

February 29, 2012

Laura Bunte
U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
109 T.W. Alexander Drive
Research Triangle Park, NC 27709

Re: Proposed Ozone Advance Guidance

Dear Ms. Bunte:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) draft guidance for the Ozone Advance program. 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 efforts to proactively mitigate emissions that could, in the future, result in unhealthy air, provided that such actions comport with the federal Clean Air Act (CAA). In that regard, we are concerned about the following aspects of the Ozone Advance guidance as currently drafted.

Invoking Flexibility as to Whether Areas will be Redesignated to Nonattainment: The guidance implies, in two different sections, that attainment areas enlisting in the Ozone Advance program may receive special treatment from EPA, should they begin to measure violations:

*As long as Ozone Advance control measures are being fully implemented and appropriately documented, EPA would consider that circumstance among the other factors specified in the Act when exercising its discretion in deciding **whether to redesignate the area to nonattainment.***" (Section 14, emphasis added)

If the air quality in the area deteriorates and a violation occurs, EPA may exercise its discretion to redesignate the area to nonattainment. (Section 21)

We are concerned about this language given the informal construct of the Ozone Advance program and lack of specific requirements. Under federal law, any area that measures ambient ozone levels in violation of the National Ambient Air Quality Standard (NAAQS) is obligated to comply with attendant CAA requirements to protect public health. Areas violating the NAAQS that are not designated as nonattainment could be vulnerable to legal action. We urge EPA to designate areas that violate the NAAQS as nonattainment within a clearly prescribed period of time after the measured violation. EPA should define a clear timeframe for success, so that areas are appropriately informed and motivated to act.

Transport SIP Requirements: EPA must be clear that this guidance is not intended to address transport obligations pursuant to CAA section 110(a)(2)(D) in Ozone Advance areas. Transport must be addressed through regional, national, and strong source-specific rules, not voluntary programs. EPA, however, should use the program as an opportunity to educate Ozone Advance areas about their potential to adversely affect downwind air quality, as well as possible future emission control requirements. This would enable those areas to make appropriate choices about the programs they choose to implement as part of Ozone Advance. Absent a national or regional transport rule that addresses the 2008 ozone NAAQS, downwind areas, including Ozone Advance areas, are vulnerable to transport obligations under CAA section 110(a)(2)(D). EPA should evaluate and clearly articulate section 110(a)(2)(D) obligations and status for areas that wish to join this program.

Impacts on Nonattainment Boundaries: Encouraging areas to sign up for the program without restrictions on geographical size, coupled with EPA's intent to exercise discretion regarding redesignating areas that may violate the ozone NAAQS in the future, could result in partial counties or cities being designated as nonattainment areas in a manner inconsistent with a state's recommendation. This, in turn, could create non-contiguous or disjointed nonattainment areas that would prove challenging for states to address through the SIP process.

Technically Consistent Guidance: There are technical issues for which participating areas will need additional guidance. In such cases, we urge EPA to include the corresponding states in those discussions to ensure appropriate technical consistency.

Process Concerns: In the draft document, EPA indicates that the guidance was "*developed with the input of stakeholders that include state and local government officials and organizations, tribes and tribal organizations, and environmental and health groups.*" Notwithstanding long-term interest and prior discussions with EPA on these types of programs, NESCAUM and its states were not asked for input or feedback by EPA on the Ozone Advance program prior to the brief 20-day comment period. We expected more rigorous up-front vetting of the program design and dissemination of the draft, as well as more time for comment.

We also note that states are waiting for EPA guidance to be released for mandatory CAA requirements and programs that are already in place. We believe that EPA's prioritization of a voluntary program is misplaced, when it is so far behind in issuing critical guidance on mandatory SIP-related programs such as sulfur dioxide modeling, particulate matter implementation for the 2006 NAAQS, ozone implementation, and ozone transport requirements pursuant to section 110(a)(2)(D).

Emphasis on Multi-pollutant and Energy Efficiency Programs: While EPA mentions multi-pollutant programs in Ozone Advance areas, we encourage the Agency to provide more information on the co-benefits of multi-pollutant and energy efficiency programs, in its final guidance and in its support to participating areas. These types of programs hold great promise

for long-term results, and it would be a missed opportunity not to discuss or examine those in depth as part of Ozone Advance.

NESCAUM provides additional comments in Attachment A. If you or your staff have any questions regarding the issues raised in this letter or the Attachment, please contact Leah Weiss of my staff at 617-416-4829.

Sincerely,

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

Arthur N. Marin
Executive Director

Attachment

Cc: NESCAUM Directors
Greg Green, U.S. EPA
Steve Page, U.S. EPA
Janet McCabe, U.S. EPA
Gina McCarthy, U.S. EPA

ATTACHMENT A

NESCAUM's Additional Comments on U.S. Environmental Protection Agency's Proposed Ozone Advance Policy

1. Introduction:

- Paragraph 2, re: *“The Ozone Advance program offers participating states, tribes, and local communities the opportunity to work in partnership with EPA within a framework **that can help focus participants’ efforts to keep their air clean**”* (Emphasis added).
 - EPA should be clear up front about its expectations for the highlighted phrase.
- Paragraph. 2, re: *“While participation in the program is not a guarantee that an area will avoid a future nonattainment designation, it can better position the area **to comply** with the requirements associated with such a designation”* (Emphasis added).
 - Awkward wording. EPA must be as clear as possible that participating in the program will not, in fact, ensure that the area will comply with any future nonattainment designation or other Clean Air Act requirements.

