



**Statement of Paul Cort, Staff Attorney, Earthjustice  
on  
Proposed National Ambient Air Quality Standards for Particulate Matter  
and  
Proposed Revisions to Ambient Air Monitoring Regulations**

My Name is Paul Cort. I am a staff attorney for Earthjustice in the Oakland Regional Office. Earthjustice has been working for many years with the Latino Issues Forum, Medical Advocates for Healthy Air, and the Sierra Club to fight the deliberate agency failures to address the terrible air quality problems in the San Joaquin Valley. Through the litigation efforts of these groups, we have been successful in turning the tide and finally forcing EPA and the air district to take action in the Valley. EPA's proposal for coarse particulate matter threatens to undo many of these hard-fought gains just when progress appeared to be underway.

You have already heard today complaints about the illegality of EPA's proposed PM standards and about EPA's transparent attempt to promote political science over sound science. I would like to spend my few minutes this afternoon to reflect on how far EPA has fallen in its mission to protect public health. To me this is manifest most clearly in EPA's response to scientific uncertainty and the proposed PM coarse standards.

Once upon a time, EPA took a precautionary approach to protecting public health in the face of uncertainty. It is hard to believe that not that long ago, there was debate about the need for a national ambient air quality standard for lead. In setting the lead standard, EPA noted the ongoing disagreement over several issues including the exposure levels at which harmful impacts occur. Industry argued that EPA only had authority to set standards to protect against health effects that are known to be clearly harmful. EPA argued, and the D.C Circuit Court of Appeals agreed, that uncertainty about health effects is inevitable and that Congress "specifically directed the Administrator to allow an adequate margin of safety to protect against effects which have not yet been uncovered by research and effects whose medical significance is a matter of disagreement." *LIA v. EPA*, 647 F.2d, 1130, 1154 (D.C. Cir. 1980). Noting the precautionary and preventative nature of the Clean Air Act, the Court added, "[A]s we read the statutory provisions and the legislative history, Congress directed the Administrator to err on the side of caution in making necessary decisions." *Id.* at 1155.

Somewhere along the way, EPA lost its direction. Little by little, EPA began to abuse the early court decisions upholding the Agency's discretion to make difficult technical decisions. We have seen EPA frequently try to hide behind uncertainty to side-step politically difficult issues. The common strategy to avoid moving forward was to refuse to put effort and resources into collecting information. As long as the record was empty, EPA could claim things were too uncertain to support change. EPA counted on the fact that the resources to generate this information reside primarily with the government and industry. As long as they did nothing to

resolve uncertainty, the status quo could be maintained. As disgraceful as this was, it did not stoop to the new lows in this proposal.

The new strategy is to invent and create uncertainty, and then ensure that new information will not be collected. The prior strategy of doing nothing is no longer sufficient (1) because EPA is faced with a record that is not empty and (2) because EPA and industry are no longer satisfied with maintaining the status quo. Rollbacks and relaxations are the new order. The lengths to which EPA will go to mangle the record to generate uncertainty is boldly transparent. EPA tries to argue that the health impacts of rural dust are uncertain. This attempt to feign ignorance is unsupported by the record or by common sense.

- We know that epidemiological studies in Coachella and Phoenix link exposure of coarse particulates to health impacts. EPA admits this much.
- We also know that these studies were conducted in areas with emissions dominated by rural sources.
- We know that rural dust from farms and mines is nothing like “uncontaminated” volcanic ash.
- We know this dust contains pesticide residues, toxic metals and radionuclides, not to mention biological agents that everyone knows are linked to diseases like Valley Fever.
- We know that rural areas have the same sources that are found in urban areas. Likewise we know that in many western urban areas, the dust being disturbed today is the same earth that was only recently being farmed or mined in rural areas.
- We know that CASAC never recommended exempting agricultural and mining sources or leaving rural areas unprotected and unmonitored.

EPA knows all of this too. Yet EPA says there is insufficient basis for setting a standard that covers rural sources of dust and directs states to remove the monitors from rural areas. The two conclusions do not make any sense together. If there is uncertainty, why would anyone think it is rational to stop collecting ambient air quality data? But we all know that this is not really about uncertainty. Given the record and the precautionary directive of the Clean Air Act, there is more than enough certainty to set a coarse PM standard that applies to all sources in all areas, the same way that all NAAQS have done in the past. Today’s proposal is unlawful, a clear abuse of discretion, and arbitrary and capricious in the extreme. And we all know this.