Analysis of the Testimony of John A. Paul

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On behalf of State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO)

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Mr. Paul: "S. 1844 would postpone until 2018 the final date for industry compliance with the NO_x, SO_2 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 SO_2, 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."

Analysis: The Acid Rain Trading Program, the most successful Clean Air Act program, allows banking. According to the Environmental Protection Agency, "The banking aspect of the trading program creates incentives for electricity generators to reduce their emissions further and more quickly than the law requires." The results have been impressive: "Reductions in the early years of the program averaged 25% below allowable levels, resulting in early benefits to human health and the environment."

The Clean Air Act *does not* require a specific regulatory approach such as a MACT for mercury, nor does it require a specific level of reduction. Under the MACT framework, EPA must determine what reduction levels are *achievable* by analyzing emission controls used by similar sources of pollution. The law requires EPA to set a minimum reduction, determined by averaging the emission control achieved by the best-performing 12 percent of an industry.

No commercially available technologies can reduce mercury emissions, from all coal types, on a consistent basis, by 90 percent in three years. According to the Energy Information Administration: "With currently available technologies, it is not known whether this level of removal is achievable for all plant and coal types. This is particularly true for plants using subbituminous and lignite coals. Technologies for removing SO2 and NOx are not as successful at removing mercury from these lower rank coals and mercury specific control technologies that can achieve greater than 90-percent removal have not been demonstrated." (Energy Information Administration, "Analysis of S. 1844, the Clear Skies Act of 2003; S. 843, the Clean Air Planning Act of 2003; and S. 366, the Clean Power Act of 2003," May 2004)

Imposing an unrealistic, 90 percent command-and-control reduction by 2008 would cause severe economic harm to the coal industry, which provides 52 percent of the nation's electricity. According to the Energy Information Administration, this approach would cut coal-fired electric generation by 55 percent, coal production by 50 percent, and destroy 32,000 coal jobs. (Energy Information Administration, "Analysis of S. 1844, the Clear Skies Act of 2003; S. 843, the Clean Air Planning Act of 2003; and S. 366, the Clean Power Act of 2003," May 2004).

Mr. Paul: "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 SO_2, 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 SO_2 caps of 4.5 million tpy by 2010 and 3.0 million tpy by 2018. A regional SO_2 cap for western states should not interfere with the regional haze rule's SO_2 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."

Analysis: These levels are very similar to those called for in the Carper bill. The Carper bill, according to the Energy Information Administration, is not cost-effective and would seriously harm the economy. Under the Carper bill:

- The amount of electricity generated from coal would drop 24.2% by 2025, which is almost five times greater drop than it would with the Inhofe bill.
- Coal production would drop 302.2 million tons by 2025, almost five times lower than it would with the Inhofe bill.
- Coal mines would lose 12,000 jobs by 2025.

(Source: Energy Information Administration ("EIA"), Analysis of S. 1844, the Clear Skies Act of 2003; S. 843, the Clean Air Planning Act of 2003; and S. 366, the Clean Power Act of 2003; May 2004.)

The Carper bill would also increase natural gas use at a time when natural gas prices are rising and domestic production is decreasing. The increased demand for natural gas would raise prices, affecting consumers, agriculture and the manufacturing sector. Specifically:

- EIA estimates natural gas prices for consumers would increase $2.9 billion in 2020, more than three times the increase under the Inhofe bill, at $0.8 billion.
- EIA likely has underestimated the increase in natural gas prices. This is because the current price of natural gas is higher than used in EIA's estimate.
- Net natural gas imports would increase 4.7% by 2020.
- Dependence on natural gas imports would increase 8.8% by 2025.
- Net natural gas imports would account for 24.3% of the total gas supply, which would come primarily from liquefied natural gas.

(Source: Energy Information Administration, Analysis of S. 1844, the Clear Skies Act of 2003; S. 843, the Clean Air Planning Act of 2003; and S. 366, the Clean Power Act of 2003; May 2004.)

The Carper bill restricts mercury trading, making the trading program less effective. The most successful emission trading programs, such as EPA's acid rain program, do not restrict the ability of a source to trade so long as overall cap levels are met.

- The Carper bill's restricted mercury trading would lead to higher industry costs, and therefore more fuel switching, than would occur with unrestricted trading under the Inhofe bill.

- The cost of complying with the Carper bill's mercury cap is likely to be even greater than EIA's estimate. This is because the cost of certain mercury control technologies is 60% higher than estimates used by EIA.

(Source: Energy Information Administration, Analysis of S. 1844, the Clear Skies Act of 2003; S. 843, the Clean Air Planning Act of 2003; and S. 366, the Clean Power Act of 2003; May 2004.)

Mr. Paul: "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."

Analysis: All of the above programs lack the certainty and clarity of Clear Skies and cannot guarantee a specific level of emissions reductions. These command-and-control programs encourage confrontation and litigation, which can seriously delay progress in cleaning the air.

New Source Review provides a clear-cut example of the problems associated with the existing act. Currently there are two conflicting legal interpretations of NSR. The Clinton EPA's 1999 "enforcement interpretation" essentially concludes that many routine maintenance projects trigger NSR. Yet in its August 26, 2003 decision, the United States District Court for the Middle District of North Carolina rejected the Clinton EPA's enforcement interpretation. In fact, EPA has admitted that under the court's analysis, none of the projects undertaken in that case would violate NSR. The NSR program, then, would apply to few facilities, and therefore would not come close to besting the reductions achieved by Clear Skies.

The Section 126 process, for example, is unwieldy, time-consuming, and prone to litigation. According to Unions for Jobs and the Environment: "UJAE notes Section 126 petitions have complicated, exacerbated and thwarted compliance efforts that would otherwise have been implemented. While such petitions are doubtless conceived with good intentions, they can have unforeseen -- and confounding effects."

According to testimony on April 8, 2003 by former EPA Administrator Christie Todd Whitman, "For example, Section 126 of the Clean Air Act provides a petition process that states can use to force EPA to issue regulations to reduce emissions of SO2 and NOX from upwind sources, including power plants. A number of states have indicated that they intend to submit Section 126 petitions in the near future. **However, compared to Clear Skies, this approach will almost certainly involve years of litigation and uncertainty about reduction targets and timetables**."

Further, Clear Skies will require coal-fired power plants to install $50 billion in new pollution control technologies, thus obviating the need for states to file Section 126 petitions.