

**REALITY CHECK PART II: THE IMPACT OF EPA'S
PROPOSED OZONE STANDARDS ON RURAL AMERICA**

**Testimony by
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INTRODUCTION

Good afternoon, my name is Todd Hiett and I am an Oklahoma Corporation Commissioner. The Oklahoma Corporation Commission (Commission) is comprised of three commissioners who are elected by statewide vote to serve six-year terms. The Commission has judicial, legislative and administrative authority and is charged with balancing the rights and needs of Oklahoma citizens and industries. Currently, the Commission regulates a wide range of activities in four core program areas: 1) oil and gas drilling and production; 2) public utility; 3) motor carrier, rail and pipeline transportation; and 4) petroleum storage tanks. Taken together, these responsibilities affect industries that are critical components of the State economy and touch the lives of all Oklahomans.¹ I am testifying today as an individual Commissioner, and the views expressed today are my own.

Prior to being elected Commissioner, I served twelve years in the Oklahoma Legislature serving my final term as Speaker of the House. I was born and raised in Kellyville, Oklahoma. I currently own and operate a ranch in Creek County, and previously owned and operated a 150 cow dairy. I was motivated to enter politics when the Department of Agriculture placed an unwarranted quarantine on my cattle herd based on an outdated federal program. I was successful in getting the quarantine lifted following a lengthy battle with the agency. I have experienced firsthand the overreach of government and the effects it has on its citizens and the financial impact it has on industry.

I thank you for the opportunity to appear today. I hope to provide the members information on the impact of proposed ozone standards on Rural America, from both a regulatory and personal perspective.

BACKGROUND

On March 17, 2015, this Committee conducted its hearing entitled: “Reality Check: The Impact and Achievability of EPA’s Proposed Ozone Standards”. The Committee received information concerning the EPA’s proposed rule on National Ambient Air Quality Standards (NAAQS) for Ozone published December 17, 2014 (Proposed Rule). Written comments to the Proposed Rule were also due on March 17, 2015. Review of the docket in this proceeding reflects over 434,000 comments/submissions have been received.² Undeniably, this is a complicated subject requiring technical, legal and environmental expertise. However, without minimizing the importance and complexity of the issues, one must not lose sight of the following three fundamental concepts when assessing the Proposed Rule: 1) Proposed changes to NAAQS for ozone are unwarranted at

¹ For additional information on the Oklahoma Corporation Commission, see <http://www.occeweb.com/>; Oklahoma Corporation Commission Annual Report Fiscal Year 2013, available at <http://www.occeweb.com/FY13%20Annual%20Report%20FOR%20PRINTING.pdf>; and Oklahoma Corporation Commission Strategic Plan FY 2014-2018 (June 2013).

² Review of the National Ambient Air Quality Standards for Ozone, Docket ID: EPA-HQ-OAR-2008-0699. Available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OAR-2008-0699> (last accessed April 25, 2015).

this time, 2) Retaining the current NAAQS for ozone would result in substantial compliance with the more stringent proposed standards, and 3) The Proposed Rule is arguably the most expensive air regulation in U.S. history with a disproportionately negative impact on Rural America.

FUNDAMENTAL CONCEPTS

1) Proposed changes to NAAQS for ozone are unwarranted at this time

The current ozone standard of 75 parts per billion (ppb) was set in 2008. However, due to legal challenges and delay, the implementation of this standard was only finalized *less than two months* ago. On March 6, 2015, the EPA published its final State Implementation Plan requirements for the current standard.³ Despite the current status and ongoing efforts to now implement years of efforts that resulted in the 2008 standards (which notably are the most stringent ozone standards to be imposed), one must ask, “Why?” and “Why, now?” It defies logic to reset the clock to 2008 and repeat the same process before EPA has even assessed the (to be determined) achievements of the current standards. Moving the goal posts in this manner exacerbates the business uncertainty for investments and plans; imprudently duplicates efforts, costs and resources; severely stifles economic growth; and recklessly harms millions of Americans.

Moreover, at this time EPA has not proven the need to change the ozone standards. In discussing the rationale for the proposed change to the primary standard (within the range of 65 to 70 ppb), EPA “recognizes that there is no sharp breakpoint within the exposure-response relationship for exposure concentrations at and above 80 ppb down to 60 ppb.”⁴

2) Retaining the current NAAQS for ozone would result in substantial compliance with the more stringent proposed standards

EPA itself has provided the best argument in support of retaining the current NAAQS standards:

Existing and proposed federal rules ... will help states meet the proposed standards by making significant strides toward reducing ozone-forming pollution. EPA projections show the vast majority of U.S. counties with monitors would meet the proposed standards by 2025 **just with the rules and programs now in place or under way.**

³ Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule. 80 Fed. Reg. 12264 (March 6, 2015). Available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-06/pdf/2015-04012.pdf>.

