OZONE TRANSPORT COMMISSION

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July 26, 2004

The Honorable Michael O. Leavitt
Administrator
Air Docket
Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attention: Docket ID No. OAR-2003-0053

Re: Comments on Supplemental Proposal Published June 10, 2004 in Federal Register Volume 69, Number 112 page 32684 for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone, Docket ID No. OAR-2003-0053

Dear Administrator Leavitt:

The Ozone Transport Commission (OTC) provides these comments to Docket ID No. OAR-2003-0053 in response to U.S Environmental Protection Agency's (EPA's) supplement to its proposed Interstate Air Quality Rule (IAQR) , originally published January 30, 2004. This supplemental rule, is entitled "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)."

General Comments

As you are aware, the OTC is a multi-state organization[1] created under the Clean Air Act (CAA) responsible for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions, and charged with commenting to EPA on matters affecting the interstate transport of ozone-producing pollutants. We take this responsibility seriously, and have done our utmost to provide EPA with thoughtful, well supported alternatives to its proposed caps and several key aspects of its approach. OTC wants EPA to be successful with this rulemaking, but to be so, the rule must address our serious, demonstrated concerns about EGU sector upwind transport of pollutants, and achieve very significant reductions from this sector - adequate enough to enable us to achieve attainment of the ozone standard through aggressive, but feasible, local controls. Unfortunately, the proposed pollution reductions and timing of them fall short of our demonstrated need for reductions, and so the rule must be changed if it is to be acceptable.

This is not just a numbers exercise to change map colors and check off a box. This attainment goal is to achieve a health-based standard that is well-founded and long overdue. For the OTC, this means the difference between 50 million people breathing clean air or not. Our states represent 25% of the country's population. We have executed a cap and trade program within the OTR, successfully reducing our NOx emissions from EGUs by over 70%.

[1] Our members are: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia.

We know what is achievable and we know what is necessary from this sector to be able to meet the health-based standard. We are counting on EPA to implement a rule that achieves these reductions, and does so on time.

This rule is significant because of both its positive ability to achieve strong national reductions, and its negative potential to hamstring states' pursuit of air quality improvements to protect the public health of their citizens. As previously expressed, our member states simply cannot achieve attainment of the eight-hour ozone standard through local reductions alone; local and regional reductions must come in addition to, not in lieu of, very significant upwind reductions. States must also retain the right to pursue additional reductions to protect the health of their citizens availing themselves as warranted of all the tools provided under the Clean Air Act. Even with these capabilities in tact, some states will actually be prevented from seeking additional reductions because of limitations on their ability to impose requirements more stringent than federal regulations. For this reason, and because interstate transport of pollutants is a national problem, EPA must act and must do so with a strong rule.

Achieving the federal, health-based eight-hour ozone standard, on time, is of critical concern to the OTC member states. Our modeling demonstrates that significantly greater reductions from EGU's are needed to allow member states to achieve attainment of the standard. When we said we needed reductions in a timely manner, as part of an overall attainment strategy, we didn't expect the response to be a proposal to relax the timelines for attaining the standard. Our members have time and time again relayed that delay is neither desired nor acceptable. As of this writing, no OTC member state has requested a "bump-up," believing the delay in attainment deadlines to be unsupportable. EPA must use this rule to address the EGU sector and transport of pollutants decisively, and with a substantial portion of the reductions in place by 2010.

A new trading scheme should not come at the expense of successful state and regional programs already in place. It is imperative that non-EGU sources, including large industrial boilers and cement kilns that have demonstrated considerable emission reductions and compliance with a cap and trade program for four ozone seasons, not be segregated from this program. Many of the non-EGUs participating in the OTC NOx Budget Program and NOx SIP Call have been providing annual NOx emissions data since 2000. EPA should include non-EGU industrial units in this rule.

