

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

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**Testimony of the
State and Territorial Air Pollution Program Administrators
and the
Association of Local Air Pollution Control Officials
on the
Need for Multi-Emission Legislation
before the
Subcommittee on Clean Air, Wetlands, and Climate Change
of the
Senate Committee on Environment and Public Works**

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Good morning, Mr. Chairman and Members of the Subcommittee. 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 am pleased to testify today on behalf of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials, the national associations of air quality agencies in 53 states and territories and more than 165 metropolitan areas across the country. I currently serve as Vice President of ALAPCO and Co-Chair of the STAPPA/ALAPCO Energy Committee. The members of our associations have primary responsibility under the Clean Air Act for implementing our nation's air pollution control laws and regulations and, moreover, for providing clean, healthful air for our citizens. Accordingly, we are pleased to have this opportunity to provide our perspectives on the need for legislation to control multiple emissions from electric utilities.

We Have Made Substantial Progress in Cleaning Up Our Air, But Significant Challenges Remain

Over the past three and a half decades, since authorization of the first federal Clean Air Act, the U.S. has made substantial progress in reducing air pollution, while, at the same time, experiencing strong economic growth. In fact, since 1970, aggregate emissions of the six criteria pollutants have decreased by 51 percent. During this same time, Gross Domestic Product has increased by 176 percent, energy consumption by 45 percent, vehicle miles traveled by 155 percent and the U.S. population by 39 percent. However, our nation continues to face significant public health and environmental problems as a result of emissions into our air.

Last year, all or part of nearly 500 counties were designated as nonattainment for the 8-hour ozone standard and earlier this month the U.S. Environmental Protection Agency (EPA) published a notice in the *Federal Register* designating 225 counties, in whole or in part, as nonattainment for the fine particulate matter (PM_{2.5}) standard. Further, fish consumption advisories have been issued for some or all of the water bodies in at least 45 states due to elevated concentrations of the persistent and bioaccumulative pollutant mercury, which can contaminate aquatic life and pose a serious threat to humans who consume the contaminated species. In addition to contributing to tens of thousands of premature deaths and innumerable adverse health consequences, emissions into our air also cause such damage to our environment as visibility impairment, eutrophication of waterways and acid rain.

Emissions from Electric Utilities Are a Key Contributor to Air Pollution

Electric utilities are the largest remaining stationary source of air pollution in the United States, an order of magnitude greater than the second largest category, refineries. According to EPA and others, power plant emissions each year are responsible for over 20,000 premature deaths. Additionally, according to a recent study by the Clean Air Task Force, power plant emissions cause over 38,000 heart attacks, more than 3 million lost work days and in excess of half a million asthma attacks.

Nationally, utilities are responsible for 68 percent of annual sulfur dioxide (SO₂) emissions and 23 percent of nitrogen oxide (NO_x) emissions. Further, it is important to note that in some areas of the country, power plant contributions to SO₂ and NO_x levels are considerably higher. Add to these no fewer than 67 hazardous air pollutants (HAPs), which power plants also emit in substantial quantities, including mercury, for which electric utilities account for 41 percent of the nation's emissions. In addition, electric utilities are responsible for 39 percent of U.S. carbon dioxide emissions, which contribute to global warming.

The magnitude of emissions from power plants, and the serious public health and welfare implications these emissions have, make controlling electric utilities a top priority. In fact, broad, rigorous control of this sector is crucial to the success of state and local efforts not only to attain health-based air quality standards in a timely manner, but also to ensure maintenance of these standards into the future.

An additional concern is the age of the coal-fired boilers operating across the country. Today, nearly three-quarters of all utility boilers are over 30 years old and most continue to operate without modern pollution control technology; in 10 years, almost 90 percent of all boilers will exceed 30 years of age. Among the most important steps we, as a nation, can take to address air pollution and protect public health is to establish a comprehensive national multi-pollutant approach for cleaning up these outdated power plants and ensuring that new plants are dramatically cleaner.

STAPPA and ALAPCO Strongly Support an Effective Multi-Pollutant Approach for Power Plants

STAPPA and ALAPCO endorse the concept of a comprehensive national strategy for reducing emissions of multiple pollutants from electric utilities. Such an approach could enhance opportunities for pollution prevention and sustainability and promote more expeditious compliance. A comprehensive, integrated approach would also offer important advantages to the regulated community in the form of increased certainty and cost efficiencies. Further, it would increase certainty and efficiency for state and local air quality regulators, both in terms of the development of our programs and in fulfilling our obligation to ensure clean, healthful air to our citizens.

In May 2002, as various multi-pollutant proposals were emerging, STAPPA and ALAPCO adopted a set of principles (copy attached) outlining what we believe should serve as the foundation of a viable national multi-pollutant strategy for power plants.

