

**Comments of the
Power Generators Air Coalition on the
U.S. Environmental Protection Agency's
Proposed Rule: Reconsideration of the
National Ambient Air Quality Standards for
Particulate Matter**

Docket No. EPA-HQ-OAR-2015-0072

March 28, 2023

TABLE OF CONTENTS

	Page
I. EPA’s Reconsideration Does Not Comply with the CAA’s Requirements for Conducting NAAQS Reviews	3
II. EPA Has Not Adequately Explained Why Revision of the PM NAAQS Is Necessary	7
III. Recent Practice Regarding Reconsideration of NAAQS Determinations Creates Uncertainty for States, Industry, and the Public and Is an Unsustainable Practice for EPA.	10
IV. EPA’s Proposed Rule Does Not Comply with the CAA Requirement that the Agency Consider and Respond to CASAC Advice.....	12
V. The Primary Annual NAAQS for PM2.5 Should Not Be Revised at this Time.....	15
VI. 24-Hour Primary NAAQS for PM2.5 Should Not Be Revised at this Time.	19
VII. EPA Has Correctly Determined that the Record Does Not Support a Revision of the Coarse PM NAAQS.....	21
VIII. EPA Has Correctly Determined that the Record Does Not Support a Revision of the Secondary NAAQS.....	22
IX. EPA’s Proposed Changes to the Air Quality Index Would Not Adequately Communicate Public Health Risk.....	25
X. EPA’s Proposed Changes to its Monitoring Requirements Should Be Better Supported	27
XI. EPA Should Provide Additional Guidance on Implementation and Ensure States Have Adequate Time to Prepare for a New NAAQS.	29
XII. Conclusion	31

**Comments of the Power Generators Air Coalition on the
U.S. Environmental Protection Agency’s Proposed Rule:
Reconsideration of the National Ambient Air Quality Standards
for Particulate Matter**

88 Fed. Reg. 5558 (Jan. 27, 2023); Docket No. EPA-HQ-OAR-2015-0072

March 28, 2023

On January 27, 2023, the U.S. Environmental Protection Agency (“EPA” or the “Agency”) published in the Federal Register a proposed rule titled “Reconsideration of the National Ambient Air Quality Standards for Particulate Matter” (“Proposed Rule”).¹ The Power Generators Air Coalition (“PGen”) is pleased to submit the following comments on the Proposed Rule.²

The Proposed Rule is one in a series of actions taken in this proceeding to reconsider the December 18, 2020, final determination of the EPA Administrator to retain the national ambient air quality standards (“NAAQS”) for particulate matter (“PM”) as they were in force at that time (“2020 PM NAAQS Decision”).³ EPA initiated reconsideration of that decision on June 10, 2021,⁴ in response to Executive Order 13,990, which directed agencies to review all actions taken between January 20, 2017, and January 20, 2021, including by name the 2020 PM NAAQS Decision.⁵

To conduct the reconsideration, EPA prepared a May 2022 “Supplement to the 2019 Integrated Science Assessment for Particulate Matter” (“Supplemental ISA”), which presented

¹ 88 Fed. Reg. 5558 (Jan. 27, 2023).

² Additional information on PGen and its members can be found at PGen.org.

³ 85 Fed. Reg. 82,684 (Dec. 18, 2020).

⁴ EPA, News Release, <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged>.

⁵ Fact Sheet: List of Agency Actions for Review, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

“a targeted review of peer-reviewed studies published since the literature cutoff date (i.e., ~January 2018) of the 2019 ISA,”⁶ and a May 2022 “Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter” (“2022 PA”).⁷

As a result of the directive in Executive Order 13,990 and EPA’s targeted new scientific and technical analysis, the Agency has proposed to revise the primary annual fine PM (“PM_{2.5}”) standard of 12.0 micrograms per cubic meter (“μg/m³”) to within the range of 9.0 to 10.0 μg/m³, while taking comment on alternative standard levels as low as 8.0 μg/m³ and as high as 11.0 μg/m³.⁸ EPA has proposed to retain the primary 24-hour PM_{2.5} standard of 35 μg/m³, while taking comment on revising the level to as low as 25 μg/m³.⁹ EPA has also proposed to retain the primary 24-hour coarse PM (“PM₁₀”) standard and to retain the secondary PM standards.¹⁰ EPA asked for comment on potentially revising the level of the 24-hour secondary PM_{2.5} standard to as low as 25 μg/m³.¹¹

PGen supports EPA’s mission to protect the public health and welfare. In particular, with respect to the NAAQS, PGen supports EPA’s efforts to comprehensively review the health and welfare science and to develop standards that provide appropriate levels of protection, as called for by the Clean Air Act (“CAA”). Certain aspects of the Proposed Rule, however, raise the potential for legal and policy problems and call for EPA to change course or otherwise adjust this proposal. To assist in those efforts, PGen is pleased to offer these comments and welcomes the opportunity for further collaboration with EPA.

⁶ 87 Fed. Reg. 22,207 (Apr. 14, 2022).

⁷ 88 Fed. Reg. at 5560.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

I. EPA's Reconsideration Does Not Comply with the CAA's Requirements for Conducting NAAQS Reviews.

Review and revision of the NAAQS is governed by sections 108 and 109 of the CAA. When EPA initially establishes a NAAQS for an air pollutant, section 108 first requires that EPA “list the pollutant” as a “criteria air pollutant.”¹² The statute sets out the minimum statutory requirements for listing. Section 108 next requires EPA to prepare “air quality criteria” for each criteria air pollutant to serve as the foundation for the air quality standard for the pollutant’s control.¹³ The air quality criteria are a comprehensive review of all of the relevant science associated with the air pollutant, including its effects on public health and the environment. In recent years, the air quality criteria have been contained within EPA’s Integrated Science Assessments, or ISAs, for each pollutant.

Based on the criteria, under section 109, EPA must establish primary ambient air quality standards, “the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.”¹⁴ The administrator must also establish secondary ambient air quality standards that “specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.”¹⁵

¹² CAA § 108(a).

¹³ *Id.* § 108(a)(2).

