

STAPPA / ALAPCO

STATE AND TERRITORIAL  
AIR POLLUTION PROGRAM  
ADMINISTRATORS

July 15, 2002

ASSOCIATION OF  
LOCAL AIR POLLUTION  
CONTROL OFFICIALS

The Honorable Christine Todd Whitman  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building, 101A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

S. WILLIAM BECKER  
EXECUTIVE DIRECTOR

Dear Governor Whitman:

Earlier this year, the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) brought to your attention a series of concerns regarding changes to the New Source Review (NSR) program being contemplated by the Administration. While we continue to hold those concerns, we are writing to you today to highlight an additional one, raised by EPA's recent announcement of the NSR reform package – the preemption of state and local authority. It is our understanding that EPA intends to make the five specific NSR reforms that it will soon issue as direct final rules – the clean-unit exclusion, plant-wide applicability limits, pollution control projects and two baseline calculation changes – mandatory elements of state and local NSR programs. We strongly urge that you reconsider this approach and, instead, offer these reforms as options for states and localities.

In 1996, when EPA first proposed its NSR reform package, the agency expressly stated its intent for any changes to the NSR program to be optional, not mandatory. Specifically, the agency concluded:

In the past, EPA has essentially required States to follow a single applicability methodology. States could, of course, have a more stringent approach but most followed closely the EPA prototype. The EPA is proposing to break with this one-size-fits-all approach to applicability by proposing to adopt these changes as a menu of options from which a State may pick and choose in order to customize a specific approach for its individual needs. Thus, in its final action on this rulemaking, EPA will consider placing all or some of the applicability options presented today as permissible alternatives in its part 51 regulations containing minimum requirements for State NSR programs in nonattainment and attainment/unclassified areas. States will then be free to adopt any combination of these menu options into their own regulations and SIP to offer sources these alternatives. (July 23, 1996, 61 *Federal Register* 38253)

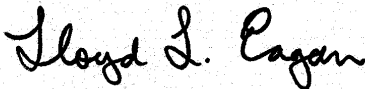
As EPA appropriately recognized in 1996, in order to best address the specific needs of their respective jurisdictions and ensure the achievement of clean air goals, it is imperative that states and localities have flexibility to design tailored air pollution control strategies.

In addition, Section 116 of the Clean Air Act, addressing the "Retention of State Authority," specifically provides that "[e]xcept as otherwise provided...nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution..." thus acknowledging the potential need for and ensuring the ability of states and localities to institute measures more stringent than those of the federal government.

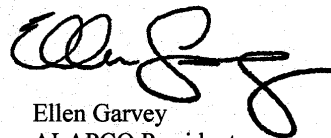
STAPPA and ALAPCO are extremely concerned that EPA's current intent to make the five new NSR reforms mandatory program elements will impede or preclude state and local ability to retain or adopt programs that are more stringent than the federal program requirements. Further, while we understand that the agency is contemplating a process whereby a state or locality could seek EPA approval of an alternative NSR program, provided a demonstration is made, it is unclear to us how EPA will judge such programs and, moreover, why such a process is even necessary. Instead, STAPPA and ALAPCO strongly urge that those with existing NSR programs should not only be able to preserve and continue their programs, they should be able to do so without question or additional process. This is especially critical, in that many of EPA's NSR reforms will weaken the existing program. Similarly, those who may wish to pursue some, but not all, of EPA's reforms, should be enabled to do so, unencumbered, as should those who wish to adopt EPA's five reforms, but with variations.

STAPPA and ALAPCO are extremely concerned that EPA's mandatory "one-size-fits-all" approach, even if accompanied by some kind of opt-out demonstration process, will prevent state and local agencies from retaining or adopting programs that differ from the federal program, particularly if they are more stringent. We cannot overstate the importance of flexibility to state and local efforts to protect and improve our nation's air quality. Therefore, as EPA completes work on final NSR reforms, we urge that you ensure against any preemption of state and local authority and, instead, make the reforms optional.

Sincerely,



Lloyd L. Eagan  
STAPPA President



Ellen Garvey  
ALAPCO President

cc: Jeffrey R. Holmstead