March 17, 2015

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Proposed Rulemaking; National Ambient Air Quality Standards for Ozone
(EPA-HQ-OAR-2008-0699; FRL-9918-43-OAR) (RIN 2060-AP38)

Dear Sir/Madam:

The Portland Cement Association (PCA) appreciates the opportunity to provide comments on EPA’s proposal to revise the primary and secondary National Ambient Air Quality Standards (NAAQS) for ground-level ozone under the Clean Air Act (CAA) (79 FR 75233). PCA represents 27 U.S. cement companies operating 82 manufacturing plants in 35 states, with distribution centers in all 50 states, servicing nearly every Congressional district. PCA members account for approximately 80% of domestic cement-making capacity.

Like the entire U.S. manufacturing sector, the domestic cement industry is heavily impacted by restrictions imposed by states and localities identified as being in “non-attainment” with NAAQS. These restrictions often restrain potential growth opportunities for cement companies that would otherwise create new, well-paying American jobs. In other situations, enhanced requirements can be the difference between a cement plant surviving in challenging economic times or becoming uneconomic. Accordingly, it is vital that any new NAAQS generate real benefits sufficient to justify the real-life pain resulting requirements can impose on American families.

1 PCA’s economic study of the proposed rule (discussed below) surveyed 30 U.S. cement companies operating 99 plants.

#4824342.5
In line with these priorities, PCA endorses and joins in the comments submitted by the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM), which together amply state the legal infirmities, enormous costs, and scant benefits associated with EPA’s proposed rule.

PCA’s comments focus specifically on: (1) the obligation that EPA has, both as a matter of law and good public policy, to take into account economic data on the impact of the proposed rule; and (2) the specific economic impact of the proposed rule on the cement industry.

**Consideration of Cost**

PCA believes EPA collecting and incorporating accurate and thorough cost data into its rulemaking process is of paramount importance. In *Whitman v. American Trucking Associations, Inc.* (hereafter “Whitman”), the U.S. Supreme Court held that Section 109(b) of the Clean Air Act “unambiguously bars cost considerations from the NAAQS-setting process.” While at first glance this pronouncement may appear to bar cost considerations from entering into the agency’s rulemaking process altogether, in fact that is far from the case.

First, EPA has already prepared a preliminary analysis of the costs and benefits of the proposed rule in its regulatory impact analysis (RIA) for the purposes of satisfying the requirements of Executive Order 12866. Executive Order 12866 calls for regulations to be designed in the “most cost-effective manner to achieve the regulatory objective.” The regulatory objective of promulgating revised NAAQS for ground-level ozone is to protect “public health and welfare.”

The charge to protect public health and welfare is not as simple as it seems. The Supreme Court acknowledged as much in *Whitman*, writing, “[T]he economic cost of implementing a very stringent standard might produce health losses sufficient to offset the health gains achieved in cleaning the air—for example, by closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries.” At its most basic, a regulation that protects public health and welfare must be feasible so as not to jeopardize critical public services.
Cost undoubtedly bears a prominent role in feasibility, especially if a regulation promises to be the most expensive of its kind – e.g., the proposed rule.

Second, Section 108 of the Clean Air Act directs EPA to provide states “information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology.” EPA needs to fully understand the cost implications of the proposed rule to satisfy its obligations in the statute and provide states with accurate information.

Third, Section 109(d) stipulates that EPA’s Clean Air Scientific Advisory Committee (CASAC) “advise the Administrator of any 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.” In spite of this charge, CASAC has not conducted an analysis of adverse economic effects associated with the proposed rule. Instead, CASAC references the Supreme Court’s decision in *Whitman* and argues that cost is irrelevant. They write:

>[C]ost and implementation issues are not relevant or allowable considerations in setting or revising a NAAQS. Therefore, CASAC did not consider such issues in its scientific review of the current standards or in developing its advice regarding revising the standards. However, the CASAC acknowledges that the Clean Air Act, section 109(d), states that the CASAC shall “advise the Administrator of any 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.” Separate from the standard-setting process, the CASAC would be receptive to a request from EPA to review EPA analyses 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” (42 U.S. Code § 7409).²