¹⁴ *Id.* § 109(b)(1).

¹⁵ *Id.* § 109(b)(2).

Once a pollutant is subject to a standard, EPA must review and potentially revise the standard “at five-year intervals thereafter.”¹⁶ EPA is authorized to review and revise the standards “earlier or more frequently than otherwise required” by section 109, so long as the standards are “revised in the same manner as promulgated.”¹⁷ This means that EPA must “complete a thorough review of the criteria” for each NAAQS review and potential revision.¹⁸ Section 108 further explains that such a complete and thorough review must ensure that the criteria

shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

- (A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;
- (B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and
- (C) any known or anticipated adverse effects on welfare.¹⁹

EPA’s reconsideration of the PM NAAQS has not abided by these legal requirements. The fundamental requirement of a NAAQS review is that EPA “*complete a thorough review of the criteria*” and ensure that they “*accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare.*”²⁰

¹⁶ *Id.* § 109(d).

¹⁷ *Id.* § 109(b)(1), (2).

¹⁸ *Id.* § 109(d).

¹⁹ *Id.* § 108(a)(2).

²⁰ *Id.* §§ 109(d)(1), 108(a)(2).

EPA has instead conducted a “targeted,” not complete, review of the science intended to address only those issues that EPA identified as most likely to support revision of the NAAQS to a more stringent level.²¹ The Clean Air Scientific Advisory Committee (“CASAC”) recognized this anomalous and scientifically questionable decision in its letter to EPA addressing the Supplemental ISA, noting the unusually limited scope of the draft Supplemental ISA and accepting it on the condition that “this limiting of scope applies only to this document and is not intended to establish a precedent for future ISAs.”²² Although CASAC appears to believe the targeted approach might be appropriate in this one instance, CASAC is not the arbiter of what the CAA allows and disallows. Here, the CAA prohibits partial scientific assessments.

As with the Supplemental ISA, to support its action on reconsideration, EPA also prepared an updated 2022 PA, including a new “targeted” Risk Assessment.²³ The targeted Risk Assessment only evaluated all-cause or nonaccidental mortality associated with long- and short-term PM_{2.5} exposures.²⁴ Again, this was because EPA determined that this analysis was most likely to support a revision of the NAAQS. Although a risk assessment is not a requirement of the CAA, as the air quality criteria noted above are, this is not a sound approach to scientific review of the NAAQS.

EPA took a similar targeted course of action with respect to the secondary standards, including only new science only as to visibility. EPA declined to update science related to

²¹ See, e.g., 88 Fed. Reg. at 5580 (“the ISA Supplement builds on the information presented within the 2019 ISA with a targeted identification and evaluation of new scientific information”). In addition to the ISA Supplement, EPA relies in part on the 2019 ISA in these reconsideration proceedings. It is important to recognize that EPA has not determined that the ISA Supplement provides a comprehensive assessment of all scientific developments since the preparation of the 2019 ISA. On the contrary, it is expressly a document of predetermined scope and not a general update.

²² Sheppard, 2022b, p. 2 of letter.

²³ 88 Fed. Reg. at 5615.

²⁴ *Id.* at 5561.

climate or effects on materials. The reason for the action was the same: EPA believed this focus was most likely to produce evidence to support a tightening on the NAAQS.²⁵

The Proposed Rule attempts to place EPA’s decision about which science to target in a context that may appear technical or neutral with respect to outcome for the NAAQS review, but a closer examination reveals that this remains an invalid approach to revising the criteria. EPA says

In selecting the health effects to evaluate within the ISA Supplement, the EPA focused on health effects for which the evidence supported a ‘causal relationship’ because those were the health effects that were most useful in informing conclusions in the 2020 PA (U.S. EPA, 2022a, section 1.2.1). Consistent with the rationale for the focus on certain health effects, in selecting the nonecological welfare effects to evaluate within the ISA supplement, the EPA focused on the non-ecological welfare effects for which the evidence supported a ‘causal relationship’ and for which quantitative analyses could be supported by the evidence because those were the welfare effects that were most useful in informing conclusions in the 2020 PA.²⁶

Although this rationale may sound technical in nature, it is really just another way of saying that EPA selected areas of science to evaluate because the 2020 PA identified those areas as the most likely to support a NAAQS revision.

The fact that EPA is engaged in a reconsideration proceeding, rather than a NAAQS review conducted in the regular course to satisfy EPA’s CAA obligations does not change the standard that applies to a NAAQS review proceeding. It is well-established that agencies have broad discretion to reconsider their rules at any time. “[T]he power to decide in the first instance carries with it the power to reconsider.”²⁷ By the same token, the power to reconsider is subject

²⁵ See *id.* at 5568.

²⁶ *Id.*

²⁷ *Prieto v. United States*, 655 F.Supp. 1187, 1191 (D.D.C.1987) (citing *Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir.1980)).

to the same legal constrictions as the initial power to decide. Accordingly, reconsideration must “comply with the Administrative Procedure Act (APA), including its requirements for notice and comment.”²⁸ It is not just the general requirements of the APA that constrain EPA’s actions. When Congress established specific standards governing an agency’s actions, they too apply on reconsideration. For that reason, EPA could not simply choose to reconsider and delist EGUs under section 112 pursuant to an inherent authority to reverse an earlier administrative determination. It had to instead follow the procedural requirements set out in section 112(c)(9) limiting its discretion. EPA must do the same here so as not to “completely nullif[y] textually applicable provisions meant to limit its discretion.”²⁹

For all of these reasons, EPA should either conduct a full scientific review to support these reconsideration proceedings or halt this action and commence with a new complete review, as previous administrations have done under similar circumstances.

II. EPA Has Not Adequately Explained Why Revision of the PM NAAQS Is Necessary.

Agencies are not bound forever by their previous positions, legal interpretations, or policy goals. Their adaptability to new demands is a key strength of the administrative system, and EPA’s implementation of the CAA is no exception. Nevertheless, agency policy and regulation does not exist in a vacuum, and the law demands that agencies appropriately acknowledge and address changes in policy, especially when that change could be considered substantial. A reconsideration proceeding such as this one is a stark example of such a change in policy.

