

ATTACHMENT A

Detailed Comments from the Northeast States for Coordinated Air Use Management (NESCAUM) on EPA's Proposed Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule) (69 FR 4566-4650)

1. General Approach

The preamble of the proposed Interstate Air Quality Rule (IAQR) describes the framework for a program that the NESCAUM states believe, with modifications described below, is appropriate toward mitigating the transported pollution that plagues our region. This program builds on the federal Acid Rain Program, the OTC NOx Budget Program, and the NOx SIP Call, which were some of the first multi-state transport initiatives. As proposed, EPA's IAQR is another step forward, though certainly not the final step, in resolving the transport problem.

We are concerned, however, about the apparent disconnect between EPA's stated environmental goals for a multi-pollutant cap-and-trade program and the proposed cap levels. Given that one goal of the IAQR is to reduce ozone transport, we are particularly concerned about the lack of stringency with regard to the NOx reduction requirements. According to EPA's own data, the ozone benefits of this rule are along the order of 1-2 parts per billion reductions in ozone in the affected violating counties. Due to inadequate reductions in ozone transport, we anticipate that large geographic areas will not be able to attain the eight-hour ozone standard, even with their local ozone control programs in place. Clearly, more needs to be done to alleviate the ozone transport problem.

In the IAQR preamble, EPA discusses the success of the Acid Rain Program, and indicates that the 41% reduction from 1980 SO₂ emissions allowed "lakes and streams in the Northeast to begin recovering from decades of Acid Rain" (see 69 FR 4574). EPA's own December 2003 draft report on the National Acid Precipitation Assessment Project, however, indicates only limited recovery in only one-quarter to one-third of Northeast Lakes and Streams. In 2001, the Hubbard Brook Ecosystem Study concluded that the federal Acid Rain Program has not yielded enough SO₂ reductions to allow the forests in the Adirondacks of NY and New England forests in VT, NH, and ME to adequately recover from acid deposition, and that, if recovery is to occur, then even more drastic SO₂ reductions must occur on an expedited timeframe.¹

We believe that EPA can and must set caps that require deeper and faster emission reductions. Deeper reductions achieved on a faster timeframe would result in benefits that outpace any additional costs. We believe that EPA's proposed deadlines of 2010 and

¹ Driscoll, Charles T., Gregory B. Lawrence, Arthur J. Bulger, Thomas J. Butler, Christopher S. Cronan, Christopher Eager, Kathleen F. Lambert, Gene E. Likens, John L. Stoddard, and Kathleen C. Weathers. 2001. "Acidic deposition in the Northeastern U.S.: Sources and inputs, Ecosystem Effects, and Management Strategies," *BioScience*, Vol. 51, no. 3.

2015 sacrifice extensive health benefits in deference to savings on compliance costs that are a fraction of EPA's estimates of the monetized benefits.

EPA has indicated that it is acting under Section 110(a)(2)(D) of the Clean Air Act in making findings of significant contribution, yet EPA appears to be silent on its statutory obligation under that section to ensure that the SIPs submitted in response to the IAQR “contain adequate provisions... prohibiting... any source or other type of emissions activity... from emitting any air pollutant which will... interfere with maintenance... with reference to any... standard.” EPA must also make findings on maintenance of the standard when it assesses the adequacy of SIPs that respond to the IAQR.

We are pleased that EPA “believes it is important to address interstate transport as early as possible” (69 FR 4579). We also agree that EPA’s proposed requirement to submit State Implementation Plans (SIPs) within 18 months of finalizing the IAQR is reasonable, as experience has shown that it is feasible to do so.

We are concerned that EPA may consider this program a panacea for transport – now and into the future - as well as a substitute for other regulatory and statutory programs. We strongly believe that EPA must consider this program as another brick in the foundation of attaining the national ambient air quality standards (NAAQS), and that EPA must continue to develop better and more appropriate analytical and regulatory tools from which transport can be better assessed and mitigated. In April 2002, through the Ozone Transport Commission (OTC), we submitted a series of recommended mechanisms that EPA could put in place to continue to assess the effects of transport and address it in a timely manner. We urge EPA to again reconsider those recommendations.

