Testimony of
John Paul
on behalf of the
State and Territorial Air Pollution Program Administrators
and the
Association of Local Air Pollution Control Officials
on the U.S. Environmental Protection Agency's Proposed Rule
to Implement the Fine Particle National Ambient Air Quality Standard
(November 1, 2005, 70 *Federal Register* 65984)
Docket ID No. OAR 2003-0062

November 30, 2005

Good morning. My name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency, a six-county local agency centered in Dayton, Ohio. I appear today on behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), which are the national associations representing air pollution control agencies in 53 states and territories and over 165 metropolitan areas across the country. I currently serve as President of ALAPCO. I am testifying today on the proposed rule to implement the fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) that the U.S. Environmental Protection Agency (EPA) published in the *Federal Register* on November 1, 2005 ("proposed $PM_{2.5}$ Implementation Rule"), which describes the requirements that states must include in their implementation plans.

As EPA is well aware, states and localities face a daunting challenge in the next few years to craft implementation plans to meet important health and welfare standards. In addition to reducing emissions of $PM_{2.5}$ and its precursors, states and localities must attain the 8-hour ozone standard, address regional haze and related visibility requirements and cut emissions of hazardous air pollutants, including mercury, by substantial amounts. We are committed to protecting public health and welfare implementing appropriate pollution control strategies that make the most sense for our communities; thus, we seek rules and guidance from EPA that enable us to attain the air quality standards as expeditiously as practicable and in the most cost-effective manner.

While we are still analyzing EPA's proposal, we are pleased to provide these initial comments today.

First, we strongly disagree with EPA's proposal that electric generating units (EGUs) complying with the agency's Clean Air Interstate Rule (CAIR) should be exempt from meeting Clean Air Act requirements to install "Reasonably Available Control Technology (RACT)." Throughout the development of CAIR, EPA has made clear that its rule was designed to address *transported* pollution from one area into another and not to be used as an attainment strategy. Accordingly, when EPA established emission caps for EGUs under CAIR, the agency purposely did not base its decisions on what levels of

reductions from EGUs would be necessary to demonstrate attainment of the $PM_{2.5}$ standards. While EPA's models show an expected air quality improvement in many areas, not all areas will reach attainment through CAIR. Unfortunately, by now concluding that CAIR – and its cap-and-trade program – satisfies the RACT requirements under the Clean Air Act, there is no longer any requirement for an EGU that is located in a nonattainment area to reduce its emissions of pollution *at all*; it could simply buy allowances to meet its CAIR requirements, notwithstanding the fact that these sources are among the most cost-effective to control. STAPPA and ALAPCO are very concerned that this provision of EPA's proposed $PM_{2.5}$ Implementation Rule could significantly interfere with the ability of states and localities to meet the $PM_{2.5}$ standard. It is therefore critical that states and localities retain these tools in the Clean Air Act to reach attainment as expeditiously as practicable.

Second, we are concerned that several of the options in EPA's proposal significantly weaken existing programs in the Clean Air Act. For example, as stated previously, we believe the Clean Air Act is clear that all major sources, including EGUs and industrial facilities, in nonattainment areas must install RACT. Yet, two of the options offered by EPA allow either the elimination or postponement of this important provision. While STAPPA and ALAPCO recognize that many areas will face challenges in attaining the NAAQS by 2010, we also recognize the unacceptable public health impacts associated with air pollution problems. Accordingly, EPA should be doing everything it can in this proposal to require the regulated community to adopt all measures that are technologically feasible in as expeditious manner as practicable before an area qualifies for a five-year extension to its attainment deadline.

Third, we support adoption of the basic new source review (NSR) regulatory framework for prevention of significant deterioration (PSD) and nonattainment NSR for direct emissions of $PM_{2.5}$ and agree that $PM_{2.5}$ precursors should also be subject to NSR regulation. In fact, it appears to us that whenever a major source is proposed for construction or modification, the impacts of all precursor emissions should be evaluated and controlled if they meet significance levels. Therefore, we oppose provisions that allow states to opt out of evaluation and control of all of the $PM_{2.5}$ precursors. We are not saying necessarily that all precursors need to be subject to Lowest Achievable Emissions Rate and offsets requirements but that all precursors need to be considered. We are still discussing this issue and will elaborate further in our written comments.

Fourth, the proposed rule suggests certain flexibilities for states and localities in implementing this program, including the ability of states and localities to make adjustments in offset ratios for direct and precursor emissions in nonattainment areas, as long as a net air quality benefit is achieved. We support such flexibilities and also support measures in the proposed rule that harmonize the significance levels for $PM_{2.5}$ precursors with the significance levels for SO_x, NO_x, and VOCs as criteria pollutants.

Finally, we are extremely concerned that modifications of EGUs that result in significant levels of direct and/or precursor $PM_{2.5}$ will escape controls altogether if the definition of modification is adopted pursuant to EPA's proposed rule of October 20,

2005 (70 *Federal Register* 61081). Specifically, EPA states in the proposed $PM_{2.5}$ Implementation Rule that it does not propose any change to the current policy for implementing BACT requirements at a major source "[i]f a physical or operational change at the source will result in a significant emissions increase of a regulated NSR pollutant…" Nonetheless, BACT will rarely, if ever, apply to EGU modifications under the October 20 EGU rule, because NSR will only be triggered when changes result in increases in the hourly rate of emissions. EPA has also stated that it is "seriously considering" extending the hourly rate of emissions test for NSR applicability to all other industrial sectors. If the agency successfully continues in this direction, the ambient air quality impacts of $PM_{2.5}$ emission increases from major sources will not be evaluated and uncontrolled increases in annual emissions of direct $PM_{2.5}$ and precursor emissions will result, impairing public health and the environment.

In the coming weeks, we will continue to evaluate the agency's proposals and develop written technical comments for submittal by the January 31, 2006 comment deadline. I thank you for this opportunity to provide the associations' perspectives on these proposed rulemakings and I am happy to answer any questions.