²⁸ *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017).

²⁹ *New Jersey v. EPA*, F.3d 574, 583 (D.C. Cir. 2008) (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001)).

In the ordinary course, to sustain a regulatory action, an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”³⁰ That explanation must demonstrate that the agency has considered the “relevant factors” and avoided “a clear error of judgment.”³¹

When an agency is changing position, as is surely an option during reconsideration, “the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, depart from a prior policy sub silentio or simply disregard rules that are still on the books.”³² Further, “the agency must show that there are good reasons for the new policy” even if it need not prove that the reasons for its new policy are “better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.”³³

While an agency need not always say more to support a change-of-heart policy, in some circumstances it must:

when, for example, its new policy rests upon *factual findings that contradict those which underlay its prior policy*; or when its prior policy has engendered *serious reliance interests* that must be taken into account. It would be arbitrary or capricious to ignore such matters. In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.³⁴

³⁰ *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

³¹ *Id.*

³² *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

³³ *Id.*

³⁴ *Id.* (citations omitted) (emphasis added).

There is hardly any mention of the 2020 PM NAAQS Decision or the reasons that were given in support of the Administrator's determinations at that time. Very little is said to distinguish between the facts relied upon in 2020 and the facts EPA relies on now. It is not clear which facts, which studies, and what information differentiates the Administrator's 2023 proposed conclusions from the conclusions finalized after notice and comment in 2020. There is a particularly noticeable absence of any discussion comparing the conclusions and advice of CASAC in the prior proceedings with the advice of the reconstituted CASAC by the new administration. Yet there clearly must be factual findings that contradict those underlying the policy announced in 2020. As the D.C. Circuit has explained, under these circumstances, the law requires more transparent discussion.

Further, there are indisputably significant reliance interests at stake. States have undoubtedly begun work in anticipation of the retained PM NAAQS, likely devoting resources to other issues under the expectation that additional measures to implement PM requirements would be at least a number of years further off. Regulated industries have likely proceeded with planning based on their reliance on a status quo situation until at least another five years and a new orderly NAAQS review. As the D.C. Circuit has explained, EPA must take these serious reliance interests into account when conducting this reconsideration. At this time, that analysis is absent.

The Proposed Rule lays out a case for revising the annual primary NAAQS for PM_{2.5}, but it does so without grappling in any meaningful way with the agency's decision from just over two years ago that revision was not warranted. The law does not necessarily require EPA to prove it has the better case now, but it does require EPA to acknowledge and explain how things

have changed. EPA should undertake that necessary analysis or halt these proceedings and move forward with a PM review in the ordinary course.

III. Recent Practice Regarding Reconsideration of NAAQS Determinations Creates Uncertainty for States, Industry, and the Public and Is an Unsustainable Practice for EPA.

Review and revision of the NAAQS is almost always an area of strong disagreement among various stakeholders. Once EPA has spoken at the end of a review cycle, however, in the vast majority of cases, EPA has left review of the adequacy of its decision to the courts, and any remand and reconsideration of the NAAQS-setting decision has occurred almost exclusively as the result of a court order or other legal action.

In recent years, however, there has been considerable political pressure on new administrations to reconsider NAAQS determinations made by their predecessors. For instance, in 2008, the George W. Bush administration revised the level of the 8-hour primary ozone NAAQS to 0.075 parts per million (“ppm”) and revised the secondary standard by making it identical to the revised primary standard.³⁵ Citing comments from CASAC and the public, Administrator Lisa Jackson announced a reconsideration of the ozone NAAQS (notably relying on the record developed for the 2008 decision) and proposed to make the standards more stringent.³⁶ President Obama, however, ultimately halted the reconsideration, citing “the importance of reducing regulatory burdens and regulatory uncertainty” during the recovery from the 2008 recession and the ongoing work to conduct a regular review of ozone NAAQS in accordance with regular procedure.³⁷

³⁵ 73 Fed. Reg. 16,436 (Mar. 27, 2008).

³⁶ See 75 Federal Register 2,938 (Jan. 19, 2010).

³⁷ The White House, Statement by the President on the Ozone National Ambient Air Quality Standards (Sept. 02, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards>.

Several years later, after a complete review proceeding, the Obama administration ultimately did revise the ozone NAAQS to 0.070 ppm.³⁸ After the election, the Trump administration also faced pressure to reconsider the ozone standards. After deliberations concerning the manner in which NAAQS reviews should take place and the development of significant new policy guidance to govern such reviews, EPA decided not to reconsider the ozone NAAQS (based on the record from the 2015 NAAQS revision) and to instead proceed with a complete NAAQS review, following the normal order.³⁹

In deciding not to complete reconsideration proceedings, the Obama administration cited the disruption reconsideration could have on a fragile economic recovery and preventing the spread of unnecessary regulatory burdens. Likewise, the Trump administration decided against reconsideration because it reasonably perceived “benefits of applying the new approach of the Back-to-Basics Memo, the need to focus resources in order to move swiftly and complete the new review by 2020, the status of implementation for the 2015 Rule, recent D.C. Circuit decisions on the ability of EPA to revoke previously promulgated NAAQS, and the importance of certainty for States and the regulated community.”⁴⁰

These considerations apply with equal force today and caution against unnecessary NAAQS reconsideration. These proceedings once again are taking place in a time of significant economic uncertainty. An unexpected and premature revised standard will have significant consequences for states as they plan for and begin to implement a host of new and pending environmental rules, some of which are almost certain to involve significant implementation

³⁸ 80 Fed. Reg. 65,291 (Oct. 26, 2015).

³⁹ See *Murray Energy Corporation v. EPA*, No. 15-1385, Respondent EPA’s Final Status Report at 2-6 (Aug. 18, 2018); see also *Inside EPA*, “EPA Retains Obama-Era Ozone NAAQS, Rejects Push For Reconsideration” (Aug. 1, 2018), <https://insideepa.com/daily-news/epa-retains-obama-era-ozone-naaqs-rejects-push-reconsideration>.

