

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



July 23, 2004

U.S. Environmental Protection Agency
Air Docket, Clean Air Interstate Rule
Mail Code 6102T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attention: Docket #OAR 2003-0053

Re: Connecticut DEP Comments on Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone

Dear Docket Administrator:

The Connecticut Department of Environmental Protection (CT DEP) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed rulemaking, entitled *Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone* (Interstate Transport Rule) (69 Fed. Reg. 32684, June 10, 2004). Although CT DEP recognizes EPA's efforts to reduce interstate transport through the Interstate Transport Rule, CT DEP has serious concerns regarding the timing, level, and manner of the proposed reductions.

The Clean Air Act framework of attainment provisions is built upon the premise that EPA sets the health based standards to be achieved and then mandates legally binding state plans. Since 1974 Connecticut has been actively working on attainment plans and has had considerable success developing and implementing programs that achieve measurable results and public health benefits. Connecticut must rely on EPA to effectively regulate mobile sources and upwind emissions. As partners in the effort to protect the citizens of Connecticut from unhealthy air quality, we need EPA to develop an Interstate Transport Rule that provides the necessary reductions to achieve attainment goals no later than 2010 for ozone and PM_{2.5}. The very need for the Transport Rule is to achieve attainment that will not occur without a strong EPA-state partnership.

As CT DEP stated in the comments dated March 30, 2004 (Enclosure A), on EPA's *Proposed Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone* (Interstate Air Quality Rule or IAQR), "***Connecticut will not be able to meet the 8-hour ozone NAAQS unless upwind reductions occur sooner and deeper than proposed by EPA in the IAQR***" (emphasis added). We reiterate and incorporate those comments here to assure their inclusion in this docket. Clearly, EPA has established the 8-hour ozone NAAQS to protect public health. CT DEP's position, as supported by EPA's own

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modeling, is that the currently proposed emissions reductions are neither timely enough nor stringent enough to allow CT DEP to develop and implement a successful 8-hour ozone attainment plan, even in conjunction with further in-state reductions. EPA's suggestion that states in Connecticut's predicament should seek a higher non-attainment classification and/or request up to a two-year extension from EPA is unacceptable from a public health and public policy perspective. More time for a state to achieve attainment may remove the threat of federal sanctions but does not remove the threat to public health nor provide the tools to achieve our goals even by a later date. Alternatively, EPA is urged to adopt and implement the approach identified in the Ozone Transport Commission's (OTC) Multi-Pollutant position dated January 27, 2004. That position is supported by Connecticut and incorporated by reference here (see Enclosure B), as ensuring that upwind reductions occur deep enough and soon enough so that Connecticut's citizens will have the same opportunity as other Americans to breath clean air.

Although we are committed to protecting the public health and reducing levels of PM_{2.5} in the air, CT DEP would like to reiterate that EPA's potential designation of New Haven as non-attainment for the annual average PM_{2.5} NAAQS is not justified and directly affects the applicability of Interstate Transport Rule requirements for our neighboring state, Massachusetts. CT DEP's in-depth monitoring network and analysis thereof shows that elevated PM_{2.5} levels at the Stiles Street site in New Haven are due to micro-scale phenomena not representative of community exposure. Ambient levels at all six additional measurement sites deployed in New Haven to study the situation are below the level of the NAAQS. EPA should strongly consider CT DEP's sound scientific and technical analysis to conclude that all of Connecticut should be designated attainment for PM_{2.5}.

EPA's potential non-attainment designation for Connecticut is the sole reason that Massachusetts will be subject to the PM_{2.5} provisions of the Interstate Transport Rule based on EPA's finding that emissions from Massachusetts contribute significantly to the elevated levels in New Haven. CT DEP notes that the preliminary threshold used by EPA to determine Connecticut's significant contribution to New York in the PM_{2.5} designation process is inconsistent with the approach employed in the Interstate Transport Rule.

The NOx SIP Call states have proven and viable programs for reducing ozone precursors during the summer season. CT DEP is not convinced that the Interstate Transport Rule will be effective for reducing ozone during the summer season. The issues of tracking electricity-generating units (EGUs) during the ozone season, robustness of the market for non-EGUs (includes categories such as industrial boilers and smaller turbines), and the potential for NOx Budget Program redesign by the states are of significant concern. CT DEP recommends that EPA adopt a two-season allowance tracking/trading system to address these concerns (see Attachment A).

