

US EPA ARCHIVE DOCUMENT

## MEETING MINUTES

### **8-Hour Ozone National Ambient Air Quality Standard Implementation Public Meeting Radisson Hotel Old Town Alexandria, Virginia March 5, 2002**

#### **INTRODUCTION**

The United States Environmental Protection Agency (EPA) held a public meeting on March 5, 2002 from 9:00 a.m. until 5:00 p.m. in Alexandria, Virginia. EPA held the meeting to solicit comments on various options to implement the 8-hour ozone national ambient air quality standard (NAAQS). The options contain EPA's preliminary views and were used to initiate a dialogue with the public on approaches for implementing the 8-hour ozone NAAQS. EPA is interested in hearing the views of interested stakeholders on the options and their ideas on how to best implement the 8-hour ozone NAAQS consistent with the February 2001 Supreme Court decision. Issue papers and presentation material were and still are available to the public at the website <http://www.epa.gov/ttn/rto/ozonetech/o3imp8hr/o3imp8hr.htm>.

#### **ATTENDEES**

See attached list.

#### **DISCUSSION**

##### **Plenary Session (Lydia Wegman)**

No comments

##### **Classification of Nonattainment Areas for the 8-Hour Standard (John Silvasi)**

- Renee Green (County of Bexar, Texas): Stated that the classification scheme is confusing. She is also concerned that the standard is expressed in units of ppb (instead of ppm), which would take away the benefit of rounding.
  - EPA staff clarified that these classification schemes are just proposed and not set in stone and that the standard is in units of ppm (the examples were stated in ppb for simplicity).

- Elizabeth Bartlett (New York State DEC): Expressed concern about the legality of using 1-hour data to designate 8-hour areas.
  - Jan Tierney explained the designations will be made solely on the 8-hour data, but classification is different.
- Joanne Alexandrovich (Vanderburgh County Ozone Officer): Expressed concern on Option 2 (translation of 8-hour standard to 1-hour standard) because it seems “phony” and the required control measures may not be the best for the situation.
- Chuck Ferrick: (Exxon Mobil): Asked for technical or scientific basis for these options. Will EPA scheme get ozone levels to where we want them?
- Brock Nicholson (NCDENR): Also expressed concern over the translation of the standards. He feels that areas should be doing demonstrations instead of assuming that the “stock measures” will work.
- Elizabeth Bartlett (New York State DEC): Said EPA should make certain that whatever they propose is legally viable so that EPA doesn’t get sued again.
  - EPA staff also expressed this sentiment, but stated that it is most likely that they will be sued no matter what they propose.
- Daniel Wheeler (Federal Highway Administration): Asked “what’s next” after classification.
- Katie Hornbarger (American Forest & Paper Association): Asked if there were studies done to show how areas would fall out under different designations.
  - John Silvasi said there are details in one of the papers.
- Renee Green (County of Bexar, Texas): Feels that Option 4 is the most flexible, but doesn’t want EPA to have the discretion to stick areas in Subpart 2.
- Elizabeth Bartlett (New York State DEC): Suggested that for Option 4, EPA use the 1-hour design values data first, then sort the areas in groups. Then use the 8-hour data to decide how to treat the groups.
- Laura Yannayon (U.S. General Accounting Office, Natural Resources and Environmental Team; (formerly with the San Diego Air Pollution Control District): Asked clarifying questions about Option 1. Areas in attainment now would be in submarginal in Subpart 1.
- Herb Williams (TNRCC): Asked if a current 1-hour nonattainment area will keep all of the 1-hour requirements under an 8-hour standard.
- Claudia O’Brien (Latham & Watkins Attorneys at Law representing Intel Corporation): Suggested waiting to classify 8-hour areas until they attain the 1-hour standard to get around

Table 1 in Subpart 2. She thought that EPA could get around subpart 2 by designating submarginal areas.

- John Walke (NRDC): Stated concern over the negative health effects associated with “flexibility” and possible delay.
- Shane Robinson (US Conference of Mayors): Commented that he liked Option 2 because it seems straightforward and easy to explain to the public.
- Blake Early (American Lung Association): Agrees with John Walke’s concern about the negative health effects of flexibility and delay. Asked if a list of the nonattainment areas in the studies would be named.
  - EPA Staff explained that this would not be done because EPA’s hypothetical definition of nonattainment areas for analysis purposes would be controversial (and might be erroneously perceived as “pre-designating”).
- Brock Nicholson (NCDENR): “Flexibility” does not have to mean “delay.” He likes Option 4, but suggests that all 4 options should remain on the table.