Member states have invested significant time in developing a common position on timing and level of reductions needed to attain the eight-hour ozone standard as part of a comprehensive multiple pollutant emission reduction approach. This past year we have invested significant resources into delineating the extent of reductions needed using the CALGRID (California Gridded) air quality screening model and we have performed multiple Integrated Planning Model (IPM) runs demonstrating the feasibility of our proposed caps. On January 27, 2004 the Commissioners made their states' needs clear in OTC's adopted Multi-Pollutant Position. Since then, we have developed comprehensive comments documenting our needs and providing critical input on how a transport rule could work. We are counting on EPA to make the changes necessary to ensure this rule is effective and accomplishes the expected outcome – attainment of the standards, everywhere, and on time.

Below, we provide comments on specific provisions of the supplemental rule that build on the extensive comments already submitted to EPA. These are meant to augment the comments and data previously submitted.

RULE DEVELOPMENT AND PROCEDURE

EPA's approach to this rulemaking and its self-imposed schedule has left little room for thoughtful consideration of comments provided to date, and uncertainty as to how or if EPA will incorporate our states' input. It is our understanding that EPA intends to have a final rule in effect by the end of the year – meaning that a final rule will be published in early Fall. We also understand that there will be no model rule, similar to that developed for the NOx SIP call, clearly delineating the requirements and provisions of the proposed trading program. There are many unanswered questions remaining in this proposal in addition to unmet needs. A thoughtful and deliberative process would have allowed for a more logical progression in the development of this program.

There also appear to be substantial changes from the proposed rule which warrant separate consideration and additional comment periods under the Administrative Procedures Act. For example the proposed changes to the determination of significant contribution (*32702*) are without precedent. We feel that there are substantial changes proposed in the supplement that require more time for consideration – and may, in fact, warrant an additional proposal to satisfy procedural obligations.

IMPLEMENTATION

EPA recommends that if states find it difficult to adopt plans showing attainment for the health-based 8-hour ozone PM2.5 standard by their initial attainment dates, they should choose to be reclassified to higher classifications with longer attainment dates (*32690*). EPA suggest that if an area is reclassified from "moderate" to "serious" under the 8-hour ozone requirements it would have a compliance date of 2013, which could be met by the proposed rule if the area receives a one-year extension. Additionally, it is offered that even if after this reclassification, there is still the option to request one-year extensions.

Attainment of the eight-hour ozone standard is not simply a regulatory requirement, but also an obligation by states to protect the health of its citizens. Members have clearly expressed the extent of regional reductions needed from EGUs and large industrial sources as part of an overall attainment strategy. Further, given the proposed caps, a reclassification or "bump-up" to the next higher category would still not allow for attainment. Member states would not begin to see real benefits until the second phase of reductions in 2018.

Given the federal mandate under the Clean Air Act to attain the ambient air quality standards "as expeditiously as possible", the timing of these reductions should be based on the greatest reductions that are possible while still maximizing benefits relative to cost. The suggestion of adjusting the attainment deadlines as the solution to insufficient reductions is illogical and seems to be the result of an unwillingness to require the real

reductions necessary to ensure the health-based standard is met, and is met on time. It reduces this program to a feel-good bureaucratic exercise that on paper reduces emissions by many many tons, but when all is said and done, and emission banks and off ramps are accounted for, may not achieve much, and will most certainly codify an unsafe and unsatisfactory air quality for a long time to come.

Our analysis demonstrates that we must achieve significant emission reductions from the power sector - comparable to that proposed in EPA's straw proposal - in addition to stringent local and regional emission controls, to make meaningful progress toward attainment in the mandated 2010-2013 timeframe.

Regarding the proposal that emission reduction requirements begin at the start of the calendar year and the potential partial year allocation for the first year of the program (*32690*), further explanation is warranted to justify this approach. There is no detail provided regarding what the effect will be on total allowances available at the beginning of the program. With delay of the NOx SIP Call program, for example, sources were allotted a "windfall" of allowances by virtue of having an extra month of allowances in addition to any state specific set-asides. This should not be repeated.

We also feel that is necessary for EPA to explain how the timing of credit for emission reductions (by attainment year or calendar year) will affect states' attainment demonstrations. Given that the true "attainment year" can be a full year before the attainment deadline, it is important to consider how a calendar year's worth of reductions that do not align with an attainment years' worth of reductions may affect the timing of a states' attainment demonstrations.

