

## SUMMARY

### EPN Comments on the Draft EPA Policy Assessment of Ozone

December 16, 2019

On December 16, 2019, EPN submitted [comments](#) on EPA’s draft Policy Assessment (PA) of the scientific basis for the National Ambient Air Quality Standards (NAAQS) for ozone. The Clean Air Act (CAA) requires EPA to set standards for common air pollutants that are harmful to public health and the environment, and periodically review the standards and the science on which they are based. Ground-level ozone, the main ingredient in “smog,” is called a secondary pollutant because it is formed when two primary air compounds—nitrogen oxides and volatile organic compounds—combine in the presence of sunlight. EPN’s review found that the draft PA does not recommend a revision to the current secondary ozone standard, contrary to the court’s decision in *Murray Energy v. EPA*, and does not analyze any alternative standards. As a result, the agency should prepare a draft PA that accounts for the court’s decision regarding the NAAQS ozone standard, and resubmit that draft to EPA’s independent Clean Air Advisory Committee (CASAC) for review.

EPA’s draft PA perpetuates the same errors that resulted in the court’s remand of the secondary ozone standard in *Murray Energy v. EPA*. The court held that EPA had not explained how a secondary standard with a three-year averaging time provided necessary protection against tree damage. The court also said EPA had not justified its decision not to specify any level of air quality needed to protect against visible foliar or leaf injury. In addition, the agency failed to inform CASAC of these issues. As a result, the CASAC review of the secondary standard is essentially meaningless, because the agency has failed to present legal alternatives for CASAC review. If the agency proceeds without CASAC review of legally legitimate standards, any secondary standard would be rendered illegal.

EPN’s review of the current ozone draft PA found:

- **The draft PA has not justified a three-year averaging period.** If the agency is determined to retain a three-year averaging time, then it must adjust the level of the secondary standard to avoid the one-year exposure spikes that result in unacceptable loss of biomass, the total mass of living material measured over a particular area.
- **The draft PA has not properly justified its failure to identify a level of ozone needed to protect against visible leaf injury.** There is no dispute that exposure to ozone is linked to visible leaf injury and that this injury can be significant to public welfare. The D.C. Circuit has already rejected the agency’s argument that it lacks criteria for assessing the welfare effects, and the draft PA does not address the 2015 scientific conclusion by CASAC that a one-year standard level of 10 ppm-hrs is required to reduce leaf injury.
- **Adverse climate effects of ozone require a robust secondary standard.** The PA notes the difficulties of quantifying the effect of ozone on temperature and other climate change effects, particularly when assessing the effects on a regional scale. Difficulty in quantifying effects or, more properly, levels at which known effects occur is no bar to setting NAAQS.

### Background

The CAA requires that EPA periodically review the latest scientific information relevant to assessing NAAQS pollutants like ozone, as well as the standards themselves. Based on this review, EPA must decide whether the existing NAAQS are adequate to protect public health and welfare, and revise them as appropriate. To ensure that these reviews meet the highest scientific standards, the Act established the seven-member independent CASAC. Last fall, EPA abandoned plans to reinstate an expert Ozone Review Panel, which has supplemented the CASAC’s review for the last four decades.