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U.S. Environmental Protection Agency  
EPA Docket Center  
Air and Radiation Docket, Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Comments on EPA’s Proposed Reconsideration of the National Ambient Air Quality Standards for Particulate Matter; Docket ID No. EPA–HQ–OAR–2015–0072**

Dear Sir or Madam:

The Associated General Contractors of America (AGC) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (EPA) proposed National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) (proposed rule).<sup>1</sup> AGC supports the establishment of reasonable air quality rules that are necessary, based on sound science and measurably improve public health. The proposal would greatly increase the stringency of the PM NAAQS ahead of schedule, without clear justification,<sup>2</sup> and contrary to the Administration’s commitment to improve infrastructure and create jobs. AGC is interested in this rulemaking because a “nonattainment” designation under the Clean Air Act (CAA) may result in construction bans in geographic areas so designated by EPA, which would have a negative effect on employment, gross domestic product, manufacturing shipments, the completion of critical infrastructure projects, and the delivery of important public services. AGC urges EPA to retain the current standards.

AGC of America is the nation’s largest and most diverse trade association in the construction industry. The association represents more than 27,000 members through a network of chapters in all 50 states, the District of Columbia, and Puerto Rico. Our commercial construction firms are engaged in building, heavy, civil, industrial, utility, and other construction for both public and private property owners and developers. Collectively, AGC member firms build much if not most of the nation’s public and private infrastructure. In building our quality of life, AGC members own and operate diesel-powered construction equipment and construct road and transportation projects funded by the Highway Trust Fund.<sup>3</sup>

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<sup>1</sup> 88 *Fed. Reg.* 5558 (January 27, 2023) (EPA-HQ-OAR-2015-0072).

<sup>2</sup> EPA has admitted that the science is unclear and suggests that EPA should protect against hazards that science has not yet identified. “The requirement to provide an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information and to provide a reasonable degree of protection against hazards that research has not yet identified.” 88 *Fed. Reg.* 5562 (January 27, 2023).

<sup>3</sup> AGC is also a member of the American Highway Users Alliance (AHUA) and incorporates by reference the Alliance’s comment letter in this regulatory docket.

## **I. Regulatory Burdens Continue to Increase While Emissions Continue to Decline**

The active phase of construction and the equipment used to perform this work is already regulated by both federal and state agencies to reduce particulate matter emissions. States with non-attainment areas have regulations in place that apply directly to the construction industry. In many cases, construction firms must obtain permits and submit dust management plans for each active construction site, and the permits are reviewed and approved by local air pollution control officers. In addition, EPA has enacted federal engine emissions requirements for all new diesel engines used in construction equipment and mandates the purchase/use of ultra-low-sulfur diesel fuel.

Moreover, under the recently enacted Bipartisan Infrastructure Law (BIL), for a State that has a nonattainment or maintenance area for PM<sub>2.5</sub>, the BIL requires that an amount equal to 25 percent of the amount of the State’s CMAQ (congestion mitigation and air quality) apportionment attributable to the weighted population of such areas in the State must be used for projects targeting PM<sub>2.5</sub> reductions in those PM<sub>2.5</sub> nonattainment and maintenance areas, including for diesel replacements (in addition to retrofits), and the BIL requires States to prioritize benefits to disadvantaged communities or low-income populations living in or adjacent to such area, to the extent practicable.<sup>4</sup>

Despite these controls and the well-documented overall decline in criteria and precursor pollutants over recent years,<sup>5</sup> EPA is proposing to increase the stringency of federal PM regulations and increase the number of areas designated as nonattainment. A new NAAQS at any of the proposed levels (see section II) would likely more than double the current number of PM 2.5 non-attainment areas, where new and modified major sources of air emissions would need to install controls that meet the lowest achievable emissions rate and provide offsets. Additional nonattainment areas would result in additional requirements and restrictions on the business of construction, as outlined in section III below.

