

August 1, 2003

Marianne Lamont Horinko  
Acting Administrator  
EPA Docket Center (Air Docket)  
U.S. Environmental Protection Agency, 1301  
Constitution Avenue, N. W., Room: B108  
Mail Code: 6102T  
Washington, DC 20460

Re: Comments on 68 F R 32802-32870, Docket # OAR 2003-0079

Dear Acting Administrator Horinko:

The Ozone Transport Commission (OTC) appreciates the opportunity to provide comments for docket #OAR 2003-0079 regarding the U.S. Environmental Protection Agency's (EPA) June 2, 2003 proposal entitled "Proposed Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard; Proposed Rule." The OTC is a multi-state organization responsible for developing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic region of the U.S. It is committed to finding innovative approaches that maximize public health and environmental benefits. OTC was created by Congress, and its members include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. Individual states may also be submitting comments representing their state's specific perspective.

A final rule on implementing the eight-hour ozone standard needs to provide expeditious protection of public health – in all parts of the country - and timely SIP-approved emission reductions that hold jurisdictions accountable for their degradation of air quality in downwind states. EPA's proposal does not adequately address transport and provides too many opportunities for delay in adopting emission control measures as well as options to avoid emission control measures altogether.

We believe that this rule presents a critical opportunity for EPA to address interstate transport while providing an equitable mechanism for improving air quality throughout the country over the next decade. The proposal as presented does not appear to take advantage of this opportunity. Additionally, with no specific regulatory language included in this proposal, we can only speculate which provisions EPA will ultimately adopt in its final rule and must, therefore, comment quite generally as to the proposal and the ramifications of the options presented.

Discussed below are overarching principles and recommendations we believe EPA must address in the final rule in order to assuage our concerns regarding the implementation of the eight-hour standard. We are also including our April 22, 2002 eight-hour implementation proposal to EPA as an attachment as we believe many of the points are still valid and have not yet been addressed.

### Public Health

Classification and implementation measures for the eight-hour ozone standard must be developed to ensure attainment as expeditiously as possible, so that public health protection is not delayed. OTC is concerned with policies that forego requiring specific control measures, delay the requirement of control measures, or weaken existing requirements.

We believe EPA will diminish the effectiveness of the NOx SIP Call by using Subpart 1 to designate nonattainment areas. Specifically, the preference for designating areas under Clean Air Act Title I Part D, Subpart 1 will forego application of effective, proven measures that existing non-attainment areas within the Ozone Transport Region (OTR) already have in place, such as NOx RACT. The use of Subpart 2 for classification of all nonattainment areas, with flexibility to substitute some required measures for others that achieve comparable emission reductions, is superior to the complexity of a combined Subpart 1 and 2 process. It is also more sustainable legally.

Proposed Early Action Compacts for areas classified under Subpart 1 create the potential for significant delays in SIP submittals and in achieving real reductions. Areas with Early Action Compact agreements that are not able to demonstrate attainment by the end of 2007 may ultimately have until 2020 to demonstrate attainment. SIP submittals would not be required until 2008 versus 2004. There are currently 35 areas intending to pursue Early Action Compacts - many are upwind of the OTR and therefore affecting air quality in the OTR.

Furthermore, we remain concerned about the opportunity for backsliding or disassembling of air programs in upwind areas during the transition from the one-hour to the eight-hour standard. For example, areas that were designated as nonattainment for the one-hour standard that will not be designated as nonattainment for the eight-hour standard would no longer be subject to NSR offset and major source thresholds. Additionally, irregularities in the application of conformity - such as which budget applies to a nonattainment area - should be fixed through amendments to the conformity rule and should not be addressed in this rulemaking. We also firmly believe that conformity requirements should remain in place during the transition to the eight-hour standard.

### Timing

There is an inherent disconnect between the time emission reductions addressing interstate transport are needed for attainment compared to deadlines in the proposed eight-hr implementation rule. While most nonattainment areas in the OTR have attainment deadlines between 2007 and 2013, the benefit of emission reductions from many major federal programs will not begin until 2010 and after.

