

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF MISSISSIPPI, <u>et al.</u>)	
Petitioners,)	
)	No. 08-1200 and consolidated cases
v.)	(Ozone NAAQS Litigation)
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY)	

DECLARATION OF REGINA MCCARTHY

I, Regina McCarthy, declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information, and belief and is based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am the Assistant Administrator for Air and Radiation at EPA, a position I have held since June 2009. The Office of Air and Radiation (OAR) is the EPA office that develops national programs, technical policies, and regulations for controlling air pollution. OAR's assignments include the protection of public health and welfare, pollution prevention, energy efficiency, air quality, industrial air pollution, pollution from vehicles and engines, acid rain, stratospheric ozone depletion, and climate change.

2. OAR is responsible for conducting rulemakings to adopt or revise National Ambient Air Quality Standards (NAAQS) under section 109 of the Clean Air Act (CAA). 42 U.S.C. § 7409. My office also is responsible for either preparing or assisting in the preparation of the scientific and technical documents that the Administrator reviews in determining whether revisions to the NAAQS are appropriate. OAR provides assistance to the Administrator as she assesses the body of evidence and proposes and takes final actions concerning decisions to revise the NAAQS in light of the CAA's requirements.

3. EPA issued a final rule revising the primary and secondary ozone NAAQS in March 2008. 73 FR 16436 (March 27, 2008). That rule was challenged in this court. On September 16, 2009, EPA informed this Court that it would be commencing a rulemaking to reconsider the 2008 ozone NAAQS.

4. Following this filing, EPA continued to review the 2008 NAAQS rule and to take the steps required to prepare and issue a proposed rule. EPA published its notice of proposed rulemaking on January 19, 2010. 75 FR 2938 (January 19, 2010).

5. As in other proceedings under CAA section 307(d), EPA must provide an opportunity for public comment as well as provide an opportunity for oral presentation of comments, keep a transcript of any such proceeding, and hold the record of the proceeding open for an additional 30 days to provide an opportunity for submission of rebuttal and supplementary information. 42 U.S.C. § 7607(d)(5). After publication of the proposed rule, EPA accepted public comment on the proposal until March 22, 2010. EPA also held three public hearings on the proposal in February 2010 in Houston, TX; Washington, DC;

and Sacramento, CA. Approximately 210 interested stakeholders participated in the public hearings. EPA also received approximately 5,200 unique comments on the proposed rule from citizens, industry groups, public health organizations, states, and public interest groups. These comments touched on all aspects of the proposed rule for both the primary and secondary standard.

6. After the close of the comment period, EPA began to undertake all the steps and the analyses necessary to make well-informed decisions and to prepare a final rule. Among other things, this requires time-intensive work to review, analyze and develop responses to the comments received by the Agency. Not surprisingly, many of the comments addressed difficult scientific and technical issues regarding the clinical and epidemiological studies in the record, as well as EPA's risk and exposure assessments. Development of a final rule of this magnitude also requires significant time and effort to brief the Administrator, and other senior managers, on the complex issues involved and then to develop the Agency's positions on these issues. Many of the issues cannot be dealt with easily and require considerable internal deliberation.

7. Reaching a final decision on the reconsideration of the March 2008 decision requires the deliberative evaluation of the extensive body of scientific and technical information in the record and the comments received on the proposed rule, both individually and as a whole. It requires the exercise by the Administrator of public health and welfare policy judgment concerning the appropriate revisions to the ozone NAAQS in light of this body of information. In providing this Court in past filings with its schedule for reaching a final decision, EPA has made its best good faith estimate on how much time would be needed to complete the various steps necessary to reach a conclusion on the reconsideration. EPA had believed it could complete the reconsideration in a relatively short timeframe and most recently informed this Court that it was committed to issuing a final rule by December 31, 2010. However, in the process of evaluating the scientific evidence and other information before her, the Administrator recently determined that seeking additional advice from the Clean Air Act Scientific Advisory Committee (CASAC) may prove useful and important in helping her draw conclusions about the scientific and other technical information.

8. CASAC is a committee of highly-qualified scientific and health experts that provide advice on the body of scientific evidence and other information concerning the air pollutant at issue, in this case ozone, as well as make recommendations on appropriate revisions to the NAAQS in light of that evidence and information, as part of the regular periodic review of the science-based air quality criteria and the NAAQS. 42 U.S.C. §§ 7408, 7409(d). CASAC has previously provided advice to the Administrator during the review of the Ozone NAAQS leading to the March 2008 revision, as well as during the current reconsideration. The members of the CASAC committee for the 2008 ozone revision are familiar with and have important expertise concerning the underlying scientific and technical information.

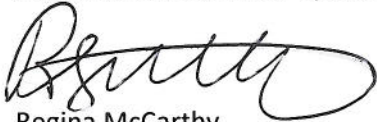
9. During this reconsideration, many commenters have highlighted and taken positions on various issues concerning the scientific evidence and other information before the Administrator. While CASAC has previously provided advice on many of these issues, the Administrator believes that additional advice from CASAC may be useful, especially in the context of a more specific and focused solicitation of scientific advice. For example, the advice from CASAC may aid the Administrator in most appropriately

weighing the strengths and weaknesses of the scientific evidence and other information before her, and thus aid her in the exercise of judgment as to the appropriate standard for ozone under CAA section 109(b). 42 U.S.C. § 7409(b).

10. In light of the above, the Administrator intends to take the following specific steps. During December 2010 and January 2011, EPA intends to prepare a set of questions for CASAC and provide them for CASAC's review. The questions are expected to request additional advice focused on the scientific evidence and other information before the Administrator. EPA anticipates that CASAC will hold a public meeting in February 2011 to discuss their response and anticipates that CASAC will provide its additional advice to the Agency by letter shortly thereafter. The CASAC process includes an opportunity for the public to submit comments to CASAC and EPA. EPA intends to issue a final decision on the reconsideration by July 29, 2011. This timeline should give the Administrator adequate time to consider CASAC's additional advice as well as any public comments, to prepare a final rule and accompanying rulemaking documents, such as the response to comment document, conduct the appropriate interagency review under Executive Order Number 12866, and issue a final decision on the reconsideration rulemaking.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2010.

A handwritten signature in black ink, appearing to read 'Regina McCarthy', written in a cursive style.

Regina McCarthy

Office of Air and Radiation

Assistant Administrator for Air and Radiation

U.S. EPA