Significant Contribution

We disagree with the test proposed by EPA for significant contribution. The threshold of at least a 0.5% percent contribution is arbitrary and capricious. We further disagree with the incorporation of this test into the "highly cost effective" component of the "significant contribution" test. EPA proposes that the test should be incorporated as a part of the "highly cost-effective" component of the "contribute significantly" requirement of CAA section 110(a)(2)(D) when a multi-State call for SIP revisions to address interstate transport of air pollution is at issue (*32720*).

Not only is this test arbitrary, but it does not have a foundation in the Clean Air Act. This rulemaking should not attempt such a significant redefinition within the proposal for a multi-pollutant emission trading program. Furthermore, such a redefinition would appear to presuppose the ability of states to seek relief from upwind sources contributing to downwind attainment that goes beyond this proposal.

Importantly, in the example provided as part of this "suggested approach," EPA goes on to state that:

> Since there are over 3,000 counties and parishes in the lower 48 States, basing the highly cost-effective control levels in the proposed CAIR on EGUs would meet this 0.5 percent criterion.

In addition to setting a highly arbitrary criterion, EPA has conveniently decided that this proposed rule would satisfy that threshold.

Finally, while EPA admits that states retain the authority to decide which sources would need additional reductions to achieve attainment, they describe those authorities as such:

> Other CAA, mechanisms, such as SIP disapproval authority and State petitions under CAA section 126, are available to address more isolated instances of the interstate transport of pollutants.

This extemporary analysis appears to serve no purpose but to declare this proposal as already satisfying downwind nonattainment area's threshold for contribution of nonattainment by upwind sources – which would presuppose any section 126 finding. Furthermore, this narrative would appear to consider this valuable state tool as only useful in leveraging reductions in very isolated cases. We disagree with such an assessment and believe that the history of the one-hour section 126 filings by OTC member states and the subsequent NOx SIP call trading program offer a significant example of their importance.

We restate our fundamental position that if cost is to be considered in determining whether a source is significantly contributing to downwind non-attainment problems, the relative cost of reductions in the originating upwind area must be weighed against the cost of further local reductions in a downwind nonattainment area, before the downwind area is required to reduce emissions further and before the upwind source is relieved of any accountability. We believe that "significant contribution" from upwind areas is a function of the relative level of pollution controls sources apply in upwind as compared to downwind areas, and the cost to the downwind area because of far-reaching transport of air pollution, complex meteorology, and the close proximity of nonattainment areas in the OTR. An upwind area's contribution should be considered significant if the area could reduce ozone in a downwind area at a cost less than that achievable through local controls in the downwind area.

COORDINATION WITH OTHER PROGRAMS

We are appreciative of EPA's efforts to address other, overlapping, regulations for NOx, SO2, and regional haze. Conceivably, a multi-pollutant program would build on the success of previous programs without creating redundant or inconsistent regulations that are burdensome on industry sources and state regulators alike. This proposal fails on these marks.

For this program to be part of an attainment solution for the northeast and mid-Atlantic states, not only are more significant, timely reductions needed - but the emission reductions for this program cannot come at the expense of existing programs. The trading program proposed in the SNPR does not ensure against ozone season backsliding, and would supplant basic controls that would otherwise be installed at older, larger industrial sources.

Ozone Season Programs

The supplemental proposal clarifies that if a State chooses to obtain some or all of its required emission reductions from non-EGUs, EGUs in that State could not participate in the EPA administered multi-State trading programs (*32692*). EPA is proposing to continue administering an ozone season only NOx cap-and-trade program for non-EGUs included in the NOx SIP Call (*32701*).

OTC has gone on record in support of a seasonal cap for NOx emissions to achieve additional ozone season reductions beyond the NOx SIP call and to prevent summer time allowance dumping from off-season reductions. While it is important to segregate currencies for the ozone season, it is counterintuitive to exclude certain sources already participating in a successful program.