## **II. EPA Proposal**

EPA has provided 60 days for public comment on a new proposal that sets forth a range of possible outcomes and changes to the primary and secondary PM standards. The Administrator proposes to—

- Lower the primary annual PM<sub>2.5</sub> standard from 12.0 micrograms per cubic meter (mg/m<sup>3</sup>) to somewhere within the range of 9.0 to 10.0 mg/m<sup>3</sup>—while taking comment on alternative annual standard levels down to 8.0 mg/ m<sup>3</sup> and up to 11.0 mg/m<sup>3</sup>;

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<sup>4</sup> [Bipartisan Infrastructure Law - Congestion Mitigation and Air Quality \(CMAQ\) Improvement Program Fact Sheet | Federal Highway Administration \(dot.gov\)](#) – see “set-asides” section.

<sup>5</sup> According to EPA, “Since 1970, implementation of the Clean Air Act and technological advances from American innovators have dramatically improved air quality in the U.S. Since that time, the combined emissions of criteria and precursor pollutants have dropped by 77%. Cleaner air provides important public health benefits, and we commend our state, local, and industry partners for helping further long-term improvement in our air quality.” <https://gispub.epa.gov/air/trendsreport/2020/#welcome>

- Retain or lower the current primary daily exposure limit (i.e., the 24-hour PM<sub>2.5</sub> standard) at a level of 35 mg/m<sup>3</sup>—while taking comment on revising the level as low as 25 mg/m<sup>3</sup>;
- Retain the primary 24-hour PM<sub>10</sub> standard, without revision; and,
- Retain or lower the secondary PM standards—while taking comment on revising the level of the secondary 24-hour PM<sub>2.5</sub> standard as low as 25 mg/m<sup>3</sup>.

The EPA also proposes revisions to its Air Quality Index (AQI) and monitoring requirements for the PM NAAQS. The proposal notes that these revisions are necessary to ensure compliance with the proposed NAAQS for PM 2.5, pointing out that PM<sub>2.5</sub> is a “great concern” to already overburdened and vulnerable communities.

### **III. Impacts on Construction**

#### A. Restriction on Equipment Use

As EPA continues to tighten the PM NAAQS, states are challenged to find ways to further reduce particulate pollution from mobile sources. States would need to submit plans for meeting a tightened PM<sub>2.5</sub> standard within 18 months after EPA finalizes nonattainment designations. In geographic areas that do not meet EPA’s PM standards, states may attempt to directly impose requirements through their SIP on the users of diesel engines to reduce emissions from the existing fleet of construction equipment. Although the CAA generally reserves for the federal government the authority to set emissions standards for either new or old engines in offroad construction equipment (a concept called federal preemption), some states have attempted (or currently are attempting) to include provisions in their SIPs that appear to violate this statutory prohibition—such as operating restrictions on the use of construction equipment; requirements to retire or replace older diesel equipment; or mandates (via contract specifications or bid preferences) to retrofit old nonroad engines. **Restrictions on the use and operation of diesel equipment are, in essence, construction bans.**

#### B. Loss of Federal Highway Funding

It also becomes even more difficult to build new roads or other transportation projects in areas that are designated as “nonattainment.” Nonattainment areas are subject to “Transportation Conformity.” This conformity analysis requires extensive transportation and air quality coordination and computer modeling to ensure transportation projects do not affect the area’s ability to regain and/or maintain attainment. Transportation conformity requirements are time-consuming, costly and include establishing a mobile emissions ‘budget’ from which to determine the impact transportation projects, once implemented, would have on regional air quality. In nonattainment areas, transportation projects can proceed only if it can be demonstrated that they will not result in increased emissions. **Such construction bans would delay the renovation and improvement of public infrastructure, including highway and transit construction projects, and bridge construction and repairs.**

To this end, delaying or threatening safety-related highway projects could have a negative impact on the traveling public. This comes at a time when traffic fatalities on our highways are at a 15-year

high.<sup>6</sup> Even a temporary freeze on new highway construction could prevent states from “obligating” their federal highway funds, which could, in turn, result in a loss of those federal dollars. This could also limit a state or localities’ ability to better connect disadvantaged communities and Tribes to jobs, healthcare facilities, and schools, or to better link businesses in those communities to their markets.

