

CLEAN AIR NAAQS

The Clean Air Act’s regulatory regime for ozone pollution abatement is fundamentally broken. Because ozone is a “non-threshold” pollutant, there is no “scientific” standard at which there is zero impact. Rather, it has a continuum of effect. And although differences in health impact along that continuum are slight, the differences in compliance costs are profound. Thus, setting the standard for ozone is a quintessential policy-making determination, for which the U.S. Environmental Protection Agency (EPA) should weigh both the costs and benefits in rendering a decision.

However, thanks to a series of federal court rulings, responsibility for setting ozone standards has been given to an insular group of advisers, the seven-member Clean Air Science Advisory Committee (CASAC). CASAC’s recommended ozone standard, which is due to be finalized in 2015, could cost the economy trillions of dollars. Yet, CASAC is in no way accountable to U.S. voters. To fix the Clean Air Act’s program for ozone pollution mitigation, Congress must restore policy-making discretion to the EPA and task CASAC with its proper statutory role of advising the EPA on the public health dangers of ozone—and of ozone policy.

Congress should:

- ◆ Require CASAC to fulfill its responsibility pursuant to 42 U.S.C. §7409(d)(2)(C)(iv) to “advise the administrator of adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.”
- ◆ Amend 42 U.S.C. §7607(d)(3) so that courts of judicial review afford deference to the EPA’s reasonable explanation for adopting a national ambient air quality standard that differs from CASAC’s advice.

Under the Clean Air Act, the Environmental Protection Agency must establish a national standard for ambient air concentrations of ground-level ozone at a level “requisite to protect public health.” That national ozone standard must be reviewed and, if necessary, revised every five years. In 1977, Congress established the Clean Air Science Advisory Committee—a

seven-member board nominated annually, primarily from the ranks of epidemiologists and public health officials—and tasked it with advising the EPA on the costs and social effects of its recommended ozone standard.

However, CASAC has never fulfilled its statutory duty to do so. That failure is troubling in light of the fact that ozone is a “non-threshold” pollutant—that is, there is no threshold at which ambient air concentrations of ozone cease to have an effect on human health. Therefore, there is no obvious line at which to draw zero impact. Rather, it is a continuum. And as explained by Susan Dudley, director of George Washington University’s Regulatory Studies Center, “Once you recognize that science alone cannot determine definitively what the standard should be, then you are faced with policy decisions, and policy decisions involve tradeoffs.”

That policy choice should be made by the EPA, which represents a branch of government that is accountable to voters through presidential elections. However, the D.C. Circuit Court of Appeals, which is the exclusive court of review for national ozone standards, has interpreted the Clean Air Act such that, in practice, the EPA cannot deviate from CASAC’s advice on where to set the standard. As such, the EPA is effectively bound by CASAC in establishing an ozone standard.

The D.C. Circuit’s empowerment of CASAC is hugely problematic. CASAC’s recommended range of standards would place 80 percent to 96 percent of eligible counties in “nonattainment” status, which is a de facto deindustrialization mandate. According to a recent industry study, the ozone rule could impose costs of up to \$1 trillion annually, making it the most expensive regulation ever. CASAC, an unelected body of technocrats, has no business rendering decisions of such gravity for the American people.

Experts: Marlo Lewis, William Yeatman,
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For Further Reading

Susan E. Dudley, “Economic Impact Analyses”, *Pace Environmental Law Review*, Vol. 16, No. 1 (Winter 1998): 81–86,

<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1313&context=pehr>.

David Harrison, Jr., et al, "Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone," NERA Economic Consulting, July 31, 2014, <http://www.nera.com/publications/archive/2014/assessing-economic-impacts-of-a-stricter-national-ambient-air-qu.html>.

William Yeatman, "CASAC: The Undemocratic Institution that Threatens the American Economy," GlobalWarming.org, April 16, 2014, <http://www.globalwarming.org/2014/04/16/casac-the-undemocratic-institution-that-threatens-american-economy/>.