2. Process

We are deeply concerned that EPA has released the proposed IAQR as a preamble, with no regulatory text on which to comment. We believe that EPA’s current trend -- seeking comments on conceptual frameworks with a mix-and-match of possible options -- creates confusion and deprives the public of adequate review and comment opportunities. EPA should have issued this preamble as an “Advanced Notice of Proposed Rulemaking,” and reserved the Notice of Proposed Rulemaking for specific regulatory language.

In addition to this procedural deficiency, we are extremely concerned about the appropriateness of a 60-day comment period when EPA has not provided the states with the technical analyses necessary for us to adequately assess the rule in a timely manner. On February 12, 2004 a NESCAUM state requested the emission files used in EPA's IAQR modeling (e.g., the emissions for the 2015 future base case and IAQR cases). These were not made available until March 5, 2004. It would have been useful if EPA had also provided any detailed emission summaries and modeled concentration results. Also missing were individual modeling result analyses and detailed graphic plots that are typically generated as an order of business. Currently, only the meteorology and biogenic emissions are posted to EPA's regional modeling center website, and a very general (non-detailed) analysis summary was posted on the EPA IAQR website. Neither gives us enough detail to perform any kind of meaningful analysis.

The purported March 30, 2004 close of comments on this notice of proposed rulemaking should not foreclose comments on any issues that are related to the forthcoming proposed regulatory text (which, we understand, will be released as a supplemental notice of proposed rulemaking), even if set forth only in this notice of proposed rulemaking. Similarly, any comments submitted today, if related to the supplemental notice of proposed rulemaking, should be deemed to be comments on that rulemaking as well.

When the requisite regulatory language is available, the NESCAUM states intend to analyze the rule's efficacy with respect to attainment of PM standards, and plan to submit comments when that analysis has been completed. We understand that analysis of the rule with respect to ozone is being conducted by the Ozone Transport Commission (OTC); accordingly, as member states, we intend to submit comments into the docket on that analysis through OTC.

3. Timing

The NESCAUM states are disappointed that the proposed implementation deadlines do not align with ozone or PM attainment dates. Reductions are proposed for 2010 and 2015, but areas across the country must meet ozone attainment deadlines starting in 2007 and a PM-fine attainment date of 2009. Attainment status is based on three years of ambient monitoring data showing significant improvements in air quality.

We see no valid reason for EPA's failure to require IAQR reductions during the 2007-8 timeframe, with a second phase in 2012, rather than waiting until 2010 and 2015, as currently proposed. According to EPA, the first sizable ozone reductions would occur in 2010. However, many states affected by ozone transport will be required under the Clean Air Act and EPA's proposed attainment schedule, to attain the ozone health-based standard by 2007.

Furthermore, we believe that EPA's proposed caps do not comply with the "as expeditiously as practicable" requirement of the Clean Air Act.

With respect to ozone, EPA's proposed NO_x reductions under the IAQR essentially annualize the ozone season requirements of the NO_x SIP Call. EPA has indicated that the same NO_x control technologies are being relied upon for the NO_x SIP Call and IAQR programs. However, the NO_x SIP Call deadline for 19 of the 29 IAQR jurisdictions is May 31, 2004. EPA should not need to allow an additional three years past attainment deadlines to allow for NO_x hardware installations in just 10 states.

With respect to SO₂, all sources in all 29 jurisdictions are already subject to the Acid Rain Program. In addition, many Northeast states, as well as other states, are currently implementing SO₂ controls to comply with levels more stringent than the IAQR, and anticipate that affected sources will have installed SO₂ control technologies many years before the proposed 2010 deadline. These accelerated state programs -- which also include more stringent NO_x requirements -- were not considered in EPA's equipment needs assessment.

We do not agree with EPA's argument that there are not enough skilled laborers, i.e., boilermakers, to support a 2008 implementation date. First, we understand that, as of 2002, the Boilermakers Union had almost 28,000 active members. We further

understand that nearly 1/3 of the states in the IAQR are not unionized with respect to boiler makers. In addition, boilermakers from Canada could also be used to assist in installations if needed (as occurred during the NOx SIP Call). Second, installation of scrubber technology is not intrusive to the boiler, and does not require any boiler modifications, but instead, requires construction labor. Third, given that the NOx SIP Call is in effect, there should be no more than 10 states that will need NOx control technology installed between 2004 and 2007. Fourth, we understand that more gigawatts of SCR have been installed than EPA has indicated thus lessening the number of required installations. We believe there is a sufficient labor pool to accommodate the current needs for NOx and SO2 control technology installations by 2008.