⁴ National Ambient Air Quality Standards for Ozone; Proposed Rule. 79 Fed. Reg. 75234 at 75245 (Dec. 17, 2014). Available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-17/pdf/2014-28674.pdf>.

Existing and proposed federal rules will help states meet the proposed standards by reducing ozone-forming pollution. These rules include: the final Mercury and Air Toxics Standards, requirements to reduce the interstate transport of air pollution, Regional Haze regulations, the proposed Clean Power Plan, and the final Tier 3 Vehicle Emissions and Fuels Standards. Other rules include: Light-Duty Vehicle Tier 2 Rule, the Mobile Source Air Toxics Rule, the Light-Duty Greenhouse Gas/Corporate Average Fuel Efficiency Standards, the Heavy-Duty Vehicle Greenhouse Gas Rule, the Reciprocating Internal Combustion Engines (RICE) NESHAP, and the Industrial/Commercial/Institutional Boilers and Process Heaters MACT and amendments.⁵

Oklahoma enjoys the benefits of low energy costs. Today, many industries realizing this competitive advantage are faced with real, challenging decisions in business planning. As a result of current and recently finalized environmental regulations (such as MATS and Regional Haze), these entities are evaluating the ability to continue doing business in Oklahoma. It is noteworthy that even *before* factoring in the increased costs of energy due to the proposed Clean Power Plan and the Proposed Rule, Oklahoma's economy is already at risk.

3) The Proposed Rule is arguably the most expensive air regulation in U.S. history with a disproportionately negative impact on Rural America

Although the Clean Air Act does not allow costs to be considered in setting NAAQS, the magnitude of this Proposed Rule cannot be left unsaid. This is particularly important when the standards fail on all levels to be ripe for consideration *at this time*. By EPA's own analysis, this regulation would exceed \$15 billion. According to a recent analysis by NERA Economic Consulting (NERA), NERA found that "EPA has understated the potential compliance costs—including their likely range—of meeting more stringent ozone standard. Achieving a more stringent ozone standard could be substantially more costly than even the very substantial costs EPA has estimated."⁶ In a prior study, NERA estimated that the "potential emissions control costs could reduce U.S. [GDP] by about \$140 billion per year on average over the period from 2017 through 2040 and by about \$1.7 trillion over that period in present value terms."⁷ Additionally finding that "[t]he potential labor market impacts represent an average annual loss employment income equivalent to 1.4 million jobs (*i.e.*, job-equivalents)."⁸

⁵ EPA Fact Sheet: Overview of EPA's Proposal to Update the Air Quality Standards for Ground-Level Ozone at 2 and 5 (emphasis added). Available at <http://epa.gov/groundlevelozone/pdfs/20141125fs-overview.pdf>. See also 79 Fed. Reg. at 75371.

⁶ NERA Economic Consulting, "EPA Regulatory Impact Analysis of Proposed Federal Ozone Standard: Potential Concerns Related to EPA Compliance Cost Estimates" (March 2015) at E-4. Available at http://www.nera.com/content/dam/nera/publications/2015/EPA_Regulatory_Impact_0315.pdf.

⁷ NERA Economic Consulting, "Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone" (February 2015) at 1. Available at [http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-\(NERA\).pdf](http://www.nam.org/Issues/Energy-and-Environment/Ozone/Economic-Impacts-of-a-65-ppb-NAAQS-for-Ozone-(NERA).pdf).

⁸ *Id.* (references omitted)

As a regulator, costs (even in this initial stage) can never be ignored—because at the end of the day, the simple fact is that costs will be passed on to the citizens of Oklahoma. This Proposed Rule touches every facet of our economy, regulated and unregulated by the Commission. The cost, expense and burden the economy and, ultimately, the American citizens must endure to obtain a result that could have little to no impact on ozone levels cannot be taken lightly. It is clear a consensus exists—even amongst those opposing the Proposed Rule—that cleaner air is desirable and should be a priority. Yet, with this acknowledgement is the recognition to strive toward this goal in a reasonable, meaningful approach that will truly obtain achievable results at the proper time.