#### **Transition from the 1-hour NAAQS to the 8-hour NAAQS (John Silvasi)**

- Elizabeth Bartlett (New York State DEC): Asked about areas with current maintenance plans. Would they continue to have them?
- Brock Nicholson (NCDENR): Stressed the need for a strong anti-backsliding provision. Option 1 could be good; it makes the most sense when explaining to local officials.
- ???: Asked what would happen to an area that was recently bumped-up and what consideration would be given? Preferred Option 2.
- Laura Yannayon (U.S. General Accounting Office, Natural Resources and Environmental Team; (formerly with the San Diego Air Pollution Control District)): Prefers Option 2. It makes more sense to spend time and resources planning SIPs for 8-hour standards than doing both standards.
- Bob Dreher (Troutman Sanders): Asked if there was a health benefit in attaining both standards? If so, why would the 1-hour be revoked?
  - Lydia Wegman explained that at the time of 8-hour implementation, there will be no need for the 1-hour standard.

- Herb Williams (TNRCC): Suggested that if the 8-hour standard is more protective than the 1-hour standard then EPA should move more quickly to the 8-hour standard. Also, option 2 may address when SIPs are due among states.
- Ira Domskey (Arizona DEQ): Transitioning to 8-hour standard control programs (rather than administrative programs) need to be key when moving towards standard.
- Elizabeth Bartlett (New York State DEC): Concerned that Option 1 is capricious and lends itself to shifting control measures to get out of doing specific things, prefers Options 2 & 3.
- John Walke (NRDC): Designating areas for the 8-hour standard does not bring cleaner air to the public immediately. Suggests allowing areas to comply with the 1-hour standard. This keeps momentum going in the right direction. Concerned about the potential loss of forward movement if the 1-hour standard is revoked.
  - ▶ Lydia Wegman said EPA will be cautious about revoking the 1-hour standard in the future.

#### **Options on Attainment Dates for the 8-Hour Ozone Standard (John Silvasi)**

- ??: Are submarginal areas less polluted than subpart 2 areas?
  - ▶ John Silvasi said that generally submarginal areas are cleaner, but this is not always the case.
- Abbe Mamer (Federal Highway Administration): Asked what “with justification” means.
  - ▶ EPA staff explained it is the ability to justify a longer period based on the availability of controls and severity of nonattainment.
- Bob Dreher (Troutman Sanders): In terms of public health, has EPA compared when areas will come into compliance under each option. What are the consequences of the different options? EPA should know this information. It would be a good thing if EPA could supply this information for each option.
  - ▶ John Silvasi replied that a list of counties and their design values will be posted on the EPA web site.
- Renee Green (County of Bexar, Texas): Stated that it is difficult to provide comments regarding which option would be most advantageous without knowledge of which subpart they will fall under. Suggested that EPA first determine which classification system will be used.
- Renee Green (County of Bexar, Texas): Stated that there is too much focus on the current nonattainment areas rather than implementation of the 8-hour standard. Questioned how EPA will implement the 8-hour standard for areas currently in attainment for the 1-hour standard but that may be nonattainment for the 8-hour standard.

- ▶ Lydia Wegman responded that the options are designed to address new 8-hour nonattainment areas. All the options are linked but for discussion purposes EPA has separated them.
- Brock Nicholson (NCDENR): Asked for clarification of approach C - would 10 years (subpart 1) really work?
  - ▶ Jim Ketcham-Colwell explained that under approach C, attainment for Los Angeles would be further down the road.
- ???: Commented that bumped-up areas will have a problem with approach C because there will not be enough attainment time to comply by 2007.
- Peter D. Bella (AACOG): Asked EPA to break out current 1-hour attaining areas from 1-hour nonattaining areas.
- Laura Yannayon (U.S. General Accounting Office, Natural Resources and Environmental Team; (formerly with the San Diego Air Pollution Control District)): Option C would be bad for reclassified areas because it gives the States more time.
- Chris James (Connecticut DEP): Concerned with transport in upwind and downwind areas and consistency of their attainment dates.
- Joanne Alexandrovich (Vanderburgh County Ozone Officer): Doesn't like the prospect of "options" in proposed rule. She is concerned that the options do not address attainment dates. She feels that a clear objective should be presented.
  - ▶ John Silvasi clarified that there is a danger in picking only one way in the proposal. The options may help timeliness so that EPA wouldn't have to "re-propose" after public comment.
  - ▶ Lydia Wegman added that the point is well taken. In order for the public to provide useful comment, EPA needs to present a coherent approach.

