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**TESTIMONY OF
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OF THE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES**

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INTRODUCTION

Mr. Chairman and Members of the Subcommittee: Thank you for the invitation to provide information on EPA's attainment date extension policy for areas affected by pollution transport, and the impact of recent court decisions on this policy.

Over the last decade, we have learned a great deal about "transported" pollution. We know that pollution is often transported great distances – often across state boundaries. We also know that a number of cities have not been able to meet Clean Air Act deadlines for complying with the 1-hour ozone air quality standard because they are significantly affected by pollution from upwind sources located in other cities or other states. In most cases, these upwind sources are required to reduce their emissions under EPA interstate ozone transport rules or state clean air plans. These reductions will allow many downwind cities to meet the ozone standards, but these cities still face a timing problem: Under the Clean Air Act, they have compliance deadlines that are earlier than the dates by which the upwind sources are required to reduce their emissions – the very emissions that are in large part responsible for poor air quality in the downwind areas.

In order to address this problem, EPA adopted its "attainment date extension policy" in 1998 and granted qualifying downwind cities additional time to meet the standard. To qualify for an extension, the cities had to meet a number of requirements, including a showing that they had imposed on their local sources all the reasonably available controls that would result in meeting the standard sooner.

For the reasons set forth below, we continue to believe the attainment date extension policy, which was issued during the Clinton Administration, makes sense from a policy perspective. The courts have determined, however, the Clean Air Act does not provide legal authority for the policy. As a result, EPA is taking steps to comply with the court decisions in

areas affected by the litigation, and is not able to apply the policy in other areas affected by upwind transport of pollution.

Mr. Chairman, in the remainder of my testimony, I will review in more detail the policy, its history and rationale, and how recent court decisions have affected both EPA's policy and areas affected by upwind pollution more generally.

CLEAN AIR ACT REQUIREMENTS

When Congress amended the Clean Air Act in 1990, many areas of the country had not met the 1-hour ozone standard EPA set in 1979. As a result, Congress established a new framework and new minimum requirements for ozone nonattainment areas.

The revised Act called for ozone areas to be classified according to the severity of their air quality problems – marginal, moderate, serious, severe, or extreme. Under this structure, an area with a more serious pollution problem is subject to more stringent control requirements and is allowed more time to meet the ozone standard. The Act set the following deadlines for meeting the 1-hour standard: 1993 for marginal areas; 1996 for moderate areas; 1999 for serious areas; 2005 or 2007 for severe areas; and 2010 for extreme areas.

The Act established specific consequences for areas that fail to meet the standard on time. A marginal, moderate or serious area must be reclassified -- or “bumped up” – to a higher classification and must meet the requirements of that new classification. Depending on the classification, those requirements could include: enhanced inspection and maintenance for motor vehicles; reformulated gasoline; and controls on smaller pollution sources. (See Appendix for list of requirements.) A severe or extreme area is subject to stationary source fees and certain other requirements, rather than reclassification.

TRANSPORT AND ATTAINMENT DEADLINES

During the 1990s, it became clear that interstate transport is a more serious and widespread contributor to ozone nonattainment than previously understood. Both ozone and nitrogen oxides (which react with VOC to form ozone) can travel long distances.

A number of areas found it difficult or impossible to attain the standard on time because of interstate transport, even though they had implemented the local control measures required for their classification.

Based on a determination that transport was significantly contributing to ozone nonattainment in the eastern United States, EPA in 1998 issued an interstate transport rule known as the NO_x SIP call. The rule required 22 states (currently 19 states, due to litigation) and the District of Columbia to significantly reduce their NO_x emissions. This rule will dramatically

reduce the interstate transport of ozone and will help many areas to meet both 1-hour and 8-hour ozone standards.

Despite this action, several cities still faced problems because of two deadline inconsistencies:

- First, the compliance date for upwind controls required by the NOx SIP call (May 2004) is later than the attainment dates for moderate and serious areas (1996 and 1999, respectively).
- Second, upwind areas classified as severe have later attainment dates, but pollution from those areas can affect downwind moderate or serious areas, which have earlier deadlines for meeting the standard. Houston, for example, has a 2007 attainment date. Houston emissions adversely affect air quality in Beaumont, which originally had a 1996 attainment date.

THE ATTAINMENT DATE EXTENSION POLICY

These timing problems led EPA to develop a policy to assist areas significantly affected by transport by allowing those areas to take credit for future controls required of upwind areas. The Agency issued that policy, "Extension of Attainment Dates for Downwind Transport Areas," July 16, 1998, and later published it in the Federal Register. The policy provided guidance on extending attainment dates for moderate and serious ozone nonattainment areas that were significantly affected by transported pollution.

