



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  
Rhode Island Office of Air Resources, Stephen Majkut  
Vermont Air Pollution Control Division, Richard Valentinetti

March 30, 2004

U.S. Environmental Protection Agency  
Air Docket  
Mail Code 6102T  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
*Attention: Docket #OAR 2003-0053*

Re: Proposed Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)

Dear Administrator Leavitt:

The Northeast States for Coordinated Air Use Management (NESCAUM) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed rulemaking, published on January 30, 2004 in the Federal Register (69 FR 4566-4650), entitled *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)* (IAQR). NESCAUM is a regional association of the air pollution control programs of the eight states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

The NESCAUM states are committed to mitigate the pollution transport problem that continues to plague our region. Protecting the public health of the 41 million people who experience unhealthy air quality in our region is our top priority. Given that we are now tackling the challenge of meeting a more protective eight-hour ozone standard, additional NOx emission reductions beyond those needed for attainment of the one-hour ozone standard are clearly necessary. In addition, the problem of fine particulate pollution, which can aggravate asthma, reduce lung function, and cause bronchitis and premature death, requires a national response that significantly reduces SO2 and NOx emissions, as well as direct emissions of fine particles. These reductions are also essential to address the problems of acid rain, estuary nitrification, and regional haze.

Addressing transport requires looking upwind (state-to-state, regionally, and nationally), locally, and downwind. We are fully aware of the work we have to do in our own states to reduce emissions locally and downwind to address the 8-hour ozone and fine particles problems, and we are committed to ensuring those reductions occur in a timely fashion in order to protect public health. In 1994, we established with our Mid-Atlantic partners the Ozone Transport Commission's (OTC) Regional NOx Program, a NOx cap and trade program that began in 1999. We were among the first states to submit State

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Implementation Plans (SIPs) to meet the requirements of EPA's NO<sub>x</sub> SIP Call of 1997, which essentially expanded the OTC program to most of the Eastern U.S. We remain very concerned about the lack of progress in reducing upwind emissions. It is now 2004, and we are still awaiting the full benefits of the NO<sub>x</sub> SIP Call from states located outside of the Ozone Transport Region.

We are deeply concerned that EPA has released the proposed IAQR as a preamble, with no regulatory text on which to comment. We believe that this approach has left us with many unanswered questions about program specifics, and essentially deprives the public of an adequate review and comment opportunity. EPA should have issued this notice as an "Advanced Notice of Proposed Rulemaking."

We believe that the final IAQR can and should be more stringent with respect to timing and cap levels. First phase reductions should occur by no later than the 2007-8 timeframe. Final NO<sub>x</sub> and SO<sub>2</sub> cap levels should be consistent with the *Multi-Pollutant Strategy Position of the Ozone Transport Commission* of January 27, 2004, and the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Program Officials' (STAPPA/ALAPCO's) May 7, 2002 *Principles for a Multi-Pollutant Strategy for Power Plants*, as further elucidated in its March 15, 2004 analysis of those principles. In addition to annual caps, EPA should also set a seasonal eastern NO<sub>x</sub> cap ensuring sufficient ozone season NO<sub>x</sub> reductions. There may also be a need for peak ozone day limitations to achieve the NAAQS.

With respect to ozone, the proposed first phase reductions of the IAQR proposal essentially annualize the NO<sub>x</sub> SIP Call. We therefore see no reason why EPA cannot require those reductions by the 2007-8 timeframe, rather than 2010. EPA's data indicate that the proposed IAQR's NO<sub>x</sub> benefits will leave many counties in the IAQR still out of attainment with the ozone standard. It is unacceptable for EPA to promulgate a rule that leaves behind a transport problem in a nonattainment area that cannot be addressed locally. It is therefore incumbent upon EPA to work with the states to analyze whether attainment -- and maintenance -- in all areas can be achieved with the IAQR program as expeditiously as practicable and in tandem with local measures. In the event that these goals are not achieved, EPA must take swift action to better address transport specific to those areas.

We question whether the proposed SO<sub>2</sub> emission reductions will actually occur during or close to the proposed interim or final timeframes. Due to potential concerns regarding the legality of implementing the IAQR program through the Acid Rain program, we believe that separate SO<sub>2</sub> control programs are necessary. EPA should prohibit the comingling of allowances between the two programs. This prohibition would better ensure the integrity of the SO<sub>2</sub> cap and that SO<sub>2</sub> reductions occur in the timeframe needed for PM attainment.

The NESCAUM states urge EPA to include large non-electric generating units (non-EGUs) including other boilers, turbines, and cement kilns (non-EGUs) in the IAQR. Excluding them would likely erode the environmental benefits of the NO<sub>x</sub> SIP Call which included these sources. We believe sufficient data exist to characterize non-EGU emissions and warrant their inclusion in the IAQR.

We are concerned that the timing of EPA's proposed caps do not comply with the “as expeditiously as practicable” requirement of the Clean Air Act. Furthermore, the proposed IAQR is silent on interfering with maintaining the ozone and PM-fine standards. EPA must fulfill its obligation under Section 110(a)(2)(D) of the Clean Air Act and develop provisions in the final rule that will prohibit emissions that would contribute significantly to nonattainment or interfere with maintenance of the ozone and PM-fine standards in downwind areas. In addition, EPA should include provisions for making the caps more stringent in the event that the currently designed program does not meet its public health and environmental goals.

We are disappointed with EPA’s proposed cost-benefit analysis, and believe it is lacking. Any multi-pollutant program that is being considered concurrently with a mercury proposal must be analyzed in the context of all pollutants including direct emissions of fine particles. We urge EPA to conduct a more comprehensive multi-pollutant cost-benefit analysis before it finalizes this rule and the mercury rule.

EPA requests comments on whether the proposal could help make progress toward “meeting the goals” of other regulatory programs. We strongly oppose this approach, and believe that the IAQR should not *replace* or be construed to meet any goal of any other regulatory program. We disagree with EPA’s position that it would not be required to approve any section 126 petitions that targeted sources in the affected states if the petitions relied on the same record. We also want assurances that none of the provisions of the “Clear Skies” legislation that threaten states’ current Clean Air Act protections and authorities, such as the evisceration of section 126, creep into this rule.

We believe that there is economic and environmental justification for a stronger rule that has (1) more stringent NOx and SO2 caps, (2) provisions to ensure maintenance of the standard and to further ratchet down the caps as necessary, (3) clear program authorities and emissions currencies distinct from other regulatory programs, and (4) earlier deadlines that better align with attainment dates.

Additional and more detailed comments are contained in Attachment A. We hope you will consider these comments as you finalize the IAQR. If you or your staff has any questions about the issues raised in this letter or the attachment, 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

Attachment

Cc: NESCAUM Directors