

February 17, 2006

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W.
Mail Code: 6102T
Washington, DC 20460
Attention: Docket ID No. OAR-2005-0163
a-and-r-docket@epamail.epa.gov

Regarding: *Comments on Proposed Prevention of Significant Deterioration, Nonattainment New Source Review and New Source Performance Standards: Emissions Test for Electric Generating Units, 70 FR 61081 (October 20, 2005)*

Dear Administrator Johnson:

NESCAUM thanks the Environmental Protection Agency (EPA) for the opportunity to file comments on the proposed changes to the New Source Review program. NESCAUM is a voluntary association of state air quality management agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NESCAUM anticipates adoption of the proposed rule would have adverse impacts on air quality and public health in the Northeast.

NESCAUM believes that the proposed rule change is deeply flawed, inimical to the intent and integrity of the NSR program, and detrimental to continued progress toward cleaner air in the Northeast and elsewhere. NESCAUM has worked with its member agencies over many years to support more effective application of NSR and other vital Clean Air Act programs in the interests of public health and environmental protection. In the process we have identified – and communicated to EPA – a number of improvements that could strengthen and streamline the NSR program, making it both easier to enforce and less burdensome to regulated industry. Unfortunately, the proposed change to the applicability test on modifications for Electric Generating Units (EGUs) now being proposed by the Agency, coupled with earlier NSR modifications already promulgated by EPA, go in precisely the wrong direction by making it easier for many of the nations largest polluters to extend the life of old sources without installing modern pollution controls.

Under the October 20, 2005 proposal, EPA is considering three alternatives: 1) the maximum achievable hourly emissions test; 2) the maximum achieved hourly emissions test; and 3) the energy output test. We do not support implementation of any of these tests.

Comments have been submitted to the docket by several of our member states and the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). NESCAUM fully supports these comments and summarizes our concerns:

- Emissions from older plants will continue to increase from the nation's oldest and dirtiest power plants. While EPA's analysis indicated that only a small portion of EGUs will not be covered by CAIR or BART, NESCAUM has identified several units that are not in CAIR and were put in service prior to 1962 and therefore are not BART eligible. The local impacts from these units must be addressed and the primary lever to address those sources is NSR. The assumption that CAIR, BART and the Acid Rain program will "make up" for the emissions increases that may result from this proposal is questionable at best and disingenuous at worst.
- Existing regulations cannot replace the NSR program, especially regarding local impacts and the complete suite of NSR pollutants. CAIR, BART and the Acid Rain Program do not cover the range of pollutants regulated by NSR. The proposed rule fails to consider the importance of these provisions.
- This new approach gives an economic advantage to existing units. We are concerned that this prevents newer more efficient equipment from coming on line. Also, contrary to EPA's assertion, there is no mechanism for encouraging emissions reductions for units that make modifications. Rather, under EPA's proposal, a facility has an incentive to maintain its maximum achievable hourly emission rate. This can lead to greater actual annual emissions at existing locations without the benefit of BACT/LAER review and public comment.
- The proposed rule change is contrary to the intent of the majority of legislative and judicial actions.

A further concern about the October 20th proposal relates to its overall vagueness and generality as a whole. Critical details on many key aspects of the proposal are simply lacking. Without them it is difficult, if not impossible, to understand how the proposed changes would be implemented or to reliably assess resulting regulatory and environmental impacts. Absent a fully developed outline of regulatory processes and methodologies, explicit definitions for key terms, and a detailed explanation of recordkeeping, reporting and review activities entailed by the proposed changes, the proposal is inadequate to form the basis of a final rule. Therefore, we hope that EPA's supplemental rulemaking, as referenced in the proposed rule, will allow a complete analysis of impacts and submittal of detailed comments.

In sum, we believe EPA's current proposal is misguided and contrary to the air quality and public health interests of citizens in the Northeast and throughout the country. Immediate consequences for States are likely to include greater difficulty in meeting attainment goals and rate of progress targets. Since that cannot be EPA's interest or intent, we hope the Agency will seriously re-examine its proposal in light of these and other comments.

Meanwhile, we appreciate the opportunity to provide input. If you or your staff has any questions regarding these comments, please contact Paul Miller at 617-259-2016.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthur Marin".

Arthur Marin, Executive Director
NESCAUM

cc: NESCAUM Directors