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# EPA Opens Door To Novel CO2 NAAQS After Withdrawing Petition Denial

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The Biden EPA has withdrawn the Trump administration's 11th-hour denial of a Clean Air Act petition asking the agency to set a first-time national ambient air quality standard (NAAQS) for carbon dioxide, opening the door reconsidering the request and potentially setting a landmark air standard for the greenhouse gas.

"By undoing Trump's denial, the Biden administration has created a chance to enact the most consequential protection we've ever had for our climate," said Maya Golden-Krasner, deputy director of the Climate Law Institute at the Center for Biological Diversity (CBD), which together with 350.org filed [the petition in 2009](#).

Acting Biden EPA Administrator Jane Nishida sent [a March 4 letter](#) to CBD Climate Law Institute Director Kassie Siegel saying the agency is "withdrawing the denial of your petition" by the Trump administration, "as the agency did not fully and fairly assess the issues raised by the petition. The EPA intends to further consider the important issues raised by your petition before responding."

Coming at a time when EPA [is reconsidering its options](#) for how to regulate GHGs from coal- and gas-fired power plants under the air act, the action opens the door to the agency addressing CO2 using its authority under sections 108-110 of the law for setting NAAQS for criteria air pollutants from a range of sources.

The notion of setting a CO2 NAAQS has long faced significant skepticism -- though after the Biden administration successfully urged the U.S. Court of Appeals for the District of Columbia Circuit to not to reinstate the Obama-era Clean Power Plan GHG rule for existing power plants, which relied on section 111(d) of the air act, administration officials have been considering their options for regulating GHGs.

In one of his last acts in office, then-Administrator Andrew Wheeler denied CBD's petition and other similar requests for GHG rulemakings under various sections of the air law.

In [a Jan. 19 letter](#) to several groups that filed such petitions, accompanied by an 18-page explanation, Wheeler said he had decided to reject the CBD and 350.org petition for a GHG NAAQS, which sought a standard of 350 parts per million.

He also rejected most of a February 2013 petition from New York University's Institute for Policy Integrity (IPI) that sought to regulate GHGs under the air law's section 115 that governs international air pollution, though Wheeler left in place portions of the petition asking EPA to regulate GHGs under section 111's new source performance standards, the Title II mobile source program and the Title VI stratospheric ozone program.

The denial "does not address those portions of IPI's petition. EPA notes that it is already regulating GHG under these provisions," Wheeler wrote.

He also rejected an April 2019 Food & Water Watch petition to regulate GHGs as hazardous air pollutants (HAPs) under section 112 of the air law.

On the other petition requests, Wheeler wrote, "The Clean Air Act's NAAQS regime and §115 are well suited to local pollutants that have the greatest effect on -- and can be meaningfully controlled by the localities where they are emitted. That is not true of GHG, which are dispersed throughout the global atmosphere."

He added, "Likewise, §112 is designed to address HAP that cause direct health and environmental effects by exposure, concentration, or otherwise in relatively low concentrations by a few sources."

And he said, “These provisions are not designed to handle globally dispersed pollutants that are emitted in great amounts by myriad sources and have only indirect health and environmental effects.”

### **‘Huge Impact’**

Wheeler’s arguments echo long-running claims from opponents of a GHG NAAQS that it would be impossible to implement such a standard, compared to the existing NAAQS that regulate conventional pollutants such as ozone and particulate matter.

Through the NAAQS program, EPA sets limits on emissions of criteria pollutants, and states craft implementation plans detailing the pollution control measures they will adopt to meet the standards.

Environmentalists have long weighed the merits of introducing a NAAQS targeting GHGs such as CO<sub>2</sub>, but EPA has never taken this course in the light of serious practical, legal and political impediments to that strategy.

For example, the NAAQS must be set at a measurable and enforceable level using a “form” and “indicator” that is feasible to readily use. States must then craft their implementation plans to reach the NAAQS, but it is far from clear how this could be achieved for CO<sub>2</sub> or other GHGs, creating a hurdle for such a limit.

But CBD in a March 5 press release announcing Nishida’s reversal of the petition denial says a CO<sub>2</sub> NAAQS is feasible and “would have a huge impact because it would apply across all sectors of the economy, not just fossil fuel power plants. States would be given flexibility to choose how they cut pollution to meet the national cap.”

And Karl Coplan, a law professor and director of Pace University’s Environmental Litigation Clinic, wrote in [a March 4 blog post](#) on the American College of Environmental Lawyers (ACOE) website – discussing EPA’s options for future power plant climate rules – “that a more durable regulatory approach would be for EPA to bite the bullet and designate GHGs as criteria pollutants subject to National Ambient Air Quality Standards.”

“According to Supreme Court precedent, NAAQS implementation need consider neither cost nor technical feasibility. And some of the NAAQS implementation horrors might be avoided by adopting only a secondary NAAQS for GHGs,” he wrote.

Under the NAAQS program, EPA sets “primary” limits on emissions that are designed to protect human health, and “secondary” limits designed to protect the environment.

### **CO<sub>2</sub> NAAQS Warnings**

The Biden administration’s decision to take a fresh look at the environmentalists’ petition comes shortly after conservatives warned about efforts to force GHG reductions through the NAAQS program.

Energy Policy Advocates, a conservative-leaning group focused on transparency in federal energy policy, claims that a lawsuit filed by 15 states and 14 environmental organizations over the Trump EPA’s rule retaining Obama-era ozone standards is “[a Trojan Horse](#)” that ultimately aims for tighter regulation of GHGs.

In a Feb. 22 *amicus brief* filed in *State of New York, et al. v. EPA* in the D.C. Circuit, the group says that the real purpose behind the lawsuit is to force the Biden administration to tighten the secondary ozone NAAQS – intended to address adverse environmental effects – in a way that it also cuts GHGs.

Opponents of the Trump-era decision have criticized what they say are shortcomings in the truncated NAAQS review process that led EPA to opt against tightening the ozone limits set in 2015.

The states’ suit has been consolidated with one brought by environmental groups, and environmentalists have explicitly urged EPA to tighten the ozone limits to achieve a co-benefit of curbing GHGs, because reductions in ozone-forming emissions tend to also reduce GHGs. Indeed, ozone itself is a GHG, although not as consequential for the climate as CO<sub>2</sub>, methane or other common climate-warming gases.

Environmental petitioners seek the vacatur of the Trump ozone NAAQS “as a Trojan Horse to import the politically elusive regulatory regime for greenhouse gases,” Energy Policy Advocates claims in its brief.

The group further alleges that, according to documents it claims it has obtained, acting Biden EPA air chief Joe Goffman plans to drive down GHG emissions using ozone standards after he previously consulted with the states now bringing suit during his recent tenure as an environmental law professor at Harvard University.

"Petitioners and Respondent, as currently staffed, planned the replacement to include a secondary NAAQS for ozone which transmogrifies the NAAQS program to regulate non-criteria pollutant CO2/GHGs, after activists were frustrated in their pursuits through proper channels," the group claims.

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