---

CASAC’s invocation of *Whitman* is circular: EPA has done no economic analysis because the agency claims it is barred from considering cost. CASAC says it is waiting to review EPA’s findings. Thus, CASAC also has done no economic analysis on the grounds that EPA has not requested it. The statute is quite clear that CASAC is charged with conducting an analysis of adverse economic effects and advising the Administrator on the outcomes of that study with or without a specific request.

In supplementing EPA’s existing records with new information about the substantial costs of the proposed rule, PCA seeks to provide a more complete picture on the adverse economic effects that may result from implementation of the proposed rule – effects which were deliberately ignored by CASAC in its reviews.

Finally, some economic considerations, including adverse effects likely to result from the proposed rule, have a direct and measurable effect on public health and therefore must have direct bearing on EPA’s analysis separate from questions of cost. The Supreme Court has validated this notion: A footnote in the *Whitman* opinion reads, “The Committee’s advice concerning certain aspects of ‘adverse public health … effects’ from various attainment strategies is unquestionably pertinent; but to say that Committee-generated cost data are pertinent is to beg the question.” In this footnote, the “Committee” is a reference to CASAC, and the consideration of “adverse public health…effects” is a reference to Section 109(d) of the Clean Air Act. Adverse economic effects can result in adverse public health effects; it is for that reason that PCA’s economic data is “unquestionably pertinent.”

A robust body of scientific research bears out the notion that negative economic effects exercise a deleterious influence upon multiple indicators of public health. At its most basic, the added stress of economic hardship exacerbates a host of health problems. Empirical research published in *The Journal of Mental Health Policy and Economics* found that “an increase in the average state unemployment rate worsens an individual's [health-related quality of life] HRQL, suggesting that the loss of jobs and income and/or the economic distress associated with
economic downturns have a detrimental effect on people's daily lives.” Worse, University of Ljubljana Professor Danica Rotar Pavlic has found that these effects are most experience by already-vulnerable groups. She writes:

When visiting the doctor’s office, people talk about their fear of losing their job. Construction workers no longer dare to voice discontent with their long work schedules or poor working conditions, and sometimes even work without safety equipment because they are glad to have a job at all. Older workers even calculate whether, and when, they will reach their eagerly awaited retirement. Many patients burdened by loans are in difficult straits when a doctor says that they should stay home from work to get well.

The effect of economic hardship on mental health is no less severe. Researchers at the Institute of Psychiatry at King’s College write that “stresses associated with rising unemployment, poverty and social insecurity will lead to upward trends in many national suicide rates, as well as to less readily charted increase in the prevalence of psychiatric illness, alcohol-related disorders and illicit drug use.”

It is not just vulnerable groups that are put at risk by slower economic growth; children and their caregivers are also at stake. Academic research demonstrates not only that children’s health is put at increased risk in situations of economic hardship, but also that economic hardship is correlated with an across-the-board deterioration in the healthfulness of individuals’ food choices. President Obama has argued that “we have a responsibility to ensure our children have every chance to fulfill their potential, and that starts by providing them with the opportunities to

---

3 “This Recession Is Wearing Me Out! Health-Related Quality of Life and Economic Downturns.” Journal of Mental Health Policy and Economics 14:61-72.
4 “Is the recession also wreaking chaos in health?” Quality in Primary Care 2011;19:145–6.

#4824342.5
make healthy choices.” EPA should take the President’s words to heart and perform an adequate analysis of public health that includes the likely economic effects of the proposed rule.

Clearly, PCA’s information on the likely economic costs of the proposed rule directly implicates public health, and is therefore absolutely necessary to any adequate standard-setting process under the Clean Air Act.