**Integration of Air Quality Designations and Classifications for the 8-Hour Ozone and PM2.5 NAAQS (Sharon Reinders)**

- Chris James (Connecticut DEP): Encourages EPA to harmonize dates because of overlapping benefits, unless it means delay. Err on the side of protecting public health.
- Brock Nicholson (NCDENR): Option 1 is the best long-term option because the one package approach is easier for industry to understand and deal with.
- Howard Fox (Earthjustice): Will EPA consider what the statute requires?
  - ▶ Sharon Reinders responded that the statute is complicated by litigation and the dates are long overdue for ozone.

- ▶ Lydia Wegman added that since it is past the time frame for ozone, EPA is working toward what makes sense. PM designations will occur in 2005, so there is an opportunity to harmonize the programs.

### **Optimal Controls for Ozone, PM2.5 and Regional Haze (Doug Grano)**

- Joanne Alexandrovich (Vanderburgh County Ozone Officer): Do all options require modeling?
- Ira Domskey (Arizona DEQ): How much thought has been given to ammonia as a precursor to PM2.5?
  - ▶ Doug Grano responded that EPA realizes that ammonia is an important player. Current guidance for the 8-hour ozone standard calls for and encourages development of model outputs for sulfur and nitrates.
- Blake Early (American Lung Association): How will EPA coordinate dates for the Regional Haze program with the PM2.5 and ozone programs?
  - ▶ Lydia Wegman said submittal of the regional haze and PM2.5 dates are linked - the question is the timing for ozone. TEA-21 provides different attainment dates for areas.
- Brock Nicholson (NCDENR): Encourages EPA to take an integrated approach. This ensures that industry and legislature must only be approached once. Given the state of the science, coordinated controls should work.
- Janea Scott (Environmental Defense): Concerned that coordinating attainment dates will cause delay, which would be bad for public health.

### **Addressing Transport in the 8-Hour Ozone Implementation Program (Sharon Reinders)**

- Joanne Alexandrovich (Vanderburgh County Ozone Officer): She favored establishing a new transport region, using regional planning organizations, and additional monitoring. She stated that large industrial sources are the major cause of problems in her area. Nonattainment areas should be larger than MSAs due to transport issues. Monitoring should be expanded to include transport considerations.
- Ira Domskey (Arizona DEQ): Concern about international transport. Areas in the Southwest are facing broad impact from international sources. He indicated that his area has ozone background levels of about 0.065 ppm.
  - ▶ Tom Helms responded that EPA is aware of this situation and is looking at it.
- Herb Williams (TNRCC): Must consider the issue of transport to nonpolluting counties. It doesn't make sense to require receivers to comply with many requirements. Don't rely on



126 Petitions to solve the problem; 126 petitions pit states against states. He also recommended additional national control programs. He is against very large nonattainment areas.

- John Daniel (Virginia DEQ): Option 1 is not good. Suggests a national program and he doesn't like the ideas of large nonattainment areas. He recommended against the EPA Region III model to place areas into nonattainment areas. He will provide written comment.
- Joanne Alexandrovich (Vanderburgh County Ozone Officer): Stated that NSR enforcement would assist rural areas that are largely affected by transport.
- Chris James (Connecticut DEP): Section 126 petitions should only be used as a last resort. Believes that the SIP Call and Clean Skies programs won't get all of the required reductions for the states. Recommends "nationally consistent" measures.
- Brock Nicholson (NCDENR): Large nonattainment areas will not solve the problem and will only frustrate the politicians. A national approach based on analysis by EPA or regional planning organizations is needed to apply the right controls upwind. A regional planning organization for ozone may make sense. He noted that many areas do not need to be designated nonattainment in order for the state to regulate emissions there.
- John Silvasi noted the dilemma: do we bump-up a less polluted area to match the more polluted area's attainment date?
- Renee Green (County of Bexar, Texas): Thought that the two areas should have two different sets of control strategies.
- Brock Nicholson (NCDENR): Suggested different attainment dates for these areas.
- Laura Yannayon (U.S. General Accounting Office, Natural Resources and Environmental Team; (formerly with the San Diego Air Pollution Control District)): Pointed out that transport is not a regulation, just a policy. It may be good to add it into the regulation. Also, areas that are receivers of transported pollution should have a different classification.
- John Walke (NRDC): Quoted Supreme Court judge saying people have a right to clean air. Stated it is a policy mistake to reconcile upwind and downwind areas. Large nonattainment areas will have a perverse result and result in weaker controls. A more rigorous national control measures program is the way to go.
- Kathy Beckett (Jackson & Kelly PLLC representing Midwest Ozone Group (MOG)): EPA needs to be consistent with the OTAG's findings on transport policy.



