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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

**Oral Testimony of Dawn R. Gallagher
on behalf of the Northeast States for Coordinated Air Use Management
on the U.S. Environmental Protection Agency's Proposed Rule to Reduce Interstate
Transport of Fine Particulate and Ozone (69 FR 4566-4650) and
Proposed National Emission Standards for Hazardous Air Pollutants; and in the
Alternative, Proposed Standards of Performance for New and Existing Stationary
Sources: Electric Utility Steam Generating Units (69 FR 4652-4752)**

**February 26, 2004
Philadelphia, Pennsylvania**

Thank you for the opportunity to comment on EPA's proposed Interstate Air Quality Rule (IAQR) and Utility MACT rule. My name is Dawn Gallagher, and I am Commissioner of the Maine Department of Environmental Protection. I am testifying today on behalf of the Northeast States for Coordinated Air Use Management (NESCAUM), representing the six New England States, New York, and New Jersey.

The Northeast has been struggling with the interstate transport problem for many years. When monitors at Acadia National Park in Maine record exceedances of the ozone standard after midnight, we know that this is not just the result of local emissions. We worked with EPA during the OTAG process in the mid-1990s to ensure that a stringent interstate transport rule was promulgated to help states attain the one-hour ozone standard. The result of that effort -- the NO_x SIP call of 1997-- was a good first step in alleviating some of the ozone transport burden. It is now 2004, and we are still awaiting the full benefits of that program. And because we now need to address the more

protective eight-hour ozone standard, more NO_x emission reductions are clearly needed. And the fine particulate problem, which can aggravate asthma, reduce lung function, and cause bronchitis and premature death, requires a national response that will significantly reduce SO₂ as well as NO_x emissions. These reductions are also essential to address the problems of acid rain, estuary nitrification, and regional haze.

While we are pleased that EPA has proposed a rule to further address transported pollution, we believe that it does not go far enough or soon enough. While the IAQR calls for considerable SO₂ reductions, it merely annualizes the NO_x SIP Call, providing little ozone season benefit. Reductions are proposed for 2010 and 2015, but areas across the country must meet ozone attainment deadlines starting in 2007. By EPA's own calculations, the rule yields 1 to 2 parts per billion (ppb) ozone reductions on a per county basis, leaving most affected counties still out of attainment. Several northeast states, including Maine, Connecticut, Massachusetts, New Hampshire, and New York, are implementing year-round NO_x control programs that will provide benefits similar to or greater than EPA's proposal over the next few years. EPA's next phase of NO_x controls must provide reductions deep enough to achieve our attainment objectives, consistent with the OTC's multi-pollutant principles of January 27, 2004. EPA's proposal will not achieve the needed public health benefits for the 41 million people who experience unhealthy air quality in the NESCAUM region.

We question whether the emission reductions will occur during the proposed timeframes. As leaders in implementing cap-and-trade programs, we know that checks and balances

must be in place. There are currently over 10 million SO₂ allowances in the Acid Rain allowance bank. If sources use those allowances to comply with the IAQR rather than put on controls, real reductions due in 2015 could be delayed until 2025. We urge EPA to adopt even more stringent SO₂ allowance use ratios and other provisions to ensure that real reductions occur in the timeframe needed for PM attainment. For NO_x, EPA should establish a bifurcated allowance system that would prohibit the use of non-ozone season allowances during the ozone season.

We urge EPA to lower its proposed “significance” threshold of 2 ppb of ozone. EPA used 2 ppb for the less stringent 1-hour ozone standard under the NO_x SIP Call. Maine is so affected by transported pollution that we would violate the 8-hour ozone standard even if all in-state emissions were shut down. A lower significance threshold is needed for a more protective ozone standard.

We are disappointed with EPA’s proposed cost-benefit analysis. Any multi-pollutant program that is being considered concurrently with a mercury proposal must be analyzed in the context of all three pollutants. A more complete cost-benefit analysis that appropriately accounts for mercury interactions would support more stringent SO₂ and NO_x caps sooner. Also, the primary emissions of fine particulates should be considered, as well as the synergy of good particulate control and good mercury control. We urge EPA to conduct a more comprehensive multi-pollutant cost-benefit analysis before it finalizes this rule and the mercury rule.

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 EPA's current trend --seeking comments on conceptual frameworks with a mix-and-match of possible options -- creates confusion and deprives the public of adequate review and comment opportunities. EPA should have issued an "Advanced Notice of Proposed Rulemaking."

EPA requests comments on whether the proposal could help make progress toward "meeting the goals" of other regulatory programs. We believe that the IAQR should not *replace* or be construed to meet any goal of any other regulatory program. For example, while reductions through the IAQR could *assist* in making progress toward the Regional Haze Program's visibility goals in Maine's three Class 1 areas, we cannot support a presumption that it would constitute compliance with or supplant the Regional Haze or any other regulatory program. 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 eviscerating section 126, creep into this rule.

In sum, we believe that there is economic and environmental justification for a stronger rule with more stringent NO_x and SO₂ caps, earlier deadlines that align with attainment dates, and stringent allowance use and trading mechanisms.

I will now turn to the proposed Utility MACT rule to control mercury from power plants.

As Massachusetts will testify shortly in greater detail, recent scientific studies have confirmed the serious health risks to the developing fetus from methylmercury exposure.

In addition, recent studies confirm that a greater amount of methylmercury is distributed to the fetus than previously estimated, leading to a doubling of an earlier annual estimate of newborn infants at risk in the U.S from 300,000 to 600,000. In the Northeast, the prospect of over 84,000 newborns per year potentially at-risk for irreversible neurological deficits and cardiovascular abnormalities from methylmercury exposure represents one of the most critical public health threats in our region today.