2. Section 2: What is Ozone Advance?

- Re: *“Ozone Advance is a collaborative effort intended to preserve or improve the air quality in ozone attainment areas, particularly in areas that have ambient ozone levels close to the level of the NAAQS and thus are at the greatest risk of violating the standard.”*
 - This is the program’s goal, and would be better placed in Section 1, “What is the purpose of this program?”
- Re: *“...4) increasing public **awareness.**”* (Emphasis added).
 - After “awareness,” add the words “about ground-level ozone as an air pollutant”.

3. Section 3: Why should an area want to take action to reduce emissions that contribute to ozone formation now, if it is not currently required to do so?

- Re: “By acting in the near-term, a local area or state will have greater flexibility to choose control measures **which** make the most sense and are **the most** cost-effective for an area. (Emphasis added).
 - Change “which” to “that”. Delete “the most”. The original language sounds like it is promising too much, and might set expectations too high and make an area more vulnerable.

4. Section 5: Who can sign up to participate in Ozone Advance?

- Paragraph 1, re: “To participate in the program, the state, tribe and/or local government must be able to **identify** the air monitor(s) that reflect the air quality in the area.” (Emphasis added).
 - Add the words “and report on” after “identify”.
 -
- Paragraph 1, re: *In addition, EPA will evaluate a state’s compliance with existing **inventory** requirements before accepting a state into the program; states should meet their reporting obligations for the National Emissions Inventory prior to applying for participation in Ozone Advance.* (Emphasis added).
 - Add the word “emissions” before “inventory”.
- Paragraph 2, re: “Participation in Ozone Advance would not relieve any area from any requirements to which they are otherwise subject under the Act or from any requirement in an approved SIP.”
 - Add the following at the end of the sentence: “, including the ozone transport requirements of the Clean Air Act, Section 110(a)(2)(D).” This helps place the program in context, and provides an educational opportunity for upwind areas.

5. Section 6: Who cannot sign up for Ozone Advance?

- Paragraph 1, re: “However, participating states, tribes, and/or local governments may continue to participate in the program if the area of concern is eventually designated nonattainment and classified Marginal...Marginal areas do not otherwise have **planning** requirements” (Emphasis added).
 - Insert “specific Clean Air Act-mandated” before “planning”. EPA should not leave areas with the impression that they have no requirements. For example, an area, if designated nonattainment, will eventually have Section 110(a)(2)(D) requirements.

6. Section 8: How can an area apply for participation in Ozone Advance?
 - Paragraph 3, re: “EPA will **ensure that** whether the basic program eligibility requirements are **met**, and...” (Emphasis added).
 - Replace “ensure that” with “review as to”. After “met” add “by the applicant”.
7. Section 14: What happens if violations of the standard begin to occur despite an area’s participation in the program?
 - Re: “The area should quickly evaluate, select, and implement additional measures and **programs**. **However**, Ozone Advance does not shield an area from being redesignated nonattainment if the area eventually violates the standard. (Emphasis added).
 - After “programs” add “to mitigate its ozone problem”.
 - Replace “However,” with “It is important to note that”
8. Section 16: How can early reductions achieved as part of Ozone Advance be recognized in any future SIP that the area may need if designated nonattainment with a Moderate or higher classification for the 2008 ozone NAAQS or a future ozone NAAQS?
 - Re: *If emission reductions occur through Ozone Advance after the baseline year, the area **can** take credit for those reductions **subject to certain Clean Air Act restrictions**, such as demonstrating that the reductions are surplus, quantifiable, enforceable, and permanent.* (Emphasis added).
 - Replace “can” with “may”. Replace “subject to” with “if they comply with”. Delete “certain”. Replace “restrictions” with “requirements”.
9. Section 20: Must a participating area undertake emissions inventory development or modeling?
 - Re: “No, emissions inventory development and modeling are not necessary prerequisites to an area’s participation in Ozone Advance.”
 - EPA indicated earlier that participation in the National Emissions Inventory is a requirement, as well as a pre-requisite for this program. EPA should clarify this statement by restating the requirement related to emissions inventory.

- Re: “*However, EPA encourages participating areas to consider existing emissions inventories and modeling information and/or develop new analyses as necessary in order to characterize the nature of the ozone issue in the area (i.e., is the area NO_x or VOC limited)*...” (Emphasis added).
 - After “VOC limited” add “, is the area upwind of nonattainment areas, might the area be considered to affect ozone levels downwind in a future, possibly lowered ozone NAAQS?”.

10. Section 21: What happens if the ozone concentrations in an area violate the standard?

- Re: “*EPA recognizes that some areas are affected by the transport of upwind pollution, however it is still important for local reductions to be achieved, where possible. As soon as an area determines...*” (Emphasis added).
 - After “possible.” add, “Similarly, an area’s emissions may affect an ozone nonattainment area downwind.”

11. Section 22: Must a participating area commit to contingency measures?

- Re: “*Measures undertaken should not be discontinued even if the area continues to remain in attainment, in order to protect against increases in local ozone.*” (Emphasis added).
 - After “local” add, “as well as downwind transported”.

12. Attachment B, Pollution Reduction Measures and Programs

- Paragraph 1, re: “*Consideration of multipollutant benefits (such as maximizing reductions in both NO_x and PM) should be incorporated into any selection of measures and programs.*” (Emphasis added).
 - After “and PM)” add “, as well as possible beneficial impacts in downwind areas,”.

13. Editorial comments:

- EPA should use consistent language when referring to the NAAQS (i.e., use “NAAQS” throughout rather than interchanging “NAAQS” and “standard.”)
- When using the term “e.g.,” a comma must follow the period after the “g.”
- Employ the “if... then” convention.