In our principles we call for an integrated approach based on an expeditious schedule, including interim compliance dates, that will allow us to reduce emissions as quickly as we can and consistent with the deadlines by which states and localities are required to meet health-based air quality standards. We believe firmly that such an approach – which should address all significant emissions from electric power generation – should supplement, not supplant, the existing Clean Air Act. Programs such as New Source Review (NSR), Maximum Achievable Control Technology (MACT) standards and regional haze, as well as other important statutory tools and requirements for achieving and sustaining clean air, must be retained.

In addition, a viable multi-pollutant approach should establish the most stringent enforceable national emission reduction goals feasible. In particular, we recommend that national emissions caps be set at levels that reflect the installation of technology no less stringent than the best available controls on all existing units nationwide, with each existing plant required to meet a minimum level of control by the final compliance deadline. We further believe that in meeting these emission goals, the regulated community should be afforded flexibility, including an emissions trading mechanism for NO_x and SO₂, with appropriate limitations and protections against local adverse health or environmental impacts. And, very significantly, any multi-pollutant strategy must ensure that regions, states and localities retain their authority to adopt and/or implement measures – including local offset and technology requirements – that are more stringent than those of the federal government.

STAPPA and ALAPCO used the associations' adopted principles to evaluate S. 1844, the Chairman's Mark of the Administration's Clear Skies proposal, introduced on November 10,

2003. After careful study, we have concluded that the proposal fails on every one of our associations' core principles. The deadlines are too protracted, and well beyond those by which we must, and should, meet health-based air quality standards. The caps are simply not protective enough, and there is no minimum level of control required of each existing power plant. And we have tremendous concerns with the fact that this proposal strips away many of our most essential Clean Air Act tools and authorities. Accordingly, STAPPA and ALAPCO can not support this proposal.

Although we would prefer that a multi-pollutant approach be established through legislation rather than regulation, given the serious deficiencies of this legislative proposal, we believe that continued implementation of the Clean Air Act will provide far greater, and more certain and timelier protection of public health and the environment. Toward this end, we have availed ourselves of every opportunity to provide EPA with our comments and recommendations to improve the two rules it has proposed – the Clean Air Interstate Rule and Utility MACT Rule – using its authorities under the existing Clean Air Act to address NO_x, SO₂ and mercury.

STAPPA and ALAPCO Have Significant Concerns with S. 1844

I would like to elaborate in a bit more detail on some of our key concerns with the multi-pollutant approach established in S. 1844.

Deadlines

S. 1844 would postpone until 2018 the final date for industry compliance with the NO_x, SO₂ and mercury caps. Moreover, compliance will be deferred even further – to the mid-2020s – due to the impacts of the bill's credit banking and trading program. For mercury, this protracted

compliance schedule is about 15 years later than Congress allowed under the Clean Air Act for utilities and other sources to comply with MACT. And for NO_x and SO₂, it is not only nearly a decade later than state and local attainment deadlines, it is also clearly counter to the Clean Air Act requirement for attainment as expeditiously as practicable. Since each year of delay will take an additional and unwarranted toll on public health and welfare, the solution is not to defer public health deadlines but, rather, to accelerate industry compliance dates. For this reason, we are also concerned with the bill's transitional area provisions, which could impede timely implementation of state and local regulatory initiatives and interfere with EPA's recent 8-hour ozone and PM_{2.5} nonattainment designations. In an analysis conducted last year, which I will discuss further in a moment, our associations concluded that an interim compliance date of 2008 and a final compliance date of 2013 are appropriate and feasible deadlines for the type of national multi-pollutant approach we envision.

Caps

As I have already noted, we believe the caps in S. 1844 are far too lenient and do not reflect what is necessary and achievable for this source sector. Last spring, our associations completed a deliberative analysis (copy attached) of our multi-pollutant principles – specifically, estimating what national caps could result from application of those principles, which call for installation of best available controls on electric utilities. What we found is that application of air pollution control technologies consistent with what various states across the country have committed or proposed to implement over the next decade (i.e., through state permits, court-ordered settlements agreements or state regulations) would achieve NO_x, SO₂ and mercury caps that are significantly more protective than those in S. 1844, remain cost effective and still provide a reasonable margin of flexibility and opportunities for increased power generation.

With respect to NO_x, our analysis identifies an interim cap of 1.51-1.87 million tons per year (tpy) by 2008 and a final cap of 0.88-1.26 million tpy by 2013, compared to S. 1844's NO_x caps of 2.1 million tpy by 2008 and 1.7 tpy by 2018. For SO₂, our analysis identifies an interim cap of 3.0-4.5 million tpy by 2008 and a final cap of 1.26-1.89 million tpy by 2013, compared to S. 1844's SO₂ caps of 4.5 million tpy by 2010 and 3.0 million tpy by 2018. A regional SO₂ cap for western states should not interfere with the regional haze rule's SO₂ annex. And for mercury, our analysis identifies an interim cap of 15-20 tpy by 2008 and a final cap of 5-10 tpy by 2013, compared to S. 1844's caps of 34 tpy (which is even weaker than the already-too-weak 26-tpy cap originally included in Clear Skies) in 2010 and 15 tpy in 2018.