For some OTC states, these sources represent over 10% of the total sources participating in NOx SIP Call trading. There are already at least 150 facilities participating in ozone season trading under the NOx Budget Program with a track record of over 3 years of data. Many of these sources are required to provide annual continuous emission monitoring data the same as EGUs. There is not sufficient justification for excluding non-EGU units from the annual NOx program, or to force the non-participation of OTC states themselves from the program if the states wish to continue the successful model already in place.

Trading under the CAIR program can incorporate NOx SIP Call sources while keeping the allowances separate. The budget can be calculated to include EGUs and non-EGUs while achieving significant regional reductions. This program can build on the success of the OTC NOx Budget Program and NOx SIP Call by utilizing the significant data already collected. In alternate, EPA should use the same methodology to include non-EGUs for annual trading as that developed for including non-EGUs in the budget.

Emissions Trading Under the Proposed CAIR Relating to Regional Haze

EPA is proposing that BART-eligible EGUs in any state affected by CAIR may be exempted from BART for controls for SO_2 and NOx if that state complies with the CAIR requirements through adoption of the CAIR cap-and-trade programs for SO_2 and NOx emissions (*32702*).

Cap and trade programs, such as that offered through the Clean Air Interstate Rule, should not be used to supercede the installation of minimum control technology on all potentially BART-eligible sources. While there would likely be valuable reductions toward the 2018 visibility goals under a cap and trade program for SO_2 and NOx emissions, these reductions should happen in addition to, rather than in lieu of, installation of control technology at all eligible sources.

BART represents an important component of the overall emission reductions that will be needed to achieve reasonable progress. It is not designed to be, nor has it been demonstrated to achieve all of the reductions needed to address interstate contribution of visibility degradation in Class I areas. Further, the CAIR rule does not satisfy the requirement “that the regional haze controls be installed as expeditiously as possible, but in no case later than…” 2018

This relationship is similar to Phase I of the OTC NOx Budget program which required the installation of RACT on EGUs and large industrial boilers greater than 250 MMBtu/hr to establish a benchmark control level. It was only after RACT was installed at all participating sources that additional reductions were pursued using the flexibility of a cap and trade program. In fact, the ability to generate credits after installation of RACT gave the added incentive to companies to install the best technology available so that they could over-control and earn reduction credits for future use, use elsewhere or for sale to recoup cost of the equipment.

TRADING PROVISIONS

Proposed SO_2 State Emission Budget Methodology

EPA is withdrawing the proposed flexibility options for retirement of Title IV allowances and is re-proposing that all States use the same retirement ratios for Title IV allowances (*32687*), because the flexibility could lead the level of the regional cap on emissions to increase or decrease, depending on which individual States tightened the retirement ratios.

In the January 2004 proposal, EPA proposed that, to meet the 65 percent reduction a source would have to retire allowances at a ratio of 3-to-1. EPA is now proposing two alternatives (*32686*):

1. A new ratio of 2.86-to-1
2. A 3-to-1 ratio, allowing States to convert additional reductions into allowances

We believe there are serious legal and logistical complications from linking the Title IV Acid Rain trading program and the proposed allowance trading program under CAIR. First, it is questionable whether EPA can make changes to this legislative program through regulatory mechanisms. More importantly, given that additional reductions that are needed, it makes no sense to take on the large bank of allowances created by a trading program which provided admirable, but insufficient reductions.

Regarding the retirement ratio, our modeling has demonstrated that one of the biggest impediments to achieving significant reductions early in the program is the glut of banked allowances coming from the Title IV program. Our modeling also demonstrates that a discount ratio employing a mechanism such as a flow control could achieve greater reductions in Phase I of the program.

This makes it difficult to understand the logic of a 3:1 discount ratio that only applies to a limited amount of banked allowances, and even more difficult to understand reducing the ratio to the proposed 2.86:1 ratio. With the size of bank Title IV allowances going into this program, the size of the cap is largely inconsequential during the first phase of the program. In not addressing this issue, EPA not only delays the glide path of reductions toward the end of the program, and well beyond the attainment deadlines of most all states, but creates the potential of “hotspots” where many sources will have no incentive to seek additional reductions when allowances are abundant.