The extension policy was designed to ensure that areas significantly affected by transport are not required to implement costly local control measures that will not result in meeting the 1-hour ozone standard sooner. Without the attainment date extension policy, several downwind cities would have been required to adopt additional local controls specified in the Clean Air Act in order to receive a later attainment date. EPA took the position that requiring these additional controls on local sources was not the best solution when: 1) upwind sources significantly affected an area's ability to meet the 1-hour ozone standard; 2) the affected area already had adopted measures to control its local share of the problem; and 3) the area would meet the 1-hour ozone standard through required reductions from upwind sources.

To qualify for an extension under this policy, a nonattainment area was required to:

- Show that it was affected by transport from (1) an upwind area in the same state with a later attainment date and that significantly contributes to the downwind area's nonattainment problem, or (2) an upwind area in another state that significantly contributes to the downwind area's nonattainment problem (i.e. states subject to the Nox SIP call).
- Adopt all local measures required of the area's classification and any additional

measures needed to demonstrate attainment.

- Submit an approvable attainment demonstration, including the necessary adopted local measures, showing that the area would attain no later than the time upwind controls must be in place (i.e., by the compliance date of the NO_x SIP call, or by the attainment date for the upwind area).
- Implement all adopted measures as expeditiously as practicable and no later than the time the upwind reductions needed for attainment will be achieved.

The policy was designed to ensure that the air quality standard would be met. It provided the possibility of an extension only when statutory or regulatory provisions – the NO_x SIP Call rule, or the upwind city's attainment date – require that upwind reductions would be achieved by a date certain.

EPA approved attainment date extensions for seven areas: Metropolitan Washington (including the District of Columbia and parts of Virginia and Maryland); St. Louis, MO-IL; Atlanta, GA; Beaumont-Port Arthur, TX; Baton Rouge, LA; Greater Connecticut (Hartford); and Western Massachusetts (Springfield).

LITIGATION AND STATUS OF POLICY

Environmental groups filed legal challenges to EPA's policy in all of the seven areas except Greater Connecticut and Western Massachusetts. Federal Courts of Appeals ruled that the Clean Air Act does not provide legal authority for the policy in cases involving Metropolitan Washington (D.C. Circuit), St. Louis (7th Circuit) and Beaumont-Port Arthur (5th Circuit). Following those rulings, EPA requested and received voluntary remands of the attainment date extension in cases involving Baton Rouge and Atlanta.

In light of the court rulings regarding EPA's legal authority for the policy, EPA does not intend to apply the policy to any other areas in the country. EPA has been fully complying with the court decisions by withdrawing attainment date extensions and moving to bump up the areas subject to the litigation.

However, EPA continues to believe the purposes of the policy are legitimate for the reasons I have stated above. Transport continues to occur between 1-hour ozone nonattainment areas such as Houston and Beaumont-Port Arthur, and between Washington and Baltimore. Upwind areas in other states also continue to affect downwind nonattainment areas such as Atlanta, and upwind reductions still are necessary for some areas to meet the standard. We believe pollution transport is likely to be an issue in implementation of the 8-hour standard as well.

STATUS OF EXTENSION POLICY AREAS

EPA already has taken several regulatory actions in response to the court decisions. Following is the current status of each of the five cities:

- **St. Louis:** The most recent air quality data have demonstrated that the St. Louis-East St. Louis metropolitan area is meeting the 1-hour ozone standard. On May 12, 2003, EPA redesignated the area as an attainment area.

As required by the 7th Circuit decision, EPA issued a notice January 30, 2003, bumping St. Louis from “moderate” to “serious.” However, the reclassification is no longer in effect because of the redesignation to attainment. Missouri and Illinois are no longer required to submit a new 1-hour SIP with “serious” area control measures for St. Louis because the area met the standard and was redesignated before the deadline for the state to submit the new control measures.

The Sierra Club in July filed petitions for review in the 7th and 8th Circuits challenging the St. Louis redesignation.

- **Metropolitan Washington, D.C. :** EPA published a notice on January 24, 2003, determining that the area had failed to attain the 1-hour standard as of November 1999 and that the area had been reclassified as “severe” by operation of law. EPA also published a final rule on April 17, 2003, providing conditional approval of the area’s 1-hour severe area attainment SIP and 1996-99 rate-of-progress plans (now required as a result of the court decision).

The Sierra Club filed petitions for review of the conditional approval and the reclassification. The petition on the bump up takes issue with the deadlines for submitting certain additional severe area SIP elements but not with the reclassification itself.

