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Oral Testimony of Paul Miller
on U.S. Environmental Protection Agency's Proposed Rule on
Federal Implementation Plans To
Reduce Interstate Transport of Fine Particulate Matter and Ozone
(75 FR 45210-45465)
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Philadelphia, Pennsylvania

My name is Paul Miller. I am Deputy Director of the Northeast States for Coordinated Air Use Management (NESCAUM), and am speaking today on behalf of our eight Northeast state member agencies on EPA's proposed Transport Rule.

We congratulate EPA on issuing this proposed rule. We wholeheartedly support the establishment of a *process* for dealing with transported air pollution for each new NAAQS, and appreciate EPA's efforts to construct a framework. Previous attempts to address transport solely through source-specific rules have not proven effective in meeting Clean Air Act requirements, and have hindered states in their attainment planning processes. Transport continues to have a significant impact on NESCAUM states as we work to meet the NAAQS. Thus, a framework to implement transport requirements of the Clean Air Act is important.

We expect that the forthcoming ozone NAAQS revisions will be more protective of public health and welfare, and that the revised 24-hr PM2.5 NAAQS, scheduled for proposal in 2011, will reflect the available science and CASAC recommendations. Meeting current and future ozone and PM2.5 NAAQS requires highly effective national and regional solutions as the starting basis. Pollution transport is one key element that must be addressed up front so that downwind states

may commence planning to successfully address their nonattainment and maintenance problems by implementing a reasonable level of local controls with the knowledge that significant transported pollution will be eliminated.

Today, in 2010, we are discussing a proposed transport rule to address the 1997 ozone and annual PM2.5 NAAQS, and 2006 24-hr PM2.5 NAAQS. This proposal is welcomed, but it is long in coming. States are already well into planning to further improve air quality and build upon past successes that have integrated regional approaches with state-based planning.

Based on past experience, we urge EPA to promulgate future transport rules *concurrent* with finalizing new NAAQS. This would provide states with the critical information they need to develop and submit approvable SIPs within three-years after promulgation of a NAAQS, as they are required to do under the Clean Air Act. The result would be timely, effective SIPs, and emissions reductions that would ensure cleaner air to the public and the environment.

We applaud several aspects of the proposed framework. We greatly appreciate EPA's efforts to bring the timing of the transport rule's reductions in line with NAAQS attainment dates. We are pleased that EPA proposes to adopt 1% of NAAQS as the transport linkage criterion, a metric that the OTC and LADCO states collectively proposed to Administrator Jackson in September, 2009. We agree with EPA's decision not to use the rounding convention to establish 1% of the NAAQS. We support the concept of the variability provisions that limit interstate trading. We underscore the value of having tools in the Clean Air Act, like the § 110(a)(2)(D) transport

provisions, that require EPA and the states to limit pollution further to meet more protective NAAQS in light of new science.

While we are pleased with many of the strengths of the proposal, we would be remiss not to note our most serious concerns. The D.C. Circuit court ordered EPA to eliminate emissions that significantly contribute to nonattainment and/or interfere with maintenance, and to do so in a timely manner. EPA has indicated that this rule may not fully satisfy the transport requirements of the Clean Air Act for a number of states -- including some in the NESCAUM region -- and a second transport rule is planned that will complete that task for the next generation NAAQS. While we appreciate EPA's acknowledgement and future commitment, we find this aspect of the proposal extremely disappointing. We are concerned that this sets a precedent in the proposed framework that allows for postponement to an uncertain date the essential remedy that downwind areas experiencing significant upwind contribution need in order to meet the NAAQS. EPA should either design the program to fully meet its objectives or contain a requirement that significantly contributing areas be obligated and connected to the downwind areas' SIP processes; otherwise, downwind areas may be vulnerable to contingency and bump-up provisions due to significant contributions of transported pollution should a second transport rule be inadequate to meet SIP deadlines.

We recognize that variability needs to be addressed and support the concept of the proposed provisions that limit interstate trading. However, some of the implementation specifics are troubling. EPA proposes to set state-specific trading budgets at the level necessary to

significantly address transport, but then allows sources in a state to emit at the budget plus an increased variability limit, without mitigation in a specific state exceeding its budget. By allowing emissions in a state to be higher than the budget, the variability provisions weaken the state budgets that are already inadequate to fully address significant contribution. EPA should correct this by setting the state-specific budgets with an adequate margin of safety such that periods of high emissions will not exceed the levels of significant contribution. We also urge EPA to require variability provisions to take effect in 2012 rather than 2014.

We are dismayed that the NOx budgets are not set at levels stringent enough to fully address significant contribution. EPA indicates that it did not consider cost thresholds for NOx beyond $500/ton "because there are minimal additional NOx reductions until one considers cost levels higher than $2,400/ton" (75 FR 45281). We do not support EPA's proposed cost threshold, and are concerned that such a low threshold could create an unworkable regulatory hurdle for states, who have already implemented successful programs at much greater per ton costs. EPA's own cost/benefit analysis shows that significantly higher costs are cost effective based on the public health and welfare benefits. We urge EPA to adopt a higher cost threshold more aligned with state efforts.

EPA has indicated that it did not include non-EGU sources because it did not want to delay release of the rule for such an evaluation. While we appreciate EPA's efforts to release the rule as soon as possible, we are concerned that the omission of non-EGU sources compromises EPA's framework by proposing only a partial solution to transport. We expect that, when EPA

develops responses to fully address significant contribution, it will consider *all* cost-effective controls from upwind areas, and not just those from a single source sector.

We also anticipate some issues with the proposed state budgets, as we are identifying some questionable assumptions with respect to installed pollution control equipment. Our states plan to highlight these issues to EPA in written comments, and we urge EPA to make appropriate corrections prior to finalizing the rule.

The NESCAUM states urge EPA to make appropriate changes to this rule to ensure that a strong, sufficient framework exists that fully addresses significant contribution in a timely manner as per the Clean Air Act, and sets the stage for effective future transport rules that respond to future NAAQS. We look forward to EPA speedily moving forward with a next Transport Rule that addresses the upwind contributions of transport from all sources in a time frame necessary to meet the statutory deadlines with the upcoming ozone and PM-2.5 NAAQS revisions so the Northeast states can get the upwind reductions needed to protect public health and the environment. We stand ready to work with EPA on these efforts.

We will be submitting more detailed written comments into the docket. Thank you for the opportunity to testify today.