



September 14, 2009

Docket No. EPA-HQ-OAR-2006-0922
Environmental Protection Agency
EPA West
Room 3334
1301 Constitution Ave, NW
Washington, DC 20460

Attention: Docket No. EPA-HQ-OAR-2006-0922

Subject: Comments on Primary National Ambient Air Quality Standard for Nitrogen Dioxide; Proposed Rule

Dear Sir or Madam:

The National Tribal Air Association (NTAA) is pleased to submit these comments to the U.S. Environmental Protection Agency (EPA) regarding its proposed rule concerning the primary national ambient air quality standard (NAAQS) for nitrogen dioxide (NO₂).

The NTAA is an autonomous organization of the National Tribal Environmental Council and has more than 50 principal member tribes. The NTAA's mission is to advance air quality management and policies and programs, consistent with the needs, interests, and unique legal status of American Indian tribes and Alaskan Natives. As such, the NTAA provides its resources to support the efforts of all federally recognized tribes in protecting and improving the air quality within their respective jurisdictions.

With respect to the proposed rule, the NTAA would like to take this opportunity to recommend to the EPA that it should make the existing annual primary NO₂ NAAQS more stringent, consider climate change when setting annual and hourly primary standards, and engage Indian tribes more fully in the siting of NO₂ monitors.

Need to Make Annual Primary NO₂ NAAQS More Stringent

The NTAA appreciates EPA's efforts to propose an hourly standard below the existing NO₂ NAAQS with the intent of addressing short-term exposure of such NO₂ that can have serious health effects. Our organization believes, however, that a more stringent annual primary NO₂ NAAQS is warranted so as to assure that the health of Indian tribes and Alaska Natives is protected with an adequate "margin of safety."

In proposing the hourly NO₂ standard of 0.080-0.10 parts per million (ppm), the EPA in effect is acknowledging that the current annual primary NO₂ standard of 0.053 ppm is insufficient to protect public health with an adequate margin of safety. This is a belief shared by other organizations such as the American Lung Association and Clean Air Watch which have recommended a lower standard of 0.050 ppm based on the sufficiency

of existing scientific data. The NTAA concurs with this recommendation, particularly since Indian tribes and Alaska Natives are highly susceptible to health impacts as a result of NO₂ exposure.

Asthma, one of the primary health concerns for which the EPA has deliberated about in proposing revised NO₂ NAAQS, is a chronic lung disease that affects 14-15 million people in the United States. It is also a disease whose rate has been steadily increasing among tribal populations with it affecting more than 10 percent of adults and 14 percent of children. As the Agency noted in its proposed rule (see page 34419), the prevalence and severity of asthma is higher among certain ethnic or racial groups such as Indian tribes and Alaska Natives.

With the average life expectancy among Indian tribes and Alaska Natives about 4.6 years less than the national average among U.S. citizens, greater health protection is necessitated for these at-risk populations. In the case of NO₂, while an hourly standard provides them with increased protections, most Indian tribes and Alaska Native villages aren't located in areas for which they would be substantially exposed to NO₂ over an hour. Instead, they reside in locations where NO₂ impacts them over a greater amount of time. As such, a more stringent annual standard is necessary so as to help reverse the health impacts of NO₂ that such tribes and villages are experiencing due to prolonged exposure. The NTAA therefore recommends that the EPA adopt an annual NO₂ primary NAAQS that is at least 0.050 ppm if not lower.

Consider Climate Change in Setting the Annual and Hourly Primary NO₂ NAAQS

As the EPA deliberates about revising the annual primary NO₂ standard and also considers a proposed hourly standard, the Agency should consider what impact that climate change will have on NO₂ levels on a short- and long-term scale.

In its fact sheet concerning the proposed rule (see <http://www.epa.gov/air/nitrogenoxides/pdfs/20090722fs.pdf>), the EPA acknowledges that ozone is formed when NO_x, a constituent of NO₂, and volatile organic compounds react in the presence of heat and sunlight." Agency and non-Agency scientists alike predict that temperatures will rise as a result of climate change, thereby fostering an opportunity for increased ozone levels throughout the nation. This, in turn, could increase the number of adverse health episodes experienced by people due to ozone such as reduced lung function, increased respiratory problems, and even premature death. Increased ozone levels have also been found to aggravate the conditions for climate change with ozone actually considered a greenhouse gas in its own right. With this said, the NTAA strongly recommends that the Agency consider the strong link between ozone and climate change in determining both an appropriate annual and hourly primary NO₂ standard.

Engage Indian Tribes in NO₂ Monitor Siting

The EPA is proposing a two-tier monitoring network design to “monitor ambient concentrations of NO₂ and assess compliance with the NO₂ NAAQS.” The first tier would require monitoring near major roadways whereas the second tier would require monitoring at the neighborhood and larger area-wide scales. Both tiers call for placement of monitors in areas thought to have the highest expected NO₂ concentrations – i.e., urban areas, working with state and local air monitoring agencies in siting NO₂ monitors. This approach is problematic for Indian tribes in at least two ways.

First, the EPA indicates that it will work with state and local air monitoring agencies to “design and/or maintain the most appropriate NO₂ network to service the variety of data needs for an area” (see pages 34443-34444). In a 2008 Agency document entitled “Ambient Air Monitoring Strategy for State, Local, and Tribal Air Agencies,” however, the EPA indicated that it would also be consulting with Indian tribes in “developing the near-roadway component of ambient monitoring.” Unfortunately, the Agency appears to have abandoned this commitment based on its current proposal, even though tribal lands within or contiguous to urban areas might very well be the best locations to site NO₂ monitors, particularly as such lands are transected by major roadways such as those located in urban areas in Arizona and California.

Second, the largest part of Indian country is located in rural areas of the country. EPA’s proposal, however, would establish a monitoring network in places having populations of no less than 350,000 citizens, essentially excluding most of Indian country from participation in the monitoring network. Such a monitoring network appears to be contrary to what the EPA considered only a few years earlier. Specifically, in the 2008 document already mentioned, the EPA stated that the primary consideration for establishing a network would be to “operate a small number of sites spaced in *varying geographical areas* of the country in an initial attempt to address near-roadway issues” (emphasis added). Placement of monitors strictly in urban areas meeting a population requirement reflects little geographic variation, hence Indian tribes and those states lacking sizeable urban areas would be prohibited from inclusion in the monitoring network.

The EPA, however, indicates that it will consider comments on an alternative monitoring requirement that would allow each state and territory to have at least one roadside monitoring site (see pages 34442-34443). Conspicuously absent from this list of jurisdictions is the nation’s more than 560 federally-recognized Indian tribes, each which is exposed to NO₂ emissions at varying degrees. Ideally, the NTAA recommends that each such tribe with a land base have at least one roadside monitoring site. If resources do so are limited, our organization alternatively recommends that the Agency follow the example of the Western Regional Air Partnership which has conducted a representative analysis of the existing tribal and non-tribal air monitoring networks to identify those Indian tribes that do not currently have a source of air data for IMPROVE monitors. This analysis could be extended to other air pollutants such as NO₂.

Conclusion

In summary, the NTAA is pleased to provide the aforementioned comments and recommendations concerning the proposed rule. If you should have any questions or comments, please feel free to contact Bob Gruenig, NTAA Senior Policy Analyst, via phone at (505) 242-2175 or via e-mail at bgruenig@ntec.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bill Thompson", with a stylized flourish at the end.

Bill Thompson
Chairman
National Tribal Air Association