

Multi-Pollutant Strategy Position of the Ozone Transport Commission

A. Introduction

This is the Ozone Transport Commission's (OTC's) recommended position on multi-pollutant legislation for the EGU sector, or any legislation or rulemaking that may intend to implement these provisions by rule or law.

Using its multi-pollutant statement of principles as a framework, the OTC has developed broad consensus on nitrogen oxide (NO_x) reductions needed from the power sector for ozone attainment in the 2010-2013 timeframe, as presented in our adopted Resolution 03-01. The resolution, attached, also acknowledges that broad emission reductions must be made across other sectors and in the context of multi-pollutant controls.

1. Supporting the Multi-Pollutant Approach

- The OTC Supports a multi-pollutant approach for the electrical generating (EGU) sector (as well as other sectors) as an efficient means of gaining necessary emission reductions in ozone and its precursors from specific sources of emissions. Whether, how and when other pollutants are controlled is directly relevant to OTC's mission to address the transport of ozone and its precursors, and to plan for, achieve and maintain attainment.
- The OTC has approved a set of multi-pollutant principles, and adopted resolution 03-01 regarding multi-pollutant control from the EGU sector.
- The OTC acknowledges that additional emission reductions of ozone precursors beyond those obtained through existing or proposed rules or legislation are needed in order to attain the health standard. These reductions are also needed sooner than presently proposed to meet statutory deadlines. Multi-pollutant legislation designed to achieve attainment by the dates specified in the existing federal Clean Air Act (CAA) would be a helpful and efficient way of reaching attainment.

2. Attainment Dates and Standards

- The OTC does not support any legislation or rule that seeks to:
 - a) Relax the 8-hour Ozone Standard;
 - b) Extend attainment dates for meeting the standards beyond those dates established by the CAA; or,
 - c) Change the designation of an area as a means to allow more time for attainment than would otherwise be allowed by an area's measured air quality.
- The OTC will not support any legislation or rule that fails to hold upwind areas and sources, whether or not those areas are in attainment, accountable for any significant contribution to downwind area non-attainment. The OTC supports legislation or rules

that require emission reductions from upwind areas and sources in a manner and timeframe that allows attainment of the standard in the Ozone Transport Region (OTR) by the required dates if not sooner.

3. Carbon and Greenhouse Gases

The Northeast and Mid-Atlantic states recognize that greenhouse gas emissions have become a significant issue and believe it is best addressed at the national level. Many of the states in our region have already implemented or plan to implement measures to reduce greenhouse gas emission and have joined together to implement regional greenhouse gas reduction initiatives.

The CAA expressly authorizes the OTC to recommend and develop strategies to reduce nitrogen oxides and volatile organic compound emissions as precursors to ozone. Our states also have roles with regional planning organizations to reduce regional haze and particulate emissions. Pollutants contributing to these problems are in large part a function of combustion for energy production. Accordingly, we recognize the importance of addressing efficiency as a significant element in reducing all these emissions. In considering multi-pollutant legislation, regulatory and operational efficiency are also critical to effective environmental programs. Addressing this would enable electricity generators and other affected sectors to have a higher level of certainty and predictability to optimize investment decisions regarding pollution controls and operating procedures. Therefore,

- The OTC encourages Congress to act on a national program or programs promoting efficiencies that address emissions such as carbon dioxide and other greenhouse gases in a cost-effective, coordinated, and streamlined manner.

4. Use of Pending Legislative and Regulatory Proposals as a Framework for Discussion

- The OTC will support provisions of a Clear Skies Act or other multi-pollutant legislation that reflect the positions identified herein;
- The OTC will support provisions of rulemaking and rules that contain the positions identified herein.

5. The Numbers

- The OTC supports a Cap and Trade Program for NO_x, sulfur dioxide (SO₂) and other non-hazardous pollutants.
- The OTC does not support cap and trade for Mercury (Hg) beyond a facility's borders. The OTC supports a bubble concept for mercury at a given facility.
- In addition to these caps, the U.S. Environmental Protection Agency (EPA) should also set a seasonal Eastern NO_x cap to address regional ozone as a subset of the national cap.

| | National Cap Numbers |
|-----------------|--|
| SO ₂ | <ul style="list-style-type: none"> • 2008: 3.0 MT <i>interim</i> • 2012: 2.0 MT |
| NO _x | <ul style="list-style-type: none"> • 2008: 1.87 MT <i>interim</i> • 2012: 1.28 MT |
| Hg | <ul style="list-style-type: none"> • 2008: 15 ton <i>interim</i> cap • 2012: 10 ton maximum cap • 2015: Approximately 5 tons per year |

