



Connecticut Bureau of Air Management, Anne Gobin, Acting
Maine Bureau of Air Quality Control, James Brooks
Massachusetts Bureau of Waste Prevention, Barbara Kwetz
New Hampshire Air Resources Division, Robert Scott, Acting
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

July 31, 2003

U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W.
Room B108, Mail Code 6102T
Washington, DC 20460
Attention: Docket #OAR 2003-0079

Re: Proposed Rule to Implement the 8-Hour Ozone Standard

Dear Acting Administrator Horinko:

The Northeast States for Coordinated Air Use Management (NESCAUM) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed rulemaking, published on June 2, 2003 in the Federal Register (68 FR 32802-32870), entitled *Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard*. NESCAUM is a regional association of the eight states of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The NESCAUM states have decades of experience and expertise in dealing with Clean Air Act requirements and EPA rules for attaining the Federal health-based ambient air quality standards. Our comments are rooted in this expertise.

In July 1997, EPA promulgated the 8-hour ozone standard based on findings that the 1-hour ozone standard did not provide adequate public health protection. Numerous studies indicated that adverse health effects occur at lower levels and over longer exposure times than the 1-hour ozone standard. Under the 8-hour standard, more people are known to be exposed to unhealthy ozone levels than under the 1-hour standard. There are 41.3 million residents in the NESCAUM region. Given that the populations known to be at risk for exposure to ozone include active children and adults, and persons with asthma or other respiratory diseases, millions of people in the Northeast are vulnerable to ozone levels approaching the 8-hour standard. According to EPA's assessment and based on monitoring data from 1999-2001, nationwide 155 additional counties are monitoring unhealthy levels of ozone that exceed the 8-hour standard, and those areas must now take action for the first time to protect their citizens from ozone exposures. It is therefore important that the rule guiding implementation of the more protective ozone standard be clear, that it build on lessons learned from implementing the 1-hour ozone standard, that it be consistent with Clean Air Act and that it afford expeditious public health protections. We believe EPA's proposal falls considerably short of these goals. The proposal, especially EPA's preferred framework, is far from being clear, is less protective – not more protective – of public health, and fails to provide adequate accountability so that the public can be assured that air quality is being brought to healthful levels as expeditiously as possible. Instead, EPA's preferred framework would allow many states to be relieved of their statutory obligations to protect public health in a

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timely manner. Our major concerns are highlighted in this letter, and more detailed comments are elucidated in Attachment A.

First, we believe EPA has strayed too far from the text and mandates of the Clean Air Act in its preferred “flexibility” options, particularly with the preferred option to designate ozone areas under subpart 1 of the Act. In 1990, Congress established specific ozone requirements under subpart 2 in response to past failures and to ensure progress and accountability in implementing the ozone standard. Under subpart 2, states with 1-hour nonattainment areas have made tremendous strides to reduce ozone levels since 1990, and air quality has improved considerably. By opting to classify some areas under subpart 2 and other areas under subpart 1, EPA would create an unlevel playing field at the outset that is neither based in good science nor comports with the February 27, 2001 Supreme Court decision on implementing the 8-hour standard. The NESCAUM states believe that areas with similar air quality levels should be treated similarly in terms of designations and classifications, as well as in terms of required reductions and accountability. We believe that EPA should base classifications and Clean Air Act obligations on 8-hour ozone values, not on 1-hour ozone values coupled with a modeling exercise. EPA must classify all areas under subpart 2 of the Clean Air Act.

Second, EPA’s preferred option for invoking an “early incentive feature” in the manner that it does (i.e., by allowing an area to be subject to less rigorous requirements based on a modeling demonstration) is of dubious scientific and legal merit, and does not provide appropriate accountability and emissions reductions. We support the concept of flexibility, but believe that EPA’s preferred options come at the expense of public health protection by no longer ensuring that the necessary control measures to ensure attainment will be implemented within reasonable timeframes. Given the more stringent nature of the 8-hour standard as compared to the 1-hour standard, states should be doing more, not less, and doing it better than was done for the 1-hour standard. EPA can provide the desired “flexibility” without sacrificing accountability. We believe EPA should instead allow a substitution scheme for certain subpart 2 program requirements, as appropriate. We would be happy to help explore options with you in this regard.

Third, EPA’s proposed options on transitioning from the 1-hour to the 8-hour standard are unacceptable. We believe that the 1-hour standard should be revoked only when the 8-hour SIP for an area is approved, with control measures effective upon approval. We urge EPA to develop changes to the conformity rule that will allow areas to be subject to only one conformity budget for purposes of conformity actions during the transition time between 1-hour SIP obligations and 8-hour SIP obligations, however long that may be.

Fourth, we are dismayed that EPA fails to address transported ozone up front. In the proposal, EPA cites *control programs* – some of which are in place, but several that are in development and yet to be developed – as the way it intends to “address transport ‘up front.’” Ozone transport is a scientifically accepted phenomenon that will no doubt increase with the emissions growth that accompanies continued economic expansion. The cited control programs, while achieving differing degrees of ozone precursor reductions, simply will not do the job for the Northeast. In order to attain the 8-hour standard by our attainment dates, we need, *at minimum*, a regional strategy with deeper and quicker (i.e., by the end of this decade) reductions than has been offered to date.

Notwithstanding control programs, a *framework* is needed to address ozone transport on an ongoing basis. EPA has not proposed a framework in its proposal. There are several tools

available in the Clean Air Act that are designed as such and that EPA can use to develop a framework to assess and address transport. Some framework options are contained in the paper we developed in concert with the Ozone Transport Commission and submitted to EPA on April 22, 2002. We are resubmitting this paper into the docket (see Appendix B), and urge EPA to incorporate critical components into the final implementation rule.

EPA's failure to address transport, coupled with the additional flexibilities offered in the preferred options, means businesses in the Northeast will continue to be at competitive disadvantage with those in upwind States.

Fifth, we are concerned that EPA's proposal relies too heavily on modeling in every aspect of air quality management. Modeling should not be the sole method for determining whether an area's ozone problem has been solved.

Sixth, we are very concerned that EPA's proposal lacks regulatory language. Instead, it offers a series of options, many of which are tied to other options in other parts of the proposal. The result is that understanding and discussing the proposal amongst the states has been challenging, as has been developing comprehensive comments on the proposal as a whole. Our comments are therefore based on selected proposed program options and assumptions. We are also concerned that the lack of regulatory language invites legal challenge to the rule and further delays in implementation of the 8-hour ozone standard. EPA should propose to amend the rule with the needed regulatory language and provide the public with a meaningful opportunity to comment

More detailed comments on these and other issues are contained in Attachment A. We hope you will consider these comments as you finalize your implementation rule. If you or your staff has any questions about the issues raised in this letter or the attachment, please contact Leah Weiss through the NESCAUM office at 617-367-8540.

Sincerely,



Kenneth A. Colburn
NESCAUM Executive Director



Barbara A. Kwetz
NESCAUM Chair

Attachment A: Detailed Comments from the Northeast States for Coordinated Air Use Management on EPA's Proposed Rule for Implementing the 8-hour Ozone Standard

Attachment B: OTC's Principles and Proposal for Implementing the Eight-Hour Standard (April 22, 2002)

Cc: NESCAUM Directors