The NESCAUM states agree with EPA that the SIPs for the IAQR should be due prior to attainment SIPs for ozone or PM-fine. Having the IAQR SIPs available for review will assist states in developing their attainment SIPs.

4. Reductions

We do not see why both phases of both proposed caps cannot be more stringent. The NESCAUM states cannot stress the importance of setting appropriately stringent emission caps that can act as a regulatory driver for encouraging wide-scale innovation in and commercial application of control technologies with dramatically lower implementation costs. We have seen this dynamic occur during implementation of the NOx SIP Call, whereby costs of reductions are considerably lower than initially anticipated. The IAQR should not ignore this technology-driving dynamic.

We refer you to the testimony and comments from the OTC, as well as the OTC multi-pollutant principles of January 27, 2004, and the STAPPA/ALAPCO May 2002 multi-pollutant principles, as to the extent and timing of the reductions we advocate.

The NESCAUM states strongly support year-round control of NOx emissions for purposes of fine particle attainment and to address water quality and acid rain problems caused by nitrogen deposition. Because of the importance of NOx in ozone formation, however, we also believe that it is critical to retain an ozone seasonal cap in addition to the annual cap, or in tandem with a non-ozone season cap, to ensure that the full NOx reductions needed for ozone attainment are realized when they are needed. Otherwise, it is possible that allowances banked during the non-ozone season could be used to offset control requirements in the ozone season, thereby undermining the ozone reduction benefits of the program as a whole.

We urge EPA to reconsider its metric for “highly cost effective,” which is currently at the same levels as the 1997 NOx SIP Call, to take into account the impacts of inflation and technology advances. We also question EPA’s continued reliance on this metric as determinative in its calculus of what level of transport constitutes a “significant contribution.”

We do not agree with EPA in its approach to assess the adequacy of the IAQR reductions within the context of other as-yet undeveloped or unimplemented regulations. We believe that this approach is not appropriate, as schedules, deadlines, and actual substance and language of planned regulatory actions are always subject to change – sometimes to a

significant extent. We note, for example, the more than one-year delay in implementing the NO_x SIP Call.

We are disappointed that EPA has not proposed any contingent provisions for further ratcheting down reductions in the event further reductions are needed to address transport and meet NAAQS attainment and maintenance needs for ozone and PM-fine standards. We believe such provisions, such as the backstop approach the Western Regional Air Partnership (WRAP) adopted in its visibility program (i.e., if states demonstrate after full implementation of the IAQR that remaining transport is preventing attainment, an automatic backstop takes effect, lowering the caps to a predetermined level), should be included in the final regulation, together with provisions aimed at ensuring that attainment can be maintained into the future.

Based on preliminary analyses to date, the NESCAUM states believe that the proposed levels of the NO_x cap levels are not stringent enough to adequately assist us in attaining the ozone standards. We refer you to the testimony and comments from the OTC to address this issue in greater detail. Furthermore, NESCAUM is unable to complete more detailed technical analyses for PM-fine attainment, given the short time period on which to comment on this proposal. We reserve the right to comment in more detail when the regulatory language for the IAQR is proposed and the docket re-opened.

Given the multi-pollutant programs many Northeast states have already adopted, the documented importance of caps that are set at levels stringent enough to stimulate technology innovation, and the need for ozone reductions greater than 2 ppb in order for many northeast states to achieve the 8-hour ozone standard, we see no reason why EPA cannot require more stringent and more rapid reductions than proposed.

