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S. William Becker

February 16, 2007

Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 1101A
Washington, DC 20460

Dear Administrator Johnson:

We are writing on behalf of the National Association of Clean Air Agencies (NACAA), formerly known as STAPPA and ALAPCO, regarding two important issues for state and local clean air agencies—attainment of both the 1997 ozone and fine particulate matter (PM_{2.5}) standards. Specifically, we urge EPA to immediately issue the final PM_{2.5} implementation rule and to quickly issue guidance on 8-hour ozone implementation in light of the recent D.C. Circuit Court decision. NACAA is the national association of air pollution control agencies in 54 states and territories and over 165 metropolitan areas across the country.

PM_{2.5} Implementation Rule

EPA's final rule on implementing the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) is woefully overdue. States and localities have been awaiting the rule since the NAAQS was issued in 1997. When EPA finalized nonattainment designations for PM_{2.5} in April 2005, this action set an April 2008 deadline for states to submit State Implementation Plans (SIPs). EPA proposed an implementation rule in September 2005, yet, with the deadline for SIP submittal only a little over a year away, EPA has still not issued the final rule.

SIP preparation is not a trivial matter for states. States spend months, sometimes years, to prepare SIPs: crafting strategies for reducing emissions of air pollutants, which usually includes developing rules and regulations; holding discussions with stakeholders, including public hearings; and finally shepherding the SIP through a state's administrative process for adoption. This final step alone can take up to a year or more. It is difficult for states and localities to move forward in this process absent EPA guidance, since they run the risk of inadvertently failing to meet that guidance.

Accordingly, we call on EPA to immediately issue the PM_{2.5} implementation rule.

8-Hour Ozone Implementation Rule

As you know, on December 22, 2006, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit vacated EPA's Phase 1 8-hour Ozone Implementation Rule (*South Coast Air Quality Management District v. EPA* (No. 04-1201, et al.)). The court held that EPA's classification of areas under Subpart 1 of Part D of Title I of the Clean Air Act was illegal. For areas with 8-hour ozone design values above 0.09 parts per million (ppm), the court clearly held that these areas are subject to Subpart 2. For areas with 8-hour ozone readings between 0.08 and 0.09 ppm, the court said EPA did not resolve the gap created in the Act reasonably, because the agency interpreted the Act "in a manner to maximize its own discretion." Therefore, while EPA may have authority to place these areas under Subpart 1, the court said the agency did not provide an adequate basis for so doing. With respect to EPA's treatment of New Source Review, section 185 penalties, contingency plans and motor vehicle conformity demonstrations contained in 1-hour ozone SIPs, the court concluded that withdrawing any of these measures from a SIP "would constitute impermissible backsliding."

Given this decision and the court's *vacatur* of the Phase 1 Rule, there is much confusion among states and localities about which policies govern state SIPs. We understand that the court has given EPA until March 22, 2007, to file a petition for rehearing or rehearing en banc. While we appreciate that EPA has the legal right to challenge the court decision, we request that EPA not appeal. SIPs are due in June 2007, less than four months from now. States are deep in the process of developing their SIPs and, in some cases, these SIPs are almost completed. Therefore, in the interest of moving forward and attaining the 1997 ozone standards in the most expeditious manner possible, we urge EPA to quickly issue guidance, with the advice and counsel of states and localities, that interprets the court decision. Then together, we can focus our limited resources on cleaning up the air.

If, however, EPA chooses to appeal the decision, which will force states to submit their 8-hour ozone SIPs in a climate of uncertainty, then it is imperative that EPA work closely with state and local air agencies to ensure that SIPs are approved in a timely manner.

We request a meeting with you to discuss further the issues we raise in this letter and our thoughts on resolving them. We will contact your office shortly to schedule a meeting. In the meantime, please feel free to contact either of us or Bill Becker, NACAA Executive Director, at 202-624-7864.

Sincerely,



Shelley Kaderly
Nebraska
Co-President



Ursula Kramer
Pima County, Arizona
Co-President

cc: Bill Wehrum, Acting Assistant Administrator for Air and Radiation