- **Beaumont-Port Arthur:** On June 19, 2003, EPA published a proposed rule to reclassify Beaumont-Port Arthur as “severe” or, in the alternative, “serious.”

In response to a request by the South East Texas Regional Planning Commission, EPA provided a 30-day extension of the comment period to August 20, 2003.

- **Baton Rouge:** Because of the 5th Circuit decision in the Beaumont-Port Arthur case, EPA on April 24, 2003, issued a final rule finding that the Baton Rouge area did not attain the 1-hour ozone standard by its 1999 deadline, and provided notification that the area is reclassified to “severe” by operation of law.
- **Atlanta:** As a result of other adverse court decisions, EPA voluntarily requested vacatur of EPA’s approval of the Atlanta attainment plan that relied on the attainment date

extension. The 11th Circuit Court of Appeals granted that motion in an order dated June 16, 2003. EPA expects in September to determine whether Atlanta attained the ozone standard by its 1999 deadline, and if not, provide notification that Atlanta is reclassified as “severe” by operation of law.

The additional statutory requirements resulting from bump-up to “serious” or “severe” are shown in the list of requirements in the Appendix to this testimony. The actual impact on an area may be less than the list of requirements implies, because some areas have previously adopted some of the listed measures as part of their attainment demonstrations.

FUTURE IMPACT OF COURT DECISIONS ON DOWNWIND AREAS

Mr. Chairman, you also asked me to address the impact of the court rulings on downwind nonattainment areas in the future.

The federal courts have been very clear: The Clean Air Act provides no authority for extending an area’s statutory attainment date based on pollution transport without bumping up the area to a higher classification, which triggers additional local control requirements. This means that any ozone nonattainment area classified under subpart 2 that misses its attainment date must be bumped up within six months of the attainment date, even if transport contributes to its pollution problem.

There is one exception: the Act does provide for up to two one-year extensions for an area that is very close to meeting the standard.

We do not anticipate that many additional 1-hour ozone areas are likely to seek relief from the Act’s bump-up provisions because of pollution transport problems, although this issue might arise in a few areas. Two possible examples are Portland, Maine; and Dallas.

The President recently proposed legislation known as the Clear Skies Act that, among other things, would further reduce in-state transport of ozone and NO_x (an ozone precursor) from the power sector through a cap-and-trade program similar to the acid rain program. Clear Skies would further reduce regional ozone in the East beginning in 2008. These reductions are beyond the levels required under the NO_x SIP call. The Clear Skies reductions would enable several additional areas to meet the 8-hour standard without imposing any additional local controls. A number of other areas would find it easier to meet the 8-hour standard because of the additional reductions in power plant emissions that would be required under Clear Skies. However, the Agency has not made a determination that such reductions are warranted under the transport provisions of the Act. In order to evaluate this issue, the Agency intends to investigate the extent, severity and sources of interstate ozone transport that will exist after the existing transport rules are implemented in 2004. Prompt action to reduce interstate pollution transport would minimize the extent to which interstate transport could interfere with areas meeting their attainment dates for the 8-hour standard. Even so, there could be 8-hour areas with early

attainment dates that are earlier than the compliance date for upwind facilities in the same state or other states. Timely identification and control of sources causing pollution transport are necessary if states and EPA are to minimize this problem.

Mr. Chairman, thank you for the opportunity to testify. I would be happy to answer any questions from you and members of the subcommittee.

APPENDIX

Moderate Area Requirements

- Attainment demonstration
- 15 percent volatile organic compounds (VOCs) reduction plan (first six years)
- Basic I/M
- VOC reasonably available control technology (RACT) rules for control technique guideline (CTG) categories and major stationary sources (100 tons per year)
- NOx RACT rules for certain major combustion sources
- New source review (NSR) major source thresholds (100 tpy) and offset ratio (1.15 to 1)

Serious Area Requirements

- Requirements for moderate areas, plus
- Enhanced I/M
- Enhanced ambient monitoring
- Attainment demonstration with photochemical grid modeling
- Contingency Measures (for failure to meet 15 percent plan)
- 3 percent rate of progress (ROP) plan to attainment year
- Clean fuels program
- Vehicle miles traveled (VMT) demonstration
- Stage II gasoline vapor recovery
- NSR major source thresholds (50 tpy) and offset ratios for serious areas (1.2 to 1)
- Major source thresholds (50 tpy) for RACT and Title V permits

Severe Area Requirements

- Requirements for serious areas, plus
- Reformulated gasoline
- VMT growth offsets
- Major source fees for failure to attain
- NSR major source thresholds (25 tpy) and offset ratios for severe areas (1.3 to 1)
- Major source thresholds (25 tpy) for RACT and Title V permits