



# THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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July 12, 2006

The Honorable Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, DC 20460

Dear Administrator Johnson:

I am writing on behalf of the Associated General Contractors of America (AGC) regarding EPA's proposed revisions to the existing National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). The proposal would greatly increase the stringency of the PM NAAQS at a time when implementation of the current standard is just beginning and despite key uncertainties in the underlying science. 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 is the oldest and largest trade association in the construction industry. It has more than 32,000 members and 98 state and local chapters throughout the United States. This number includes more than 7,000 of the nation's leading general construction contractors and 25,000 specialty contractors and other firms, engaged in the construction of buildings, highways, utilities, and federal projects. In building our quality of life, AGC members own and operate diesel-powered construction equipment and rely on federal highway funds to construct road and transportation projects.

## EPA Proposal

EPA's proposal would cut the allowable concentration of fine particles in the air averaged over 24-hour periods almost in half, from 65 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 35  $\mu\text{g}/\text{m}^3$ . This change would increase the number of counties in nonattainment (i.e., areas where pollutant concentrations exceed the standard, or contribute to exceedance of the standard in adjoining counties) from 208 under the current standard to at least 283. These numbers may seem small compared to the approximately 3,000 counties in the United States, but the nonattainment counties tend to have larger populations than those in attainment: 88 million people (about 30 percent of the U.S. population) live in the 208 counties currently designated nonattainment.

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Also, EPA has proposed a 24-hour standard for PM<sub>10-2.5</sub>. That standard would be set at a level of 70 µg/m<sup>3</sup>, compared to the old 24-hour PM<sub>10</sub> standard of 150 µg/m<sup>3</sup>. Significantly, the new PM<sub>10-2.5</sub> standard would focus on construction sources in urban areas, excluding any mix of particles “dominated by rural windblown dust and soils and PM generated by agricultural and mining sources.” Under the proposal, EPA would revoke the *annual* PM<sub>10</sub> standard.

AGC remains concerned that the timeframe for this action is being dictated by a consent decree stemming from a lawsuit between the American Lung Association, a coalition of environmental organizations (including Sierra Club and Natural Resources Defense Council), and the EPA. Under the terms of that consent decree, the EPA has until September 14, 2006, to promulgate final revisions to the PM NAAQS. This tight deadline has denied the public the ability to meaningfully participate in this standard-setting process.

Moreover, EPA only recently completed the process for designating geographical areas as attainment or nonattainment with respect to the current PM<sub>2.5</sub> NAAQS. Right now states are developing their SIPs for how they will meet that more stringent standard; those plans are due by early 2008. It is inappropriate for EPA to revise the fine particulate rule before assessing the success of its current regulatory scheme.

#### 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. In geographic areas that do not meet EPA’s PM standards, states may attempt to directly impose requirements through their state plan for clean air (state implementation plan or SIP) on the users of diesel engines to reduce emissions from the existing fleet of construction equipment.

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. Nonetheless, 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.

#### Loss of Federal Highway Funding

States that fail to develop suitable SIPs (or to meet EPA's CAA deadlines) could be subject to numerous federal sanctions, including emissions caps limiting economic development and the loss of federal highway transportation dollars. In addition, EPA’s “transportation conformity” provisions can bring federal funding for road and transit projects to a grinding halt. Under the CAA transportation conformity provisions, federal departments and agencies may not approve,

permit, or provide financial support to most highway and transit projects in areas that have not attained air quality standards, unless such projects conform with the state's SIP. "Conformity" means transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of air quality standards in polluted areas. Failure to demonstrate conformity results in a "conformity lapse," which renders the area's transportation program and plans invalid.

Only certain types of projects can advance during a conformity lapse (e.g., safety projects and transportation control measures).

Restrictions on the use and operation of diesel equipment and the loss of highway funds are, in essence, construction bans. Leaving projects unbuilt has consequences far beyond the owner and users who are deprived of the use of that project. Construction is a major contributor to employment, gross domestic product ("GDP"), and manufacturing. In addition, construction is vital to restoring our nation's aging infrastructure and to the delivery of important public services.

