

September 13, 2011

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Air and Radiation Docket
Mail Code 6102T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attention: Docket ID No EPA-HQ-OAR-2010-1076

Re: Proposed Rule – Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver

Dear Administrator Jackson:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) proposal, published on July 15, 2011 in the Federal Register, entitled "*Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver*" (76 FR 41731) (Proposed Widespread Use Rule). NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

NESCAUM supports EPA's efforts to determine the date of widespread use of Onboard Refueling Vapor Recovery (ORVR) throughout the motor vehicle fleet and to provide a waiver of Stage II requirements, thereby allowing states the option of removing their Stage II program requirements. The Stage II program has been a key factor in reducing volatile organic compounds (VOCs) and air toxics, and its potential removal must be done in a way that ensures continued protection of public health and the environment from the effects of ozone and toxics. Since states must promulgate rules and revise their State Implementation Plans (SIPs) in order to remove their Stage II program, guidance from EPA on the SIP and rulemaking criteria is needed to ensure that public health impacts are appropriately addressed when discontinuing a Stage II program. NESCAUM's comments are therefore structured in four parts: 1) specific comments on EPA's Proposed Widespread Use Rule, 2) issues related to State Implementation Plan (SIP) and rulemaking activities that EPA should address, 3) issues related to the removal of Stage II systems, and 4) issues for maintaining a Stage II program.

EPA has indicated that it will issue new guidance specific to the Ozone Transport Region (OTR) upon promulgation of the final Widespread Use Rule. The OTR represents a significant majority of the Stage II systems that will be evaluated for next steps. By not providing the OTR guidance before the Widespread Use Rule is finalized, EPA places the OTR states in the difficult position of having to guess at the type of analyses and program changes they will need to undertake for policy decisions regarding their Stage II programs. The NESCAUM states strongly urge EPA to

develop and release clear, detailed guidance to the OTR on this issue as soon as possible. The guidance must clarify what comparable measures are and how to conduct comparability analyses.

NESCAUM is concerned that EPA has not considered how an agency's (state or local) request to remove Stage II will impact environmental justice communities. Gasoline dispensing operations cause significant emissions of VOCs and hazardous air pollutants (HAPs). This source category represents significant potential for public exposure to these pollutants. HAP exposures include, but are not limited to, benzene, ethyl benzene, toluene, and xylenes. EPA's analysis indicates that gasoline dispensing facilities emit more than 25,000 tons of emissions nationally for these four pollutants.¹ Many of these facilities are located in residential areas, including environmental justice communities. Moreover, research indicates that individuals living in close proximity to gasoline dispensing facilities are exposed to elevated levels of several HAPs and that the highest short-term exposures to benzene occur during refueling operations.¹ Facilities equipped with properly maintained Stage II systems substantially mitigate public exposures to these pollutants.

In 2009, NESCAUM recommended that EPA develop a technical assessment of toxic emissions and exposures at gasoline dispensing operations. In the preamble of the Proposed Widespread Use Rule, EPA states that the proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. However, it is NESCAUM's understanding that EPA did not analyze the potential increased local exposure to air toxics, either generally or for environmental justice communities. NESCAUM requests that EPA provide any environmental justice analysis it conducted for this proposed rule. We urge EPA to ensure that an adequate analysis has been completed, and, if necessary, to supplement it with an examination of the potential impacts of this proposed rule on environmental justice communities and on local air toxics emissions.

Below are detailed comments on specific Stage II issues.

1. Comments on EPA's Proposed Widespread Use Rule

NESCAUM supports EPA's approach of creating one national date for determining when widespread use has occurred while providing flexibility for states to conduct a state-specific analysis to support an alternative widespread use date.

