September 2, 2009

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code 1101A
Washington, DC 20460

Dear Administrator Jackson:

On behalf of 17 states in the eastern half of the U.S., we wish to provide the following recommendations to the Environmental Protection Agency (EPA) to consider as it develops a replacement rule for the Clean Air Interstate Rule (CAIR), in light of the December 23, 2008, remand by the U.S. Court of Appeals for the D.C. Circuit.

The recommendations follow through on the commitment we made in the March 9, 2009, Framework Document to work together to address the transport requirements of Section 110(a)(2)(D) of the Clean Air Act (CAA), and to attain the ozone and PM2.5 National Ambient Air Quality Standards (NAAQS). Please understand that in preparing these recommendations our fundamental air quality objective is to achieve attainment and ensure maintenance of the NAAQS as expeditiously as practicable.

As the result of our collaboration, we recommend for your consideration a framework, which is based on in-depth technical evaluations and a sincere and concerted effort by all states to reach common ground on an overall approach to addressing transport. This comprehensive framework comprises national rules involving significantly contributing states that combine statewide emissions caps and complementary regional trading programs with a state-led planning process to address transport in a multi-pronged and layered approach. While the undersigned states have reached consensus on this suggested framework, there are some regional differences concerning the timing and stringency of electric generating unit (EGU) reductions, and the criteria for determining which states are included in the state-led planning process. In addition, the states differ in their perspectives on whether performance based standards should be part of the strategy.

The Lake Michigan Air Directors Consortium (LADCO) and the Ozone Transport Commission (OTC) will be submitting separate letters to explain their perspectives on these areas of regional differences on implementation of the framework.

Many areas in the eastern U.S. are designated as nonattainment for the current ozone and PM2.5 standards (1997 version), and it is expected that even more areas will not be in compliance with 2008 ozone and 2006 PM2.5 standards. Numerous data analysis and modeling studies have shown that some (not all) of these nonattainment problems are strongly influenced by inter-state transport.

Additional regional emission reductions will be necessary to help states meet the new air quality standards. A timely and robust federal program that requires substantial regional emission reductions from mobile sources, area sources and large point sources such as

EGUs is an essential component of any strategy to reduce interstate transport of air pollution. These reductions are necessary to attain and maintain compliance with the NAAQS.

The undersigned states recommend a 3-step approach, as further discussed below, to establish a framework from which to address the requirements of CAA section 110(a)(2)(D):

1. Identifying areas of interest (i.e., those not meeting the standards and those struggling to maintain the standards);
2. Identifying, based on specific criteria, upwind states which contribute to nonattainment or interfere with maintenance in these areas of interest; and
3. Implementing a multi-sector remedy to meet CAA requirements.

Step 1 - Identifying Areas of Interest

A. While the requirements of Section 110(a)(2)(D) apply to all areas, most attention should be given to those areas not meeting or struggling to maintain the NAAQS. These "areas of interest" should be identified using monitoring and modeling data.

B. Specifically, areas with both base monitored design values and future modeled design values above the applicable NAAQS should be designated as areas of interest. The monitored design values are based on the maximum design value from the periods 2003-2005 through the most recent three-year period, and the future modeled values are based on future year modeling which reflects legally enforceable control measures and a conservative model attainment test - i.e., use of maximum design values rather than average design values.

   1. The use of maximum design values and a conservative model attainment test are intended to account for historic variability, which is necessary to ensure maintenance. An alternative means of accounting for historic variability is to conduct a statistical analysis of the year-to-year variation in meteorology.

   2. Requiring a more conservative model attainment test will necessitate a change in EPA's modeling guidance. EPA should also establish performance criteria to insure that the modeling is capturing transport appropriately.

   3. EPA's approach in CAIR also reflects a "monitored and modeled" test to identify areas of interest.

Step 2 - Identifying Upwind States that Significantly Contribute to Nonattainment or Interfere with Maintenance

A. An upwind state significantly contributes to nonattainment or interferes with maintenance in a downwind area of interest if its total impact from all source sectors equals or exceeds 1% of the applicable NAAQS.

B. Individual state contributions should be determined through a weight-of-evidence approach, including source apportionment modeling.