#### 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 for 7.5 million employees and 2 million self-employed workers. From May 2005 to May 2006, construction added 257,000 employees, according to the Bureau of Labor Statistics ("BLS"). Moreover, construction jobs are good-paying jobs. In May 2006, seasonally adjusted hourly earnings in construction averaged \$19.81 per hour, 18 percent higher than the average for all private industry nonsupervisory workers, according to BLS.

**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 current economic recovery. Construction makes a disproportionately large contribution to GDP. Construction spending in 2005 totaled \$1.12 trillion, including more than \$500 billion of equipment, goods, and services that generated jobs throughout the economy.

**Any tightening of the PM NAAQS could result in construction bans that would cut deeply into manufacturing shipments and return that sector into recession.** Construction equipment accounted for 11 percent of manufacturers' shipments of equipment in 2005. See U.S. Bureau of the Census' Web site, online at <http://www.census.gov/indicator/www/m3/prel/pdf/table1p.pdf> (last visited June 29, 2006). Shipments of construction materials and supplies accounted for 11 percent of total shipments.

### Air Quality Impact

**Any tightening of the PM NAAQS could result in construction bans that would delay the renovation and improvement of public infrastructure, including highway and transit construction projects, bridge construction and repairs.** Highway improvement projects improve traffic flows and reduce congestion, which decreases air pollution associated with idling. Emissions' rates are higher during stop-and-go, congested traffic conditions than free flow conditions operating at the same average speed. Limiting the construction of highway and transit projects would have a net negative impact on air quality. *See* U.S. Environmental Protection Agency, *MOBILE 6.2 Model Run*, 24 September 2003. *See also* *Transportation Air Quality – Selected Facts and Figures*, U.S. DOT, Federal Highway Administration, 2002; *Securing America's Future: A National Commitment to Build a Highway System that Meets America's Mobility, Safety and Economic Challenges*, AGC, 2003.

### Public Health and Welfare Impacts

**Any tightening of the PM NAAQS could result in construction bans that would delay the renovation and improvement of public infrastructure, including highway and transit construction projects, bridge construction and repairs, dam repairs, and school renovation.** To this end, delaying or threatening safety-related highway projects increases potential for injuries and fatalities to the traveling public. *See* *Traffic Safety Facts*, U.S. Department of Transportation ("DOT"), National Highway Traffic Safety Administration, 2000 and 2001. One-third of the nearly 43,000 highway deaths each year can be attributed to inadequate road infrastructure. *Id.* 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.

**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. In addition, the nation's 16,000 wastewater systems face enormous needs.

### Air Quality is Getting Cleaner

When considering any tightening of the PM NAAQS, along with the resultant impacts to our economy and the public's health and welfare, it is important to note that EPA's own reports have demonstrated an overall decline in particulate pollution. As EPA reported in early 2005, "between 1970 and 2004...total emissions of the six principle air pollutants dropped by 54 percent." Specifically, EPA's own studies state that the amount of fine particulates in the air is now 30 percent lower than it was 25 years ago; similarly coarse particulate concentrations have declined 31 percent since 1988. *See* *The Particle Pollution Report, Current Understandings of*

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*Air Quality and Emissions through 2003*, U.S. Environmental Protection Agency (<http://www.epa.gov/airtrends/pm.html>), December 2004. This progress has occurred prior to implementation of the current PM NAAQS.

Moreover, EPA has projected that in many cases, PM attainment will be reached as the result of many federal measures including the "Regional Haze Rule;" voluntary diesel engine retrofit program; new federal standards on cars, light trucks, and heavy duty diesel engines that are scheduled to be implemented between 2004 and 2010; new nonroad diesel engine rules; and the 1998 regional strategy to reduce nitrogen oxides from eastern states referred to as the "NOx SIP Call."

### 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.

Air quality is clean and getting significantly cleaner even as our economy continues to grow. Any tightening of the PM NAAQS will have 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 reconsider its proposed revisions to the existing PM NAAQS that would tighten them and allow EPA rules currently in place and future actions and voluntary initiatives to achieve PM attainment.

Sincerely,



Stephen E. Sandherr