⁴⁰ *Murray Energy Corporation v. EPA*, No. 15-1385, Respondent EPA’s Final Status Report at 5 (Aug. 18, 2018).

burdens. Finally, the development of reconsideration as a new normal only compounds the timing problems that have long plagued the NAAQS program. Compliance with the statute's five-year review cycle has always been a challenge. Adding years-long reconsideration proceedings into the mix makes compliance with the CAA's statutory deadline even more problematic, if not entirely unrealistic.

States and regulated industry deserve some measure of certainty when it comes to the NAAQS program. Despite the many complex moving parts to its implementation—involving EPA, the states, and the courts—regular review of the standards themselves should at least be one area of relative predictability. EPA should take this opportunity to develop a more reasonable approach than what has occurred over the last several administrations where reconsideration has taken place as a matter of course. Instead of completing these proceedings, EPA should consider developing standards that could be used more generally for determining when reconsideration is truly warranted. In particular, setting a standard that requires more than differences of opinion as to policy or approaches to scientific interpretation should guide determinations as to whether reconsideration is warranted. Accordingly, PGen encourages EPA to consider more broadly the issues presented by NAAQS reconsideration proceedings and to reevaluate whether it is appropriate to move forward with this rulemaking.

IV. EPA's Proposed Rule Does Not Comply with the CAA Requirement that the Agency Consider and Respond to CASAC Advice.

The CAA requires an EPA scientific advisory body—here, CASAC—to “complete a review of the criteria ... and the national primary and secondary ambient air quality standards” and to then “recommend to the Administrator any new national ambient air quality standards and

revisions of existing criteria and standards as may be appropriate.”⁴¹ If EPA decides to deviate from CASAC’s scientific recommendations, the CAA requires the Administrator to explain that decision.

In the Proposed Rule, EPA describes the advice of CASAC post that committee’s reconstitution in June 2021. This new version of CASAC received advice from a new PM Panel that the Administrator established in August 2021. Of particular significance, the current CASAC has failed to reach a unanimous recommendation on the primary annual standard for PM_{2.5}. A majority of CASAC recommends revising the annual PM_{2.5} standard to within the range of range of 8–10 µg/m³, while the minority recommends a range between 10–11 µg/m³.⁴² EPA appears to place weight on the fact that the minority and majority CASAC positions included 10 µg/m³, as a potential standard.⁴³ Beyond noting the coincidental overlap, however, the Proposed Rule does not explain how the differing views of the CASAC members, which lead to these majority and minority sets of differing preferred ranges, can be reconciled. For instance, if the points of view are truly divergent as to fundamental issues of scientific interpretation, EPA should address that and explain why such a situation would not warrant going to the high end of the ranges recommended. Similarly, if the CASAC members have disagreements about the reliability or usefulness of various bodies of science relative to one another, EPA should explain how those considerations figure into its analysis.

Unlike the views of the current CASAC, the views of the prior CASAC are hardly addressed at all. During the 2020 review, “some CASAC members expressed support for

⁴¹ *Id.* § 109(d)(2)(B).

⁴² *Id.* at 5608.

⁴³ *Id.*

retaining the current annual standard while other members expressed support for revising that standard in order to increase public health protection.”⁴⁴

In reconstituting CASAC, EPA did not determine that the prior CASAC was invalid or unqualified. The Administrator cited his desire to return to a “time-tested, fair, and transparent process for soliciting membership to these critically important advisory bodies.”⁴⁵ In particular, the Administrator wanted to end the previous administration’s policy of disqualifying recipients of EPA funding from participating in EPA advisory committees. The decision to reconstitute CASAC was challenged in the U.S. District Court for the District of Columbia.⁴⁶ Although the court found the reconstitution was lawful, it pointedly did not find there was anything wrong with the prior CASAC or that the views it expressed were unreliable.

The relevance of the prior CASAC’s views on the science and the adequacy of the existing NAAQS—and the primary annual PM_{2.5} NAAQS in particular—is clear in light of the fact that the 2019 ISA still comprises the bulk of the scientific record at issue in this review. The prior CASAC had substantial input into that document, and if EPA is going to rely on the 2019 ISA and the record from the 2020 NAAQS Decision as support for this rulemaking, it must also consider the prior CASAC’s views in addition to the views of the reconstituted CASAC.

It may not be possible for EPA to reconcile all of the divergent views expressed by the members of the prior CASAC and the reconstituted CASAC. EPA must address all of the

⁴⁴ See 85 Fed. Reg. 82,706 (Dec. 18, 2020).

⁴⁵ EPA, News Release, <https://www.epa.gov/newsreleases/administrator-regan-directs-epa-reset-critical-science-focused-federal-advisory>.

⁴⁶ *Young v. United States Env't Prot. Agency*, No. CV 21-2623 (TJK), 2022 WL 4598693 (D.D.C. Sept. 30, 2022). The district court’s ruling has been appealed to the U.S. Court of Appeals for the D.C. Circuit. *Young v. United States Env't Prot. Agency*, No. 22-5305 (D.C. Cir. filed Nov. 22, 2022).

viewpoints expressed by both versions of CASAC and explain how it weighs the different recommendations the Agency has received.

V. The Primary Annual NAAQS for PM_{2.5} Should Not Be Revised at this Time.

The scientific record has not changed in any significant way since the completion of the 2020 review. As explained above, there certainly has been no development of such significance to warrant the extraordinary action of reconsidering a NAAQS determination that is just over two years old and that had CASAC, staff, and strong record support. The Proposed Rule itself states that the evidence available in this reconsideration “is largely consistent with the evidence that was available in previous reviews.”⁴⁷ It goes on to explain that most of the science was even available during the 2012 review and evaluated in the 2009 ISA.⁴⁸ Under these circumstances, reconsideration is unnecessary.

Setting aside the procedural concerns, as in 2020, the scientific record does not support a revision of the NAAQS. Considerable uncertainties, for instance, continue to characterize the relevant science. Very few studies address confounding by co-pollutants.⁴⁹ There are also very large uncertainties associated with EPA’s Risk Assessment, including with EPA’s approach to simulating air quality that just meets the current NAAQS and alternative standards.⁵⁰ Nevertheless, the revised Risk Assessment contained in the new Policy Assessment shows lower risk than the Risk Assessment prepared for the 2020 PM NAAQS decision.⁵¹ The minority

⁴⁷ 88 Fed. Reg. at 5609.

