Message

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Title: House Democrats Fail In Bid To Require CASAC Approval For Ozone Delay

Body:

House Democrats Fail In Bid To Require CASAC Approval For Ozone Delay

June 15, 2017

House Democrats at a June 15 markup failed with a bid to attach an amendment to a bill overhauling EPA's national ambient air quality standards (NAAQS) program to require the agency's Clean Air Scientific Advisory Committee (CASAC) to affirm any ozone NAAQS delay would not harm public health before it could proceed.

At the House Energy & Commerce Committee's markup of the bill, H.R. 806, Rep. Raul Ruiz (D-CA) pronounced himself "extremely concerned" with the bill's potential health impacts. The bill would delay from October this year until 2025 the deadline for EPA to designate areas in attainment or nonattainment with the Obama EPA's 2015 ozone standard of 70 parts per billion (ppb) and make a host of changes to the NAAQS program, including delaying the NAAQS review cycle.

Ruiz offered an amendment to require that EPA not proceed with the bill's ozone NAAQS implementation delay unless CASAC decides it does not worsen public health. The agency recently announced a one-year delay in issuing initial designations for whether areas are attaining or in nonattainment with the 2015 standard, and is also reconsidering the decision to tighten the limit from the 2008 NAAQS of 75 ppb.

Rep. Frank Pallone (D-NJ), ranking member of the full Energy & Commerce Committee, speaking in favor of the amendment to require CASAC's input, said, "You can't deny the science, and the science is clear" that the 70 ppb NAAQS is justified and should be implemented.

Bill sponsor Rep. Pete Olson (R-TX) countered that he believes CASAC in reviewing the 2015 decision and endorsing a stricter limit than 75 ppb ignored its statutory duty to assess non-health effects of tightening the limit. GOP lawmakers say CASAC should weigh costs and other factors as well. Olson urged against the amendment, arguing that "CASAC is the last agency we want to empower," and the amendment was rejected on party lines.

Democratic Rep. Jerry McNerney (D-CA) also offered an amendment to eliminate a bar on any additional funding for EPA to perform tasks the bill requires such as studying impact of foreign pollution.

During debate on the measure, Rep. Paul Tonko (D-NY) said, "we cannot continue to ask EPA to do more with less," while Pallone added that "I believe their real goal is just to have EPA do less."

McNerney's amendment would have stripped the additional funding prohibition, but also failed on party lines.

Therefore the legislation cleared through the subcommittee without amendments on a party-line vote of 12-08. Should H.R. 806 make it though the House, it faces a possible Democratic filibuster in the Senate, sources have said, given Democratic opposition to the measure and GOP air policies.

One Democrat on the House panel, Rep. Gene Green (TX) did, however, praise EPA's one-year designation delay for the ozone NAAQS, calling the issue "extremely complicated." Green also expressed his support for the 2015 ozone NAAQS and ultimately voted with his fellow Democrats against the bill.

Ozone Legislation

H.R. 806, which has 21 cosponsors including two Democrats, would prohibit any ozone NAAQS review before 2025, and extend the compliance date for states to meet EPA's 2008 and 2016 ozone NAAQS.

States' suggested designations of areas in attainment or nonattainment with the 2015 NAAQS would now be due in 2024, with EPA's final decisions on designations due in 2025, rather than October this year as currently foreseen, and state implementation plans (SIPs), outlining states' plans to attain the NAAQS, not due until 2026.

The bill would further extend the NAAQS review cycle from five years to 10 years for all six NAAQS, including those for ozone, particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide, and lead.

In addition, it would require EPA to issue implementation guidance for how states should craft plans to meet the standards concurrently with new NAAQS, rather than years after issuance of a NAAQS, as has been the pattern in the past. Permit applicants with applications deemed complete at the time a new NAAQS is promulgated would be allowed to comply with permit requirements relating to the NAAQS in effect when they filed their application.

Further, the bill would force EPA to prepare within two years a report on the impact of foreign-sourced air emissions on NAAQS attainment in general, and to report on the effectiveness of states' petitioning EPA under the air law for a regulatory exemption for foreign emissions beyond their control under air law section 179(B).

Although primary, or health-based NAAQS are required to protect public health with an "adequate margin of safety," the bill would allow the EPA administrator to set the NAAQS using the technological feasibility of attainment as a "secondary consideration." It also eliminates requirements in areas of the country classified in "extreme" nonttainment to introduce "contingency measures" -- a provision in effect reserved for California -- and makes provision for greater regulatory exemptions based on "exceptional events" such as dust storms or wildfires.

EPA would be required to consult CASAC on "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standard." The Clean Air Act already requires CASAC to consider these issues, but the panel has never done so in any of its NAAQS reviews. The Obama EPA took the position that existing air law language does not tie the requirement to any particular NAAQS review, but H.R. 806 would do so explicitly.

House Republicans have praised H.R. 806 as necessary to ease the regulatory burden on states and industry struggling with implementation of the ozone standards.

The bill has a Senate companion, S. 263, sponsored by Sen. Shelley Moore Capito (R-WV) and 6 co-sponsors including one Democrat, Sen. Joe Manchin (WV).

Markup Debate

Republicans at the markup were harshly critical of EPA's slow issuance of implementation rules for the 2008 NAAQS, which was delayed by protracted litigation over the NAAQS. EPA has yet to finalize its implementation rule, proposed Nov. 17. Olson said the ozone designations delay gives EPA "the time they have proven they need" to implement NAAQS standards, calling the agency's handling of the issue "a mess."

Olson in his remarks also reiterated his claim that the bill would not weaken any existing standards, and pointed to factors such as foreign pollution that local regulators cannot address. "You can't control what you can't control," he said. "Nowhere does this bill allow states to increase their emissions."

The American Chemistry Council (ACC) issued a statement June 15 saying the bill "updates and improves the implementation process for EPA ozone standards" and will help industry win air permits more quickly.

Democrats, however, were unified in their opposition to the bill, pointing to the sweeping changes to the NAAQS program it would introduce that they argue would weaken environmental protections, by undermining the scientific process for setting NAAQS and slowing down both the review and implementation process.

"I opposed this bill in the last Congress and I oppose it now," said Pallone. Democrats linked the bill with broader policies of President Donald Trump's administration aimed at cutting back EPA regulation, including the administration's proposed 31 percent budget cut for the agency and retreat from measures aimed at curbing greenhouse gases.

Brownfields Legislation

Meanwhile, the House panel in other business approved by voice vote a bipartisan bill reauthorizing EPA's brownfields redevelopment program. Among other provisions, the bill increases the maximum allowed grant for brownfields projects from $200,000 to $500,000. The previous authorization expired in 2006.

Lawmakers praised the program as widely popular with municipal authorities, industry and environmentalists, noting the potential of brownfields cleanups to generate economic value from sites that are otherwise liabilities.

Tonko said the program will turn "liability into an opportunity," and larger grants will allow remediation of more difficult and complex sites.

The increased grants funding in the bill will also send a strong signal to the Trump administration that Congress wants to fund such work, Tonko said. Several Democrats expressed concerns that states are being asked to do more in environmental regulation, including cleanups, with sharply reduced funds under the president's budget proposal. -- *Stuart Parker* (sparker@iwpnews.com)

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