C. Use of 1% of the NAAQS as the significance threshold is consistent with EPA's approach in CAIR.

Step 3 - Implementing a Multi-Sector Remedy to Meet Clean Air Act Requirements

A two-part process is recommended consisting of: (A) a national/regional control program adopted by EPA for EGUs and additional federal control measures for other sectors, and (B) state-led efforts to develop, adopt, and implement federally enforceable plans for each area of interest that is not expected to attain the standards even after implementation of the national/regional program.

A. National/Regional Control Program

A significantly contributing state (i.e., a state which contributes at least 1% to a downwind area of interest) must comply with the national/regional control program described below.

1. EGU point source strategy (applicable to units $\geq$ 25 MW)
   In adopting a CAIR replacement rule EPA should:

   (a) make federally enforceable through appropriate mechanisms all nitrogen oxide (NOx) and sulfur dioxide (SO_2) controls to comply with the original CAIR Phase I program;

   (b) make federally enforceable through appropriate mechanisms optimization by no later than early 2014 of existing NOx and SO_2 controls;

   (c) make federally enforceable through appropriate mechanisms application by 2015 of low capital cost NOx controls;

   (d) establish statewide emission caps by no later than 2017 for all fossil fuel-fired units ≥25MW. The caps should reflect an analysis of NOx and SO_2 controls on coal-fired units ≥ 100 MW which, in combination with the three measures above, will achieve rates that are not expected to exceed 0.25 lb/MMBTU for SO_2 (annual average for all units ≥25 MW) and 0.11 lb/MMBTU for NOx (ozone seasonal and annual average for all units ≥25 MW) and which will result in lower rates in some states. Previously banked emissions under the Title IV or CAIR programs shall not be used to comply with the state-wide emission caps; and

   (e) to the fullest extent allowed under the Clean Air Act, EPA should work with the states to establish regional emissions caps with full emissions trading to replace the caps currently applicable under CAIR.

Again, there are regional differences on some elements of the EGU point source strategy, including mechanisms for achieving reductions prior to 2017. Further recommendations will be provided in separate letters by LADCO and OTC.

2. Non-EGU point source strategy

   a. EPA should identify and prioritize other categories of point sources with major emissions of NOx and/or SO_2 (e.g., cement plants) based on a review of available emissions inventories and other information, such as source apportionment studies.

   b. For the non-EGU point sources, EPA should identify and evaluate control options for reducing NOx and/or SO_2 emissions. The evaluation should consider the technological, engineering, and economic feasibility of each control option.

   c. At a minimum, EPA should evaluate the technological, engineering, and implementation feasibility, and cost-effectiveness of controlling SO_2 and NOx emissions from industrial, commercial, and institutional boilers $\geq$ 100 MMBTU/hour.

3. Mobile source strategy, such as new engine standards for on-highway and off-highway vehicles and equipment, and a single consistent environmentally-sensitive formulated fuel.

4. Area source strategy, such as new federal standards for consumer products and architectural, industrial and maintenance coatings as originally promised by EPA in 2007

B. State- Led Attainment Planning

The undersigned states recommend the use of a state-led attainment planning process concurrent with developing the transport SIP to address areas of interest that are not expected to attain after implementation of the national/regional control program. The state-led planning effort should involve a key subset of significantly contributing states to develop, adopt, and implement an appropriate attainment strategy. EPA should work with the states to establish criteria for determining which significantly contributing states should be involved in the state-led planning process. Additionally EPA should work with the states to determine the appropriate criteria for each state to satisfy CAA section 110(a)(2)(D). The advantages of this state-led planning effort include:

- A one-size-fits-all federal solution cannot provide the most appropriate and cost-effective solution for each area;
- Attainment planning is more effective and more likely to succeed if it is done on a non-attainment area basis with a key subset of contributing states;
- Additional controls are identified where they are needed; and
- States maintain their responsibility under the Clean Air Act to establish state implementation plans.

Further recommendations on this issue will be provided in separate letters by LADCO and OTC.

The comprehensive framework outlined above represents the culmination of our collaborative work over the past six months. We look forward to working with you further as EPA develops its CAIR replacement rule.

Sincerely,

Connecticut

District of Columbia

Illinois

Indiana

Maine

Maryland

Massachusetts

Michigan

New Hampshire

New Jersey

New York

Ohio

Pennsylvania

Rhode Island

Vermont

Virginia

Wisconsin