⁴⁸ *Id.*

⁴⁹ *See, e.g., id.* at 5605.

⁵⁰ *See id.* at 5608.

⁵¹ *Compare* Policy Assessment for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter at 3-148, 3-151 to 3-155, 3-167 (May 2022) *with* Policy Assessment for the Review of the National Ambient Air Quality Standards for Particulate Matter at 3-81 to 3-97 (Jan. 2020).

CASAC view recommending a higher revised level for the annual PM_{2.5} NAAQS emphasized these uncertainties in particular.⁵²

The Proposed Rule describes recent studies that EPA says support effects at lower concentrations or that may reduce uncertainties.⁵³ These include a small number of studies that use various statistical techniques to attempt to reduce uncertainties related to confounding, studies that rely on satellite methods or hybrid methods to estimate PM exposures, studies that use co-pollutant models, Canadian studies, and studies that restrict their analyses to concentrations below the current standard.⁵⁴ All of this new information raises uncertainties of its own.

With respect to hybrid modeling studies, EPA acknowledges that there are uncertainties with evaluating how the “mean concentration can be used ... to evaluate the adequacy of the standard as well as potential alternative levels of the annual standard.”⁵⁵ EPA likewise notes that there are “uncertainties and limitations associated with comparisons between Canadian studies and the annual standard metric.”⁵⁶ With respect to the “restriction” studies, EPA explains that “uncertainties exist in these analyses ... including uncertainty in how studies exclude concentrations (e.g., at what spatial resolution are concentrations being excluded), which would make any comparisons of concentrations in restricted analyses difficult to compare directly to design values.”⁵⁷ Of particular note, EPA says that one of the new sources of information evaluated in the Supplemental ISA—studies of the Mortality Air Pollution Associations in Low

⁵² 88 Fed. Reg. at 5608.

⁵³ *Id.* at 5561, 5582.

⁵⁴ *Id.* at 5582.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Exposure Environments (MAPLE) cohort—indicate that there “is evidence of potential confounding of the PM_{2.5}- mortality association by copollutants.”⁵⁸ Surprisingly, the Proposed Rule appears to minimize these results, saying “this result is inconsistent with other recent studies evaluated in the 2019 ISA that were conducted in the U.S. and Canada that found associations in both single and copollutant models (U.S. EPA, 2019a; U.S. EPA, 2022a, section 3.2.2.4).”⁵⁹ Likewise, the Proposed Rule evaluates the results of studies using different statistical techniques to reduce confounding: Greven et al. (2011), Pun et al. (2017), and Eum et al. (2018).⁶⁰ EPA acknowledges that all of these studies suggest the presence of unmeasured confounding.⁶¹ All of this material introduces new uncertainties or demonstrates that older studies may have uncertainties that were not previously identified. The Proposed Rule does not explain why EPA believes uncertainties have been reduced overall, and certainly not since the 2020 PM NAAQS Decision.

EPA’s approach to identifying target levels of protection is also unsupported. EPA acknowledges, for instance, that epidemiologic studies “do not identify the specific exposure that can lead to the reported effects.”⁶² “Rather,” EPA explains, “health effects can occur over the entire distribution of ambient PM_{2.5} concentrations evaluated, and epidemiologic studies conducted to date do not identify a population-level threshold below which it can be concluded with confidence that PM_{2.5}-associated health effects do not occur.”⁶³ To address this shortcoming, EPA says that it evaluates concentrations “with a focus around the middle portion

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 5594.

⁶³ *Id.*

of the PM_{2.5} air quality distribution, where the bulk of the observed data reside and which provides the strongest support for reported health effect associations.”⁶⁴ Accordingly, EPA evaluates mean concentrations, 25th percentile concentrations, and concentrations 20 percent higher than mean. EPA has not provided a compelling justification for why consideration of these values can reveal reliable concentrations of concern. Indeed, all EPA says on the matter is that it has used this approach in the past and, again, that these values represent the bulk of exposures. EPA should explain how its assumption that values around the mean are responsible for effects observed, in particular, by comparing results from controlled human exposure studies to mean concentrations in epidemiologic studies.

Finally, EPA cites CASAC “consensus” on the need to revise the annual standard as another reason for its proposed decision. EPA’s view ignores the fact that there remains considerable disagreement over the appropriate level for a revised standard among the current members of CASAC, and it further ignores the views of the prior CASAC without a reasonable basis for doing so. As explained above, EPA has not identified a problem with the advice of the prior CASAC; it has not determined that the prior CASAC was improperly constituted or that it provided advice that was flawed. EPA instead appears to simply ignore this advice. While EPA may be free to consider the advice of its reconstituted version of CASAC, it has not provided a reasonable basis for ignoring the advice of the committee’s previous iteration. The CAA requires the Agency to weigh the advice of both versions of CASAC and to explain the Agency’s decision to disregard the prior CASAC’s scientific advice. The Proposed Rule has fallen short of that standard.

⁶⁴ *Id.*

VI. 24-Hour Primary NAAQS for PM_{2.5} Should Not Be Revised at this Time.

EPA has proposed to retain the existing 24-hour PM_{2.5} NAAQS. That proposed action is well-supported by the record and should be carried forward in the final rule if EPA decides to continue with these reconsideration proceedings.

As an initial matter, CASAC could not reach consensus on whether there was a need to revise the 24-hour PM_{2.5} NAAQS.⁶⁵ Because CASAC did not recommend a revision to the 24-hour standard, the EPA Administrator is subject to a less exacting standard when it comes to explaining his proposed decision to retain the existing standard. The explanation contained in the Proposed Rule meets that standard.

