

July 6, 2005

Air and Radiation Docket
U.S. Environmental Protection Agency
Mail Code 6102 T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attention: Docket # OAR 2003-0090

Re: Proposed Rule to Defer Effective Date of Nonattainment Designations

Dear Administrator Johnson:

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 rule, *Extension of the Deferred Effective Date for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas* (70 FR 33409-33414). NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

In April 2004, EPA designated areas as attainment, nonattainment, or unclassifiable for the 8-hour ozone National Ambient Air Quality Standard. However, the Agency deferred until September 30, 2005 the effective date of the nonattainment designation for areas that are in violation of the 8-hour ozone standard but have entered into an "Early Action Compact" with EPA, pursuant to procedures as outlined in memoranda dated November 14, 2002¹ and April 4, 2003,² provided those areas met the milestones of the Early Action Compact³. In the June 8, 2005 Federal Register, EPA determined that the named areas continue to meet all milestones of the Early Action Compact and proposed to grant a second deferral of nonattainment designations until December 31, 2006,. EPA plans a third deferral, until December 31, 2007, at a future date.

While the NESCAUM states support EPA's efforts to afford nonattainment areas flexibility in achieving the 8-hour ozone standard, we believe that the specific mechanism that EPA has developed to provide such flexibility, i.e., the Early Action Compact framework, conflicts with existing obligations under the Act. We do not believe EPA has the authority to: (1) defer effective dates of designations; (2) enter into Early Action Compacts with areas; or (3) allow areas to be relieved of obligations under Title I, Part D of the Clean Air Act while they are violating the 8-ozone standard or are designated nonattainment of that standard. We believe that Congress was clear in prescribing requirements for states to ensure progress

¹ Memorandum from Jeffrey Holmstead, Assistant Administrator, to Regional Administrators, Regions I-X, "Schedule for 8-Hour Ozone Designations and its Effects on Early Action Compacts," November 14, 2002.

² Memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, to Air Directors, Regions III, IV, VI, and VIII "Early Action Compacts (EACs): The June 16, 2003 Submission and Other Clarifications," April 4, 2003.

³ "Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas," 68 FR 70108-70119.

toward attaining and maintaining the ozone standard, and that EPA's memoranda describing the Early Action Compact approach do not meet those requirements and are, in fact, inconsistent with them.

If you or your staff have any questions about issues raised in this letter, please contact Ms. Leah Weiss through the NESCAUM office at 617-259-2000.

Sincerely,



Arthur N. Marin
Executive Director

cc: NESCAUM Directors
David Cole, U.S. EPA
Barbara Driscoll, U.S. EPA