

United States Senate

WASHINGTON, DC 20510

December 17, 2013

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

Re: Taxpayer Funds Expended on Reconsideration of Ozone NAAQS

Dear Administrator McCarthy:

We are writing to renew a longstanding, unanswered request for data related to federal funds and resources expended as part of EPA's unnecessary reconsideration of the national ambient air quality standard (NAAQS) for ground level ozone in the 2010-2011 timeframe. As you know, ozone attainment status significantly impacts state and local transportation planning, energy production and use, and economic development. EPA's reconsideration of the ozone standard in 2010-2011, years ahead of the regularly-scheduled review process established in the Clean Air Act (CAA), caused economic and regulatory uncertainty throughout the United States. Private businesses and organizations as well as federal, state, and local agencies incurred significant expenses analyzing EPA's proposal as well as participating in the public comment process. As the Assistant Administrator with responsibility for EPA's Office of Air & Radiation at the time, you led this ozone reconsideration effort and, as the Administrator, you are responsible for overseeing the current ozone review.

Many recognized EPA's reconsideration initiative as lengthy and unnecessary. For example, a recent report by the Congressional Research Service (CRS) suggests that the reconsideration was done as a political, rather than legal, matter and notes that the process took over a year and a half. Specifically, CRS explains:

With the change of Administrations in 2009, EPA agreed to reconsider the 2008 [ozone] standard. As a result, a more stringent primary standard and a different version of the secondary standard were proposed in January 2010. After a year and a half of public comment and review, EPA sent what it considered a final set of standards to OMB for interagency review. The process was short-circuited, however, by a Presidential decision to await conclusion of the next regular review—the review now nearing completion—before promulgating any change.¹

¹ CRS Report, Ozone Air Quality Standards: EPA's 2013 Revision (May 30, 2013) (emphasis added).

Moreover, as outlined in the recent Senate Environment and Public Works (EPW) Committee Minority Report entitled “Neglecting a Cornerstone Principle of the Clean Air Act: President Obama’s EPA Leaves States Behind,”² many states commented about the adverse impacts of the ozone reconsideration proposal. For instance, the Ohio Environmental Protection Agency commented:

*The timing of the proposal, i.e., reopening the standard just two years after it was set, is ill-considered and inconsistent with the schedule for review of NAAQS contained in the Clean Air Act... Attempting to implement a new standard while the previous standard is still being implemented has consistently caused strain, redundancy and inefficiency in the process and has led to seemingly endless rounds of litigation that takes the focus away from the important task at hand--real air quality improvements... U.S. EPA...should not add to the uncertainty and strain generated by the existing Clean Air Act obligations for attaining the ozone standard and generated by the five-year review of that NAAQS by prematurely reevaluating and reestablishing the ozone standard when neither law nor science requires it.*³

Similarly, the Missouri Department of Natural Resources commented:

*[I]t cannot be overemphasized how much of an impact the reconsidered standard will have on limited resources at the state level... [T]he statewide public outreach effort required to provide information and notice to all affected areas will be unprecedented.*⁴

Other states commented as well, as discussed in the aforementioned EPW minority report. Additionally, a bipartisan coalition of concerned members of Congress urged EPA to forego the unnecessary reconsideration process.⁵

² Senate Environment and Public Works Committee Minority Report, “Neglecting a Cornerstone Principle of the Clean Air Act: President Obama’s EPA Leaves States Behind” (October 31, 2013).

³ Comments of Ohio Env’tl. Prot. Agency on EPA’s Proposed 2010 Ozone Standards, Docket ID No. EPA-HQ-OAR-2005-0172-12376, at 3-4 (March 22, 2010).

⁴ Comments of Mo. Dep’t of Natural Res. on EPA’s Proposed 2010 Ozone Standards, Docket ID No. EPA-HQ-OAR-2005-0172-12905, at 1-3 (March 16, 2010).