IMPACT ON RURAL AMERICA

Rural areas will be disproportionately affected by the Proposed Rule. Based upon even EPA's analysis, the majority of cities and counties would no longer be in compliance with ozone standards. As noted by the Oklahoma Department of Environmental Quality (ODEQ), most Oklahoma counties may be facing nonattainment status for the first time.⁹ Oklahoma has been in attainment with ozone NAAQS since 1990. In commenting on the need to retain the same ozone levels for primary and secondary sources, ODEQ further explained the areas primarily at risk for a violation of the secondary standard but not the primary standard would “most likely be rural areas that possess no ability to establish attainment through control of ozone precursors within the designated nonattainment boundary due to the heavy impacts from the interstate transport of pollution.”¹⁰

More stringent ozone standards will additionally place undue burdens on farmers. Every aspect of productivity will see an increase in costs: fuel, fertilizer, utilities and equipment. In turn, agricultural support and processing industries will be subjected to these impacts. The Proposed Rule fails to provide flexibility to rural areas that will undoubtedly be impacted by geographic expansion of nonattainment into rural areas. These areas, already struggling for social and economic development, will experience new burdens with no additional resources to prosper.

Controlled agricultural burns could also be restricted due to increased ozone standards. This is contrary to the necessity and benefits of this method to preserve the native prairie. Without controlled burns, Oklahoma will experience increased wildfires. EPA must account for exceptional events without penalizing areas due to natural occurrences. Furthermore, without the tool of controlled burning, farmers and ranchers will be forced to use more chemicals for control, which not only increases the cost of doing business, but will also have a negative impact on ozone levels.

Agriculture producers are heavily dependent on heavy equipment for operations and trucking for transportation. The increasing cost of emissions controls on trucks and heavy machinery will fall

⁹ ODEQ Comments (March 16, 2015). Available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2008-0699-2121>.

¹⁰ *Id.* at 5.

directly on the farmer who does not have the ability to adjust the price of his/her product. Agriculture producers are at the mercy of global markets and weather conditions.

Negative impacts would extend beyond the transportation cost to the transportation infrastructure. An area deemed to be a nonattainment area would be subjected to additional burdens to proceed with a federal transportation project. Federal projects would be halted until the State could produce evidence the project would have no impact on ozone levels. In agriculture, unless a product makes it to the market it has no value. Agriculture currently struggles to move bulky commodities on a dilapidated surface and rail system. We are fortunate in Oklahoma to have the McClellan Kerr Arkansas River Navigation System (MKARNS) to transport fertilizer into, and the final agriculture product out of, the State and to the world market.

Most agriculture producers have some source of off-farm income to supplement the farming operation, such as a spouse working an off-farm job or the producer working an off-farm job on a part-time basis. The greatest economic challenge we face in Oklahoma is employment availability in rural areas. This has resulted in a massive exodus of population from rural to urban counties in recent decades. The best opportunities for job creation in rural Oklahoma are manufacturing, oil and gas and trucking—the very industries most negatively affected by the Proposed Rule.

Increased nonattainment areas will result in expansion into rural areas, which could hinder growth in energy production. As analyzed by NERA, rural areas active in oil and gas extraction could become subject to higher emissions and face barriers to obtaining new wells and pipelines.¹¹

Another challenge facing rural Oklahoma is availability of healthcare. Due to populations shifting out of rural areas, most rural hospitals struggle financially. According to the Oklahoma Hospital Association, a recent financial stress test determined nearly one half of rural hospitals are experiencing negative trend lines financially, with six currently in bankruptcy. Many rural hospitals have been closed and many others struggle financially. The increased energy costs resulting from the Proposed Rule would exacerbate this problem greatly. Hospitals in Oklahoma have recently joined together to intervene in a pending proceeding before the Commission that would result in a rate increase, demonstrating the importance of energy costs to their operations.¹²

¹¹ *Supra* n7 at 2.

¹² See Entry of Appearance of the Oklahoma Hospital Association, filed August 27, 2014, Cause No. PUD 201400229, *In the Matter of the Application of Oklahoma Gas and Electric Company for Commission Authorization of a Plan to Comply with the Federal Clean Air Act and Cost Recovery; and for Approval of the Mustang Modernization and Cost Recovery*. Available at <http://imaging.occeweb.com/AP/CaseFiles/occ5136109.pdf>.

CONCLUSION

The far-reaching effects of the Proposed Rule are immeasurable. Efforts to tighten the 2008 standards resulted in suspension of implementing the current standards while EPA pursued an out-of-cycle rulemaking to impose more stringent standards. In this strikingly similar approach, EPA is making another attempt to accomplish what it previously failed to accomplish. The White House rejected EPA's attempt noting regulatory burdens and regulatory uncertainty as reasons the economy could not support such an unjustified expense. The economy still cannot face the unjustified expense associated with the Proposed Rule and we owe it to Americans to do more.