

Senator Shelley Moore Capito Opening Statement
Committee on Environment and Public Works
Subcommittee on Clean Air Clean Air and Nuclear Safety
“Making Implementation of the National Ambient Air Quality
Standards for Ground-Level Ozone Attainable:
Legislative Hearing on S.263 and S.452”
May 23, 2017

Thanks to everyone for being here today.

Today’s hearing in the Subcommittee on Clean Air and Nuclear Safety will focus on the challenges posed by the implementation of the National Ambient Air Quality Standards (NAAQS) for ground-level ozone.

I will begin by recognizing myself for a brief opening statement before turning the floor over to Ranking Member Whitehouse for five minutes.

I will then recognize Senator Flake as our first panel, before introducing our second panel composed of expert witnesses whom will each be afforded five minutes for oral testimony.

With that bit of housekeeping out of the way, let’s begin.

Recognizing myself for five minutes.

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Roughly a year has passed since the Subcommittee last had a hearing on the Ozone NAAQS and legislation seeking to address the uncertainty regarding implementation of the new standards.

A year later, no legislative fix has been enacted and so that uncertainty continues.

The EPA took seven years to finalize the implementing regulations of its 2008 standards. Nearly contemporaneously, it announced a revision of the standards to 70 parts per billion.

Now state and local governments and private industry are faced with potentially abiding by two different standards at the same time.

To that end, I request unanimous consent to submit for the record two letters: one signed by more than 200 trade associations from around the country to congressional leadership in support of last year's version of S. 263, and a letter sent yesterday by the Association of Air Pollution Control Agencies to this Subcommittee expressing concerns over the NAAQS review and implementation process.

This is a multibillion dollar issue, as there are severe constraints on economic development in areas designated as in "nonattainment." Perversely, in nonattainment areas it may be more profitable for a company to close a factory and kill jobs to create ozone offset credits to sell, then it would be to reinvest in or expand that facility.

Furthermore, while this Committee is improving our nation's infrastructure, nonattainment status delays affected areas' access to federal support for transportation projects.

The bills before us today are meant to end the regulatory uncertainty and its impacts on Americans' livelihoods.

S. 263, the *Ozone Standards Implementation Act*, which I introduced with Senators Cornyn, Fischer, Flake, Inhofe, and Manchin, would make needed reforms to the implementation of the standards, including

requiring that the EPA promulgate implementing regulations at the time it finalizes the standards. Where there is a range of levels that would protect public health, it would also require the EPA to consider whether the selected standard is technically feasible.

S. 452, the *Ozone Regulatory Delay and Extension of Assessment Length (ORDEAL) Act*, introduced by Senator Flake with myself, and Senators Cotton, McCain, and Wicker, would, like my bill, move the EPA from a five-year schedule of reviewing the standards to a ten-year schedule, affording enough time for compliance.

The EPA has repeatedly failed to comply with the existing five-year schedule and, as the standards have gradually tightened compliance has become costlier and more complicated. The longer schedule will allow the time needed for regulators, governments, and regulated parties to understand and fulfill their obligations.

Different states and regions have unique challenges in meeting the ozone standards. Elevation, weather patterns, natural phenomena, traffic, varying levels and types of industrial activity, and interstate and international transport of ozone and its precursors all impact ozone levels and vary significantly by jurisdiction.

With all of those variables in mind, modeling is extremely complicated and is largely left up to the states and municipalities, at great cost. Western and mountain states are particularly burdened by elevated background levels of ozone.

To achieve compliance, governments and industry need a clear, certain timeline for implementation of standards and a willing partner in the EPA. Up to now, they have not had that support from Washington.

The EPA repeatedly misses the deadlines for finalization – 2008 was not an outlier. One of these delays was 14 years. Implementation almost always takes longer than the five years required by statute.

Now, just as the 2008 standards are being implemented, implementation regulations for 2015 are being drawn up. Areas that have just reached attainment status may once again be thrown into nonattainment, even as ozone levels nationally are trending downwards.

Based on data collected between 2013 and 2015, the number of counties in nonattainment will increase from 197 to 214 across 20 states and the District of Columbia. More than one-third of the US population would live in areas facing regulatory sanctions for nonattainment.

EPA has estimated the cost to comply with this new standard will be \$1.4 billion annually for 49 states and \$800 million annually for California, which would have until the 2030s to come into attainment.

Ground-level ozone is already declining nationwide due to emissions controls. There is no need to rush into implementation of new standards when the trend lines are positive and the late implementation of 2008 has not allowed the compliance process to play out.

Even a state like West Virginia, which is projected to be in attainment under both the 2008 and – narrowly – the 2015 standards has raised opposition with the EPA over the tightening of the standards over the uncertainty and costs the standards generate on those grounds.

The West Virginia Department of Environmental Protection has noted in communications to the EPA that “the costs of achieving lower ozone

concentrations increase exponentially as the standard is lowered, a policy decision as to the level at which the NAAQS should be set should not require the expenditure of billions of dollars to achieve health benefits that are not real, or at least extremely dubious under the science.” I request unanimous consent that this letter be entered into the record.

Our panel has the unique perspective of regulators that have addressed the challenges posed by the implementation of the Ozone NAAQS and by a civic leader from one American city, Baton Rouge, that has been whipsawed by the EPA’s start-stop approach to implementation and faces a nonattainment re-designation later this year or early next.

I look forward to the debate and hearing from our witnesses. I yield to Ranking Member Whitehouse for a five minute opening statement.

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