



Connecticut Bureau of Air Management, Anne Gobin, Acting  
Maine Bureau of Air Quality Control, James Brooks  
Massachusetts Bureau of Waste Prevention, Barbara Kwetz  
New Hampshire Air Resources Division, Robert Scott  
New Jersey Division of Air Quality, William O'Sullivan  
New York Division of Air Resources, David Shaw, Acting  
Rhode Island Office of Air Resources, Stephen Majkut  
Vermont Air Pollution Control Division, Richard Valentinetti

November 5, 2003

Attention: Docket #OAR 2003-0079  
U.S. Environmental Protection Agency  
EPA West (Air Docket)  
1200 Pennsylvania Avenue, N.W.  
Room B108, Mail Code 6102T  
Washington, DC 20460

Re: Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard

Dear Acting Administrator Horinko:

The Northeast States for Coordinated Air Use Management (NESCAUM) submits these comments in response to the U.S. Environmental Protection Agency's (EPA's) reopening of the public comment period on its proposed rule to implement the 8-hour ozone national ambient air quality standard (NAAQS). EPA's action and proposal were published on October 21, 2003 in the Federal Register (68 FR 60054-60060). NESCAUM is a regional association of the eight states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

In its FR notice, EPA solicits comments on alternative approaches for classifying ozone nonattainment areas, based on comments received during its previous comment periods (ending August 1, 2003 and September 5, 2003). EPA proposes two alternative approaches for implementing the 8-hour NAAQS under its preferred "Option 2."<sup>1</sup> Alternative A translates the classification table based on 8-hour ozone design values, starting with 0.091 parts per million (ppm), a value that it asserts is "equivalent" to the one-hour design value of 0.121 ppm. EPA states that this approach "could then be combined with the suggestion of translating the classification table for the remaining thresholds using one-half of the percentage above the standard which each of the classification thresholds represents" (see 68 FR 60058). Alternative B reduces the range of design values that delineate classifications, starting at 0.085 ppm and using 50% of the range in Table 1 of Section 181 of the Clean Air Act (CAA). It places areas with one-hour ozone design values of 0.121 ppm or greater under Title I, Part D, Subpart 2 of the CAA.

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<sup>1</sup> Option 2 is EPA's proposal to classify some nonattainment areas under Title I, Part D, Subpart 1 of the Clean Air Act.

First, NESCAUM wishes to clarify for the record that it did not suggest “new options or variants of Option 2” in its comments to EPA (see 68 FR 60056). In the October 21<sup>st</sup> FR notice, EPA mischaracterized and misrepresented NESCAUM’s comments by placing them in a context that implies assent with its Option 2 approach. As stated in our previous comments, NESCAUM opposes EPA’s recommended approach of implementing the ozone NAAQS pursuant to Title I, Part D, Subpart 1 of the CAA. We maintain that Title I, Part D, Subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, must be used as the operative implementation framework for the ozone NAAQS, and believe that EPA’s proposed approach violates the CAA. EPA is correct in stating that NESCAUM has voiced concerns about EPA’s preferred Option 2 with respect to inequities, whereby areas with identical 8-hour ozone values would be subject to distinctly different sets of requirements. We believe that areas with similar air quality levels must be subject to similar requirements (see docket document OAR-2003-0079-0315). EPA’s mischaracterization and grouping of NESCAUM’s comments in the manner done so in the FR appears to be an attempt to portray its reopening of the record as grounded in the concerns of a wide variety of commenters, rather than in response to a limited set of specific proposals.

Second, NESCAUM believes that EPA’s continued efforts to develop classification approaches for the 8-hour ozone standard based on 1-hour ozone values ignores the underlying science as affirmed by the National Academy of Sciences. Any approach EPA finalizes for classifying nonattainment areas under the 8-hour ozone standard must be based on 8-hour ozone design values, not 1-hour design values. NESCAUM strongly opposes EPA’s proposal to start 8-hour ozone classifications at the 0.091 ppm level. Comparing a 0.091 ppm 8-hour ozone level to a 0.121 ppm 1-hour ozone level -- as EPA has done to justify this approach -- is appropriate only if the purpose is to replicate 1-hour ozone protection. This approach is thus contrary to the purpose of implementing the more stringent 8-hour ozone standard of 0.08 ppm, and will not adequately protect public health and the environment. Nonattainment classifications under the 8-hour ozone standard must start at the level at which the 8-hour ozone standard is violated (i.e., 0.085 ppm). In addition, EPA’s suggestion that all areas with design values less than 0.091 ppm be subject to subpart 1 requirements is unacceptable, as NESCAUM believes that all areas that violate the 8-hour ozone standard must be subject to subpart 2.

Third, NESCAUM believes that classifications must reflect severity and extent under the more protective 8-hour ozone standard while ensuring attainment as expeditiously as possible. With respect to attainment deadlines, EPA’s various proposals yield significantly discrepant results. For example, an area in the Northeast with a design value of 0.107 ppm would have been classified as “moderate” (2010 attainment date) under EPA’s May 14<sup>th</sup> proposal, “serious” (2013 attainment date) under Alternative A, and “severe” (2019 attainment date) under Alternative B. Such broad discrepancies, with a potential for a 10-year difference in attainment date, are of concern to NESCAUM. EPA must ensure an appropriate balance in its classification scheme that provides for expeditious attainment with the appropriate set of control requirements.

Notwithstanding what final classification cut points are chosen, transport must be taken into account in the classification and implementation scheme. By ignoring downwind impacts in developing its classification and implementation scheme in the short term, EPA will effectively choose to shortchange public health protection and retain air quality inequity in the long term. The OTC transport recommendations of April 2002 form a solid scientific, technical, and legal basis from which EPA can adequately address the transport that continues to plague the Northeast and Mid-Atlantic states. In addition, provisions in the Regional Haze rule require states whose emissions significantly contribute to degradation of visibility in a Class I area to consult with each other and address those impacts in a timely manner. Similar provisions should be incorporated into the final 8-hour implementation rule.

Fourth, we were concerned with the discussion in the FR notice regarding comments on "sequential implementation," whereby areas would not be designated for the 8-hour standard until they attained the 1-hour standard (see 68 FR 60057). It is unclear as to why these comments were summarized in a proposal addressing classification values. We agree with EPA that the sequential implementation approach conflicts with Supreme Court's decision in *Whitman v. American Trucking Association* (2001).

Fifth and last, EPA's reconsideration proposal contains equivocating and vague language, and contained at least one misrepresentation, as noted above. Overall, the proposal is difficult to understand, especially without any accompanying regulatory context or language. Such ambiguities continue to plague EPA's implementation proposal and may deprive the public of a full and fair opportunity to comment on its proposals.

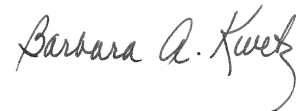
In summary, NESCAUM does not support either of EPA's two proposed alternatives. EPA must promulgate a legal classification scheme -- based on appropriate 8-hour ozone design values -- that results in expeditious attainment and emissions reductions achieved across broad areas, guarantees public health protection under the more stringent 8-hour ozone standard, and ensures that contributions to downwind nonattainment are analyzed using sound science, peer reviewed, and addressed.

If you or your staff have any questions, please contact Ms. Leah Weiss through the NESCAUM office at 617-367-8540.

Sincerely,



Kenneth A. Colburn  
NESCAUM Executive Director



Barbara A. Kwetz  
NESCAUM Chair

cc: NESCAUM Commissioners and Secretaries  
NESCAUM Air Directors