

January 26, 2005

Hon. George V. Voinovich  
317 Hart Senate Office Building  
Washington, DC 20510

Hon. Thomas Carper  
513 Hart Senate Office Building  
Washington, DC 20510

Hon. James M. Inhofe  
453 Russell Senate Office Building  
Washington, DC 20510

Hon. James Jeffords  
413 Dirksen Senate Office Building  
Washington, DC 20510

*Re: Multi-Pollutant Legislation and the Clear Skies Act*

Dear Senators Voinovich, Carper, Inhofe, and Jeffords:

We appreciate the opportunity to submit testimony to the Senate Environment and Public Works Subcommittee on Clean Air, Wetlands, and Climate Change on behalf of the Northeast States for Coordinated Air Use Management (NESCAUM) with regard to federal action to reduce air pollution from power plants. NESCAUM is a 38-year old association of the air quality management agencies of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The NESCAUM states have extensive experience in developing and implementing regional air pollution reduction programs, including cap-and-trade programs. Further, many NESCAUM states currently have multi-pollutant legislation and/or regulations in place. While we support the multi-pollutant approach as an effective tool for addressing air quality problems, we cannot support the Clear Skies Act in its current form.<sup>1</sup> Not only does it fail to provide timely and sufficient pollution reductions, but it also dismantles and weakens current legal authorities, protections and programs provided in the Clean Air Act that states have relied on – and must continue to rely on – to provide the public health and environmental protection to which our citizens are entitled.

We have ardently and consistently supported a multi-pollutant approach to regulating emissions of sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), mercury, and carbon dioxide from power plants. In the Northeast, SO<sub>2</sub> and NO<sub>x</sub> emissions from in-region and out-of-region power plants are significant contributors to problems related to public health and the environment including ozone, fine particles, acid deposition, eutrophication of surface waters, and regional haze. Additionally, with mercury exposure placing over 84,000 newborns per year at risk for irreversible neurological deficits and adult cardiovascular abnormalities in the Northeast, it is imperative that swift action be taken to curb the continued buildup of this persistent, potent neurotoxin in our environment. Finally, carbon dioxide emissions and the problem of climate change present unprecedented challenges for our ecosystems, economy, and quality of life. Given the impact of transported pollution on public health and the environment in the Northeast, the need for strong and timely federal action is unequivocal.

The NESCAUM states have followed the national debate over multi-pollutant legislation with great interest. In evaluating and comparing the various proposals that have been offered, we ask three basic questions: (1) Is the proposal adequate to address the significant public health and environmental risks posed by the affected sources? (2) Is the proposal comprehensive? (3) Does the proposal strengthen our

<sup>1</sup> For purposes of this testimony, we are referencing the Clear Skies Act of 2003, S. 1844 of the 108<sup>th</sup> Congress.

collective (state, regional and national) ability to ensure continued clean air progress? Regrettably, based upon our review of the Clear Skies Act (CSA or Clear Skies), our answer to each of these questions is “no.”

First, while the CSA calls for reductions in SO<sub>2</sub>, NO<sub>x</sub> and mercury emissions, its proposed reductions are not deep enough nor will they be achieved in a timeframe reflective of the serious public health and environmental problems. The level at which the caps are set are higher (i.e., less stringent) than what can be cost-effectively achieved using currently available control technologies. States in our region must attain the health-based federal standards for ozone and fine particles in the next two to five years. Yet, according to EPA’s own analyses, the Northeast will not receive any significant summertime ozone benefit from the NO<sub>x</sub> caps proposed in CSA. Further, CSA’s final emissions caps based on today’s available technology will not be in place until 2018, and because sources will have over a decade to bank allowances, the Phase II caps will not be achieved until many years later, perhaps sometime in the mid-2020s. As an example of this problem, the Phase II SO<sub>2</sub> emissions cap for the current Clear Air Act Acid Rain program has yet to be achieved, five years after the 2000 deadline. We are also concerned that the final emissions caps established in Clear Skies are subject to future relaxation, thus affording little certainty to either the public or the regulated community. This is based on review provisions in the bill that give economic considerations precedence over public health or environmental protection. Delaying emission reductions for 10 to 20 years will prevent states from achieving the national ambient air quality standards, and be even more problematic for the tens of thousands of people who will continue to experience serious health effects associated with unnecessarily high levels of fine particles and ozone pollution such as asthma attacks, reduced lung function, irregular heartbeat, heart attacks, and premature death. Emissions reductions must occur sooner than proposed in CSA

Second, more must be done to reduce mercury emissions. Given the persistent and bio-accumulative nature of this neurotoxin and the commercial availability of highly effective control technologies, power plant mercury emissions should be capped at levels that are at least twice as stringent as the 15-ton figure proposed as the final (Phase II) cap in Clear Skies. In addition, the Phase I (2008) mercury cap was initially introduced at 26 tons – a figure that notably represented the views of utilities participating in EPA’s Mercury MACT Stakeholder process. Unfortunately, the proposed cap was then weakened to 34 tons in the first markup of this bill (S. 485 of the 108<sup>th</sup> Congress). The latter figure reflects mercury reductions that will be achieved as so-called “co-benefits” of controlling power plants for other pollutants, thus suggesting that the health and environmental impacts from mercury emissions are not sufficiently important to merit direct efforts to reduce. CSA’s proposed reductions fall far short of the Clean Air Act requirements to reduce toxic mercury air emissions by 2008<sup>2</sup>. In addition, CSA provides no protection against local “hot spots” and their associated health and environmental impacts. Nor does it require installation of technically feasible levels of control at individual power plants. The NESCAUM states believe that, in the interest of public health, maximum feasible facility-specific emission reductions should be required at every mercury-emitting power plant.