Finally, this program provides an opportunity to reward efficiency in allocation methodology. By providing an output-based methodology, there is an incentive for

energy efficiency and fuel the incorporation of renewables into the fuel generation mix will. We recommend that EPA incorporate output based standards into allocation methodology.

Banking

EPA is proposing that banking of allowances after the start of the CAIR NOx and cap-and-trade programs be allowed with no restriction (*32714*). Further, EPA is proposing to not use flow control in order to keep compliance with the CAIR cap-and trade programs as "simple and easy as possible."

The efficacy of the cap that EPA proposes in the CAIR is highly influenced by the sizeable bank of Title IV allowances that have accumulated to date. This can only be ameliorated through a more stringent cap level, some method for graduated use of the banked allowances, or both. Our preliminary modeling demonstrates that without a mechanism for addressing excessive banked allowances, there is little incentive for early reductions and little chance of actual emissions coming close to meeting the cap until 2020.

OTC strongly recommends the use of progressive flow control as a means to moderate the banked allowances. It is already in place, is accepted by industry, and demonstrated in the modeling to achieve desired results.

EMISSIONS INVENTORIES AND DEMONSTRATING REDUCTIONS

This proposal offers two alternative methodologies for calculating the 2010 and 2015 emissions reductions from non-EGUs which can be counted toward satisfying the CAIR (*32693*), yet EPA offers little explanation or analysis demonstrating the practical implications of these different methodologies. Further, this presents a new provision not offered in the proposed rule. Because EPA has not provided sufficient analysis and there is no time available for separate analysis and examination, we feel it is inappropriate to propose an alternate methodology for calculating emission reductions at this time. If EPA believes this is a significant provision, it should be proposed as a separate rulemaking with adequate analysis.

Finally, regarding the provisions for consolidated emission reporting requirements (*32696*), we defer to STAPPA/ALAPCO's analysis and recommendations. The implications of these changes are national in scope and STAPPA has led the effort in coordinating input on these provisions.

CONCLUSION

We appreciate the importance of this rule, and its ability to make things better by advancing our state's attainment goals. We are also keenly aware of its potential to lock-in an unacceptable level of emission reductions from this sector, thereby setting states back in their programs and for gaining needed reductions from the EGU sector. We very much want EPA to be successful in this rule, and to make the situation better.

To accomplish this, we believe EPA needs to:

- Reduce the caps and shorten the timeframes as OTC proposes;
- Add in Non-EGU boilers – or at a minimum, do not preclude participation of states that do;
- Control the use of the banked SO2 allowances through an even lower cap, or through a mechanism like progressive flow control;
- Avoid introduction of new concepts at this phase of the rulemaking, that legitimately require more thought, explanation, public comment and administrative procedure.
- Apply this program to any state whose sources contribute to greater than 1% to the ozone problem in any non-attainment area;
- Define "Significant Contribution" in a way that hold upwind sources accountable for their emissions and makes them control those emissions whenever it is cheaper for them to do so than the downwind affected area sources;
- Retain state's rights throughout this rulemaking;

If EPA does these things, this rule can be the best effort to date to address the interstate transport of pollutants and finally deal with the largest sector responsible for downwind non-attainment problems.

If EPA goes forward with this proposal in its present form, the result will be unacceptable to the OTC states, and would fail by EPA's own admission to address the significant contribution of upwind sources to downwind non-attainment in a timely manner. The power generation sector will have gained nothing of the certainty and predictability it purportedly seeks.

OTC thanks EPA for its efforts to date, and trusts that with the information we've provided, and the proposal we've offered, EPA will choose to make this a program that advances, rather than sets back, our efforts.

Respectfully submitted,

Christopher Recchia
Executive Director
Ozone Transport Commission

Cc: OTC Commissioners
Jeffrey Holmstead, Assistant Administrator, OAR