The importance of fairly and accurately calculating state budgets cannot be overstated. In the development of the NOx SIP Call, EPA's budget calculation scheme shortchanged Connecticut and required a complex Memorandum of Understanding reallocation with adjacent states. This lack of attention to detail is unacceptable and is reoccurring in the Interstate Transport Rule development process. It has come to CT DEP's attention that the state NOx budgets in the Interstate Transport Rule were calculated incorrectly. Not only are the state budgets calculated incorrectly, but EPA has also failed to analyze the scope of non-EGU sources included in existing NOx Budget Programs in NOx SIP Call states and the resulting impact of the Interstate Transport Rule on these proven programs.

Connecticut is the only state subject to ozone season-only NOx requirements in the Interstate Transport Rule. Therefore, Connecticut's options for Interstate Transport Rule compliance appear to be limited to:

- 1) Connecticut EGUs and non-EGUs could participate in a seasonal NOx SIP Call cap-and-trade program that EPA will continue to administer,
- 2) Connecticut can run its own cap-and-trade program that meets the NOx SIP Call non-EGU requirements and the Interstate Transport Rule EGU requirements, or
- 3) CT EGUs can join the Interstate Transport Rule annual NOx cap-and-trade program.

The problem with the first two options is that the Interstate Transport Rule does not adequately define the trading universe for Connecticut's EGUs and non-EGUs, and CT

DEP cannot determine which currencies would be fungible (i.e., ozone season and annual or state-only and regional). Regarding the third option, Connecticut cannot seriously consider opting-in to an annual-only program without demonstration of a viable program that achieves adequate emission reductions. EPA has apparently neither considered nor addressed important programmatic details in the development of a system which can be effectively implemented.

The most effective program designs are those that integrate policies and move toward the desired public outcomes. Energy policy and environmental protection are intrinsically linked and EPA is obligated to ensure that energy efficiency is factored into environmental program development. Energy efficiency is not only a means of pollution prevention, but also sound energy policy. In the IAQR, EPA solicited comment on using an output-based allocation methodology for determining state NO_x budgets. CT DEP supports output-based allocations to states for NO_x and believes that this methodology should be included in the Interstate Transport Rule. Establishing budgets on an output basis encourages energy efficiency, a concept that should be promoted and rewarded.

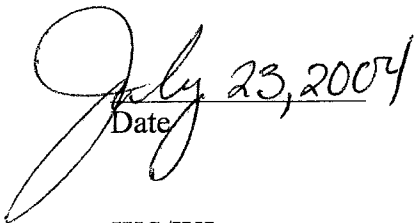
Because we are all trying to achieve the greatest environmental benefit with limited resources, good planning and process are critical elements to achieving results in a timely fashion. Unfortunately, the public process procedures employed by EPA during the IAQR/Interstate Transport Rule rulemaking have been poorly conceived and implemented. EPA's piecemeal and opaque process gives short shrift to the ability of states, who have primary authority for implementation and enforcement of Clean Air Act programs, to complete a thoughtful review and offer constructive comments. It is troubling enough that the IAQR/Interstate Transport Rule was released in two parts over a several month interval, but EPA also publicly stated that many of the comments on the first proposal (IAQR) were not even looked at and therefore would not be addressed in the Interstate Transport Rule proposal. Therefore, comments must be submitted twice, which is inefficient and counterproductive. If EPA had reason to release more than one proposal, all comments on the first proposal (in this case, the IAQR) should have been evaluated and any appropriate changes incorporated before releasing the second proposal (in this case, the Interstate Transport Rule). Also, the June 3, 2004 public hearing on the Interstate Transport Rule was held prior to the Interstate Transport Rule being published in the Federal Register (June 10, 2004) and prior to the release of all of the Technical