First, a minority of CASAC's members agreed with the position that revision of the 24-hour PM_{2.5} NAAQS is not warranted. This contingent of CASAC "placed greater weight on the risk assessment, noting that the risk assessment accounts for both the level and the form of the current standard and the way attainment with the standard is determined," and found that, based on the Risk Assessment, the annual standard is the controlling standard across most of the urban study areas evaluated.⁶⁶ The members supporting retention of the 24-hour standard also reasonably placed more weight on controlled human exposure studies, which only showed effects at PM_{2.5} concentrations well above those measured in areas meeting the current standards.⁶⁷ The rationales provided by the majority of CASAC are much less persuasive. Those members prefer to rely on the epidemiologic studies, despite the fact that the absence of a response in the controlled human exposure studies compellingly forecloses the conclusion that short-term exposure at current ambient concentrations result in health effects. The CASAC

⁶⁵ *See id.* at 5608.

⁶⁶ *Id.* at 5609.

⁶⁷ *Id.*

members supporting revision also have concerns that the Risk Assessment “may” not capture effects during winter months or that the annual standard may not generally be controlling.⁶⁸ But, those positions are speculative, and there is no scientific reason to afford them any weight. The Administrator adequately explains his decision to discount them.⁶⁹

In addition to being consistent with the minority CASAC view, the Administrator’s proposed decision to retain the current NAAQS is consistent with the EPA staff’s recommendation in the 2022 PA to retain the NAAQS. The staff’s position has not changed since the conclusion of the 2020 NAAQS review.

The minority CASAC view and the staff’s position are also consistent with the available science. As explained above, the controlled human exposure studies only show effects at PM_{2.5} concentrations well above those in areas that meet the current standard.⁷⁰ Similarly, the Administrator explains that the restriction studies available in this review do not provide information sufficient to support a revision of the 24-hour NAAQS.⁷¹ In particular, those studies are subject to uncertainties as to the method for excluding concentrations, they do not consider levels “along with the forms and averaging times of the standards,” and they do not identify health impacts that result from peak concentrations.⁷² These are sound reasons for deciding revision is not warranted.⁷³

⁶⁸ *Id.*

⁶⁹ *Id.* at 5621.

⁷⁰ *Id.* at 5620.

⁷¹ *Id.* at 5621.

⁷² *Id.*

⁷³ As discussed above, many of these issues apply with equal weight to the annual standard, yet EPA does not explain why it reaches a dissimilar conclusion with respect to the standard.

The Risk Assessment also demonstrates that the annual standard is the controlling standard for the areas EPA evaluated and that the annual standard is likely the controlling standard throughout most of the country. The Proposed Rule further explains that the Risk Assessment’s risk estimates do not reflect “uncertainties in associations of health effects at lower concentrations and simulated air quality improvements will always lead to proportional decrease in risk.”⁷⁴ These are good reasons for concluding that the Risk Assessment likely overstates risk.⁷⁵ As such, there is no record evidence that lowering the 24-hour standard will provide significant enhanced protection to public health.

VII. EPA Has Correctly Determined that the Record Does Not Support a Revision of the Coarse PM NAAQS.

EPA is correct that there is no record evidence to support a revision of the NAAQS for PM₁₀. As the Proposed Rule explains, the 2019 ISA did not even conclude that a causal relationship between PM₁₀ exposure and any health effect exists.⁷⁶ No new information has emerged since the 2020 PM NAAQS Decision to alter that finding. Indeed, EPA did not evaluate any new science related to PM₁₀ in its Supplemental ISA, so there is no basis on which to revise the standard on reconsideration.⁷⁷

Moreover, the Proposed Rule notes that many uncertainties continue to exist with respect to PM₁₀ and health effects. Those uncertainties were noted in the 2009 ISA and have not been resolved.⁷⁸ The Administrator characterizes the uncertainties and limitations for experimental

⁷⁴ *Id.* at 5622.

⁷⁵ EPA should further explain why it would evaluate the Risk Assessment differently with respect to the annual standard.

⁷⁶ *Id.* at 5630.

⁷⁷ *Id.*

⁷⁸ *Id.* at 5632.

evidence as “considerable.”⁷⁹ The epidemiologic studies, similarly, generally do not report statistically significant associations with PM₁₀ exposures.⁸⁰ Confounding by co-pollutants has been addressed in only a “relatively small” number of studies, increasing the uncertainty regarding whether PM₁₀ or co-pollutants are responsible for any effects reported in the epidemiologic studies.⁸¹

The Proposed Rule further supports its determination that revision of the PM₁₀ NAAQS is not needed by reference to CASAC’s support for retaining the existing NAAQS.⁸² Although the Administrator is right to rely on this advice, it is particularly clear that the omission of the prior CASAC’s recommendations from the Administrator’s rationale for proposing to retain the PM₁₀ NAAQS is inappropriate. EPA says expressly that “the 2019 ISA continues to serve as the scientific foundation for assessing the adequacy of the primary PM₁₀ standard in this reconsideration of the 2020 final decision (U.S. EPA, 2019a, section 1.7; U.S. EPA, 2022a).”⁸³ Despite this, EPA only refers to the advice of the reconstituted CASAC. Failing to address this shortcoming could put any otherwise well-supported decision in legal jeopardy.

VIII. EPA Has Correctly Determined that the Record Does Not Support a Revision of the Secondary NAAQS.

The 2020 PM NAAQS review and these reconsideration proceedings address the secondary PM NAAQS for climate, materials, and visibility, while ecological effects are being addressed in a separate proceeding. EPA has correctly determined that the science does not justify establishing a secondary NAAQS to address climate or materials effects. The Agency has

⁷⁹ *Id.* at 5634

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 5635.

⁸³ *Id.* at 5630.

not included any new science in the Supplemental ISA to address these effects, and EPA has never provided any analysis sufficient to identify a standard that would be protective against climate impacts or materials damage resulting from PM exposures.