The delay of much-needed repairs and investments to our roadways and transportation infrastructure will only exasperate air quality concerns. Traffic congestion wasted 3.3 billion gallons of fuel in 2017—adding 8.8 billion hours to travel times in urban areas.<sup>7</sup>

### C. Economic Impact

**Any tightening of the PM NAAQS could result in construction bans that would lead to a massive layoff of construction workers and of workers who supply a multitude of materials, equipment, and services to construction.** The construction industry provides employment to 7.7 million individuals—nearly 6% of the private non-farm workforce. Moreover, construction jobs are good-paying jobs. In October 2022, seasonally adjusted hourly earnings in construction averaged \$35.27 per hour, 8% higher than the average for all private industry nonsupervisory workers, according to the Bureau of Labor Statistics.

**Any tightening of the PM NAAQS could result in construction bans that would have a negative impact on GDP as well as a significant loss of jobs by construction service providers.** The construction industry has played a powerful role in sustaining economic growth and helping the economic recovery. Gross product of the construction industry totaled \$2.1 trillion in the second quarter of 2022, according to the Bureau of Economic Analysis.

**Any tightening of the PM NAAQS could result in construction bans that would cut deeply into manufacturing shipments.** Construction machinery accounted for 10% of manufacturers’ shipments of machinery in the first nine months of 2022 and grew by 25% compared to the same period in 2021.<sup>8</sup> Shipments of construction materials and supplies accounted for 12% of total shipments and grew at a 11% rate. The rapid increase in both types of shipments contributed significantly to the recent upturn in manufacturing employment.

### D. Public Health and Welfare Impacts

**Any tightening of the PM NAAQS could result in construction bans that would impede projects that are vital to improving municipal water supplies and wastewater treatment facilities located throughout the nation.** While drinking water quality remains good, the water infrastructure is aging rapidly. Leaking pipes alone are responsible for billions of gallons of lost

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<sup>6</sup> NHTSA 2021 Traffic Fatalities, available at: <https://www.nhtsa.gov/press-releases/early-estimate-2021-traffic-fatalities>

<sup>7</sup> Texas Transportation Institute, Texas A&M University, 2019 Urban Mobility Report, August 2019.

<sup>8</sup> U.S. Bureau of the Census’ Website, available at: <https://www.census.gov/manufacturing/m3/index.html> (November 2022).

water every day.<sup>9</sup> In addition, the nation’s 16,000 wastewater systems face enormous needs. In many parts of the country, wet weather events regularly lead to overflowing systems that release waste and chemicals into the environment—damaging aquatic ecosystems and causing human illness. Threats to the nation’s water resources investments caused construction bans would only work against EPA’s complementary goals of improving water quality.

#### E. Supply Chain Impacts

Infrastructure project costs continue to climb amid rising construction materials prices and shortages. Material price increases have doubled or even tripled in some cases.<sup>10</sup> The construction industry is facing material challenges that reach far and wide. In fact, a recent survey of AGC members found that 93 percent of construction companies are experiencing long lead times and/or allocations (less-than-full shipments) for construction materials.<sup>11</sup>

There are a lot of factors and events—whether it is from the pandemic, a cargo ship stuck in the Suez Canal, or increasing fuel prices due to world events—that can cause unexpected supply chain disruptions and lead to material price volatility. As a result, the construction industry is currently experiencing supply chain and fuel crises—the impacts of which are delaying and increasing the cost of public and private projects (when it is even possible for the general contractor to recuperate those costs). Any tightening of the PM NAAQS could further impact the price and supply of construction materials needed to meet the nation’s infrastructure needs. For example, the Portland Cement Association, which represents cement manufacturers, has publicly stated that the proposed action is a “regulatory burden that could hamper our members’ ability to manufacture sustainable construction materials.”<sup>12</sup>

Several key materials, such as cement in the example above, used in the built environment also would be impacted directly by this proposal. The markets for these materials tend to be local, whenever feasible, due to the cost of shipping these materials long distances. If plants have to curtail production or close, then it will impact the availability of local materials, constrain the supply chain, and result in increased emissions (including PM and greenhouse gases) and costs from shipping. A member has shared that when a local factory shuts down, it can set a project back by several weeks or longer as the project team tries to find a new supplier or substitute. If the delay is particularly long, then workers may move on to other projects leaving the contractor with staffing shortages when they are able to start work again. The current proposal will only exacerbate these challenges by further stressing the availability of energy and materials.

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<sup>9</sup> The 2009 Report Card for America’s Infrastructure estimates 7 billion gallons of water lost per day due to leaking pipes. <http://www.infrastructurereportcard.org/fact-sheet/drinking-water>.

