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Submitted via Federal eRulemaking Portal

Administrator Andrew Wheeler
C/O EPA Docket Center (EPA/DC)
Docket ID No. EPA-HQ-OAR-2015-0072
U.S. Environmental Protection Agency
a-and-r-Docket@epa.gov

RE: Request for an Extension of the Comment Period for EPA’s Proposed *Review of the National Ambient Air Quality Standards for Particulate Matter*, 85 Fed. Reg. 24094 (April 30, 2020)

Attn: Docket No: EPA-HQ-OAR-2015-0072

Dear Administrator Wheeler,

The California Attorney General and the California Air Resources Board, Illinois, Minnesota, Oregon, Pennsylvania, Rhode Island, New Jersey, and New York (collectively “States”) request a 60-day extension of the comment deadline for EPA’s Proposed Rule: *Review of the National Ambient Air Quality Standards for Particulate Matter* (Proposal). Additional time is necessary to thoroughly review the voluminous record supporting the Proposal, including the nearly 2000-page Integrated Science Assessment (ISA) and the 534-page Policy Assessment (PA). While the sheer size of the record is not unique to this review cycle of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM), as explained below, the States are requesting additional time because (1) the National Emergency due to the novel coronavirus (COVID-19), (2) EPA’s truncation of the review cycle in a manner that has impeded meaningful public input on the ISA and PA, and (3) two recent court decisions—holding that EPA’s 2017 adoption of the Directive titled “Strengthening and Improving Membership on EPA Federal Advisory Committees” (Directive) was arbitrary and capricious—highlight the importance of outside review of EPA’s Proposal and the PM NAAQS review process. Any one of these reasons should be sufficient justification to extend the comment deadline. Taken together, these reasons should compel EPA to grant the States’ request for a 60-day extension.

The States requesting an extension have each been delegated the authority to implement the Clean Air Act within their respective territories. Accordingly, the States are essential partners in the implementation of the Clean Air Act and attaining the NAAQS. Equally important, the States have a direct interest in protecting the public health and welfare of their residents from PM pollution. Therefore, it is critical that EPA allow the States sufficient time to meaningfully review and provide comment on the Proposal. The importance of this public comment process—the purposes of which include ensuring informed agency decision-making, encouraging public participation in the administrative process, and ensuring that agencies keep an open mind towards their rules—“cannot be overstated.” *N.C. Growers’ Ass’n v. United Farm Workers*, 702

F.3d 755, 763 (4th Cir. 2012). In order to achieve these purposes, “the opportunity to comment ‘must be a meaningful opportunity.’” *Id.* (quoting *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011)).

The current National Emergency due to COVID-19 is consuming significant resources of the States. Many of the States’ air pollution and public health experts are providing assistance with the States’ response to the coronavirus. And even when not directly providing assistance, many of these staff members are assisting in implementing new protocols and measures to enable the States to continue providing essential services throughout the emergency. Additionally, State agencies are impacted because many staff members have to divide their attention between their normal job functions and providing childcare because schools are currently closed.¹

The COVID-19 National Emergency compounds the problems created by EPA’s decision to limit opportunities to comment on the ISA and the PA. At the start of the PM review cycle, EPA finalized a formal Integrated Review Plan. Under this plan, EPA would have issued first and second drafts of the ISA and the PA and allowed public comment on each draft of each document. Furthermore, the Integrated Review Plan contemplated that EPA would finalize the ISA before issuing the first draft of the PA for public comment. This is because the PA articulates the EPA staff’s policy recommendation based on an evaluation of the science and necessarily builds on the scientific findings of the ISA. Departing from the original Integrated Review Plan, EPA jettisoned the opportunity for meaningful public comment on these documents that serve as the foundation of the Proposal. Accordingly, it is essential that EPA now provide additional time for public review and comment on the Proposal.

Finally, decisions in the D.C. Circuit and the Southern District of New York raise doubt as to whether EPA has satisfied the statutory mandate to obtain advice on the adequacy of the PM NAAQS from an independent scientific review committee (commonly referred to as the Clean Air Scientific Advisory Committee or “CASAC”). *Physicians for Social Responsibility v. Wheeler*, No. 19-5104, 2020 WL 1921539 (D.C. Cir. Apr. 21, 2020); *NRDC v. EPA*, 19-CV-05174, 2020 WL 615072 (S.D.N.Y. Feb. 10, 2020). At issue in these cases is that EPA’s Directive blocks researchers and scientists from participating on any EPA advisory board, including the CASAC, if they have received grant funding from EPA. But as the D.C. Circuit noted, this Directive runs counter to EPA’s prior policy, specifically “allowing . . . grantees to serve on advisory committees . . . in part to ‘ensure that the scientific and technical bases of its decisions . . . are based upon the best current knowledge from science, engineering, and other domains of technical expertise; and . . . are credible.’” *Physicians for Social Responsibility v. Wheeler*, No. 19-5104, 2020 WL 1921539, *8 (D.C. Cir. Apr. 21, 2020) (quoting Science and Technology Policy Council, EPA, Peer Review Handbook, A-4 (4th ed. 2015)). It remains uncertain as to whether EPA will appeal these decisions or the opposite. EPA may respond to these well-reasoned decisions by altering the composition of CASAC and its other advisory

¹ President Trump signed the Emergency Paid Sick Leave Act (EPSLA) and Emergency Family Medical Leave Expansion Act (EFMLEA) as part of the Family First Coronavirus Response Act on March 18, 2020. Pub. L. No. 116-127, 134 Stat. 177. Pursuant to this recent legislation, most state employees are entitled to expanded sick leave and family medical leave to provide care for children that would otherwise be at school. EFMLEA, Pub L. 116-127 § 3102, 134 Stat. 177, 189-192 (2020); EPSLA, Pub. L. No. 116-127 § 5102, 134 Stat. 177, 195-197 (2020).

committees to restore those of the “most qualified, knowledgeable, and experienced candidates” who were barred by the policy. *Id.*, *20. Until the issue is finally decided, the advice of the current CASAC will be subject to question and it will be more important than ever for EPA to receive careful advice from outside experts. The States and other experts therefore need additional time to provide their best guidance. Moreover, if the concerns raised by these decisions are not addressed through this comment period, these issues will likely be the subject of petitions for reconsideration and judicial review.

Thank you for your consideration of our request for an extension of the comment period by 60 days.

Sincerely,

FOR THE CALIFORNIA ATTORNEY
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