5. Technical Analyses

The NESCAUM states have concerns regarding several aspects of the technical analyses on which the proposed IAQR was developed. Overall, we are disappointed that EPA has not conducted analyses that reflect technical progress and advances in the science and analysis of ozone transport that have occurred since 1997, when the Ozone Transport Assessment Group (OTAG) process ended. For example, much more is known about the different regimes of ozone transport, such as nocturnal jets, which can bring not only NO_x and ozone, but VOC emissions up from far distances. However, EPA has not considered such transport regimes in its analysis for the IAQR. Since OTAG, EPA has updated its modeling policies and guidance with respect to modeling (e.g., selection of episodes for the eight-hour standard), but has not followed those very protocols in analyzing the IAQR, and has limited the types of episodes it has analyzed. As a result, we believe EPA has underestimated the extent of transport. With recent advances in science, we need assurances that these updates and consideration of all relevant types of episodes are reflected in the final analysis.

We believe that the technical analyses may likely underestimate ozone and PM-fine transport. We believe the analyses are not rigorous enough to make *final* determinations about the proposed IAQR's ability to address transport with respect to assisting states attain the PM-fine or ozone standards. Had EPA conducted a more robust analysis, we

believe it would have yielded a different result, i.e., one illustrating the need for more stringent NO_x and SO₂ reductions sooner than proposed.

a. Modeling

EPA's modeling performed to date yields results that are inconclusive. We believe that the modeling analyses are not accurate enough to verify that ozone and PM-fine transport have been fully addressed with respect to states' abilities to attain and maintain those standards.

The ozone episodes used for the IAQR modeling were originally chosen from previously developed episodes for characterizing maximum 1-hour ozone concentrations in different areas of the country. In the interest of time, EPA did not adhere to its guidance on 8-hour ozone episode selection and develop new modeling episodes specific to the 8-hour ozone standard, thus there is no certainty that the three ozone episodes that EPA modeled has captured all of the pertinent 8-hour events in the OTR domain. Based on analyses by several Northeastern states, other meteorological regimes that are associated with 8-hour ozone exceedances were not considered in the modeling. This introduces the likelihood that more precursor emission reductions would be required in some areas than those proposed in the IAQR. This is of major concern since national policy is being developed without considering a complete data set as recommended in EPA's own guidance. Short of modeling additional episodes specific to the 8-hour standard, more stringent NO_x caps that provide an adequate margin of safety are one way to compensate for the uncertainties in EPA's limited modeling exercise.

With respect to the Northeast, EPA has failed to conduct analyses that take into account the unique modeling issues that arose during the OTAG process. For example, EPA's model is only set up and evaluated for areas without sharp topographical contrasts such as seacoast. This could affect the results for seven of the eight NESCAUM states.

With respect to PM-fine, we are concerned that EPA will set final IAQR caps based on one 1996 annual modeling run that was calibrated based on IMPROVE and CASTNET data. At this point in time, there is not a lot of available PM data to assess whether that modeling run is, in fact, appropriate. There were no PM-fine monitoring network results available for 1996 on which to calibrate the model, and the available monitoring data were collected from more pristine rural locations, not urban locations. The NESCAUM states believe that EPA's underlying PM modeling analysis, while most certainly directionally correct, provides an incomplete record on which to base a *final* judgment on what transport assistance states will need in attaining and maintaining the PM-fine standard. Progress toward those goals should be reassessed as better tools and data become available.

In addition, EPA conducted PM-fine modeling for the annual average, not the 24-hour average. The NESCAUM states question whether this is the most protective and appropriate approach, especially given that 24-hour PM-fine levels above 45 ug/m³ are considered unhealthy for sensitive groups. As a consequence of EPA's approach, we cannot be assured that emissions have been considered from all upwind states that contribute to downwind states' elevated daily levels. In addition, the PM NAAQS review is currently underway, and there is compelling evidence that those standards should be

even more protective. EPA's staff paper has recommended a lower PM-fine annual standard of between 12-15 ug/m³, and a range of 30-50 ug/m³ for the PM-fine 24-hour standard.

b. Air Quality Analysis

We are concerned that, in conducting air quality analyses for the proposed IAQR, EPA did not consider the data generated by the North American Research Strategy for Tropospheric Ozone (NARSTO)-Northeast study. We believe that body of work would have greatly assisted EPA in assessing the transport phenomenon, particularly with respect to areas of influence and areas of violation.

