NESCAUM
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Northeast States for Coordinated Air Use Management
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Arthur N. Marin, Executive Director

February 20, 2014

Ms. Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
William Jefferson Clinton Building, Mail Code: 2831T
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Dear Ms. Giles:

I am writing on behalf of the Northeast States for Coordinated Air Use Management (NESCAUM) to share our continuing concerns regarding the EPA Office Enforcement and Compliance Assurance's (OECA) lack of action to address longstanding and critical issues for air programs. NESCAUM is the association of that state air pollution control agencies in the New England states, New Jersey and New York. Through NESCAUM, our member agencies have been raising concerns to OECA over the past five years on several air program enforcement and compliance issues including: (1) addressing onerous requirements of the Federal Reportable Violations (FRV) policy; (2) recognition that lack of action on the FRV policy negatively impacts states' capacity to address issues in the Compliance Monitoring Strategy (CMS), the State Review Framework (SRF), and migration to the new air compliance and enforcement data system ICIS-Air; and (3) effective actions to address the significant transition and implementation issues that state and local air programs face as EPA migrates to ICIS-Air. States have expended significant resources engaging OECA in an attempt to resolve these issues, without meaningful progress or acceptable solutions. We are requesting that EPA respond to these continuing and unaddressed concerns. Absent action by EPA on the FRV policy and AFS modernization, some NESCAUM states will not implement the FRV policy and may seriously pull back on the data submitted to EPA's ICIS-Air system.

FRV Policy

In a February 2011 letter to OECA, NESCAUM voiced concerns about the proposed revisions to the FRV policy and detailed the issues it posed to state and local compliance and enforcement agencies. We sent another letter in May 2012, which was followed-up by a requested face-to-face meeting with you in September 2012. The NESCAUM states and staff participated in an EPA-sponsored meeting in January 2013 and a series of weekly calls, which ran from April through June 2013, on specific FRV policy issues. These efforts included broad, national participation by various state and local agencies from other regions that echoed NESCAUM's core concerns and issues. States have invested significant resources to participate in these efforts, but have not yet seen any response from EPA that addresses our concerns. NESCAUM has since made several inquiries to EPA staff about the next steps. Responses indicate that no further dialogue is planned and no alternative pathway has been offered by EPA.

As stated in previous letters, calls and meetings, the current FRV policy is unworkable and implementation of this policy is not feasible in its current form. Furthermore, EPA's failure to address state's concerns regarding this policy have, and will continue to hinder states' abilities to accept and comply with other OECA policies, such as SRF, CMS and ICIS Air.

Air Compliance and Enforcement Data Reporting
EPA is in the process of modernizing its outdated Air Facility System (AFS), which was developed in 1990. The modernization project has been in the planning stage for many years and will culminate with the deployment of the Integrated Compliance Information System (ICIS)-Air, scheduled for October 2014. NESCAUM has been documenting concerns regarding EPA's process and the proposed approach for developing and migrating data to the new system since 2009. These include: (1) the amount of state resources that are required to migrate data into the new system; (2) the failure to consider logistical challenges and resource impacts associated with states uploading new data to the system by October 2014; and (3) the lack of training for state and local agencies to use the system to ensure quality data. In addition, since the inception of this effort, the NESCAUM states have voiced concerns about EPA's effort to work in partnership with states and continued reluctance to adequately respond to and address state concerns. Unfortunately, as the move to a modernized system continues, these important issues remain unresolved. Migration efforts are taking place in a piecemeal and iterative fashion, which make it difficult for states to determine and assess the needed resources. This effort has placed a significant burden on states without providing additional resources. Most importantly, EPA's deployment schedule does not adequately address the time states need to prepare for the transition. Many states believe that they will not be ready to input new data into the system per EPA's current schedule. It is imperative that EPA take action immediately to develop a new schedule that is reasonable and achievable and extend the timeline for retiring AFS by at least one year.

We share EPA's interest in compliance and enforcement data transparency and recognize that like the states, EPA has limited resources. In other areas, such as the work on the revised HPV policy, the state-federal partnership model has worked well in ensuring effective and efficient implementation of the Clean Air Act. NESCAUM hopes that we can find a way to work constructively with OECA to develop a mutually acceptable solution to the issues described in this letter. Absent those solutions, states may no longer provide the data needed to support ICIS-Air and SRF.

Sincerely,

Arthur N. Marin
Executive Director
NESCAUM

cc: Gina McCarthy, US EPA
Janet McCabe, EPA OAR
Lisa Lund, EPA OECA
NESCAUM Board of Directors