ORVR Rule Effectiveness

NESCAUM has concerns regarding the 98% ORVR overall efficiency used in EPA's analysis for the proposed rule. While the NESCAUM states understand the basis for the number, we are concerned that the study on which it is based lacks analysis of critical data elements. Specific

¹ EPA, *Regulatory Impact Analysis: Control of Hazardous Air Pollutants from Mobile Sources*, EPA Office of Transportation and Air Quality, EPA420-R-07-002 (2007).

issues not included in analyzing the ORVR efficiency rating are: (1) the lack of data on high mileage vehicles (>100,000 miles); (2) determining which of the many capture ratings to use with various alternative fuels; (3) determining failures that would not be identified by on-board diagnostic (OBD) systems; and (4) faster implementation of recalls when problems are found. NESCAUM urges EPA to investigate these issues and develop a more robust monitoring system to gauge ORVR effectiveness, including strategies to address failures of the ORVR system not detected by OBD systems. The NESCAUM states are concerned that EPA has overstated the benefits of ORVR without sufficient data to support the continued effectiveness of ORVR over time. Moreover, NESCAUM wants to ensure that SIPs and Rate of Progress (ROP) plans use realistic numbers when assessing impacts of the ORVR program.

New Gasoline Dispensing Facilities

Since 2004, the NESCAUM states have requested guidance from EPA on how to make practical planning decisions for new or significantly modified gasoline dispensing facilities constructed within one to two years of a state's Stage II phase-out date. Installing a new Stage II system is costly and may not result in significant emission reductions in the short window of time between installation and phase-out. State program needs will vary, and therefore NESCAUM recommends that EPA work closely with states to develop practical strategies that address new and modified facilities within the context of each states' Stage II program.

2. Related Issues for SIP Analysis for Stage II

NESCAUM believes additional guidance from EPA is needed on how to incorporate the proposed rule elements into a SIP. In many states, removing the Stage II program requires addressing several separate sections of the Clean Air Act. States need clear and detailed guidance from EPA on how to develop appropriate and complete SIP revisions. Whether or not Stage II can be removed will depend on EPA's review and approval of such SIP revisions. We urge EPA to develop this guidance as soon as possible and preferably well in advance of finalizing the Proposed Widespread Use Rule.

The NESCAUM states would welcome working with EPA on the issues identified below where we believe specific guidance is needed.

SIP Completeness and Air Quality Planning Issues

EPA must provide clear guidance as to what is needed in order to ensure that the integrity of the SIP is maintained when Stage II equipment is removed. At a minimum, EPA must provide guidance on how to address requirements, including what analysis must be done and key issues to address concerning Clean Air Act sections 110(1), 184(b)(2), and 193. Additionally, states need clear and consistent guidance as to the appropriate base year that should be used for the equivalency and/or interference with maintenance demonstrations. NESCAUM recommends that EPA require that states use the first phase-out year of the Stage II program as their baseline year. Moreover, states are confused about assessing emission reductions from an existing Stage II program. It is our understanding that emissions resulting from the incompatibility between

ORVR vehicles and vacuum-assist Stage II systems as well as reduced system efficiency for the Stage II program can be used in states' SIP demonstrations. If a state can demonstrate that ORVR obtains equal or more VOC reductions than Stage II, no additional measures should be required. In sum, NESCAUM requests that EPA headquarters and regions work together with states to identify a complete list of issues related to SIP revision development with the goal of providing the states with clear and consistent guidance that will ensure consistent application among those states conducting these analyses.

Ozone Transport Region (OTR) Guidance

The NESCAUM states are troubled by the lack of information provided to OTR states regarding OTR-specific Clean Air Act requirements for Stage II. Section 184(b)(2) of the Act requires that OTR states adopt (or maintain) Stage II or achieve comparable emission reductions. In the preamble of the Proposed Widespread Use Rule, it indicates that states in the OTR must have adopted measures achieving emissions reductions that are at least equivalent to those achievable by Stage II and "incremental" to ORVR before EPA would approve a SIP revision removing Stage II controls. The states need clarification on what an "incremental" analysis means and what it includes. It is our position that OTR states should be allowed to use the year that they phase out Stage II as their baseline year for their comparable measures demonstrations. If an OTR state can demonstrate that ORVR obtains equal or more VOC reductions than Stage II, no additional measures should be required. NESCAUM urges EPA to work with the Ozone Transport Commission to develop this guidance.