Mercury emitted from coal-fired power plants is transported through atmosphere and is deposited into our lakes and streams. Over 19,000 fish samples collected in our region demonstrate widespread mercury contamination of our aquatic ecosystems, irreparably threatening human health and wildlife unless actions are taken to significantly reduce mercury emissions. All of the Northeast states have issued fish consumption advisories because of mercury contamination. In addition to the toll on human health and wildlife, mercury contamination of fish also threatens the tourist and recreational fishing industries, which contribute \$3 billion a year to our regional economy.

Given the need to address these threats by significantly reducing mercury emissions wherever possible, we have been diligent in reducing mercury emissions from municipal waste combustors and medical waste incinerators by greater than 90 percent. We have also been assessing the feasibility of controlling the largest remaining source of mercury emissions in our region: coal-fired power plants. Since 2000, we have published three reports on the cost effective technologies for controlling mercury emissions from this sector. The reports also highlighted the need for establishing performance-based emission

standards as a regulatory driver for encouraging wide-scale innovation in and commercial application of mercury control technologies with dramatically lower implementation costs.

We believe that EPA's proposed rule for mercury MACT is inconsistent with Section 112 of the Clean Air Act, which clearly defines how EPA must determine MACT, and by when emission reductions must occur. NESCAUM has concluded that the correct application of mercury MACT in Section 112 would allow just under 7 tons of mercury in 2007 from the current emissions of 48 tons - a reduction of 86 percent. Instead, EPA has offered a series of three extremely weak proposals, all of which are unacceptable, and result in reductions that are too small and too late.

Under its first proposal, EPA's proposed MACT limits are based on a flawed methodology that would allow 34 tons of emissions in 2007 – equivalent to only a 29 percent reduction. The Northeast states do not consider this a viable MACT proposal.

In its second proposal, EPA proposes a mercury cap-and-trade program with a 34 ton annual cap in 2007. We do not believe that Section 112(n) allows emission trading once the decision is made to regulate hazardous air pollutants (or HAPs) under Section 112. Because mercury is a highly potent neurotoxin, Congress classified it as HAP. It is, therefore, inappropriate to regulate this pollutant in the same manner as NO_x or SO₂. While we support properly designed cap-and-trade approaches for NO_x and SO₂, we oppose the mercury cap-and-trade approach given the significant concern that mercury

trading could result in new mercury “hot spots” and exacerbate the “hot spots” that already exist in the Northeast.

EPA’s third proposal, and the one EPA prefers, would regulate mercury under NSPS provisions of Section 111. We do not believe that EPA has the authority to regulate mercury in this manner. As I noted earlier, mercury must be regulated as a HAP under Section 112. Additionally, EPA’s Section 111 proposal is unworkable since EPA can only promulgate regulations that establish a *procedure* for states to follow in establishing NSPS for existing sources, and could result in a scenario where fifty states develop their own mercury control plans, rather than follow one consistent national approach. This does not comport with the national multi-pollutant framework that is also being espoused by EPA.

One major flaw of the EPA’s proposed rule is that it completely ignores requirements in Section 112 for EPA to address HAPs other than mercury that are emitted from coal-fired power plants. We think it is imperative from a public health perspective that EPA addresses all HAPs in its proposed rule.

The findings of recent NESCAUM reports demonstrate that currently available control technologies, as well as rapidly emerging technologies are capable of achieving much higher mercury reductions than required under EPA’s three proposals that rely on so called “co-benefits” alone. For example, Activated Carbon Injection (ACI) has been applied to municipal waste combustors in the U.S. and is routinely achieving greater than

ninety percent reductions, with some units achieving reductions as high as 98 percent. While there are relevant differences between municipal waste combustors and coal-fired boilers, the application of ACI technology to coal-fired boilers does not depend upon any new technology breakthrough. Rather, as has been successfully demonstrated through studies funded by the Department of Energy, it is a matter of traditional technology transfer to these larger boilers.

Many states have already adopted stringent limitations on mercury emissions from new and existing power plants. Connecticut has passed legislation that requires 90 percent mercury control by July 2008. Massachusetts proposed regulations that require 85 percent control by October 2006 and a 95 percent removal by October 2012. Just two months ago, the state of New Jersey proposed new rules that would require a 90 percent reduction by 2007. Recently, Iowa required a mercury reduction of at least 83 percent and the use of ACI as MACT for a new power plant that is now under construction. These state actions were based on an assessment of the same technical and scientific record available to EPA including the findings from recent field studies in Florida, which show that reducing mercury emissions results in measurable decreases in mercury deposition and subsequent reductions in fish mercury concentrations over a short time horizon of just a few years. The encouraging findings from such field studies and the fact that much more stringent state mercury standards for power plants exist raises a serious question as to how a less stringent federal standard for these sources is justified.

We urge EPA to adopt mercury rules that reflect the Congressional intent of maximum achievable control of all plants. Given the serious public health threat and the availability of cost-effective control options, we are dismayed that EPA's proposal is so far removed from what we believe is needed, achievable, and statutorily mandated.

Yesterday, EPA released a model mercury cap-and-trade rule as a supplement to this proposal. Proposing mercury trading is a betrayal of the multi-stakeholder public process that occurred over the past several years for developing the mercury MACT. At no time was the possibility of a mercury cap and trade approach ever brought up or discussed and we have seen no concrete analysis of the effects of trading on public health to date. Certainly our citizens deserve better when it comes to protecting their public health.

NESCAUM and individual states will submit more detailed comments into both dockets. Thank you again for the opportunity to testify.