EPA has also properly proposed to determine that there is no basis for revising the secondary NAAQS to address visibility. There were no new visibility studies at the time of the 2020 NAAQS review. There was, accordingly, no basis during the last review for revising the secondary PM NAAQS. Only one new study has been evaluated in the Supplemental ISA, and it does not provide additional useful information.⁸⁴ That study evaluated individuals' preferences for different visibility conditions in the Grand Canyon, asking them to identify a cutoff for acceptable visibility based on images of a specific vista.⁸⁵ This is the basic approach for all of the visibility studies that have formed the basis of the secondary PM NAAQS review over the last several review proceedings.⁸⁶

The Proposed Rule appropriately identifies why the Grand Canyon study is not useful in this proceeding. First, it assessed visibility preference in a Class I area, not an urban area.⁸⁷ All of the other preference studies assessed preferences in urban areas.⁸⁸ When EPA has assessed a secondary NAAQS to address visibility, it has acknowledged that the Regional Haze Program of the CAA is the appropriate tool for addressing visibility in Class I areas and that any NAAQS for visibility should instead address visibility in urban areas not covered by the program.⁸⁹ The Grand Canyon study also evaluated a more limited range of candidate visibility protection levels,

⁸⁴ *Id.* at 5649.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*, n.126.

⁸⁹ *See id.* at 5688.

such that study participants were shown a range of only 3 to 20 deciviews.⁹⁰ The other preference typically showed visibility conditions ranging from 9 to 45 deciviews.⁹¹ This is significant because, as discussed below, the range of visibility conditions shown to study participants has been shown to affect the level of visibility that the participants deem acceptable. For these reasons, EPA is correct to consider this study an outlier and to discount its findings.

Rather than establish a basis for revising the secondary NAAQS to be more stringent, the Proposed Rule calls into question the adequacy of the support for the existing secondary PM NAAQS. That NAAQS is set at a level equal to the primary PM NAAQS based on the identification of a 30-deciview target for visibility protection in urban areas that has been shown to be achieved through compliance with the primary standards. While CASAC did not recommend a lower visibility target, it did state that a target level of protection of 30 deciviews “needs to be justified.”⁹²

EPA explains that the 30-deciview target was selected because it was “the upper end of the range of visibility impairment judged to be acceptable by at least 50% of study participants in the available public preference studies.”⁹³ Smith and Howell (2009), however, demonstrated that study participants’ opinions on acceptable visibility conditions are significantly influenced by the range of visibility conditions they are shown. Accordingly, if the range included more visibility impairment, preference studies identified higher deciview values as acceptable. If the range showed less visibility impairment, participants identified lower deciview targets as acceptable. This calls the reliability of the preference studies into serious doubt. Further, there are only five

⁹⁰ *Id.*, n.128.

⁹¹ *Id.*

⁹² *Id.* at 5655.

⁹³ *Id.* at 5646.

such studies that EPA has deemed relevant to this proceeding. This body of science is far too limited and uncertain to form the basis of a standard. EPA should address this in its final rule.

Finally, the evidence demonstrates that the current secondary NAAQS provides a level of visibility protection within the range of 20 to 30 deciviews.⁹⁴ EPA's quantitative analysis showed most areas of the country would be below 26 deciviews under the current standard.⁹⁵ That is plainly sufficiently protective given the limited body of scientific evidence.

IX. EPA's Proposed Changes to the Air Quality Index Would Not Adequately Communicate Public Health Risk.

As the Proposed Rule explains, EPA relies on the Air Quality Index ("AQI") to communicate air quality-related health risks to the public.⁹⁶ EPA's AirNow website conveys current air quality information and forecasts to tell the public if air quality is "good," "moderate," "unhealthy for sensitive groups," "unhealthy," "very unhealthy," or "hazardous."⁹⁷ The Proposed Rule explains that EPA has previously set the AQI so that air quality is deemed healthy when the annual PM standard is met and moderate when air quality meets the 24-hour standard.⁹⁸ EPA therefore proposes the following:

EPA proposes to continue to use the approach used in the revisions to the AQI in 2012 (77 FR 38890, June 29, 2012) of setting the lower breakpoints (50, 100 and 150) to be consistent with the levels of the primary PM_{2.5} annual and 24-hour standards and proposes to revise the lower breakpoints to be consistent with any changes to the primary PM_{2.5} standards that are part of this reconsideration. Second, the EPA proposes to revise the upper AQI breakpoints (200 and above) and to replace the linear-relationship approach used in 1999 to set these breakpoints, with an approach that more fully considers the PM_{2.5} health effects evidence from

⁹⁴ *Id.* at 5653.

⁹⁵ *Id.*

⁹⁶ *Id.* at 5638.

⁹⁷ *Id.* at 5637.

⁹⁸ *Id.*

controlled human exposure and epidemiologic studies that have become available in the last 20 years.⁹⁹

As a result of these proposed changes, air quality that would be deemed good under the current AQI would in the future be labeled moderate, unhealthy air today could be labelled very unhealthy, and so on.

It is appropriate for EPA to keep the public informed about air quality and risks to public health. The proposed changes to the AQI would not fully achieve that goal. While revisions to the AQI to reflect new scientific knowledge may be called for, EPA should also find a way to convey to the public that overall air quality is not declining. EPA's approach to the AQI gives the alternate impression, that overall air quality is declining when the opposite is true. EPA notes that it has "been developing new and innovative programs and initiatives to provide more information related to air quality and health messaging to the public in a more timely way."¹⁰⁰ Finding an innovative way to ensure that the AQI is not misleading should be a priority in this rulemaking. There are many ways EPA might proceed, including identifying additional breakpoints in air quality categories, raising the concentration levels for each breakpoint, or revising terminology for the categories to more clearly convey risks.

Accurately conveying risk to the public is especially important here where the basis for revising the NAAQS is, at the least, less robust than usual. The reconsideration proceeding has evaluated limited science, has been conducted in a short period of time, and is marked by disagreements among CASAC members and even different opposing versions of CASAC.

Moreover, the potential for arbitrary action with respect to the AQI is apparent even in the Proposed Rule. In addition to its proposed new breakpoint levels, EPA also asks for comment

⁹⁹ *Id.* at 5638.

¹⁰⁰ *Id.*

on alternative approaches that would set the breakpoints for unhealthy air at even lower concentrations.¹⁰¹ EPA also seems to acknowledge that different breakpoints could be identified if the agency were to rely more heavily on different individual studies.

In sum, EPA should ensure that the AQI does not unnecessarily alarm or mislead the public as to the overall state of air quality and its continuing improvement throughout the country.