- Tad Aburn (Maryland DEP): Doesn't support delay, but dealing with transport is critical. Noted that ozone measurements from aircraft in Maryland showed 110 to 115 ppb ozone coming from the west.

### **Tribal Issues (Julie McClintock)**

- Tom Helms posed the following situation: Tribal areas are not the source of pollution, but are within a nonattainment area and want an attainment designation. How does EPA deal with this situation?
- Ira Domskey (Arizona DEQ): Stated Tribes are often the recipients of transported pollution. EPA is not predisposed to allowing "doughnut holes" in areas because of equity and that they are hard to explain to the public.
- Laura Yannayon (U.S. General Accounting Office, Natural Resources and Environmental Team; (formerly with the San Diego Air Pollution Control District)): Stated that it is frustrating to local areas when tribal areas that do contribute to pollution are not held accountable (motor vehicle traffic to casinos was used as an example). The problem works both ways. Tribes should control their emissions.
- John Walke (NRDC): Suggested the problem be dealt with as a transport problem. Apply the most stringent controls on the upwind areas. He also noted that Tribes do have uncontrolled sources and EPA should adopt Federal requirements in Tribal areas because people living on the Reservation are breathing dirty air. Suggested that EPA release the NSR minor source rule, which would have an affect on tribes.

### **Guidance for 8-Hour Attainment Demonstrations (Ellen Baldrige)**

- Ira Domskey (Arizona DEQ): Stated that the urban airshed model is unresponsive to changes in ozone precursor emissions. EPA must reconcile the inventory with VOCs using speciated data. If modeling is required for attainment demonstrations, it is important that input data and the model work well.
- Renee Green (County of Bexar, Texas): Explained that staff and computer time needs to be considered. It cannot be expected that each year would be modeled. It is not realistic to expect that Texas will work with other States for regional modeling. Texas is a large state.
- Chris James (Connecticut DEP): States can and have worked together to do regional modeling. New York, New Jersey, and Connecticut pooled their resources and have been successful.

- Peter Bella (AACOG): If EPA would move forward with the concept of multi-state modeling, it would be easier for States to follow. Wanted to decouple problems of smaller areas that are attaining the 1-hour ozone standard.
- Gene Steadman (Celanese): Concerned about international transport. Is an area expected to apply controls to account for international impact? How can states regulate other countries?
- Brock Nicholson (NCDENR): Wants to see States work together rather than have EPA dictate what must be done. However, there is a proper role for national measures.
- John Walke (NRDC): Modeling is not required for marginal or moderate areas because they were expected to come into attainment. What has become of these areas? It would be instructive to know if attainment was achieved. If the strategy didn't work in the past, EPA should not expect it to work in the future.
  - Tom Helms responded that many areas did come into attainment.
- Brock Nicholson (NCDENR): Number 1 is ok for separated areas but will not work well in the East.
- Howard Fox (Earthjustice): Stressed that EPA should be more proactive with international transport initiatives (US/Canada and US/Mexico).

#### **Transportation Planning Issues Associated with the 8-Hour Ozone Standard (Laura Berry)**

- Herb Williams (TNRCC): Asked if conformity applies to the SIPs, but not the standard?
  - Laura Berry responded that if there is no SIP, the EPA would use some other type of test. Conformity will still apply.
- Tom Ballou (Virginia DEQ): Doing conformity for both standards is redundant. If an area is meeting the 8-hour budget then it is certainly meeting the 1-hour budget. Suggested EPA carry forward the 1-hour budget until the 8-hour SIP is approved. For added areas, create an interim budget until the 8-hour SIP is completed.
- Bob Dreher (Troutman Sanders): Asked EPA to clarify option 1, will there be a one year window where anything could happen?
  - Laura Berry stated that depending on EPA's definition, there may be a one year window.
  - John Silvasi stated that "anti-backsliding" provisions may address this.
  - Sarah Schneeberg said that EPA is deciding on what to do in this situation.
- Tom Ballou (Virginia DEQ): Stated the transportation process (amount of time needed) would not allow you to take advantage of the one year window.

