated as nonattainment under the ozone standard. Other estimates suggest that the number is much higher. Unlike the EPA estimates, which consider only counties with ozone monitors, these other estimates allow any county in the United States to be designated as nonattainment, thereby doubling the projected number of nonattainment counties.⁵⁵ The EPA's estimate of 126 areas projected to violate the PM_{2.5} standard is similarly understated.

The costs to state and local economies as a result of a "nonattainment" designation also can be considerable. "If a county is not in attainment for a particular pollutant...new manufacturing firms...will be subject to more stringent regulations governing equipment specifications. Existing firms in nonattainment areas face stricter requirements to reduce source emissions.... [T]here will be a tendency for polluting industries to move from nonattainment areas to attainment counties."⁵⁶

Why would businesses move? Because the costs to businesses can be great. In his review of the EPA's economic impact analysis for the PM standard, economist Thomas Hopkins points out that

in nearly half of all U.S. industries there will be at least one establishment that faces compliance costs, and that in half of these cases compliance costs will exceed 3 percent of sales revenues: EPA takes this to mean that these firms "may experience potentially significant impacts." To place such costs in context, the average U.S. firm now spends about 2.7 percent of its sales revenue to comply with all existing federal regulations (including paperwork requirements). The [EPA] RIA [regulatory impact analysis] estimates thus imply that a sizable number of firms will find their overall regulatory compliance spending doubled just to meet the change in the PM standard, plus whatever compliance costs will flow from other new regulations such as the pending ozone...rules.⁵⁷

Clearly, state and local communities have much about which to be concerned. On April 29, 1997, testifying on the new standards, Harry Alford, president and chief executive officer of the National Black Chamber of Commerce, stated that

54 Testimony of Mark Schwartz, council member, Oklahoma City, Oklahoma, and president, National League of Cities, before the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety of the Committee on Environment and Public Works, U.S. Senate, March 3, 1997.

55 Chilton and Huebner, "EPA's Case for New Ozone and Particulate Standards," p. 24.

56 J. Vernon Henderson, "Effects of Air Quality Regulation," *The American Economic Review*, Vol. 86, No. 4 (September 1996), p. 792, cited in Hopkins, "Can New Air Standards for Fine Particle Live Up to EPA Hopes?" p. 12.

57 *Ibid.*

The Clean Air Act of 1990 has made much progress in improving our environment. We sincerely feel the continuance of this process will further improve the environment. To put more stringent demands on our businesses will have an extreme adverse impact on business in general with even higher stakes to lose for small businesses per se. If big business gets a "cold," small business gets the "flu," and Black owned business suffers "pneumonia."⁵⁸

Major national organizations representing dozens of states and local communities have expressed their concerns to the EPA and to Congress. In December 1996, the National League of Cities adopted a resolution calling on Congress to (1) reaffirm the existing standard for ozone to allow sufficient time to assess the impact of current pollution control programs before imposing more stringent requirements; (2) overturn the court-ordered deadlines for issuance of new standards for particulate matter; and (3) require the EPA to conduct adequate and appropriate monitoring and scientific research to assure that any new standards for particulate matter are based on sound scientific information.⁵⁹ On May 16, 1997, seven national organizations representing state and local officials sent a letter to Congress expressing concerns about the new standards for PM and ozone:

the scientific underpinnings of the new standards has been in dispute. It is clear that the costs of the new standard will be very large, while the benefits, though potentially large, have also been in dispute. The schedule for this and other rulemakings should be based on the time needed to expeditiously consider all relevant evidence and public comments, not on court ordered deadlines.⁶⁰

THE EPA VERSUS CONGRESS

The American people are still waiting for the truth from the EPA. Now that President Clinton has decided to support the new standards, Congress is the next player with the ability to stop the EPA.

Since the EPA issued its proposed rule in November 1996, dozens of congressional letters and inquiries and committee hearings have attempted to determine how the EPA made its decision, whether it violated any laws, and whether the American public had any say in the matter.

Despite considerable congressional and public support to hold back the standards, however, the House and Senate leadership has been silent, apparently afraid to lose the public relations battle to more skillful environmental advocates. More than 214 House members—80 Democrats and 134 Republicans—signed letters calling for the EPA to reaffirm the existing standards until better science is made available. Similarly, in the Senate, at least 36 Senators—29 Republicans and 7 Democrats—signed letters expressing their concerns about moving forward with the new standards. In one letter to the White House, 42 Democrat Members of Congress said they were "concerned that these proposed standards

58 Testimony of Harry C. Alford, president and chief executive officer, National Black Chamber of Commerce, before the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety of the Committee on Environment and Public Works, U.S. Senate, April 29, 1997.