- Phase I (2008) mercury reductions are generally considered to be the achievable through the application of SO₂, NO_x and particulate matter (PM) control, acknowledging additional reductions being required by several OTC state multi-pollutant programs.
- Phase II (2012) mercury reductions are achievable through further application of SO₂, NO_x and PM controls needed to achieve the respective caps and standards and application of some additional mercury-specific control measures.
- Phase III (2015) mercury reductions are to be set by a performance standard to be identified no later than 2012, and are generally expected to require additional mercury-specific control technology applications beyond those required in 2012.
- Banked SO₂ allowances from Title IV trading program must expire by 2010. There would be a transition to a new banking system reflecting the cap and trade approach contained in this proposal.
- Flow Control for NO_x and SO₂ (such as that successfully implemented in the OTR through the NO_x Memorandum of Understanding for NO_x) is needed to ensure banked allowances do not interfere with meeting our air quality goals.

6. Applicability

- The OTC recommends and prefers that the multi-pollutant approach address other large industrial boilers at the same time, appropriately modifying the emission caps accordingly.
- The OTC will support addressing only EGU units at this time at the cap levels presented in the table above.
- The OTC expects to address other sectors not addressed in a multi-pollutant bill or rule as necessary to assure attainment is achieved.

7. States' Rights

States have an obligation to protect the public health of their citizens and to meet the requirements of numerous federal environmental regulations. The Clean Air Act provides a number of tools allowing states to address air quality problems unique to the state as well as regional problems, including the transport of air pollution from upwind areas and sources.

- Any multi-pollutant legislation enacted must retain a state's ability to protect the health of its citizens by maintaining tools created under the Clean Air Act to address regional ozone problems and air pollution transported from upwind areas and sources.
- The OTC may develop and implement more stringent caps and other provisions as necessary to attain our air quality goals.

B. Other Issues Potentially Associated with A Multi-Pollutant Approach

1. New "Transitional" Designations

- The OTC does not support establishment of "Transitional Areas."
- As with non-attainment areas, the OTC does not support extending attainment deadlines for "Transitional Areas."

2. Transport

- The OTC supports a requirement that all source categories significantly contributing to an area's non-attainment be required to implement controls and programs at least as stringent and on the same timeline as those being implemented by the state in which the non-attainment occurs.
- The OTC will not support EPA approval of any State Implementation Plan (SIP) for any state that does not adequately reduce any significant contribution to downwind non-attainment from its sources.
- The OTC supports the incorporation of the concepts of "area of violation" and "area of influence" as a replacement for nonattainment area definitions as these concepts more realistically acknowledge the role of transport and should be designed to facilitate the attainment of the ozone air quality standard.

3. Section 126 Petitions

- The OTC does not support reducing states' section 126 petition authorities, or EPA's obligation to respond to any and all petitions in a timely manner as presently required by the CAA.
- The OTC objects to any requirement that states conduct or submit cost/benefit assessments as a precondition to filing any petition or EPA's action on that petition. The

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OTC does not support any economic test or analysis that makes it more difficult for EPA to impose corrective requirements on upwind sources shown to significantly contribute to downwind non-attainment.

- The OTC does not presume that any cap and trade program can fully address the local impacts of transported air pollution, and as such believes the existing Section 126 petition authorities are both necessary and appropriate.

4. EPA Bump-up Policy

- The OTC does not support use of EPA's bump-up policy as a means to simply delay attainment dates for non-attainment areas, or for its use in the absence of a corollary upwind attainment strategy. Any bump-up policy should not be used as a rationale for upwind sources to delay work required for them to reduce emissions significantly contributing to downwind area non-attainment.

5. Right to Regulate

- The OTC objects to any provisions of law that preempts states from taking action to regulate new or existing sources, or that precludes states from being more restrictive than the federal government as presently allowed under the CAA.

6. Alignment of Attainment Dates

- The OTC supports EPA's efforts to align the PM fine and 8-hour ozone attainment dates within existing timeframes, so that the SIPs may be concurrently submitted and implemented.

7. Other

- The OTC objects to restricting the scope of regional and source specific haze considerations to sources within 50 km of Class I areas rather than a distance supported by science.
- In addition to provisions of rule or law that require existing facilities to upgrade pollution controls when initiating a major modification, The OTC supports the additional requirement that existing sources conduct a Best Available Control Technology (BACT) analysis when a facility reaches forty (40) years of age, and that it be required to implement BACT or equivalent controls that time.