

April 4, 2011

Improving Regulations Docket
United States Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Docket No. EPA-HQ-OA-2011-0155, EPA's Plan for Retrospective Review Under Executive Order 13563, Program Area: Air

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer the following comments for consideration as part of the U.S. Environmental Protection Agency's (EPA's) plan for retrospective review under Executive Order 13563 noticed in the February 23 issue of the *Federal Register*. The following comments deal specifically with issues relating to the Clean Air Act (CAA).

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA members undertake a variety of activities that are directly impacted by EPA's various CAA regulations. ARTBA's public sector members adopt, approve or fund transportation plans, programs or projects under Title 23 U.S.C. and Title 49 U.S.C. ARTBA's private sector members rely heavily on contracts funded under these titles to plan, design, construct and provide supplies for transportation improvement projects. This document represents the collective view of our member companies and organizations.

ARTBA commends President Obama for initiating this review process by issuing a January 18 Executive Order noting that all regulatory efforts must "protect public welfare, safety and our environment while promoting economic growth, innovation competitiveness and job creation." Specifically, the President's Executive Order notes agencies must tailor regulations to "impose the least burden on society." With this in mind, EPA should be cognizant of the impact its regulations have on other federal initiatives, such as effective transportation improvements. Regulations do not operate in a vacuum. A regulation promulgated and enforced by one agency, such as the EPA in one policy arena, often affects the ability to comply with other regulations issued by other agencies in completely different policy arenas.



For example, while EPA operates primarily in the environmental realm, its regulations can impact ARTBA members' ability to construct transportation improvements which are necessary from a public health and safety perspective. These effects should be considered by EPA as nearly 34,000 people die on U.S. highways each year and many federally-funded highway improvements are designed specifically to address this issue, but under many situations these interconnections are not recognized.

A prime example of this situation is in the regulations associated with the CAA, such as transportation conformity. The problem with the existing conformity process is caused by the fact that some have tried to turn these determinations into an exact science, when they are not. Rather, conformity findings are based on assumptions and "modeling of future events," not often reflecting reality. Very few conformity lapses occur because a region has a major clean air problem. They occur because one of the parties involved cannot meet a particular deadline. Thus, the conformity process has become a top-heavy bureaucratic exercise that puts more emphasis on "crossing the t's and dotting the i's" than on engaging the public in true transportation planning that is good for the environment and the mobility of a region's population.

The problems with the CAA's conformity process are amplified by transportation plans and the State Implementation Plans (SIPs) with which they are intended to conform often being out of sync with one another. Largely, this is due to transportation plans having very long planning horizons requiring frequent updates, while most air quality plans have very short planning horizons and are updated infrequently. As a result, many of the planning assumptions used for conformity determinations of transportation plans and programs are not consistent with the assumptions used in the air quality planning process to establish emissions budgets and determine appropriate control measures. In other words, because transportation plans must use the most recent air quality data, a perceived increase in emissions and possible conformity lapses can occur simply because the numbers of models relied on in the transportation plan differ from those in the air quality plan—not because an area's air quality has changed.

Although not specifically mentioned in the proposed rule, ARTBA would also like to comment on the notion of project-specific, or "hot-spot" conformity analysis, which has surfaced in recent transportation conformity discussions. "Hot-spot" analysis ignores a fundamental truth—the building block for SIPs and conformity is at the county level. In urbanized areas, the key test is whether emissions from the long-range transportation plan or the TIP, *in their entirety*, stay within the emissions budget set in the SIP. In these cases, there is no project level conformity and appropriately so. The difference in emissions between build and no build alternatives is usually quite small. Therefore, the impact of any single project on those area-wide emissions totals is likely to be very slight, and could be positive or negative. Nevertheless, if these projects are part of a conforming long-range transportation plan and TIP, moving forward with them regardless of their air quality impact, would *not* compromise the legal commitment of the mobile sector to meet its SIP goals and achieve the attainment of air quality standards.

ARTBA recommends the following changes to the transportation conformity process:

- 1) The air quality modeling process used in determining conformity levels needs to be reformed to utilize the most recent air quality data available, rather than prediction-based

models. This would ensure conformity determinations are no longer based on assumptions and “modeling of future events,” not often reflecting reality.

- 2) Emissions budgets must have a built in level of flexibility (preferably a 10 to 15 percent cushion) for counties. This will prevent the conformity process from degrading into a “race for the courthouse door” every time a local or regional government experiences a momentary up-tick in emissions levels.
- 3) “Hot-spot,” or project-level, conformity should be repealed. This practice provides a false picture of air quality levels by focusing on temporary emissions caused by specific transportation construction projects. Finished projects, however, often lead to an overall decline in emissions levels for the county in question.

Also, EPA must reform the manner in which it reviews National Ambient Air Quality Standards (NAAQS). Local officials need some sense of predictability in order to develop long-range transportation plans to achieve emissions reduction. Counties are focusing on addressing existing NAAQS and any further changes to the standards will undermine these efforts. If counties are to effectively comply with current NAAQS, additional requirements will only serve to hamper these efforts by opening the door to possible litigation and sanctions potentially resulting in the loss of federal funding for transportation improvement projects. In the future, EPA should consider counties’ progress towards current NAAQS before setting new ones as well as consider the cost of implementing new standards including the loss of opportunities, including transportation improvements.

When considering ozone NAAQS, and any possible changes, it is important to note the EPA’s own reports have indicated an overall decline in ozone pollution. As EPA reported last year, between 1990 and 2008, gross domestic product increased 64 percent, vehicle miles traveled (VMT) increased 36 percent, energy consumption increased 19 percent, and U.S. population grew by 22 percent. During the same time period, total emissions of the six principal air pollutants dropped by 41 percent.¹ In addition, there has been a decline in the overall concentration level of criteria pollutants for ozone (1-Hour) of 25 percent in the past 20 years.² This progress has occurred both prior to and since the implementation of the existing ozone NAAQS. Furthermore, this continuing improvement indicates the current standard is working, and there is no need for any modification.