Our concerns regarding S. 1844's weak caps are further compounded by the inclusion in the bill of provisions for early reduction credits. Although we favor early reductions and encouraging sources to reduce emissions as soon as possible, we firmly believe that if early reduction credits are provided, the use of such credits must be appropriately limited. However, because S. 1844 would provide credits for early reductions above the cap without limit, the already weak emission caps will be further diminished. The bill exacerbates this concern by granting early reduction credits above the cap and without limit to so-called "opt-in" units – non-utility industrial units that may elect to be designated as affected units – thereby ensuring that the bill will not achieve even its own claims regarding the levels of required reductions from the utility sector. This opt-in feature also appears likely to push back achievement of the 70 percent reduction targets even past mid-2020.

EPA has estimated the benefits of Clear Skies to be \$110 billion at a cost of \$6 billion – a benefit-to-cost ratio of about 20:1. Clearly, then, more rigorous and timely caps would not only yield substantially increased benefits, but could do so while still remaining very cost effective. In contrast, leaving such a significant level of feasible, cost-effective emission reductions behind – as S. 1844 does – comes at a very high cost. It will be difficult to return to the utilities to seek further reductions once the program is put into place, and because air pollution control is a zero-sum calculation, we will be forced to seek those reductions from other sources – including ones that are already well regulated and/or for which controlling emissions is far more costly and less cost effective, such as small businesses – and through strategies that may be publicly unpopular. Such an alternative is not only unfair to those sources doing their fair share to clean up our air, it may well not result in sufficient emission reductions, leaving our nation with a serious environmental and public health problem and few tools to adequately address it.

Statutory Rollbacks

As troubling as these problems are, of even greater concern to us is the fact that S. 1844 abolishes some of the most important statutory tools and requirements for achieving and sustaining clean air.

Contrary to STAPPA and ALAPCO's firm belief that new and existing power plants must continue to be subject to NSR, S. 1844 repeals this important program for affected sources, including requirements for new units to install state-of-the-art Lowest Achievable Emission Rate control technology and acquire emission offsets in nonattainment areas, and install Best Available Control Technology and protect air quality increments to guard against adverse local air quality impacts in attainment areas. Existing sources making major modifications should be

required to install the best available controls on affected units at the time of modification, acquire any emission allowances required to address emission increases and ensure against adverse local health or environmental impacts. However, in place of all this, S. 1844 regresses to seriously outmoded New Source Performance Standards (NSPS) and, further, rescinds requirements to update the NSPS on a periodic basis. Further, this bill would allow non-utility units from other industries to qualify for this same regulatory relief, as well.

S. 1844 also eliminates all the requirements of sections 169(A) and (B) of the Clean Air Act, including not only Best Available Retrofit Technology (BART) requirements, which the original Clear Skies bill repealed, but all visibility requirements and regional haze rules. Further, it revokes many Prevention of Significant Deterioration (PSD) requirements and relaxes protections for Class I areas. Moreover, the bill also includes provisions that prevent states from taking credit in their State Implementation Plans for any NSR or PSD requirements they seek to apply to affected units. Opt-in units would also be able to take advantage of these relaxations.

With respect to toxic air pollutants, S. 1844 repeals the utility MACT rule, including the regulation of non-mercury HAPs, and rescinds residual risk requirements for HAPs, which, under current law, protect the public with an additional margin of safety following application of stringent technology requirements. Once again, the bill would allow non-utility opt-in units to escape these requirements.

The bill also seriously undermines states' abilities to protect air quality in their jurisdictions by prohibiting compliance with any petition under section 126 until 2014. Further,

it impedes potential use of this important authority by requiring a downwind area to first demonstrate that all more cost-effective measures have been implemented – a process that will surely result in delay and lead to litigation. In addition, EPA is prevented from exercising its authority to issue a SIP call under section 110 until 2014.

Conclusion

Once again, I would like to reiterate that STAPPA and ALAPCO endorse a national multi-pollutant approach for power plants. Such a program should institute appropriately rigorous emission reductions on a timely schedule and compel use of state-of-the-art technology. We are disappointed that S. 1844 not only falls far short of our associations' adopted principles, but also strips states and localities of our critical tools and authorities for providing clean, healthful air. On behalf of STAPPA and ALAPCO, I thank you for this opportunity to present our associations' views on this very important issue. We look forward to working with you in the weeks ahead.