



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

July 26, 2004

The Honorable Michael O. Leavitt  
U.S. Environmental Protection Agency  
Air Docket, Clean Air Interstate Rule  
Mail Code 6102T  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: *Docket #OAR 2003-0053 Supplemental Notice for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)*

Dear Administrator Leavitt:

The Northeast States for Coordinated Air Use Management (NESCAUM) is submitting comments on the U.S. Environmental Protection Agency's (EPA's) supplemental notice of proposed rulemaking (SNPR), published on June 10, 2004 in the Federal Register (69 FR 32684-32772), entitled *Supplemental Notice for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)*. 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 have several concerns with the program (Transport Rule) as proposed.

First, we are disappointed and concerned with the manner in which EPA has chosen to manage its public process for the Transport Rule, and believe that, as a result, EPA has precluded us from providing sufficiently substantial and meaningful comments on the overall proposal. The States and EPA are engaged in a partnership, sharing responsibility for the protection of public health, and it is in this common interest that we are commenting on the proposal. Our concerns on the process have been detailed in our July 7, 2004 letter to you, which was also submitted into this docket. We reiterate our request to meet with you to discuss our concerns in greater detail and discuss ways to make EPA's approach to regulatory public process more transparent and responsive.

Second, we believe that EPA's proposed levels of emissions reductions, particularly with respect to nitrogen oxides (NOx), are inadequate to mitigate transported ozone and ozone precursors in the Northeast U.S. A more adequate remedy for EPA's finding of significant contribution under section 110 of the Clean Air Act would be final NOx cap levels consistent with the *Multi-Pollutant Strategy of the Ozone Transport Commission* of January 27, 2004 and the *State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control 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.

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Third, NESCAUM disagrees with EPA's proposed timing of emission reductions, and urges that reductions occur in the 2007-2008 timeframe. Doing so would aid states in attaining the ozone and fine particulate (PM-fine) standards by their required attainment deadlines. We further disagree with EPA's approach in the SNPR with respect to attainment dates: EPA has implied that if ozone nonattainment areas have difficulty adopting plans showing attainment by their respective attainment dates, they should either consider reclassifying to a higher classification with a longer ozone attainment date (and additional, more restrictive and costly emission control and plan submission requirements), or request a one to two year deadline extension that EPA may issue at its discretion. Such an approach places undue burden on the states and creates a disincentive for achieving the expeditious public health protection that is guaranteed in the Clean Air Act.

Fourth, we believe that the proposal lacks appropriate flexibility for the states that must achieve additional NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) reductions from major stationary sources in order to attain or maintain the NAAQS. This is evidenced in EPA's decision to bar states that wish to control non-EGU sources from participating in the program, its apparent refusal to establish a seasonal summertime NO<sub>x</sub> cap, and its choice to link the Transport Rule to the federal Acid Rain Program. Because the Acid Rain Program is administered by EPA to sources, linkage to this program effectively precludes states from allocating SO<sub>2</sub> allowances, let alone establish their own, more stringent, state-specific SO<sub>2</sub> budgets in the future.

Fifth, EPA seeks comment on whether a new proposed threshold parameter for defining "highly cost-effective" -- based on identifying source categories that emit relatively large amounts of relevant emissions and resulting in at least 16 counties being brought into attainment -- should be incorporated into the "significantly contributes" requirements of section 110(a)(2)(D) of the Clean Air Act. The NESCAUM states strongly oppose this approach as too restrictive, and believe it is arbitrary and capricious, and runs counter to the intent of the Clean Air Act.

Sixth, the NESCAUM states oppose EPA's proposal that the SO<sub>2</sub> allowance retirement ratio be changed from 3-to-1 to 2.86-to-1. EPA's justification for the change was that the former ratio would result in emissions reductions beyond the 65% reduction initially proposed. EPA has already made a determination that the 3-to-1 allowance ratio is cost-effective. In addition, EPA acknowledges that banked SO<sub>2</sub> allowances from the current Acid Rain Program are not expected to be used up until sometime after 2020 (69 FR 32705). This means that the Transport Rule's emissions caps set for 2015 will actually not be achieved until after 2020. Therefore, we see no justification for a lower retirement ratio that would support further delay in meeting the SO<sub>2</sub> cap. In addition, EPA should employ an allocation retirement mechanism that would factor in energy efficiency by varying the retirement ratios on an output-basis. This would promote energy efficiency and provide greater environmental protection.

In addition, we strongly oppose EPA's proposal that power plants complying with the Transport Rule would satisfy the Best Available Retrofit Technology (BART) requirements of the Regional Haze Rule through an automatic "better than BART" determination. We believe that EPA's proposal is unjustified and inappropriate, and that the Transport Rule should not be used to supplant or be construed to meet the goals of other regulatory programs.

We question why there is no output-based allocation method proposed for allocating state budgets in the SNPR. We understand that this option was considered earlier, but is no longer being proposed. EPA has had a longstanding commitment to fostering energy efficiency and output-based allocations, as was reflected in its prior work on and release of an output-based option for states allocations for the NO<sub>x</sub> SIP Call. Exploring output-based state budgets is a logical

extension of this effort. Given current challenges with energy supply and security, we believe that EPA should promote energy efficiency through output-based allocations in the final Transport Rule. Furthermore, in the proposed regulatory language, EPA provides input-based allocation methodology for states to allocate NOx allowances to sources, but has not provided output-based methodology. In the final rule, EPA should add regulatory language for an output-based allocation methodology to provide assistance to and incentives for states to promote energy efficiency.

Finally, we believe that EPA has not provided any or sufficient technical support for many of the proposals floated in the SNPR. For example, the NESCAUM states would like access to, and time to review, EPA's reanalysis of its January 30<sup>th</sup> proposal with respect to leakage impacts of Acid Rain allowances in the non-IAQR region of the country. We also want access to, and time to review and reconcile EPA's data on which it revised the NOx and SO2 budgets, as well as the technical analysis for EPA's proposed highly cost-effective threshold discussed above. A number of our member states have attempted to replicate this data and have been unsuccessful. If calculation errors exist, we request that a correction to the state NOx budgets be issued and that EPA republish the revised budgets, provide an analysis of the implications, and reopen the docket to accept comments on the revisions.

Additional and more detailed comments are contained in Attachment A. We hope you will consider these comments as you finalize the proposal. If you or your staff have any questions about the issues raised in our comments, please contact Ms. Leah Weiss through the NESCAUM office at 617-367-8540.

Sincerely,



Kenneth A. Colburn  
Executive Director

Attachment

cc: Jeffrey R. Holmstead, U.S. Environmental Protection Agency  
NESCAUM Directors