Ground level ozone (as opposed to the ozone in the upper atmosphere or “ozone layer,” which occurs naturally) is formed by the combination of the oxides of nitrogen (NOx) and volatile organic compounds (VOCs) in sunlight. NOx and VOCs are referred to as the “criteria pollutants” for ozone. As levels of NOx and VOCs decline, so will the amount of harmful ground level ozone. Since 1990, NOx levels have decreased by 36 percent and VOC levels have decreased by 35 percent³. This decline in pollution is being heavily driven by improvements in the transportation sector. Specifically, NOx emissions from motor vehicle emissions have gone

¹ U.S. EPA, Our Nation’s Air, Status and Trends through 2008 (February 2010).

² United States Environmental Protection Agency, National Trends in Ozone Levels, Ozone Air Quality 1980-2008, available at <http://www.epa.gov/air/airtrends/ozone.html>.

³ Id.

down 41 percent since 1970, while VOC emissions from motor vehicles have declined by 73 percent. Clearly, the transportation community is playing a vital role in reducing ozone levels.

Further, the EPA must consider reductions in ozone levels will occur as a direct result of existing regulations and those yet to take effect. Dramatic improvements in ozone levels will continue to come from implementation of regulations enacted in 2007 on sulfur levels in gasoline, as well as measures affecting heavy-duty diesel engines and highway vehicles. In fact, in 2006, regulations took effect requiring refiners to meet a 30-parts per million (ppm) average sulfur level for gasoline with a cap of 80-ppm. This fuel enables vehicles to use emissions controls which are projected to reduce tailpipe emissions of NO_x by 77 percent from passenger cars and as much as 95 percent for pickup trucks, vans and sports utility vehicles. When fully implemented by 2030, these regulations are expected to have the effect of removing 164 million cars from our nation's roadways.⁴

In addition, EPA also will continue implementation of its rule to make heavy-duty trucks and buses run cleaner. Beginning with the 2007 model year, pollution from heavy-duty highway vehicles has been reduced by more than 90 percent⁵, resulting in an additional reduction in NO_x levels of 2.6 million tons per year. In addition, EPA also recently implemented its rule to regulate emissions from nonroad diesel engines by integrating engine and fuel controls as a system to gain the greatest emission reductions. Engine manufacturers are expected to produce engines with advanced emission-control technologies similar to those upcoming for highway trucks and buses. Exhaust emissions from these engines are estimated to decrease by more than 90 percent.⁶ This is estimated to result in an additional reduction of 738 thousand tons of NO_x per year.

Turning to the NAAQS for NO_x, before deciding whether or not to tighten existing NO_x regulations, EPA must take account of what has already been achieved as well as improvements which have been approved but not yet fully implemented, including the aforementioned regulatory efforts. When considering NO_x standards, and any possible changes, it is important to note the EPA's own reports have indicated an overall decline in NO_x pollution with significant additional decreases yet to be realized.

As EPA reported last year, between 1990 and 2008, gross domestic product increased 64 percent, vehicle miles traveled (VMT) increased 36 percent, energy consumption increased 19 percent, and U.S. population grew by 22 percent. During the same time period, total emissions of the six principal air pollutants dropped by 41 percent. Specifically, there has been a decline in NO_x levels of 35 percent and furthermore, in 2008 the EPA classified the number of people living in counties where NO_x levels were exceeded at "0" and concluded "all recorded concentrations were well below the level of the annual standard."⁷ This continuing improvement indicates the current standard is working, and there is no need for any modification.

⁴ United States Federal Highway Administration, *Transportation Air Quality Selected Facts and Figures*, p. 36 (2006).

⁵ EPA Heavy Duty Highway Diesel Program, information available at <http://www.epa.gov/otaq/highway-diesel/index.htm>.

⁶ EPA Clean Air Nonroad Diesel Rule, information available at <http://www.epa.gov/nonroad-diesel/2004fr/420f04032.htm>.

⁷ U.S. EPA, *Our Nation's Air, Status and Trends through 2008* (February 2010).

The transportation community is playing an essential role in contributing to the decline in NOx. Specifically, NOx emissions from motor vehicle emissions have, according to EPA data, declined nearly 4 million tons between 1990 and 2008. Today's average motor vehicle produces 80 to 90 percent less emissions than it did in 1967.⁸ As better motor vehicle and fuel technologies develop, vehicle emissions will continue to go down with increased automobile usage.

Finally, EPA must also consider how it will determine the placement of additional NOx monitors. The monitors, which determine NOx compliance for counties, must be placed in areas where they can get a reading indicative of NOx levels for the area as a whole. Emissions are naturally going to be higher in some areas of a county and lower in others. For example, a monitor placed by the side of a well travelled highway is most likely going to get a higher reading for NOx emissions than one placed by a little used residential street.

Also, when taking readings from NOx monitors, it should be realized that the monitors cannot account for the aforementioned NOx reductions due to take place in the near future, such as reductions from newer, cleaner trucks and busses being placed on-line. Thus, even if there is a violation, the steps to remedy it are already underway.

ARTBA thanks the EPA for initiating this regulatory review and urges EPA to draw upon the President's Executive Order and ensure that regulations operate in the most effective, least burdensome manner to achieve their stated goals.

Sincerely,



T. Peter Ruane
President & C.E.O

⁸ United States Department of Transportation, "Transportation Air Quality Selected Facts and Figures." (1999).