

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

**Testimony of
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Dayton, Ohio
on behalf of the
State and Territorial Air Pollution Program Administrators (STAPPA)
and the
Association of Local Air Pollution Control Officials (ALAPCO)
on the
U.S. Environmental Protection Agency's
Notice of Reconsideration of the
Final New Source Review Rules
(68 *Federal Register* 44620)**

**August 14, 2003
Durham, North Carolina**

Good morning. My name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency in Dayton, Ohio. I am here today on behalf of STAPPA and ALAPCO – the two national associations of air pollution control agencies in states, territories and major metropolitan areas across the country. As Co-Chair of the associations' New Source Review (NSR) Subcommittee, I appreciate this opportunity to present our comments on the U.S. Environmental Protection Agency's (EPA's) reconsideration of its December 31, 2002 final NSR rules.

State and local air pollution control agencies share with EPA responsibility for protecting the public from the detrimental impacts of air pollution. For more than three decades, states and localities across the nation have relied upon EPA's NSR program to assist us in achieving our clean air goals. As we have expressed in numerous forums over the past year and a half, STAPPA and ALAPCO have serious concerns with EPA's final revisions to the NSR program and believe these changes will significantly weaken the effectiveness of our long-standing NSR programs. Therefore, we welcome EPA's July 30, 2003 decision to reconsider certain aspects of the final rules.

Before providing a brief overview of our perspectives on the specific issues being reconsidered by the agency, however, I would like to express our associations' trepidation regarding the basis for this reconsideration. While we are pleased that EPA appears to be acknowledging concerns that have been raised in numerous formal petitions for reconsideration, we are very troubled by the agency's preemptive decision to deny any requests for an extension of the 30-day comment period, its scheduling of only a single public hearing on this important issue of tremendous national interest and its stated intention to complete the reconsideration "quickly." And, while we would hope that there is a real intent to be responsive to public comment and thoughtfully consider revisions that might improve the final rules and serve to better protect public health and the environment, conclusory statements throughout the Notice of Reconsideration – including ones asserting that, in every instance, EPA selected the best approach to reforming the NSR program, and implying that the agency fully expects the final rules to remain in place without change – cause us to wonder otherwise. Indeed, we question whether this opportunity for public participation is more for the purpose of meeting a legal obligation than to foster a meaningful exchange.

STAPPA and ALAPCO hope that these apprehensions are unfounded and that EPA will give utmost consideration to the protection of public health and the environment. We are confident that revisions to the final rules, such as those we will suggest, can help to strengthen the NSR program without adverse economic impact. We offer our comments in good faith, with the intention of improving the final rules and urge the agency to give our comments genuine attention through a deliberative process that remains open to changing the final regulations.

Given the five-minute limit placed on oral statements today, I will restrict my remaining comments to a brief overview of our perspectives on the six specific issues EPA has identified for reconsideration. STAPPA and ALAPCO will provide more detail in our comprehensive written comments, which we will submit by the August 29, 2003 deadline.

1. Analysis of Environmental Impact of Final Rules

With respect to EPA's Environmental Impact Analysis of the final rules, STAPPA and ALAPCO find that the "Supplemental Analysis" fails to account for numerous consequences of the final rules and relies upon many assumptions that are invalid with regard to the regulatory language actually adopted. Overall, we believe that EPA's analysis does not accurately portray the potential environmental disbenefits of the final provisions. We will include examples of these inadequacies in our written comments. Further, in order to accomplish a full reconsideration of the environmental impacts of the final rules, STAPPA and

ALAPCO urge EPA to reassess the rules' environmental impacts and to identify carefully those areas where the analysis fails to represent accurately the adopted rule language.

2. PALs – Using PTE for Emission Units Constructed After the Selected Baseline Period

STAPPA and ALAPCO believe that incorporating the potential to emit (PTE) of units constructed after the established baseline in the plant-wide applicability limit (PAL) level is a flawed approach. The fundamental premise of an actuals PAL is that the PAL level is based upon the actual emissions of the source. Using the PTE for all emissions units constructed after the selected baseline period, without regard for the actual emissions history of those units, is contrary to that fundamental premise. We will provide recommendations for addressing units constructed after the baseline period in our written comments.

3. PALs – Elimination of Synthetic Minor Limits

STAPPA and ALAPCO also believe EPA's final rules should not allow the elimination of synthetic minor limits that were established as a part of a state-issued, federally enforceable permit to install without requiring the unit to undergo a BACT analysis.

4. Actual-to-Projected-Actual Test – Reasonable Possibility

With respect to recordkeeping and reporting, EPA's final rules are problematic because they rely completely on the discretion of the source in deciding which changes should be subject to recordkeeping, with no opportunity for review or approval by the permitting authority. Such an approach lacks certainty and benefits neither the regulatory agency nor the source. The final rules should be revised to provide certainty regarding when recordkeeping and reporting is required.

5. Actual-to-Projected-Actual Test – Replacement Unit

EPA's final rules would allow replacement units to be treated in a manner similar to a source modification; that is, they would face an actual-to-future-actual test for determining NSR applicability. However, STAPPA and ALAPCO believe that replacement units should be treated as new units, with the potential to emit of the new unit considered in determining NSR applicability. It is important that all new units, including replacement units, install appropriate pollution controls at the time of construction.

6. Clean Unit – Retention of Clean Unit Status upon Area Redesignation

With respect to EPA's adopted clean unit exclusion, we have several concerns; these concerns are compounded by EPA's ruling that clean units established within attainment areas retain their clean unit status even if the area is redesignated to nonattainment. We urge EPA to reconsider this portion of the rules and require that units be equipped with LAER technology in order to retain the clean unit status when an area is designated as nonattainment.

In conclusion, as EPA proceeds with its reconsideration of the final NSR rules, STAPPA and ALAPCO urge the agency to give thorough consideration not only to our comments today and those that we will provide in writing in the next few weeks, but also to the extensive comments we have submitted throughout the entire NSR reform effort. We remain committed to working with EPA to resolve the serious issues currently surrounding NSR and hope the agency will take full advantage of the reconsideration process to thoughtfully reexamine the final rules and remain open to recommendations for change. On behalf of STAPPA and ALAPCO, I thank you for this opportunity today; I am happy to answer any questions you might have.