c. Inventories

The 2001 "proxy" inventory for NO_x and SO₂ emissions used by EPA as the basis for analyzing the impacts of the proposed IAQR was not prepared in accordance with standard EPA inventory protocols. It was also developed for a different geographical domain and for a different universe of sources than the proposed IAQR. While an inventory prepared in such a manner may be acceptable for performing a preliminary analysis, it should not be used as the basis for a final rule.

d. Significance Criteria

We understand that EPA has assessed significance with respect to a contribution from an individual state. However, EPA must account for situations where a number of states may each contribute to a downwind area at levels below what EPA has defined as "significant," but the net effect is that those states downwind are experiencing contribution that interferes with attainment and/or maintenance of a NAAQS. EPA must consider the combined contributions from multiple states and their impacts on a downwind area when assessing significance.

The NESCAUM states urge EPA to lower its proposed "significance" threshold of 2 ppb of ozone. EPA used 2 ppb for the less stringent 1-hour ozone standard under the NO_x SIP Call. A lower significance threshold is needed for the more protective 8-hour ozone standard.

We are also uncomfortable with the significance level criteria EPA has chosen for PM-fine (0.15 ug/m³) and believe that EPA should adopt a lower significance threshold.

6. Trading Program Design

The NESCAUM states have years of experience in implementing cap-and-trade programs, and are supportive of such programs to reduce emissions over broad geographic areas. We support EPA's choice to implement the IAQR through a trading framework, and we believe that such a program should be one of many tools used by EPA and states to address transport and attainment. We also know from experience that a cap-and-trade program must be designed and implemented mindfully. Certain checks and balances must be in place in the program design to ensure that the trading program meets its environmental and public health goals.

We therefore recommend the following:

a. Establish more stringent caps with more accelerated deadlines than proposed. In order for a cap-and-trade program to be successful, the caps must be set at levels protective enough to meet environmental goals (see sections 3 and 4, above). At a minimum, the NESCAUM states urge the adoption of national caps as proposed by the Ozone Transport Commission in its *Multi-Pollutant Strategy Position of the Ozone Transport Commissions*, of January 27, 2004. For SO₂, the interim annual cap in 2008 is 3.0 million tons (MT) and in 2012 the annual cap is 2.0 MT; for NO_x, the interim annual cap in 2008 is 1.87 MT and in 2012 the annual cap is 1.28 MT. For mercury, the interim annual cap in 2008 is 15 tons, in 2012 the interim annual cap is 10 tons maximum, and in 2015 the annual cap is approximately 5 tons.

b. Take more aggressive steps than proposed to ensure that real SO₂ reductions occur. The NESCAUM states believed that the cap levels set for the federal Acid Rain Program were initially not stringent enough. It therefore comes as no surprise that EPA claims that “the level of compliance with the Acid Rain program continues to be uncommonly high with over 99 percent of the affected sources holding sufficient allowances by the annual compliance deadline.” (see 69 FR 4574). These overly-lenient caps have resulted in a glut of 10 million banked SO₂ allowances available through the program.

EPA indicates after 1995, when Phase I of the Acid Rain Program began, “emissions increased slightly, as sources began to use allowances that they had banked before the program began, until Phase II of the program began in 2000, and emissions declined again.” (see 69 FR 4578). This underscores the need for aggressive steps to ensure SO₂ reductions occur through the IAQR program.

As currently proposed, we question whether the proposed SO₂ emission reductions will actually occur during or close to the proposed or final timeframes. Our concern is due to the ambiguous relationship between the IAQR and the Acid Rain program, the potential for “leakage” between those programs, the 10 million unused SO₂ allowances currently sitting in the Acid Rain allowance bank, and the protracted deadlines that will encourage even more banking of allowances

We do not support EPA’s proposal to use the Acid Rain Program as the vehicle to implement the IAQR program. We are concerned about the potential for legal challenges to this approach, which could also delay the implementation of the final IAQR SO₂ caps. We believe that EPA should treat the Acid Rain Program and IAQR programs as separate and distinct, and should prohibit the co-mingling of allowances between the two programs.