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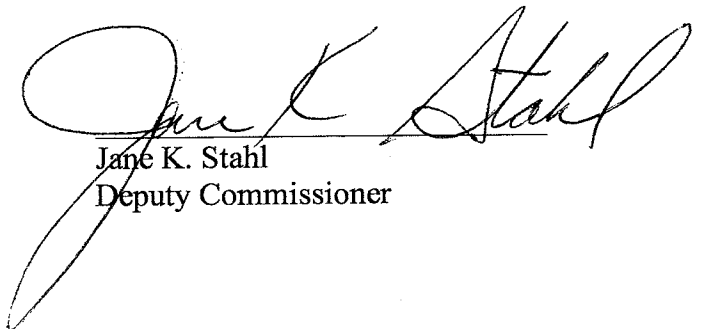
Support Documents referenced in the Interstate Transport Rule. EPA has simply not provided enough time and details for adequate review and comment of the lengthy and complex Interstate Transport Rule. Therefore, significantly impacted states such as Connecticut cannot be assured that the necessary environmental results will be achieved through this rule.

Once again, CT DEP appreciates the opportunity to comment on the Interstate Transport Rule. CT DEP supports the concerns raised by the Northeast States for Coordinated Air Use Management (NESCAUM) and OTC, and urges EPA to seriously consider the comments submitted by NESCAUM and OTC on the IAQR/Interstate Transport Rule, as well as CT DEP's comments. If you or members of your staff have any questions regarding this letter, please do not hesitate to contact Anne Gobin, Chief, Bureau of Air Management at 860-424-3026.

Sincerely,


Date

JKS/WJ


Jane K. Stahl
Deputy Commissioner

cc: Robert W. Varney, Regional Administrator (EPA New England)
Jeffrey Holmstead, Assistant Administrator, US EPA Office of Air and Radiation

Attachment A

CT DEP Recommendation: EPA should administer a two-season allowance tracking system (ozone season and non-ozone season), and include both EGUs and non-EGUs in the NOx cap-and-trade program.

In the Interstate Transport Rule's Supplemental Notice of Proposed Rulemaking (SNPR) preamble, EPA proposes to remove EGUs from their ozone season NOx limitations and provide annual tracking of EGUs under the Interstate Transport Rule's cap-and-trade programs. CT DEP believes that it is critical to retain an ozone season cap in addition to a non-ozone season cap to ensure that the full NOx reductions needed for ozone attainment are achieved when needed. EPA claims that modeling of expected NOx emissions from EGUs supports EPA's assertion that reductions from the Interstate Transport Rule's annual cap-and-trade program will also meet the ozone season reduction requirements that states were previously achieving from EGUs participating in a regionwide ozone season NOx cap-and-trade program. This modeling is based on the questionable assumption that all states affected by the proposed Interstate Transport Rule will achieve all required NOx reductions through an EPA-administered annual cap-and-trade program that includes only the EGU source sector. If not all of the states affected by the proposed Interstate Transport Rule choose to participate in EPA's annual cap-and-trade program, EPA's overly optimistic modeling assumption no longer applies. Under EPA's current proposal, Connecticut and other NOx SIP Call states that include non-EGUs (as defined in the Interstate Transport Rule) in their current NOx Budget Programs may be forced to opt out of EPA's cap-and-trade program to protect the viability of their current programs. The resulting mosaic of programs across the eastern states would likely have a negative affect on emission trading markets for both EGUs and non-EGUs.

In addition to the concern described above, it is unclear if EPA's modeling considered the potential incentive, provided in an annual cap only program, for sources to target higher control levels to periods of low electricity demand in order to maximize electrical output (and revenue) during the highest demand periods, which often coincide with the highest ozone episodes. Retaining ozone season caps, in addition to a non-ozone season cap, would minimize the potential for such gamesmanship, and help to preserve the integrity of current ozone control programs. The uncertainty of EPA's modeling is further evidenced by EPA's acknowledgement that it does not have sufficient information to project whether non-EGUs would continue to meet their ozone season NOx reduction requirements if they were subject to an annual limitation only. EPA addresses this uncertainty by proposing to exclude non-EGUs from the annual cap-and-trade program rather than proposing ways to fill the data gap, such as by administering both EGU and non-EGU tracking systems.

Based on the high level of uncertainties discussed above, the importance of protecting the integrity of existing ozone attainment SIPs, and EPA's claim of insufficient information on non-EGUs, it is CT DEP's recommendation that EPA administer a two-season (i.e., ozone season and non-ozone season) tracking system that accommodates both EGUs and non-EGUs.

ENCLOSURE B

Final – Approved January 27, 2004

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

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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.