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Arthur N. Marin, Executive Director

March 15, 2012

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center
1301 Constitution Avenue, N.W.
Mail Code 2822T
Washington, D.C. 20460
Attention: Docket ID No. EPA-HQ-OAR-2010-0885

Re: Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes -- Proposed Rule

Dear Administrator Jackson:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) Notice of Proposed Rulemaking (NPR), published on February 14, 2012 in the Federal Register, entitled *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes* (77 FR 8197-8209). NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

I. Percent-above-the-standard classification method

The NESCAUM states recognize that EPA has previously used the same "percent-above-the-standard" classification approach with the 1997 ozone National Ambient Air Quality Standard (NAAQS) as it is proposing for the 2008 ozone NAAQS. In the NESCAUM region, we expect most nonattainment areas to be classified as "Marginal" under the proposed approach, with minimal requirements to address continuing ozone problems. We encourage EPA to continue pursuing strategies to address the challenges faced by many nonattainment areas for which a vast majority of contributing pollution comes from sources outside the nonattainment areas, or from sources within the nonattainment areas over which the state air agencies have no regulatory authority, or for which federal regulation is far more cost-effective than state action. Such strategies would greatly assist in ensuring further progress towards cleaner air.

II. Attainment deadlines

The majority of the NESCAUM states believe that the ozone attainment deadlines are specifically set by the statutory language of the Clean Air Act (CAA), and this is most consistent

with Option 1 in EPA's proposal. EPA previously stated in a rulemaking to implement the 0.08 parts per million (ppm) 8-hour ozone NAAQS, "We do not believe we have authority to change the [ozone NAAQS] attainment dates to November or December [from June 15] of the attainment year as several commenters requested." [69 FR 23951, at 23967 (April 30, 2004)]

For Marginal areas under Option 1 in EPA's proposal, the attainment deadline would be three years after the area designations and nonattainment classifications become effective. Under EPA's schedule, the attainment deadline under the plain language of the CAA will be in mid-August 2015, with the specific day determined relative to the publication date of the Federal Register notice finalizing ozone designations.

III. Background information document: *Development of Hypothetical Nonattainment Areas for Illustrating Proposed Classification Thresholds for Areas Designated Nonattainment for the 2008 0.075 PPM 8-Hour Ozone National Ambient Air Quality Standard* (January 2012)

The NESCAUM states have concerns with the technical note cited in footnote 18 of EPA's classification proposal (77 FR 8197, at 8202). We disagree that it provides a supportable basis for EPA's assertion in its classification proposal that already adopted and ongoing state and federal pollution control programs should be sufficient to bring about attainment in roughly half the (hypothetically) Marginal nonattainment areas.

Through cooperative joint state and federal efforts, we have made great progress in reducing ozone pollution in the Northeast as well as nationally. This achievement required great effort, and we are concerned that EPA's projections in the background information document of footnote 18 will unnecessarily undercut momentum for maintaining continued progress. EPA should appropriately caveat the method used to make these projections in order to provide a more realistic picture of what the future may hold. Our specific concerns with EPA's approach for projecting ozone to 2015 are outlined in the attachment to these comments.

IV. The need for sufficient measures to address transport

EPA must ensure that states submit and implement CAA Section 110(a)(2)(D) SIP revisions to provide the reductions in transported air pollution necessary to enable downwind states to attain and maintain the 2008 NAAQS in the timeframes established by the CAA.

V. Closing comments

We urge EPA to propose and promulgate as expeditiously as possible an ozone implementation rule that provides adequate program guidance and ensures the anti-backsliding requirements of the Clean Air Act are met.

The NESCAUM states are eager to work with EPA to ensure smooth implementation of the ozone NAAQS in order to protect public health. We also note that some of NESCAUM's member agencies are submitting separate comments on their states' behalf.

If you or your staff has any questions regarding the issues raised in these comments, please contact Leah Weiss of NESCAUM at 617-416-4829.

Sincerely,

Arthur N. Marin
Executive Director

Attachment: Comments on 2015 Ozone Projection Methodology

Cc: NESCAUM Directors
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ATTACHMENT:
Comments on 2015 Ozone Projection Methodology

NESCAUM is providing additional comments in this attachment on the background information document referenced in footnote 18 of the EPA classification proposal (77 FR 8197, at 8202): *Development of Hypothetical Nonattainment Areas for Illustrating Proposed Classification Thresholds for Areas Designated Nonattainment for the 2008 0.075 PPM 8-Hour Ozone National Ambient Air Quality Standard* (January 2012)