We urge EPA to establish more stringent use ratios than those proposed for the various vintages of allowances. We would also urge EPA to include use ratios for more allowance vintages, including one for pre-deadline vintage SO₂ allowances as well as for vintages between Phase I and Phase II deadlines. (e.g., pre-2008 ratio at 1:2, 2008-2009 ratio at 1:3, establish a 2010 use ratio, etc.). It is critical that ratios be established at levels that ensure against leakage, ensure the integrity of the IAQR cap, and ensure that

actual reductions are occurring. It is also important to be able to manage and differentiate allowance trades in and out of the IAQR region.

The NESCAUM states urge EPA to establish progressive flow control mechanisms for NO_x and SO₂ such as that successfully implemented by the Ozone Transport Commissions in its NO_x Budget Program. Flow control is needed to ensure that banked allowances do not interfere with meeting our air quality goals.

c. Establish a separate ozone season NO_x cap. See section 4. In order to ensure that NO_x reductions occur during the ozone season, EPA must establish a separate ozone season cap. Non-ozone season allowances should not be able to be used during the ozone season. There may also be a need for peak ozone day limitations to achieve the NAAQS.

d. Broaden scope of program to include non-electric generating units (non-EGUs). The NESCAUM states are disappointed that EPA's proposed program is limited to the EGU sector. Based on states' experience, the non-EGU sector (e.g., other boilers, turbines, cement kilns) is a significant source of NO_x and SO₂ emissions and should not go unchecked.

EPA indicated that it did not include non-EGUs in the proposal because it lacked data on these sources. However, in the NO_x SIP Call states, all affected large non-EGUs are required to have continuous emissions monitoring (CEMs) systems in place, and nationally, all large non-EGUs are required to have Operating permits under Title V of the Clean Air Act. With the exception of a small population of coal fired boilers in nine states, EPA should have the data it needs to characterize and assess applicable non-EGUs.

The NO_x SIP Call includes these sources, and when that program is superseded by the IAQR, these sources will be stranded. In early 2002, when EPA first engaged in discussions with the states regarding a NO_x/SO_x transport rule, EPA indicated its intent to include these sources. We urge EPA to expand the program to include non-EGU sources to ensure there will be no erosion of environmental benefits from the SIP Call, and to ensure that transported pollutants from these large sources are adequately controlled.

We also urge EPA to analyze the IAQR program specifically within the context of distributed generation sources. The impacts of not considering those sources in the rule might compromise the efficacy of the emission reductions, particularly during peak ozone days.

e. Prohibit inter-pollutant trading. EPA solicits comments on whether SO₂ and NO_x allowances should be interchangeable (see 69 FR 4635). The NESCAUM states vehemently oppose inter-pollutant trading. We do not believe, based on our understanding of the chemistry of NO_x and SO₂ in producing ozone and fine particles, and on the environmental impacts of the two pollutants (estuary nitrification, regional haze, ozone, PM-fine, acid deposition), that inter-pollutant trading should be allowed. We also believe inter-sector trading may introduce inappropriate market signals into the cap-and-trade program and result in programmatic complications. The situation is further complicated by the unusually large surplus of banked SO₂ allowances, the significant

cost differential between the market prices of SO₂ and NO_x allowances, the difficulty in attempting to quantify appropriate inter-pollutant use ratios, and our concerns about the program's ability to achieve significant ozone season NO_x reductions. We believe that inter-pollutant trading is inappropriate and should not be considered for this program.

f. Ensure appropriate transition from the OTC NO_x Budget and NO_x SIP Call programs to the IAQR program. In the proposal, EPA has not given any indication as to how it intends to transition from the OTC NO_x Budget and NO_x SIP Call programs to the IAQR program. Given that there are several states that would be in one or two of these programs but not all three, there is potential for those states and their sources to be stranded without adequate provisions or administrative support to ensure that their participation in an ozone season cap-and-trade program can continue. We expect EPA to develop clear language in the final rule that will address these issues.

g. Promote energy efficiency. We urge EPA to develop incentives for states to promote energy efficiency, such as developing and implementing output-based allocations, and developing model language and incentives for states that implement components such as set-asides for renewable energy projects. We also encourage EPA to allocate allowances to states based on an output basis, rather than an input basis.

