

EPA's \$32 Trillion Negligible Risk

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IT IS NO SURPRISE THAT FEDERAL AGENCIES often tailor their interpretation of the facts and the law to support various policy goals. It should also be no surprise that the agencies sometimes “re-tailor” those interpretations if they conflict with other policy goals. For an example, consider the Environmental Protection Agency and its opposing appraisals of ozone.

Ozone is unusual among the substances targeted under the Clean Air Act (CAA) in that it has two distinct roles, both of which are separately regulated. It acts as a shield that blocks most of the sun’s harmful ultraviolet-B radiation (UVB) from reaching the ground — a benefit that the CAA seeks to maintain. But ozone that is close to the ground — “tropospheric ozone” — is also a major constituent of smog — an air pollutant the CAA strives to reduce. That dichotomy is reflected in an EPA brochure entitled “Ozone: Good Up High, Bad Nearby.”

Ozone regulation For the EPA of the early 1990s, one of the chief priorities was the prevention of ozone depletion from the release of chlorofluorocarbons and other manmade compounds. The agency promulgated numerous stringent rules banning a host of putative ozone-depleting compounds.

To buttress those rules, the agency grossly overstated the risks of ozone depletion and the benefits of the measures. Its Regulatory Impact Analysis (RIA) concluded that, by preventing a 10-percent decline in ozone and a concomitant rise in ground-level UVB, the agency was preventing millions of UVB-induced skin cancers. EPA’s estimate of monetized benefits from the rules ranged from \$8 trillion to \$32 trillion dollars, easily eclipsing anything else the agency has ever done. And, despite study after study conceding that the predicted long-term UVB increase has not been measured, and no clear evidence of a link between ozone loss and increasing skin cancer incidence, no one at the agency has ever suggested that the dubiously high estimate of benefits was wrong.

A few years later, EPA chose to tighten the then-already-strict National Ambient Air Quality Standard (NAAQS) for tropospheric ozone. The agency argued that the new standard would better protect the public against asthma attacks and other respiratory problems associated with inhalation of ozone. However, EPA admitted that the marginal benefits from such reductions are small; the agency’s Clean Air Scientific Advisory Committee conceded that the new rule would not be

substantially more protective of public health than the old. EPA’s initial estimate of respiratory-related benefits was zero to \$1.5 billion annually.

Lost benefit Reducing tropospheric ozone will also allow more UVB to reach ground level, which will produce adverse effects that may counterbalance or even outweigh the benefits from EPA’s projected reduction of respiratory ailments. Using figures from both EPA and the Department of Energy, it seems that the new NAAQS requirements will lead to thousands of additional cases of skin cancers.

According to the CAA, EPA is to set NAAQS based on “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.” Although the plain meaning of “all identifiable effects” would indicate that both the respiratory and UVB concerns must be taken into account when deciding whether to lower the existing ozone NAAQS, EPA chose to ignore its own claims about the UVB effects. The agency asserted that it is precluded by the CAA from taking the beneficial effects of a pollutant into account, and added that such effects are nonetheless too speculative and trivial to justify changing the standard.

The agency’s arguments failed when the final rule was challenged in the United States Court of Appeals. In the 1999 court decision *American Trucking Associations, Inc. vs. EPA*, the court flatly rejected the assertion that the positive effects of ozone in blocking UVB should be ignored. The court noted that “it seems bizarre that a statute intended to improve public health would, as EPA claimed at argument, lock the agency into looking at only one half of a substance’s health effects in determining the maximum level for that substance.” The court directed that “EPA must consider positive identifiable effects of a pollutant’s presence in the ambient air in formulating [the NAAQS].”

EPA published its proposed response in November of 2001. While purporting to comply with the court’s order, the agency decided not to change the ozone standard. EPA repeated its earlier assertion that the UVB effects are “too uncertain” and “would likely be very small from a public health perspective.” In so doing, the agency disavowed its own evidence correlating the new standard with increased skin cancers, but offered no new studies in support. The agency anticipates a final version soon.

In sum, the same phenomenon — ozone’s role in blocking UVB — was the reason for regulating in one context and an impediment to regulating in another. EPA hyped ozone loss into a multi-trillion dollar crisis when it served the agency’s interests, and then tried to trivialize it when it did not. **R**

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