⁵ Senate Environment and Public Works Committee Press Release, “Sessions Leads Bipartisan Effort Asking EPA To Not Change Its Air Quality Standard” (July 26, 2011); see also Letter from Sens. Voinovich, Bayh, Lugar, Landrieu, Vitter, McCaskill, and Bond to EPA (Aug. 6, 2010), available at <http://www.insideindianabusiness.com/newsitem.asp?ID=43052>.

Finally, even the President of the United States stepped in and recognized that this effort had to stop. In August 2011, when President Obama directed EPA to not proceed with the ozone reconsideration process, he explained that he “did not support asking state and local governments to begin implementing a new standard that will soon be reconsidered.” In other words, following 18 months of an unnecessary federal regulatory process that was not mandated by the CAA, the President ordered EPA to stand-down.⁶

Soon after the President’s decision, Senator Sessions wrote EPA in September 2011 inquiring about the “total costs incurred or expended by [EPA] ... on efforts related to reconsideration of the 2008 [ozone standard].” However, ever since that request, EPA has evaded providing a response. At your confirmation hearing, in April of this year, Senator Sessions asked you if you would respond to his questions for the record. You responded: “I absolutely will.”⁷ In those questions, you were specifically asked: “Did EPA incur significant costs as part of the ozone reconsideration process; if so, how much?” You wholly ignored the question in your response to the Committee, violating your pledge before the Committee. Again, in May of this year, EPA staff wrote Senate staff: “We haven’t tracked down a response but are working on it.” To date, no official EPA response has been provided. It has now been 26 months since the initial request.

We can only conclude, in the face of repeated refusals to respond to or acknowledge a legitimate question about how taxpayer money has been spent by EPA, that EPA either seeks to thwart our oversight role in this matter or cannot answer the question. Either explanation is deeply troubling. As Members of the Senate Committee with direct jurisdiction over EPA and the CAA, we have a responsibility to oversee Agency actions, including how it expends the resources made available to it by Congress. Our request is neither overly complex nor burdensome.

Again, we request that EPA provide to the Committee an accounting of EPA expenses incurred as part of its abandoned 2010-2011 ozone NAAQS reconsideration including the total costs incurred or expended by EPA from January 21, 2009 through August 31, 2011 on efforts related to the Agency’s reconsideration of the 2008 NAAQS for ground level ozone. The estimate should account for EPA staff time (including salaries and benefits); expenses associated with the public hearings in Arlington, Virginia; Houston, Texas; Sacramento, California; as well as any other public hearings or meetings; third-party expenses for consultants, scientists, or other persons; and any other expense incurred by the Agency as part of this effort. In addition to the monetary costs of these efforts, please also provide the total man-hours expended by EPA staff on this effort during the stated timeframe.

⁶ Office of Information and Regulatory Affairs, Letter from Cass Sunstein to Lisa Jackson (September 2, 2011).

⁷ Senate Environment and Public Works Hearing, “Hearing on the Nomination of Gina McCarthy to be Administrator of the U.S. Environmental Protection Agency” (April 11, 2013).

We look forward to your prompt and thorough response by January 7, 2014.

Sincerely,



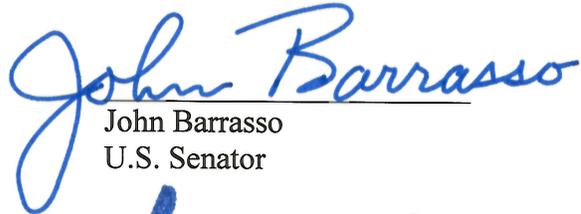
David Vitter
U.S. Senator



Jeff Sessions
U.S. Senator



James Inhofe
U.S. Senator



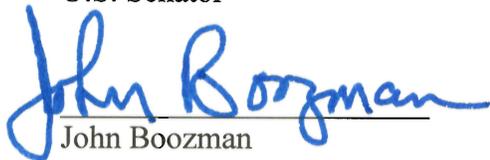
John Barrasso
U.S. Senator



Mike Crapo
U.S. Senator



Roger Wicker
U.S. Senator



John Boozman
U.S. Senator



Deb Fischer
U.S. Senator