The NESCAUM states also believe that carbon dioxide emissions reductions must be part of a multi-pollutant framework. Without them, the appropriate market signals and business certainty needed to promote sound long-term resource choices and investment decisions by the electric power industry will not develop. The inevitable long-term result is greater climate risk – and ultimately higher costs for industry and consumers. Power plants account for roughly one-third of national carbon dioxide

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<sup>2</sup> NESCAUM has concluded that the appropriate application of mercury MACT under Section 112 of the Clean Air Act would allow just less than 7 tons of mercury by December 15, 2007 from the current emissions of 48 tons, a reduction of 86 percent by 2008.

emissions. Solutions to a greenhouse gas build-up may present economic opportunities for those who develop and provide the clean energy and efficient technologies of the future. The NESCAUM states' strong commitment to act on climate change is reflected in the various regional and state-level efforts initiated to date, including action plans and aggressive four-pollutant initiatives. We are willing to lead by example, but climate change is a global issue that will ultimately require a global solution. A multi-pollutant power plant strategy that promotes long-term resource investments while ignoring one of the most important environmental challenges of this century is not comprehensive.

Third, while the stated purpose of Clear Skies is to address power sector emissions, there are a number of provisions in the proposed legislation that, if enacted, would seriously compromise the protections and authorities granted to states under the Clean Air Act. There are other measures that would significantly weaken the fundamental provisions of the Clean Air Act related to ozone and fine particle designation and attainment. These changes would deprive states of key regulatory tools that have helped them to achieve the clean air progress accomplished to date and that will be necessary to address local air quality impacts from an array of air pollution sources, including but not limited to power plants. The proposed changes would also give EPA less oversight authority for many areas that continue to violate the federal standards. The provisions of concern would: (1) materially alter and restrict Clear Air Act provisions that allow states to achieve expeditious relief from interstate pollution by restricting when petitions for relief may be acted upon and by significantly changing the criteria on which petitions for relief are granted, making it virtually impossible for states to file petitions or for the petitions to be granted; (2) restrict New Source Review applicability for many power plants located in areas with unhealthful air quality, and remove state authority to require that new facilities offset their emissions in non-attainment areas or prevent air quality deterioration in clean areas; (3) compromise the environmental benefit that states can now secure by adopting programs more stringent than federal requirements; and (4) create a new "transitional" designation that effectively exempts many newly designated nonattainment areas from adopting any local controls unless air quality problems persist after 2015 and allows some areas to postpone reaching health-based air quality standards until well after 2020. Taken together, these provisions substantially reduce the ability of states to meet their statutory clean air obligations, protect public health and the environment, and ensure sustained economic growth.

Many of the abovementioned CSA provisions go far beyond the goal of establishing national multi-pollutant emissions targets and deadlines for power plants. While the NESCAUM states would support constructive reform of the Clean Air Act, we strongly believe that such an effort should occur through careful deliberations separate and distinct from multi-pollutant legislation specific to power plants.

A more detailed discussion of our key concerns regarding specific Clear Skies' provisions is attached. The Clean Air Act provides some critical tools states can use to protect our citizens' health and quality of life. We have exercised these tools prudently in the past, and will continue to do so. We cannot support legislation that strips states of these important tools.

In summary, while we strongly support a multi-pollutant framework, we cannot support the Clear Skies proposal as currently crafted. The citizens of this nation need more and earlier pollution reduction than Clear Skies provides, and states must retain maintain their current legal authorities, protections and programs – such as Section 126 and New Source Review – provided in the Clean Air Act. If the current version of the Clear Skies Act were enacted, it would delay for 10 to 20 years the Clean Air Act's current public health protections for citizens that reside in areas with unhealthful air.

Thank you for the opportunity to submit testimony to the Subcommittee. We offer our assistance and expertise to the Subcommittee and the Committee on Environment and Public Works as you consider

multi-pollutant frameworks and other Clean Air Act-related issues. We would be happy to discuss the successes and challenges we have had in developing and implementing cap-and-trade and multi-pollutant programs alongside other Clear Air Act programs and mandates.

Sincerely,



Robert Scott  
New Hampshire Department of Environmental Services  
NESCAUM Chair



Arthur N. Marin  
Executive Director

Attachment

Cc: Hon. Christopher S. Bond  
Hon. Jim DeMint  
Hon. Johnny Isakson  
Hon. David Vitter  
Hon. Joseph L. Lieberman  
Hon. Frank Lautenberg  
Hon. Barack Obama  
NESCAUM Directors