



September 9, 2024

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Re: Notice of proposed consent decree related to the review of the air quality criteria and NAAQS for oxides of nitrogen Docket ID No. EPA-HQ-OGC-2024-0319.)¹

The undersigned health and medical organizations appreciate the opportunity to comment on EPA's proposed timeline for completing its review of the National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen. Our organizations are consistent advocates for EPA meeting the required Clean Air Act deadlines for reviewing the NAAQS and updating them if the science shows that the levels are inadequate to protect human health. This review of the NO₂ standards is overdue, which puts public health at risk.

In this notice, EPA is seeking public comment on the terms of the proposed consent decree that requires EPA to take certain actions in its review of the air quality criteria and NAAQS for oxides of nitrogen. At the outset, the proposed consent decree outlines specific deadlines for three key steps in the process of working on and completing this review. It requires EPA to issue a final NO₂ Integrated Science Assessment (ISA) by September 30, 2026, its proposed decision on primary NO₂ NAAQS by January 17, 2028, and a final decision by November 10, 2028. The fine print also says that these lengthy timeframes could be stretched further depending on EPA's consultations with the Clean Air Scientific Advisory Committee (CASAC) as part of the review process.

We have serious concerns about EPA's approach towards NAAQS review process schedules as well as its consultations with CASAC panels, not only in the case of NO₂ but also in what it portends for criteria air pollutants across the board.

1. Timelines

The Clean Air Act explicitly and unambiguously requires EPA to complete its review of the air quality criteria and the primary NAAQS for criteria air pollutants within five-year intervals and to "revise criteria or promulgate new standards earlier or more frequently" if needed.² The

¹ <https://www.regulations.gov/document/EPA-HQ-OGC-2024-0319-0001>

² Clean Air Act (42 U.S.C. 7401 *et seq.*). CAA § 108-109; USC § 7408-7409(d)(1) National primary and secondary ambient air quality standards; Not later than December 31, 1980, and at five-year intervals thereafter, the

Clean Air Act deemed five years to be sufficient to complete a NAAQS review for criteria pollutants.

Five years is ample time, given that EPA would typically be considering the increment of scientific data that has been published since the last Integrated Science Assessment and conducting the review process within an established framework. In fact, five years to review/revise the NAAQS and even longer to implement revised standards means the realization of public health benefits will generally lag current scientific knowledge. However, adhering to this required timeframe would at least ensure that the standards better reflect what the science shows is necessary to protect health.

However, EPA's inaction in its non-discretionary duty to administer the statutory requirements of the Clean Air Act means delaying those health benefits even more. This is the outcome of the litigation compelling EPA to discharge its statutory obligations, as outlined in this proposed consent decree.

The five-year clock on a new NAAQS review of a criteria pollutant starts the day after EPA's final decision on the current review is published in the Federal Register. In this context, we note this five-year clock is running out on the NAAQS reviews of two other criteria pollutants – ozone and PM_{2.5}. The current ozone NAAQS review must be completed by December 2025, five years from the last review.³ With just over a year left in this review cycle, EPA has yet to produce the first document – the Integrated Review Plan - detailing the scope and schedule of the process. The new PM_{2.5} NAAQS review is also already completing the fourth year of the five-year cycle since the completion of the last regular review in 2020⁴ and EPA has yet to act on initiating the process. The agency had stated that the PM_{2.5} NAAQS reconsideration that was completed in 2024 did not reset the clock of the regular review cycle. This next PM_{2.5} NAAQS review also has the same completion deadline of December 2025 as the ozone NAAQS.

With worsening air quality from climate change-driven events such as more frequent and intense wildfires, dust storms, extreme temperatures and/or precipitation becoming the norm, EPA must complete NAAQS reviews per the schedules specified by the statute to provide Clean Air Act-promised public health protection and also avoid resource-intensive litigations.

We also note that EPA is asking for fifteen business days to send the notice of an action (issuance of the final Integrated Science Assessment, proposed rulemaking, final rulemaking) to the Office of the Federal Register for review and publication. This is an unacceptably long

Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

³ Timeline of Ozone National Ambient Air Quality Standards (NAAQS) | US EPA

⁴ Timeline of Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) | US EPA

time that unnecessarily lengthens the NAAQS process. We ask that EPA complete these simple, straightforward tasks in no more than five business days.

2. CASAC

Beyond the timelines for the broader goals proposed in this consent decree, EPA is asking for additional time to complete this already-delayed NO₂ NAAQS review if, during the review process, the CASAC NO₂ panel were to ask for additional drafts of the ISA, the Policy Assessment, and/or any other technical document. EPA should not suggest further delays if CASAC requests improvements and updates to the documents.

This is not the first time EPA has signaled an unwillingness to respond to CASAC's questions and feedback by making edits to these documents. Even prior to this proposed consent decree, EPA cautioned CASAC panels about asking for additional drafts in the now-aborted ozone NAAQS reconsideration process of 2023, and also during the recent CASAC review of the integrated review plan in the current NO₂ NAAQS review. The American Lung Association commented on the importance of adhering to the statutory deadlines and requirements for a rigorous scientific review during the chartered CASAC meeting on NAAQS process in April 2024.⁵

EPA's interpretation of the role of CASAC in the NAAQS review process has historically involved multiple back-and-forth consultations at each step that produced more than one draft of the documents. Shifting part of the onus of meeting CAA-mandated NAAQS review schedule on to CASAC hampers the scientific body from discharging its extensive responsibilities and obligations detailed in the Clean Air Act.⁶

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https://casac.epa.gov/ords/sab/r/sab_apex/casac/0?mm_id=6559&request=APPLICATION_PROCESS%3DMEETING_FILE&session=3285579742148

"EPA should also produce additional drafts of ISA if CASAC recommends doing so. This work can be completed within the CAA-mandated review period.

Restricting the science assessment to one draft, as well as not engaging in iterative consultations with CASAC, and ignoring CASAC, ill-serve public-health and run afoul of setting science-based standards mandated by the CAA. This is not acceptable. EPA should produce an additional draft of both ISA and PA, if asked for by CASAC, to ensure that its recommendations are accurately captured and incorporated into the final versions of these documents that are utilized in decision-making."

⁶ Clean Air Act (42 U.S.C. 7401 *et seq.*). CAA § 108-109; USC § 7408-7409(d)(1)

"(2) (A) The Administrator shall appoint an independent scientific review committee.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee... (A) shall complete a review of the criteria...and the national primary and secondary ambient air quality... and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) 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."

EPA must review NAAQS *at least* every five years and revise them according to current science to ensure they meet the substantive requirements of the Clean Air Act. As part of that review, EPA should not restrict CASAC deliberations by imposing limitations on steps in the process or reviews that disallow them to deliver robust recommendations. EPA must not arbitrarily shackle CASAC's reviews, but rather work with CASAC to meet applicable timelines. The entire NAAQS review process can be completed within five years, as has been shown before.⁷

Our organizations appreciate the opportunity to comment on this proposed consent decree. We urge EPA to complete a robust review of the NO₂ NAAQS as quickly as possible, and to ensure future NAAQS reviews include adequate engagement and response to CASAC and meet the five-year statutory requirement. Anything less shortchanges public health.

Signed,

Allergy & Asthma Network
Alliance of Nurses for Healthy Environments
American Lung Association
Asthma and Allergy Foundation of America
Children's Environmental Health Network
International Society for Environmental Epidemiology - North America Chapter
National Association of Pediatric Nurse Practitioners
National League for Nursing
Public Health Institute

⁷ Timeline of Sulfur Dioxide National Ambient Air Quality Standards (NAAQS) | US EPA