7. Interactions with Other Programs

EPA requests comments on whether the IAQR proposal could help make progress toward “meeting the goals” of other regulatory programs. We believe that the IAQR must not *replace* or be construed to meet any goal of any other regulatory program. The NESCAUM states cannot support a presumption that compliance with the IAQR would constitute compliance with or supplant any other regulatory program; we cannot support blanket exemptions from other existing regulatory programs.

a. Acid Rain Program

The NESCAUM states are concerned about the interface between the federal Acid Rain Program and the IAQR. We discussed some of these concerns in section 6 above.

We are concerned about the potential for an in-flux of Acid Rain allowances from outside of the IAQR region, thus diluting the IAQR cap and reducing the real environmental benefits of the program. We would like to see EPA conduct a comprehensive leakage analysis and make recommendations as to how to best handle this leakage. We reserve the right to comment on this issue when actual regulatory language is proposed.

We believe that, due to the bank of Acid Rain Program allowances, the promised SO₂ reductions will not really occur by the established deadlines.

We are concerned about potential legal grievances that might result from establishing an interface between the two programs, thus delaying the environmental benefits of the IAQR program. We believe that EPA has not been clear in its preamble in laying out the specific interactions between these two programs, including states' ability to regulate allocation and retirement of IAQR allowances, and we reserve the right to comment further when regulatory language is available.

b. Mercury MACT

The NESCAUM states believe that any integrated multi-pollutant program should directly consider the impacts of regulating mercury. We believe that EPA must regulate mercury from utility boilers under Section 112 of the Clean Air Act and that any multi-pollutant program for mercury or other toxic air pollutants should supplement, not replace, the requirements of Section 112 of the Clean Air Act. Should EPA choose to continue its development of a supplemental, multi-pollutant program that includes mercury, the NESCAUM states recommend that EPA further evaluate the interactions between these two regulatory programs. For example, EPA should determine how earlier implementation of new NO_x and SO₂ caps could increase the cost-effectiveness of the imminent mercury MACT requirements and lead to the adoption of more stringent mercury caps on an expedited schedule similar to the caps and the schedules already proposed by the OTC and STAPPA/ALAPCO. EPA is well aware that important synergies already exist between available control options for mercury, NO_x, SO₂ and particles. In fact, when the most effective control technologies for NO_x, SO₂, and particles (i.e., SCR, scrubbers, and baghouses) in combination are applied to bituminous coal-fired boilers, significant mercury removal results. Better control of direct emissions of particles creates the direct benefit of reduced fine particulate emissions and opportunities to efficiently and very cost-effectively reduce mercury (with respect to injection, such as carbon) and sulfur dioxide (with reagent injection such as lime). Thus, to the extent that power plant owners are required to achieve mercury reductions under stringent mercury MACT requirements on an earlier implementation timetable than the IAQR, opportunities for cost-effective co-control of NO_x and SO₂ are likely to exist well before the proposed dates of 2010 and 2015. In addition, even deeper NO_x and SO₂ reductions and particulate emission performance standards could prove cost effective based on the concomitant reductions in mercury.

Since EPA is already in the process of performing additional analyses of its proposed mercury MACT rule, we request that EPA also reanalyze the mercury co-benefits predicted in the IAQR preamble. In addition, the NESCAUM states request EPA to provide NESCAUM copies of all the data used in its previous analysis as well as the additional data and analyses currently in progress. NESCAUM reserves the right to comment on EPA's co-benefits analysis pending receipt of the information requested herein.

While the NESCAUM states support properly designed cap-and-trade approaches for NO_x and SO₂, we oppose a mercury cap-and-trade approach, particularly given the significant concern that mercury trading could result in new mercury "hot spots" and exacerbate the "hot spots" that already exist in the Northeast.

While the NESCAUM states believe that reductions through the IAQR could assist in meeting progress toward the Mercury MACT program goals, we cannot support a presumption that meeting the requirements of the IAQR will meet the goals of the mercury MACT program.

c. Section 126

We disagree with EPA's position that it would not be required to approve any Section 126 petitions that targeted sources in the affected states if the petitions relied on the same record. Section 126's primary purpose is to provide states with expedited relief from transported pollution from significantly contributing stationary sources. Under the Clean Air Act, relief in the form of emissions limitations directly applicable to the contributing sources is mandated within three years of a finding of significant contribution. EPA's stated position is therefore contrary to the mandates of the Clean Air Act, particularly with respect to any Section 126 petitions that are filed prior to 2007, in that EPA has assured us that it will fail to provide relief before 2010.

