

March 15, 2012

Air and Radiation Docket and Information Center
Attn: Docket ID Number EPA-HQ-OAR-2010-0885
Environmental Protection Agency
1301 Constitution Avenue, NW
Mail Code 2822T
Washington, D.C. 20460

Re: Implementation of the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the U.S. Environmental Protection Agency's (EPA) proposed rule implementing the 2008 ozone NAAQS and revoking the 1997 ozone standards for transportation conformity purposes published in the February 14 *Federal Register*.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA members undertake a variety of activities that could be directly impacted by EPA's proposed amendments to the transportation conformity rule. ARTBA's public sector members adopt, approve or fund transportation plans, programs or projects under Title 23 U.S.C. and Title 49 U.S.C. ARTBA's private sector members rely heavily on contracts funded under these titles to plan, design, construct and provide supplies for transportation improvement projects.

According to the February 14 *Federal Register* notice, EPA's is proposing to revoke the 1997 ozone NAAQS for transportation conformity purposes one year after the enactment of the 2008 NAAQS. EPA's rationale for doing so is to avoid "overlap of NAAQS for transportation conformity purposes." While ARTBA appreciates EPA's intent to avoid regulatory overlap, we feel the current situation could have been avoided by addressing more significant problems in the transportation conformity process generally and the 2008 ozone NAAQS. These underlying problems with both the NAAQS process and transportation conformity have been raised many times by ARTBA over the last five years in regulatory comments, legislative testimony and oral statements given at EPA listening sessions. Most recently, ARTBA participated in EPA's regulatory reform hearings in April 2011 and outlined specific changes to both the NAAQS process and transportation conformity which, if implemented, would avoid situations such as this where there are conflicting regulatory deadlines.



As ARTBA noted in April 2011, both transportation conformity and the NAAQS process should be reexamined in light of President Obama's January 18, 2011 Executive Order noting that all regulatory efforts must "protect public welfare, safety and our environment while promoting economic growth, innovation competitiveness and job creation." The President's Executive Order further states all regulations must "be based upon the best available science" and "use the best, most innovative and least burdensome tools for achieving regulatory ends." Finally, the Executive Order notes agencies must tailor regulations to "impose the least burden on society." On all of these points, both the transportation conformity and NAAQS processes fail.

Ideally, EPA would not be in the position of having to repeal one deadline to avoid conflict during the implementation of a new standard. Instead, states and localities should be given time to meet current standards before new ones are discussed, much less enacted. In addition, the transportation conformity process needs to be completely rethought in order to avoid the type of administrative conflict which lead to this proposed rule.

Regulations should not operate in a vacuum, completely unaware of what is happening in the community they directly impact. Unfortunately, the NAAQS process does this by failing to consider progress already being made in reducing pollution when setting national standards. According to EPA's own data, total emissions of the six principal air pollutants dropped by 41 percent between 1990 and 2008. In addition, there has been a decline in the overall concentration level of criteria pollutants for ozone (1-Hour) of 25 percent in the past 20 years. This progress has occurred both prior to and since the implementation of the existing ozone NAAQS. As ARTBA has repeatedly stated, this continuing improvement indicates the current standard is working, and there is no need for any modification, including implementation of the 2008 NAAQS.

Further, many counties are focusing on addressing existing ozone standards and any further changes to the standards will undermine these efforts. Local officials need some sense of predictability in order to develop and implement long-range transportation plans to achieve ozone reduction. If counties are to effectively comply with current standards, additional requirements will only serve to hamper these efforts by opening the door to possible litigation and sanctions potentially resulting in the loss of federal funding for transportation improvement projects, many of which ultimately improve air quality by reducing congestion. Ultimately, the NAAQS process operates in a manner akin to "moving the goalposts" and runs the risk of diluting current compliance efforts every time standards are tightened before existing standards are achieved.

Turning to transportation conformity, the problem with the existing conformity process is caused by the fact that some have tried to turn these determinations into an exact science, when they are not. Rather, conformity findings are based on assumptions and "modeling of future events," not often reflecting reality. Very few conformity lapses occur because a region has a major clean air problem. They occur because one of the parties involved cannot meet a particular deadline. Thus, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on "crossing the t's and dotting the i's" than on engaging the public in true transportation planning that is good for the environment and the mobility of a region's population.

The problems with the conformity process are amplified by transportation plans and the State Implementation Plans (SIPs) with which they are intended to conform often being out of sync with one another. Largely, this is due to transportation plans having very long planning horizons requiring frequent updates, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions used for conformity determinations of transportation plans and programs are not consistent with the assumptions used in the air quality planning process to establish emissions budgets and determine appropriate control measures. In other words, because transportation plans must use the most recent air quality data, a perceived increase in emissions and possible conformity lapses can occur simply because the numbers of models relied on in the transportation plan differ from those in the air quality plan—not because an area’s air quality has changed.

In the spirit of the President’s 2011 Executive Order, ARTBA looks forward to continuing a dialogue with EPA on reforming all regulations, including NAAQS and transportation conformity, to help achieve necessary environmental protections with the least possible burden on society.

Sincerely,

A handwritten signature in black ink that reads "T. Peter Ruane". The signature is written in a cursive style with a large, stylized initial "T".

T. Peter Ruane
President & C.E.O