MOVES Modeling

NESCAUM urges EPA to provide states with clear guidance as to whether MOVES is required to conduct Stage II removal analyses. If so, EPA must issue guidance on how states should run MOVES for analyzing removal of the Stage II program. States have been compiling a list of issues related to using MOVES for such an analysis. A preliminary list of issues include: (1) determining appropriate Reid Vapor Pressure (RVP) factors; (2) accounting for excess emissions due to ORVR incompatibility; and (3) running the model for one representative county rather than statewide.

In addition, as stated above, NESCAUM is concerned with the 98% control efficiency rating for ORVR. We urge EPA to conduct a robust analysis of the ORVR efficiency rating and incorporate the capability in MOVES for states and EPA to apply an ORVR refueling adjustment factor, similar to that for the Stage II vapor recovery program, in order to allow a realistic analysis, or alternatively, if warranted, EPA should adjust the 98% control efficiency in the model to account for deterioration with age or realistic effectiveness.

Clean Data Determinations

Several NESCAUM states have or are being considered for EPA "Clean Data Determinations." These states have questions regarding whether or not these determinations will affect their requirements for analysis and removal of the Stage II program. The NESCAUM states urge EPA

to clarify in the final rule how Clean Air Determinations affect the type and level of analysis required to remove a Stage II program.

3. Decommissioning Stage II Systems

Removing Stage II Systems

In cases where Stage II equipment is decommissioned, steps must be taken to minimize leaks and fugitive emissions, all of which may result in increased exposure to air toxics or groundwater and soil contamination. NESCAUM urges EPA to provide guidance to ensure that Stage II decommissioning occurs in a manner that minimizes potential for vapor releases from underground piping at facilities that remove their Stage II systems. This guidance should encourage state air offices to coordinate with their state counterparts that manage underground storage tanks to ensure that consistent procedures are in place to address liquid and vapor leak issues associated with decommissioning.

Emissions after Removing Stage II Equipment

When correctly installed, operated, and maintained, Stage II systems effectively control VOC emissions associated with dispensing gasoline to motor vehicles. In the future, as Stage II systems are removed, there is concern that emissions from gasoline storage tanks may increase as a result of unsaturated air being drawn into the storage tanks. NESCAUM is concerned that EPA may not have fully evaluated the potential for such additional fugitive emissions. We urge EPA to undertake such an analysis and report its findings to the states so that they may assess future policy steps.

4. Maintaining Stage II

For states that need additional VOC emission reductions to attain the ozone NAAQS or address environmental justice or toxic concerns, EPA should continue to allow states to maintain Stage II and be clear on what is required to maintain the program. While states have this option, we believe EPA should address issues related to quantifying excess emissions that may occur when refueling ORVR-equipped vehicles at gasoline stations using vacuum-assist Stage II technology.

5. Summary

We are pleased that EPA has moved forward with a Proposed Widespread Use Rule. The NESCAUM states, however, also support the timely promulgation of additional rules and/or guidance that take into account and address the full breadth of the requirements associated with Stage II in the Clean Air Act. We strongly urge EPA to expeditiously develop Stage II-related SIP guidance, and allow adequate opportunity for comment.

We are happy to assist EPA as it works through the SIP-related issues that warrant guidance. If you have any questions or require further information, please contact Lisa Rector of my staff at 802-899-5306.

Sincerely,



Arthur N. Marin
Executive Director

cc: Lynn Dial, US EPA
Scott Matthias, US EPA
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NESCAUM Directors
NESCAUM Attainment Planning Committee
NESCAUM Vapor Recovery Workgroup