**Cost Analysis**

The proposed rule would likely be the most costly in EPA’s history. A recent study conducted by NERA Economic Consulting estimates that, were the standards to be set at 60 parts-per-billion (ppb), “U.S. GDP potentially would be reduced by about $270 billion per year, or about 1.2% per year over the period from 2017 through 2040.”8 The study estimates that these enormous costs would translate to a loss of approximately $1500 in consumption per U.S. household and overall labor-income reductions equivalent to the loss of 2.9 million jobs.

To put these numbers in perspective, consider that the Congressional Budget Office’s (CBO) newest economic projections foresee economic growth of 3 percent in 2015, falling to 2.5 percent in 2017.9 Consider also that 2.9 million jobs is roughly 25 percent of the total number of jobs the Center on Budget and Policy Priorities estimates have been created in the private sector since February 2010.10 Finally, a decrease in household consumption of $1500 would represent a decrease of approximately 3 percent of the 2013 total, according to Bureau of Labor Statistics (BLS) survey data.11 It is no exaggeration to say that EPA has proposed a rule that would have severe implications for the entire U.S. economy.

---

The impact of the proposed standards would be especially severe for the U.S. cement industry. Without question, EPA’s proposed revision to the existing ozone standards would force cement plants to close. Using survey data from member companies and conservative cost data for emission control systems that can be applied to existing kilns, PCA projects 27 kilns could be shut down as a result of the proposed rule, with an additional 26 kilns at a high risk of closure. Together, these units represent 35 percent of all cement kilns in operation in the U.S. today. To comply with the proposed standards, PCA projects that the cement industry will be forced to invest $1.9 billion in new technology. The inevitable effect will be increased costs for all consumers of Portland cement, including the Federal Government, states, and municipalities. Overall, PCA estimates a cost to the construction industry between $500-$700 million annually.

These compliance costs will also result in layoffs. PCA projects that 900 cement industry jobs will be lost as a result of the proposed rule. Those 900 workers represent 5.5 percent of the U.S. cement industry workforce. This loss of employment amounts to an annualized cost of nearly $65 million lost wages. Moreover, these individuals are highly-trained experienced professionals paid an average of $77,481 with a unique and largely non-transferable skillset. The impact of closures will be most acutely felt in small, rural communities where most cement plants are located.

The importance of the cement industry to the economy as a whole would be hard to overstate. A 2010 study by the Maguire Energy Institute at Southern Methodist University (SMU) found that the cement industry is responsible for 153,000 jobs nationwide, “generating about $7.5 billion annually in wages and benefits.” Unfortunately, the increased pressure that the proposed standards would place on U.S. sources of cement would drastically increase the economic incentive for consumers to source their much-needed supplies overseas, decreasing U.S. competitiveness.

---

An increased reliance on cement imports would be detrimental to U.S. employment and other economic indicators. Worse, a study by Professor Ragnar Lofstedt of King’s College found that increased costs for the U.S. cement industry are just as likely to result in worse overall environmental outcomes as they are to achieve intended improvements, largely due to offshoring. The reason: other countries have far more lenient environmental regulations than the U.S. Clearly, EPA must consider the costs of its proposed rule to accurately determine whether its anticipated health benefits are real or aspirational. We suspect the latter.

Conclusion

New data provided in this letter demonstrates that a revised NAAQS may result in substantial economic impacts in the U.S. cement industry resulting in job losses, offshoring, and secondary and tertiary impacts throughout the economy. In many respects, the cement industry reflects a literal and figurative foundation for the economy, providing a critical commodity necessary for infrastructure development and maintenance. The economic data provided here should be considered critical to EPA's reassessment of the NAAQS as well as recommendations it intends to make to the states. Such consideration is in fact consistent with the Agency's obligations under the Clean Air Act, the structure of its advisory committee process, and applicable Executive Orders.

Sincerely,
Bryan Brendle
Senior Director, Government Affairs
Portland Cement Association

---