

According to [press reports](#), EPA is preparing to ignore possible deaths caused by concentrations of pollutants occurring below the national ambient air quality standards (NAAQS). This is a key issue in a lot of decisions about pollution reduction. For instance, there is no NAAQS for mercury, but pollution controls on mercury would, as a side benefit, reduce pollution levels of harmful particulates. According to EPA's prior cost-benefit analyses, those reductions could save many lives even in areas where current levels of particulates are below the NAAQS. Scientists see no reason to think that particulates in those areas are harm-free. But EPA now seems poised to ignore those saved lives. There's a seeming logic behind that stance, but it's fundamentally wrong.

The logic is simple — as simple as a magician pointing out she has nothing up her sleeves. The NAAQS is supposed to be set at a level that will protect human health with an ample level of safety. Hence, there must be no risk if the pollution level is below the NAAQS, or at least no risk that the Clean Air Act recognizes. So when EPA is passing rules to reduce mercury or carbon dioxide, it can now, according to the Trump EPA argument, ignore half of the benefits of simultaneously reducing particulates.

QED. Or maybe not.

This argument is actually wrong for several reasons. The simplest is that the NAAQS are often out-of-date. They're supposed to be revised on a regular basis, but revisions are often delayed because the revision process is so complex and slow. So when EPA is considering other kinds of pollution regulations, relying on the existing NAAQS may be wrong, because the existing NAAQS may have been superseded by later scientific studies. Congress knew full well that new research could change our appreciation of risk; that was the very reason for periodically reviewing the standards. Given regulatory delays and possible litigation, a new NAAQS standard may already be out of date by the time it actually goes into effect, let alone by the time that it is officially updated years later. EPA should be able to use up-to-date science, notwithstanding the NAAQS in effect at the time.

Another flaw in Trump EPA's logic: It assumes that, because the NAAQS protect "public health," the NAAQS apparently must reduce the risk to zero. Hence, reducing pollution levels below the NAAQS won't provide any additional health benefits. But zero risk can't be what it means to protect public health. After all, something with a risk level of one in a million will still kill several hundred Americans a year, given the size of our population. (Even if some Americans choke to death every year on bubble gum, that wouldn't make bubble gum a public health problem. But lowering the number of choking deaths would still be valuable.) If we say that the risk has been reduced enough to protect the public health, we can't mean that the risk is zero below that level. So, contrary to EPA's new

argument, there can still be some risk even below the NAAQS, just not enough to constitute an outright public health hazard.

Finally, the Clean Air Act has lots of provisions that apply to a pollutant even in areas at or below the NAAQS. Even if an area is at the NAAQS, new factories and power plants have to meet tough pollution standards that don't apply to existing plants. Moreover, states are explicitly allowed to impose additional pollution requirements even when the NAAQS are safely met, if they think their air should be even cleaner. All of this shows that Congress did not regard compliance with the NAAQS as the be-all-and-end-all of pollution control.

True, if the pollution level satisfies the NAAQS, EPA can't use certain provisions in the statute to reduce the pollution level, because those provisions are designed to achieve the NAAQS. But in implementing other provisions of the statute, EPA can take into account the benefits of going below the NAAQS, benefits that Congress obviously recognized in drafting the statute. Indeed, it would have been irrational for EPA to insist that in implementing other provisions of the statute EPA should ignore the benefits of saving lives, regardless of whether some arbitrary air quality standard had been met.

In other words, Trump EPA's argument is really nothing more than a play on words. It takes the terms "public health" and "margin of safety" and twists them into meaning something quite different: a guarantee of absolutely zero risk. But there are no such guarantees, as Congress knew full well. Trump's EPA wants to use a sleight of hand to magically make hundreds of annual deaths disappear from sight. Like most disappearing acts, this requires distracting the audience with something flashy while the magician hides something right beneath the audience's eyes.