59 National League of Cities, Resolution No. 97-7, adopted December 10, 1996.

60 Joint letter from the Council of State Governments, International City/County Management Association, National Association of Counties, National Conference of State Legislatures, National Governors' Association, National League of Cities, and United States Conference of Mayors to House and Senate Leadership, May 16, 1997.

will create such controversial and impractical targets that they will undermine support for the [Clean Air] Act, even amongst its friends.”⁶¹

In response to the President’s announcement to move forward with the standards, Senator James Inhofe (R–OK), chairman of the Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety of the Senate Committee on Environment and Public Works, stated, “I am disappointed, but not surprised, that the President has chosen to ignore the broad-based public outcry against the onerous and ill-conceived mandates proposed by the EPA.”⁶²

In addition, Representative Dingell, ranking minority member of the House Commerce Committee and co-architect of the 1990 amendments to the Clean Air Act, has been outspoken in criticizing the proposed restrictions. Considering the EPA’s admission that tighter restrictions will interfere with current attempts to comply with implementation of the 1990 amendments, he is concerned that the rules will be finalized “despite the fact that EPA acknowledges that the 1990 Amendments have created significant progress on clean air and that the 1990 Amendments will continue to force continuing improvements in the country’s air quality.”⁶³

In addition to exploring issues of scientific and economic impact, congressional inquiries, led primarily by House Commerce Committee Chairman Thomas Bliley and Government Reform and Oversight Subcommittee on Regulatory Affairs Chairman David McIntosh (R–IN), also have challenged the EPA’s conclusions that the new standards are not subject to laws—many of which passed during the 104th Congress and were signed by President Clinton—viewed as “good government” laws. Specifically, the EPA has deemed the PM and ozone regulation to be exempt from the following:

- **The Small Business Regulatory Enforcement Fairness Act of 1996**, which includes a requirement that an interagency “small business advocacy review panel” solicit advice and recommendations from representatives of small entities in regard to the EPA’s regulatory proposals;
- **The Regulatory Flexibility Act of 1980, as amended**, which requires agencies to analyze the potential financial and regulatory impacts on small entities (state and local governments, as well as small businesses); and
- **The Unfunded Mandates Reform Act of 1995**, which requires agencies to examine the financial and regulatory impacts of proposals on state and local governments, to prepare a cost-benefit analysis for rules that impose costs greater than \$100 million annually, to notify small governments so they can comment during development of the regulation, and to identify and consider alternative regulations.

In exempting the new standards from these requirements, the EPA takes the position that states alone are responsible for implementing the standards and, therefore, any costs or burdens imposed are imposed by them and not the federal government. The EPA points out that any information it provides on implementing the standards would be in the form

61 Letter from Mr. Dingell, Mr. Klink *et al.* to the Honorable William J. Clinton, President of the United States, April 24, 1997.

62 Senator James Inhofe, press statement, June 25, 1997.

63 Representative John Dingell, press statement, April 10, 1997.

of guidance and not regulations, and therefore not covered by these laws.

CONCLUSION

And I would say to the Administration, sit down and talk with us. Do not meander into this. You are taking on this Nation. You are taking on these state legislators, these Governors, these industries, these labor unions. This is a government of the people, by the people, for the people. We want clean air, we are getting clean air. You are ignoring us. You are saying you do not have to sit down and talk to us.

—Representative Ron Klink (D-PA),
on the floor of the U.S. House of Representatives,
June 5, 1997

Someone must rein in the EPA. As Representative Dingell stated in response to the White House announcement, “The most perverse irony is that the standards will actually delay cleaning the air in areas like Washington, D.C.... If EPA had chosen to leave the standard unchanged, Washington would have to come into compliance by 1999. Under the new standard, the city won’t have to meet the 1999 deadline and could have until 2009 or longer before being required to meet air quality standards.”⁶⁴ In announcing the final rules, one of the few changes made by the EPA was to allow states additional time to come into compliance.

The EPA’s actions on the particulate matter and ozone standards starkly illustrate how federal regulatory agencies operate. Abuse of agency discretion is at the heart of the problem Congress is being asked to stop. The Environmental Protection Agency is out of control, with no sense of accountability or responsibility to the American people. Congress needs to impose discipline and halt these new standards.

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64 Representative John Dingell, press statement, June 25, 1997.