

**Attorneys General of New York, Connecticut, Delaware, Maryland, Massachusetts,
New Mexico, Rhode Island, Vermont, and Washington**

December 6, 2012

By electronic mail and first class mail

Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
The White House Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Re: *National Ambient Air Quality Standards for Particulate Matter*

Dear Acting Administrator Bershteyn:

We understand that the Environmental Protection Agency has recently submitted for interagency review a final rulemaking package on the National Ambient Air Quality Standards for Particulate Matter to the Office of Information and Regulatory Affairs. Under a consent decree that EPA entered into with our States and several public health organizations, the agency is required to sign the final rule by December 14, 2012. We urge you to support EPA's adoption of annual and daily standards for fine particulate matter that are fully protective of public health, including the health of over 100 million Americans who are most vulnerable to particulate matter pollution. An annual standard for fine particulate matter of no higher than 12 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is necessary to protect public health with an adequate margin of safety. In addition, the scientific evidence supports a daily standard of 30 $\mu\text{g}/\text{m}^3$ to protect the public against short-term exposures.

Because of the public health imperative for sufficiently protective standards, our States have been advocating for years -- in agency rulemakings and in court -- for EPA to fulfill its duty under the Clean Air Act to issue standards that protect public health with an adequate margin of safety. After EPA rejected the advice of its independent science advisors, the Clean Air Scientific Advisory Committee, in 2006 to strengthen the existing 15 $\mu\text{g}/\text{m}^3$ annual standard for fine particulate matter, we successfully challenged that standard in American Farm Bureau Fed'n v. EPA, and in early 2009, the D.C. Circuit remanded the standard -- which it termed "contrary to law" -- to EPA for reconsideration.

After EPA missed several self-imposed deadlines to issue standards consistent with the D.C. Circuit's decision and then also failed to meet its obligation under the Clean Air Act to timely complete its five-year review, our States filed suit in district court in February 2012 seeking to compel EPA to expeditiously issue particulate matter standards. The case, State of New York, et al. v. Lisa P. Jackson (S.D.N.Y. No. 12-1064), which was subsequently transferred to federal district court in the District of

Columbia, resulted in a court order requiring EPA to sign the proposed rule by June 14, 2012. The parties subsequently negotiated a settlement resolving the case, memorialized in a consent decree that requires EPA to sign the final rule by December 14, 2012.

It is a central goal of the Clean Air Act “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). A core element of achieving this goal is the Act’s requirement that EPA adopt “primary” standards for certain pollutants, such as particulate matter. Critically, the Act requires the standard to be set at a level that protects public health with an “adequate margin of safety.”

Fine particulate matter, or particulate matter less than two and a half micrometers in diameter (“PM_{2.5}”), forms predominantly as a result of the combustion of fossil fuel by power plants, motor vehicles, industrial facilities, and residential heating. Because of its microscopic size, fine particulate matter can penetrate deep into the lungs and trigger a wide range of adverse health effects. EPA has linked exposure to fine particulate matter pollution with increased respiratory symptoms (asthma attacks) and disease (acute and chronic bronchitis), decreased lung function, and premature deaths in people with heart or lung disease.

EPA estimates that more than 100 million Americans -- one-third of the nation’s population -- have special susceptibility to harm from particulate matter, including children, seniors and people with lung diseases such as asthma. EPA calculated in 2010 that exposure to fine particulate matter pollution at the levels allowed under the 15 µg/m³ annual standard could result in roughly 10,000 premature deaths per year in just 15 urban areas in the country. The agency also found that up to half of these premature deaths could be averted if an annual standard of 12 µg/m³ were adopted.

Although fine particulate matter pollution in the U.S. has decreased since EPA performed these calculations, areas of the country continue to experience fine particulate matter concentrations below the level of the current standards but above the levels that EPA staff and Clean Air Scientific Advisory Committee concluded pose a risk to human health. As set forth in affidavits filed in the New York v. Jackson case, there are a number of areas in our States in which fine particulate matter levels are at or below the current annual standard of 15 µg/m³ and above annual levels in the range of 11-13 µg/m³.

EPA has proposed to strengthen the annual primary standard for PM_{2.5} from 15 µg/m³ to within a range of 12 µg/m³-13 µg/m³, and proposed to leave the 24-hour primary standard unchanged at 35 µg/m³. The agency also solicited comments on alternative annual standards down to 11 µg/m³, and on the combination of annual and 24-hour standards.

As explained in detail in the comments of some of our States on the proposed rule (*attached for your reference*), the adoption of an annual standard of no higher than 12 µg/m³ is necessary to protect public health with an adequate margin of safety as required under the Clean Air Act. A primary standard set at no higher than this level is

compelled both by the extensive and overwhelming public health evidence contained in the record and by EPA's own 2010 quantitative health risk assessment for particulate matter. In the rulemaking, EPA staff concluded that there is now a "stronger and broader body of evidence" than in 2006 that exposure to fine particulate matter causes premature death, breathing problems, and heart disease. The Clean Air Scientific Advisory Committee concurred with EPA staff's finding that the strongest evidence supports a standard in the range of 11-12 $\mu\text{g}/\text{m}^3$. In addition, as explained in our attached comments on the proposed rule, the record also supports EPA setting the 24-hour standard for fine particulate matter at 30 $\mu\text{g}/\text{m}^3$ given that adverse public health impacts can occur as a result of exposure at the current level of 35 $\mu\text{g}/\text{m}^3$.

Although EPA did alternatively propose to set the annual standard at 13 $\mu\text{g}/\text{m}^3$, adopting a standard at this level would not satisfy the agency's obligation under the statute to protect public health with an adequate margin of safety. As explained in the attached comments, EPA staff and the Clean Air Scientific Advisory Committee both cited evidence of harm associated with exposures to concentrations below this level. Therefore, we believe it would be both contrary to the Clean Air Act and to the D.C. Circuit's decision in American Farm Bureau to set the annual standard at 13 $\mu\text{g}/\text{m}^3$.

Finally, EPA's decision should not be delayed on the grounds that more cost-benefit analysis on the particulate matter standards is warranted in light of the D.C. Circuit's decision vacating the Cross-State Air Pollution Rule, one of the tools EPA cited for attaining the new particulate matter standards. EPA, our States, and several other parties have petitioned the D.C. Circuit for rehearing of that decision. But more importantly, the Supreme Court has unanimously held that "EPA may not consider implementation costs in setting primary and secondary [standards]." Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 486 (2001). Instead, EPA must make decisions on the standards solely based on the scientific evidence. 42 U.S.C. § 7409(b)(1).


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Every day, particulate matter pollution threatens the health of more than one-third of our nation's population -- particularly our most vulnerable: children, the elderly and the sick. For this reason, we urge you to support EPA's timely adoption of particulate matter standards that fully meet the requirements of the Clean Air Act. Thank you for your attention to this critical matter.

Sincerely,

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Enclosure

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