For example, reductions from the Heavy Duty Diesel program do not begin to occur until 2008 with benefits of the program being phased-in in 2010 and 2012. Additionally, up to twenty years will be needed for engine turnover. And full benefits of the on-road highway Tier II program do not begin to accrue until 2004-2007.

OTC cannot rely on reductions from legislation that has not yet been enacted. Even if we could, the timing of the Clear Skies Act - that EPA cites as further evidence that transport has been addressed "up-front" - does not provide any reductions in the timeframe needed by the Mid-Atlantic and Northeast region for attainment. Phase I reductions achieved in 2010 are roughly equivalent to that of the NOx SIP Call – but on an annual basis, and reductions from Phase II do not occur until 2018 or beyond, and would therefore provide no additional public health benefit within the attainment timeframe.

### Accountability and Fair Share

We agree that areas that violate the eight-hour ozone standard must be held accountable for their emissions that contribute to unhealthful air. Upwind areas that contribute to unhealthful air quality in a downwind region must also be held accountable for their impacts by implementing similar control programs as the downwind areas they impact. This should clearly include areas that may not be classified as non-attainment, but which nonetheless demonstrably contribute to downwind air quality problems. To effectively reduce ozone levels and address ozone transport, EPA's eight-hour implementation policies must be consistent with current scientific knowledge and principles of economic efficiency.

Options contemplated for flexibility offer few mechanisms for accountability and few provisions actually ensuring reductions. For example, the Transitional NSR program and Community Development Zone designations provide little detail on how reductions will be achieved – or growth in emissions tempered. This provision sacrifices accountability for flexibility.

The 15% Reasonable Further Progress requirement, already implemented by areas in the OTR, remains a valid mechanism for ensuring steps toward sufficient VOC reductions. It is critical, however, that EPA establish a valid baseline from which reductions are made to create a level playing field.

Furthermore, the NOx SIP call – credited as taking care of interstate transport - cannot be a surrogate for the application of Reasonably Availability Control Technology (RACT) requirements on a facility by facility basis. Proposed options in Clear Skies legislation that accept cap and trade programs as a de facto RACT are not adequate. RACT is intended to be a benchmark for control technology at individual stationary sources, not a level of regional reductions.

We believe that, if need be, there are legal options available to the OTC to hold upwind areas accountable for their contribution to downwind nonattainment areas, should EPA fail to do so in this rule. Section 176(a) allows the OTC to expand the OTR to include areas contributing to interstate transport of pollutants within the region. By definition, this would require emission controls delineated under Subpart 2 be applied throughout any newly expanded OTR. We would, of course, prefer that our concerns about the accountability of areas that affect air quality in the OTR be addressed in the eight-hour implementation rule rather than by expansion of the region.

## Conclusion

Addressing ozone transport in the implementation of the eight-hour ozone standard is critical. Notwithstanding legal challenges to, and delays in, implementing the NOx SIP Call and the Section 126 petitions, states in the Northeast and Mid-Atlantic region have one-hour ozone SIPs in place. We have been actively pursuing and implementing additional emission reduction programs to meet and maintain the one-hour ozone standard and to make progress toward the eight-hour standard. Meanwhile, many areas outside of the OTR have delayed implementing any control measures whatsoever. This continues to unacceptably stymie our efforts to achieve healthful air for our citizens. We urge EPA to ensure this rule helps rather than hinders the responsible efforts of the OTC states to protect our citizens from unhealthy air.

Sincerely yours,

Jan H. Reitsma,  
Chair

cc: All OTC Members  
Christopher Recchia, OTC  
S. William Becker, STAPPA/ALAPCO  
Rob Brenner, EPA  
Arthur Marin, NESCAUM  
Lydia Wegman, EPA  
Susan Wierman, MARAMA