1. EPA's projections do not account for differences in ozone season meteorology.

Our first and foremost concern with the approach EPA takes in the background document is the new starting point from which EPA projects ozone into the future. Because EPA has done no new CAMx modeling since the final Cross-State Air Pollution Rule (CSAPR), its methodology is to project ozone decreases starting with 2008-2010 design values using a pro-rated decrease in annual ozone derived from modeling done to support the earlier CSAPR.[1] The CSAPR air quality modeling used meteorology from 2005. Applying a pro-rated ozone reduction to a later design value is inappropriate when meteorological conditions between years are strongly dissimilar. That is the case here. For the later design value, 2009 was a very unusual year in the Northeast. The Northeast experienced some of the lowest 4th maximum 8-hour ozone averages ever recorded since ambient air monitoring began in the region.[2] This is good news, and is indeed largely due to decreases in ozone precursor emissions resulting from pollution reduction programs over time, such as the NOx SIP Call and more stringent tailpipe standards. We must, however, also acknowledge that we were the beneficiaries of an unusually mild ozone season due to meteorology. The use of a design value incorporating 2009 that does not account for differences in meteorology from the 2005 CSAPR modeling basecase upon which the pro-rated projected ozone reduction is derived creates an inappropriate shift to a lower starting point.[3] This likely underestimates future ozone, thus resulting in an unrealistic projection of an area's potential attainment status in 2015.

2. EPA's projections fail to account for the economic downturn during 2008-2010.

Our second concern is that the entire three-year span used for the later design value (2008-2010) coincides with the recent economic downturn. One can reasonably assume that during this time, at least a portion of the ozone precursor emission reductions realized were linked to the recession and not the result of pollution control programs. At this point, it is unclear what portion of the

[1] [CSAPR] Air Quality Modeling Final Rule Technical Support Document, U.S. EPA OAQPS, Research Triangle Park, NC (June 2011).
[2] We also note that 4th maximum 8-hour ozone averages "bounced back" in 2010 and 2011 to levels comparable to the years immediately prior to 2009.
[3] We note that EPA has previously used a statistical model to account for year-to-year differences in ozone season meteorology in evaluating historical ozone pollution trends. *See* U.S. EPA, "Our Nation's Air: Status and Trends through 2010," p. 11 (available at http://www.epa.gov/airtrends/2011/).

reductions is permanent given the slow pace of the current economic recovery. In any case, the effects of the recession were not foreseen or incorporated in the CSAPR 2005 basecase projections. As a result, it is unreasonable to expect that the ozone reductions after the 2008-2010 period will continue in a manner proportional to the earlier reductions, making the projected additional five-ninths (5/9) ozone reduction between 2010 and 2015 highly unlikely.

3. EPA's projections assume that pollution control programs will continue to reduce ozone precursor emissions on a proportionately comparable basis post-2010 as pre-2010.

While some ongoing trends will continue to reduce ozone precursor emissions through 2015, such as vehicle fleet turnover, other major pollution reductions were already achieved by 2010, and are not likely to continue at a comparable pace post-2010. As a result, pollution reductions have been "front-loaded" in part over the period from 2005-2010, and will not continue contributing to the pace of ozone reductions at the same level post-2010. An important example is the power plant reductions from the remanded Clean Air Interstate Rule, and presumably from CSAPR going into the future. The ozone season reductions in nitrogen oxides (NOx) required under CSAPR in 2012 were already largely achieved by 2010. Therefore, there is little likelihood of additional comparable reductions from this important sector occurring after 2010 that would help sustain the trend in declining ozone, absent EPA promulgating new pollution control programs capable of maintaining the rate of decline. Without such new programs, it is highly questionable to assume ozone reductions will occur at a comparable rate after 2010 as before 2010.

4. EPA has previously expressed caveats on the use of recent ozone monitoring data for elucidating trends.

None of the issues we outline above are unknown to EPA. EPA has itself made similar points during the litigation surrounding CSAPR. In its March 1, 2012 response brief, EPA stated that to the extent a downward ozone trend could be discerned from monitoring data during the 2007-2010 time period, it could largely be explained by temporary factors such as CAIR requirements, reduced emissions resulting from the severe economic recession, and by the extremely low concentrations of ozone in 2009 due to meteorological variability.[4] EPA also emphasized that, "by 2010, many States were already meeting their 2012 [CSAPR] budgets."[5] While EPA's discussion in its response brief caveated the use of these years as end points in elucidating ozone trends, those same caveats are equally applicable to the use of these years as starting points for projecting future trends.

[4] U.S. EPA Brief for the Respondents, in *EME Homer City Generation, L.P, et al. v. EPA*, D.C. Circuit, No. 11-1302 and consolidated cases (filed March 1, 2012), at pp. 75-76.
[5] U.S. EPA Brief for the Respondents, at p. 92 (*see also* footnote 53).