X. EPA’s Proposed Changes to its Monitoring Requirements Should Be Better Supported.

EPA has proposed enhancing air quality in “at-risk communities” by modifying “our PM_{2.5} monitoring network design criteria to include an environmental justice factor that accounts for proximity of populations at increased risk of adverse health effects from PM_{2.5} exposures to sources of concern.”¹⁰² This would include subpopulations of: “children, lower socioeconomic status (SES) populations, minority populations (particularly Black populations), and people with certain preexisting diseases (particularly cardiovascular disease and asthma).”¹⁰³ To achieve its goal, EPA proposes to add “a network design requirement to specifically locate monitors in at-risk communities.”¹⁰⁴ EPA expects that this enhanced monitoring in at-risk communities will address environmental justice by better characterizing local air quality and ensuring that these communities “receive the intended level of protection of a revised NAAQS.”¹⁰⁵

It is not clear what sort or level of impact EPA expects its proposal to have. In fact, EPA says that “in many communities there may already be sites meeting the network design criteria

¹⁰¹ *Id.* at 5642.

¹⁰² *Id.* at 5673.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

we are proposing for at-risk communities,” that “EPA believes that the movement of sites should be minimized, especially in MSA’s with a small number of sites,” and that only “a small number of new sites are expected to be required.”¹⁰⁶

EPA should fully evaluate the impact of its proposal. Such an analysis would include evaluation of whether at-risk communities, as defined in EPA’s Proposed Rule, would be consistent with the administration’s definition of environmental justice communities and if EPA’s new policies would actually have a beneficial effect on environmental justice.

In addition, EPA should ensure that the monitoring network is capable of capturing data in areas throughout the country. Most monitors are currently located in urban areas and record measurements over a relatively small geographic scale. The gaps in the network leave some permit applicants with limited data on which to base a compliance analysis. EPA should work to remedy that issue.

Finally, EPA asks for comment on incorporating data from nonregulatory sensors and other new technology. It is unclear what purpose EPA would use data from such sensors for, how EPA would gather the data, or how the Agency would seek to ensure the data’s quality and reliability. Monitoring used for any regulatory purpose must be subject to rigorous standards with appropriate quality assurance and sensor calibrations performed by trained professionals, as provided for in EPA requirements. Non-regulatory sensors cannot reasonably provide that kind of data.

¹⁰⁶ *Id.* at 5675.

XI. EPA Should Provide Additional Guidance on Implementation and Ensure States Have Adequate Time to Prepare for a New NAAQS.

EPA says that environmental justice will be an important consideration in implementation and encourages state and local air agencies to begin considering how they might incentivize early emission reductions and other actions to benefit overburdened communities.¹⁰⁷ EPA cites its 2016 final rule “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” as providing guidance on the issue. That guidance is quite limited. It recommends states consider focusing efforts on reduction of direct PM_{2.5} emissions, rather than PM precursors, and prioritize addressing “sources of emissions that directly and adversely affect low-income and other at risk populations.”¹⁰⁸ The rule provides a short list of actions states might consider, including addressing minor sources, creating voluntary programs for mobile source emissions, incorporating environmental justice criteria into alternatives analysis for siting, developing potential supplemental environmental projects that could be implemented, and enhancing outreach efforts, among other things.¹⁰⁹ EPA should recognize that even this guidance provides relatively little detail on concrete actions states can consider. Many states will undoubtedly struggle with how to address these issues.

EPA also clearly intends to ask states to do more than what the 2016 guidance calls for. EPA says, for instance, that it expects states to consider environmental justice in making designations, and it says that the Agency may address this further in a future “designations-specific memorandum.”¹¹⁰ It also says states should consider environmental justice when

¹⁰⁷ *Id.* at 5680.

¹⁰⁸ 81 Fed. Reg. 58,010, 58,137 (Aug. 24, 2016).

¹⁰⁹ *Id.*

¹¹⁰ 88 Fed. Reg. at 5681.

developing nonattainment SIPs.¹¹¹ States will need more support to ensure they address these issues in a manner that will satisfy EPA and be consistent with the CAA.

In discussing implementation of prevention of significant deterioration (“PSD”) requirements for a revised PM NAAQS, EPA notes that, in 2019, the D.C. Circuit struck down a grandfathering provision in the PSD rules for the 2015 ozone NAAQS. As a result, EPA says that it “is not proposing any grandfathering provision for this proposed PM_{2.5} NAAQS, if finalized,” and that “PSD permits issued on or after the effective date of any final revised PM_{2.5} NAAQS would require a demonstration that the proposed emissions increases would not cause or contribute to a violation of the revised PM_{2.5} NAAQS.”¹¹² EPA raises environmental justice concerns in this area as well, encouraging states to consider impacts to environmental justice communities when conducting site analyses, creating plans for community engagement and undertaking “cumulative emissions impact analysis.”¹¹³

Many of these matters involve new issues for states to address, especially EPA’s new and evolving policies on environmental justice. They will require substantial additional guidance from EPA and more time than usual to address throughout the NAAQS implementation process. PSD issues always present special challenges when a NAAQS is revised, as EPA’s previous attempts to develop grandfathering provisions acknowledge. Accordingly, if the PM NAAQS reconsideration proceeds, EPA should find ways to give states more time to implement the NAAQS. This could include delaying the effective date of any final rule to revise the NAAQS to provide states with more time to undertake implementation activities once EPA has identified the final requirements. EPA should have additional guidance and established environmental justice

¹¹¹*Id.*

¹¹² *Id.* at 5686

¹¹³ *Id.* at 5687.

policies in place with clear expectations prior to either the completion of the reconsideration proceeding or during the development of the next formal NAAQS review.

XII. Conclusion

PGen appreciates the opportunity to comment on EPA's Proposed Rule. If EPA has any questions on PGen's comments, or if EPA would like to meet with PGen members to discuss these comments further, it should contact PGen's counsel—Aaron M. Flynn at 202-857-2422 or aflynn@mcguirewoods.com—who will work with PGen's Board of Directors to arrange a convenient time for a meeting.