

September 20, 2000

Carol Connell  
U.S. Environmental Protection Agency  
National Vehicle and Fuels Emission Laboratory  
2000 Traverwood  
Ann Arbor, MI 48105

Dear Ms. Connell:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), we wish to provide you with the associations' comments on EPA's proposed rule for the "Control of Emissions of Hazardous Air Pollutants from Mobile Sources," which appeared in the *Federal Register* on August 4, 2000 (65 FR 48057).

#### Background

There is no argument that emissions of hazardous air pollutants from mobile sources are a very serious problem. In fact, mobile sources represent the predominant source of toxic air pollutants in this country. EPA's own data confirm this conclusion: the 1996 National Toxics Inventory indicated that approximately 40 percent of hazardous air pollutant emissions are from motor vehicles and nonroad mobile sources combined. Specifically with respect to benzene, 76 percent of emissions are from on- and nonroad sources. For formaldehyde, the total contribution from on- and nonroad sources is 49 percent. The National Air Toxics Assessment modeling conducted by EPA indicates that, even in small communities, ambient benzene concentrations significantly exceed health benchmarks. Current ambient monitoring results show the same thing. Obviously, to address the significant public health problem of toxic air pollution, we must establish measures that reduce emissions from mobile sources, both onroad and nonroad.

The Clean Air Act is clear in its mandate: EPA must promulgate regulations under Section 202(l) to control hazardous air pollutants from motor vehicles and motor vehicle fuels. These regulations are to apply to, at a minimum, benzene and formaldehyde and "reflect the greatest degree of emission reduction achievable through the application of technology which will be available..." Congress mandated many other mobile source measures when it crafted the Clean Air Act and still determined that an *additional* provision to address mobile source air toxics specifically was warranted.

Thus, we do not believe the proposal, which relies primarily on measures already taken and merely caps benzene levels at 1998-99 levels, satisfies the requirements of Section 202(l) of the Clean Air Act

STAPPA and ALAPCO are very supportive of many of the efforts EPA is undertaking to address emissions from mobile sources, including Tier 2 motor vehicle emission standards, gasoline and diesel fuel sulfur standards, federal reformulated gasoline, onroad heavy-duty diesel standards and small engine standards. We applaud the agency for promoting these important measures and we acknowledge that they will result in needed reductions in emissions from mobile sources. However, these programs alone are simply not adequate to reduce toxic air pollution from mobile sources sufficiently. These programs, some of which rely on the turnover of the fleet, do not provide reductions in toxic air pollution soon enough. Consequently, we fear that the severe public health risk from mobile source air toxics will still persist a decade or more from now.

Further, aside from the delays, even if the controls EPA is relying upon to address mobile source air toxics do result in a 75-percent reduction in certain pollutants, as the agency is claiming, that may still not be enough. Considering the large contribution of mobile sources to the problem of toxic air pollution, we do not believe EPA has made a convincing demonstration that even a 75-percent reduction in emissions equals reduction of public health risk to an acceptable level. Again, mobile sources dominate the risk posed by toxic air pollutants in most communities in the United States. The measure of successful regulation of hazardous air pollutants, according to EPA practice in other rules and as interpreted by the court in the 1994 decision related to the benzene National Emission Standard for Hazardous Air Pollutants, is the reduction in the risk to public health to as close to one in one million as possible.

Even worse than the delays inherent in EPA's proposed approach is the fact that the agency has not offered any assurance that mobile source air toxics will *ever* be adequately addressed in the future. Under the best of circumstances, the proposed program will not afford additional controls on any emissions of mobile source air toxics for at least six or seven years – an unacceptably long time. Under less-than-ideal circumstances, EPA could decide ultimately not to take any additional action to control emissions from mobile sources, continuing to leave the problem unresolved. Since EPA is already several years behind the Clean Air Act's schedule for controlling mobile source air toxics, we do not believe additional delay is acceptable. Mobile source air toxics controls are already overdue and should not be postponed any longer.

In light of our deep concerns about mobile source air toxics, we were depending upon EPA to take strong action to address this issue. This is especially critical because 1) Section 202(l) is one of the only avenues for regulatory action to expressly reduce the substantial risk posed by mobile source air toxics and 2) state and local agencies have limited capacity to regulate mobile sources or fuels directly and generally rely upon EPA to take the lead. We were counting on EPA, then, to take aggressive action to address our public health concerns.

We believe EPA's approach outlined in the August 4 proposal should be amended to include new requirements specifically to address mobile source air toxics and to address other concerns we will identify. Our recommendations are described in greater detail below.

