Good afternoon, and thank you for the opportunity to speak today. My name is Rachel Fullmer and I’m a senior attorney at Environmental Defense Fund.

EDF is a nonprofit organization representing more than 2 million members and supporters nationwide. EDF links science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF and its members are deeply concerned about the harmful public health impacts of particle pollution and EPA’s failure to take meaningful action to reduce the public health burden of this pollution.

I’d like to focus on two key areas today:

- EPA’s clear legal obligations in light of the significant body of available scientific data on the health harms that result from particle pollution—data that has only grown stronger since EPA last reviewed the standards—and,
- the abnormalities in EPA’s review process for this proposal, including disbanding the subcommittee with expertise on particle pollution and providing only a shortened public comment period for review of two separate indicators during a time of national crisis.

First, EPA’s legal obligations during a review of the National Ambient Air Quality Standards (“NAAQS”) are clear. The Clean Air Act requires the Administrator to set the primary, health-based standard at a level that is “requisite to protect the public health” with “an adequate margin of safety.” Importantly, the standard must be set at a level that not only protects the average member of the population, but also guards against adverse effects in vulnerable subpopulations, such as children, seniors, disadvantaged socioeconomic populations, people with heart and lung disease and others particularly vulnerable to air pollution. Courts reviewing EPA’s prior national standards have repeatedly found that if a certain level of pollution “adversely affects the health of these sensitive individuals, EPA must strengthen the entire national standard.”

The science here strongly points toward the need for more protective standards—a conclusion that is strengthened by the fact that the agency is required to err on the side of protecting public health in resolving any uncertainties in that data. It is well established that the NAAQS program is meant to be preventative in nature and the margin of safety requirement was also “intended to address uncertainties associated with inconclusive scientific and technical information . . . as well as to provide a reasonable degree of protection against hazards that research has not yet identified.”

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1 American Lung Ass’n, 134 F.3d at 390, see also Coal. of Battery Recyclers Ass’n v. EPA, 604 F.3d 613, 618 (D.C. Cir. 2010); Am. Farm Bureau Fed’n v. EPA, 559 F.3d 512, 524 (D.C. Cir. 2009).
There is a wealth of evidence looking at health harms from exposure to particle pollution at levels below the current standard. As many health scientists and air pollution experts have testified to over the past two days, that body of scientific evidence shows health harms under the current standard of 12 micrograms per meter cubed, and has only strengthened since EPA’s last review of the particle pollution standards almost a decade ago. EPA’s own policy assessment showed that in just 30 metro areas, lowering the standard to 9 µg/m³ would prevent up to 12,500 premature deaths each year.

This robust body of available scientific evidence, combined with EPA’s clear-cut legal duties to protect public health broadly when selecting a level, along with an adequate margin of safety to ensure protection of sensitive groups, require that EPA establish a more protective standard, with all of the most recent evidence pointing to a standard of 8µg/m³.

I also want to take a moment to briefly address the significant abnormalities in this current review which have frustrated full consideration of this extensive body of evidence and of the public’s input on strengthening the standards. EPA’s deeply flawed proposal was already the result of an improperly truncated process. EPA disbanded the expert review panel on particulate pollution, leaving its core scientific advisory committee without the required public health expertise to conduct this review.

And now EPA has issued this proposal amid a national public health crisis and in a manner that is inconsistent with basic legal requirements under the Clean Air Act. Because of the crisis, EPA cannot accept written comments or allow access to the docket room as required by the Clean Air Act for a proposal of this kind. On top of these process violations, EPA has only provided the public with 60-days to comment on the proposal that includes two indicators, fine and course particles—an unreasonably short time period that is exacerbated by the current public health crisis.

The implications of this rulemaking are far-reaching, both for the health and well-being of people and communities nationwide. We know that particle pollution causes heart disease, lung disease, and increases in premature death—and that the people suffering from these same conditions may be at greater risk of severe illness from COVID-19. Moreover, environmental justice communities whose lives are directly and disproportionally impacted by exposure to particle pollution, are responding to the immediate needs of their families and communities as the economic and health impacts of the pandemic spread. The current crisis underscores that the public should have far more than the customary 90-day comment period, not substantially less.

It is manifestly unreasonable and dangerous to take an action of such great importance to our nation’s public health and allow the public only 60 days to comment on the proposal.

EPA should suspend the public comment deadline until the current public health crisis abates to allow for robust public participation on this extremely critical national public health rule.

In closing, we urge Administrator Wheeler to fulfil his legal obligations to set a standard that protects public health margin of safety and fully considers the current body of science on particle pollution.

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