- Elizabeth Bartlett (New York State DEC): STAPPA/ALAPCO explored different scenarios and there is a one year gap. Option 1 is not a good choice because it leaves the gap.
- Gary Jenson (Federal Highway Administration): Pointed out the equity issue for areas that have maintenance plans completed early. They would be required to do conformity, but those areas that didn't have a maintenance plan completed would not.
- Daniel Wheeler (Federal Highway Administration): EPA must make recommendations to Congress with a plan to included 8-hour ozone and PM2.5 standards. Noted that TEA-21 was being redrafted.
- Abbie Marner (Federal Highway Administration): It is important for a area to have an approved maintenance plan in place to keep CMAQ funding.
- Ira Domskey (Arizona DEQ): Don't revoke the 1-hour standard until 8-hour SIP approval. He suggested that he 1-hour should stay in effect until 8-hour budgets are found adequate.
- Tom Ballou (Virginia DEQ): Stated that a new area will find themselves in a build/no build situation and wondered how to deal with developing budgets before a SIP is in place.
- ???: Suggested using an interim approval process for transportation budgets to bridge the time gap.
- Elizabeth Bartlett (New York State DEC): When revoking the 1-hour standard leave the SIP in place.
- Ira Domskey (Arizona DEQ): Areas that are not currently required to do NOx conformity will have to figure out how to transform into the 8-hour standard. EPA should be aware that some areas are not doing NOx conformity because they have NOx waivers.
- Cecilia Ho (Federal Highway Administration) Asked about general conformity.
  - ▶ Tom Helms responded that an EPA work group is addressing the issue of general conformity.

**Will EPA be Contemplating Incentives for Areas that Want to Take Early Action for Reducing Ozone Under the 8-Hour Standard? (David Cole)**

- Renee Green (County of Bexar, Texas): Concerned about submarginal areas. There is an equity issue where a violating area may have to do less then an early reduction area.. She feels that flexibility needs to be built into the standard so that agreements with EPA could be made to give areas incentives to do early reductions. She suggested no NSR and no transportation conformity for seven years to see if the program works as incentives.

- John Walke (NRDC): Stated that it is not legally permissible to provide incentives that allow noncompliance with what the CAA requires. EPA can expect a lawsuit if it goes with early reductions that may lead to Clean Air Act non-compliance later.
- Joanne Alexandrovich (Vanderburgh County Ozone Officer): How would areas with early reductions be classified? She suggested using the “transitional” classification.

#### **Reasonable Further Progress (RFP) Requirement Under the 8-Hour Ozone Standard (Annie Nikbakht)**

- John Walke (NRDC): Clarify option 1 of issue 4; the CAA has attainment date requirements and independent dates for RFP. The subpart requires steady reductions.
  - ▶ John Silvasi responded that Issue 4 of the issue paper provides several what-if scenarios.
- John Walke (NRDC): The attainment dates are long past; what is the rationale for using 1990 as the baseline year? Suggests using a more recent year.
- Brock Nicholson (NCDENR): Stated that 2002 seems like a more relevant year for the baseline. It will focus more on NO<sub>x</sub> and VOC reductions.

#### **Flexibility in Mandatory Measures on Subpart 2 (John Silvasi)**

- John Walke (NRDC): Stated that EPA’s task is narrow - to link subpart 1 and subpart 2. EPA does not have the statutory authority to make up statute by providing flexibility.
- Renee Green (County of Bexar, Texas): In favor of flexibility. Subpart 2 is a one size fits all situation - applying the same requirements in different areas won’t work.
- Claudia O’Brien (Latham & Watkins Attorneys at Law representing Intel Corporation): It is not clear that all Subpart 2 requirements apply to the 8-hour standard. There is discretion for the Agency to show if a provision of subpart 2 will not help to achieve attainment. The EPA should be able to waive these areas.
- Ira Domskey (Arizona DEQ): Agrees with Ms. O’Brien’s statement that limiting mandatory measures would be good. It should be up to the state to decide how to make progress to reach attainment.
- John Walke (NRDC): Congress is becoming more, not less, prescriptive since EPA is not getting the job done. We cannot abandon earlier prescriptive requirements if the air is not getting cleaner.

#### **Final Remarks**

- Herb Williams (TNRCC): Asked where the process would go now.
  - Lydia Wegman replied that EPA is waiting to see what the court decides. However, a remand won't slow down the process if the standard is left in place. EPA hopes to move forward with implementation if the court decision allows.
  - Tom Helms added that all the issues discussed in the meeting will need to be worked out in any case.
- Lydia Wegman: Stated that the meeting was very helpful for EPA. She realizes that EPA needs a more coherent implementation structure to present to the public. It is good to hear the diversity of opinion. She encouraged the public to send in written comments within 30 days.