### STAPPA/ALAPCO Recommendations

#### *More Stringent Benzene Limits*

In the preamble to the proposal, EPA itself recognizes the importance of controlling benzene as part of a mobile source air toxics program. The preamble states: "...on a mass basis, benzene makes up about 70 percent of the total amount of these gaseous toxics. Thus if toxics emissions are going to be controlled through mobile sources, the benzene content of gasoline is an obvious area for priority consideration." We agree with this statement and, accordingly, do not believe EPA's proposal goes far enough to address the benzene problem. Instead of merely codifying existing benzene levels, EPA should establish a nationwide fuel benzene cap that is more stringent than the 1.0-percent cap under the Phase I reformulated gasoline (RFG) program and no higher than the lowest benzene level currently being achieved in the nation today. This cap should be as low as feasible and should apply nationally. (We note that although the 1.0-percent benzene cap in federal RFG has resulted in a reduction in ambient benzene concentrations, state and local air agencies have demonstrated that ambient benzene concentrations in areas using Phase I RFG still persist at concentrations well above risk screening ranges.) Benzene levels in conventional gasoline can vary in different regions of the country and may be as high as 5%. To codify higher benzene levels, and therefore less health protection, for most communities in the U.S. is unacceptable.

#### *Timing*

As we noted earlier, EPA's program includes unacceptable delays in studying mobile source air toxics and developing additional regulations. Since the Clean Air Act called for the program to have been in place several years ago, we believe EPA should not postpone the protection of public health any longer than necessary and should expedite the future stages of the program. Since we recognize that additional research is worthwhile, we do favor EPA conducting the additional analysis it has proposed, followed by the issuance of additional standards. We recommend, however, that the schedule be accelerated. Rather than proposing a schedule that will result in the final issuance of additional standards by December 2004, EPA should amend the schedule so that final standards are promulgated by June 2004.

#### *Preemption*

Since EPA proposed an approach that calls for *no* additional controls, one feature of the mobile source air toxics proposal that causes us a great deal of consternation is the preemption of state and local agencies' ability to adopt more stringent limits on benzene

in gasoline. In the preamble to the proposal, EPA acknowledges that state and local agencies may be put in a difficult position by the rule. The preamble states that the proposed program “would not impose a uniform national standard that ensures significant emissions reductions in all areas of the country” and “gasoline benzene levels around the country would not change from where they are today [which is] particularly significant for areas receiving conventional gasoline.” In some of these areas, average benzene levels are “well above the national average.” The preamble goes on to note that “without some regulatory mechanism, this proposal could have the effect of preventing States from addressing local toxics concerns under all circumstances because a waiver may not be available.”

Even if EPA strengthens the proposal significantly (e.g., by instituting the benzene cap we have recommended), it is imperative that the rule not tie our hands by preempting state and local agencies from adopting our own benzene controls for gasoline subject to the federal benzene standard. Those of us who fear that the proposal will not go far enough to protect public health need to have the option of adopting a program tailored to address our areas’ problems, including establishing our own limits on gasoline.

#### *Form of the Standard*

In the preamble to the proposal, EPA requests comments on which form the standard should take (e.g., benzene content standard, toxics performance standard or benzene emissions performance standard). STAPPA and ALAPCO favor a form of the standard that will provide maximum public health and environmental protection *and* full flexibility for state and local agencies that wish to go beyond the federal program to adopt their own benzene or toxic limits for gasoline. Whether this is accomplished through a toxics performance standard, another of the identified options or an approach that was not presented in the EPA proposal, we believe EPA should make health and environmental protection and state/local flexibility very high priorities in developing this program.

#### *Technical Analysis Plan and Future Regulation*

STAPPA and ALAPCO are very pleased that the preamble to the proposal acknowledges the need for additional research and data gathering and we are especially gratified to note that nonroad sources are included in the research plan. Since, as the proposal notes, nonroad sources contribute “approximately the same amount to national inventories of key air toxics as on-highway sources,” it is essential that they be included in any future programs. We support, then, EPA’s plans to conduct additional research related to onroad and nonroad sources of mobile source air toxics (including benzene, aromatics and other pollutants). However, we are dismayed to note that the appropriate provisions addressing the research agenda for onroad and nonroad sources are not contained in the proposed rule itself. Without including them in the rule, there is no explicit commitment that this research plan will be carried out. Given the fact that this data-gathering and analysis effort is extremely important and long overdue, we believe it is important for EPA to commit to it in the rule language itself.

Further, while EPA explicitly states in the proposed rule language that onroad vehicles and fuels will be subject to future rulemaking, the proposed rule fails to state that nonroad sources would also be included in this future regulatory action. In view of the importance of including nonroad sources in any future mobile source air toxics program, we strongly urge EPA to include both onroad and nonroad sources in future mobile source air toxic rulemaking, as well as in the technical analysis plan, and to state this clearly and explicitly in the final rule.

### Conclusion

We believe EPA's proposal for mobile source air toxics does not go far enough to address our concerns about this significant public health problem. We urge EPA to consider seriously our recommendations and make the necessary adjustments to the final rule.

Thank you again for your consideration of STAPPA and ALAPCO's comments on this issue. Please do not hesitate to contact us or the STAPPA/ALAPCO Secretariat at (202) 624-7864 if you need any additional information.

Sincerely,

Ronald C. Methier  
President of STAPPA

Marcia T. Willhite  
President of ALAPCO

cc: EPA Air Docket Number A-2000-12