EPA's position on Section 126 petitions could result in a scenario where states are in nonattainment of the PM and/or ozone NAAQS past their attainment deadlines, due to transport from significantly contributing sources or groups of sources, with no opportunity for the additional relief provided by the Clean Air Act. The NESCAUM states believe that EPA cannot approve a SIP that proposes to eliminate significant contribution after the attainment deadline of the affected area. We believe that such an action would violate Section 110 of the Clean Air Act if an earlier deadline is practicable.

We believe that EPA cannot refuse to rule on a Section 126 petition when the upwind SIP does not provide for elimination of the contribution prior to the attainment date.

Under the proposed IAQR, which includes a cap-and-trade program, sources may comply with the rule but, in fact, be emitting pollutants in quantities that significantly contribute to nonattainment in other areas. In such cases, the affected states would be legally entitled to relief through Section 126. As currently proposed, EPA would automatically deprive states of such relief.

d. Regional Haze

EPA solicits comment on whether the IAQR should fulfill Best Available Retrofit Technology (BART) requirements for EGUs in the affected states under the Regional Haze Program. We believe this is unacceptable. While we believe that reductions through the IAQR could *assist* in meeting progress toward the Regional Haze Program's visibility goals, we cannot support a presumption of the IAQR meeting the requirements of any other regulatory program. The Regional Haze Program is a distinct program from the IAQR, and must remain so, as its scope is much broader. The Regional Haze Program allows each state to consider all emissions sources and implement reasonable measures to reduce visibility-impairing emissions that impact Class I areas. The IAQR cannot be a blanket default for each state's emissions reduction responsibility under the Regional Haze Program.

We would like to point out that the BART program is targeted at the dirtiest and oldest uncontrolled sources. Notwithstanding a 29-state cap-and-trade program, due to the inclusion of trading, there is still the potential to have a cluster of BART sources that are still impacting Class I areas. Therefore, we believe it is important to leave BART as an independent mechanism for achieving visibility goals. It may be that equivalency determinations could be made but only on a case-by-case basis.

States are required to consider all reasonable "haze relevant" reductions before deciding on what the reasonable progress goals are. At this point in time, without having completed the engineering analyses for BART and without having contemplated other control strategies that are possible, it is premature if not impossible for the NESCAUM states or other states to say at this point what would constitute reasonable progress.

EPA also requests comment on whether the IAQR could be expanded to allow additional (non-IAQR) states to meet their regional haze obligations. We would like to remind EPA that there are other mechanisms besides BART that are needed to meet regional haze program requirements. While we cannot agree to the IAQR program being used to "meet" haze obligations, we are not averse to EPA's consideration of expanding the geographic scope of the IAQR cap-and-trade program, assuming the regional haze program - including BART requirements - remains intact. Expanding the cap might allow EPA to implement a more stringent Title IV Acid Rain Program while possibly mitigating some of the leakage concerns expressed earlier.

e. Eight-Hour Ozone Implementation

We object to the piecemeal manner in which EPA has proposed both the 8-hour ozone implementation rule and the IAQR. Absent regulatory language for this rule and the 8-hour implementation rule, it is impossible to know how the final IAQR will interact with ozone attainment SIPs. We expect EPA to provide an opportunity for public comment on the regulatory language of both rules; particularly with respect to their interaction with 8-hour attainment SIPs as well as PM-fine attainment SIPs.

Finally, we are especially concerned about EPA's planned linkages between this rule and implementing the 8-hour ozone standard with regard to use of EPA's IAQR modeling for use in attainment SIPs. We understand that EPA has proposed that marginal areas were relieved of the obligation to perform state-specific modeling for their SIPs, and may use national modeling, which could be interpreted to include the modeling used to develop this proposal or the final IAQR. As stated above, the NESCAUM states believe that this modeling should not be used to ascertain attainment or nonattainment status. As noted above, we expect EPA to provide for further information on this issue, pending release of draft regulatory language for the IAQR and final regulatory language for the eight-hour implementation rule.