<sup>10</sup> AGC Construction Inflation Alert available online at: [https://www.agc.org/sites/default/files/users/user21902/Construction%20Inflation%20Alert%20Cover\\_Jul2022\\_V4.pdf](https://www.agc.org/sites/default/files/users/user21902/Construction%20Inflation%20Alert%20Cover_Jul2022_V4.pdf)

<sup>11</sup> AGC 2022 Buy America Materials Survey Results available online at: <https://www.agc.org/sites/default/files/users/user33405/Buy%20America/2022%20Materials%20Survey%20Results%20Data.pdf>

<sup>12</sup> See e.g., “Informed Infrastructure” article online at [Portland Cement Association Regards EPA Proposed Action Involving Particulate Matter Air Quality Standards as Superfluous | Informed Infrastructure](#).

#### **IV. Air Quality is Getting Cleaner**

Any tightening of the PM NAAQS by the EPA would greatly increase the stringency of PM regulation at a time when existing standards are already resulting in noticeable progress—and even further reductions in PM are anticipated to occur because of requirements being phased in over the next few years. EPA national trend data show that PM<sub>2.5</sub> air quality has improved by 37 percent during the 2000 to 2021 timeframe, and a large part of those reductions (14 percent) occurred since 2010.<sup>13</sup> Similarly, EPA national trend data show that emissions of PM<sub>2.5</sub> and its precursors have been reduced to an even greater degree.<sup>14</sup> This downward trend in PM<sub>2.5</sub> is expected to continue without today's stringent EPA ruling in place (see section I above). Furthermore, this continuing improvement indicates the current regulations are having their desired effect.

Specifically, the Federal Highway Administration (FHWA) has documented a 50 percent reduction in PM emissions from on-road vehicle travel from 1990 to the mid-2000s.<sup>15</sup> According to EPA, compared to 1970 vehicle models, new cars, SUVs and pickup trucks are roughly 99 percent cleaner for common pollutants (hydrocarbons, carbon monoxide, nitrogen oxides, and particle emissions). New heavy-duty trucks and buses are roughly 99 percent cleaner than the 1970 models.<sup>16</sup> As better motor vehicle and fuel technologies develop, vehicle emissions will continue to decrease, even as automobile usage increases.

Moreover, advancement in clean diesel technology has resulted in diesel emissions being a small and declining contributor to the inventory of fine particles. Over the last decade in particular, the diesel industry has invested billions of dollars in the development of cleaner diesel fuels, advanced engines and emissions control technology. The results of these investments can be seen in the tremendous progress made in clean air today. According to the most recent public EPA emissions inventory data, mobile sources of PM<sub>2.5</sub> have continued to steadily decline.<sup>17</sup>

#### **V. Conclusion**

AGC is concerned that a significant increase in the number of PM nonattainment areas as proposed by this rulemaking would put at risk important transportation construction projects needed to move goods and people and provide employment. Further, potential restrictions on the use and operation of diesel equipment would leave other important construction projects unbuilt, including those to provide for safe drinking water, wastewater and stormwater management, flood control and navigation, health care, and education. AGC wants to ensure that the BIL is successful and that the American people see the benefits of the historic law. Any tightening of the PM NAAQS will have

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<sup>13</sup> See, EPA website at <https://www.epa.gov/air-trends/air-quality-national-summary#air-quality-trends>.

<sup>14</sup> *Ibid.*

<sup>15</sup> United States Department of Transportation, “Transportation Air Quality Selected Facts and Figures” p.28 (2006).

<sup>16</sup> U.S. Environmental Protection Agency website on History of Reducing Air Pollution from Transportation in the United States at <https://www.epa.gov/transportation-air-pollution-and-climate-change/history-reducing-air-pollution-transportation>. (Last accessed on March 28, 2023.)

<sup>17</sup> U.S. EPA website on National Emissions Inventory Data for 2017 at <https://gispub.epa.gov/neireport/2017/>.

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significant consequences for many states and localities and will impact their ability to provide for economic growth and opportunity as well as for public health and welfare. AGC urges EPA to abandon its proposed tightening of the existing PM NAAQS.

Sincerely,

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Director, Environment and Sustainability

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