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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Air and Radiation Docket and Information Center
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201 M. Street, SW
Room M-1500 (Mail Code 6102)
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APR 2002
EPA AIR DOCKET

Re: 40 CFR Part 50 [FRL-7145-5] National Ambient Air Quality Standards for Ozone; Notice of Public Meetings

To the EPA Docket:

The purpose of this letter is to provide the comments of the Air Division of the Virginia Department of Environmental Quality (VDEQ) on the various options outlined and articulated by the U. S. Environmental Protection Agency (EPA) and others concerning the implementation of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). This comment process and period was announced in the Federal Register (67 FR 7112 – February 15, 2002) and consists of a series of public meetings, as well as opportunity to submit written comments through the end of April 2002.

As the existing litigation concerning the 8-hour ozone standard comes to a close, both EPA and the states are now turning their attention to the pending implementation of the standard. We applaud EPA's willingness and efforts thus far to entertain and develop flexible implementation options, such as the ozone flex program. However, we also note with concern, the comments and options promoted by other groups that would thwart this flexibility and would instead create an implementation process of onerous and potentially ineffective mandatory requirements over widespread areas at the front in the process. We believe that such a approach lacks adequate justification and analysis of benefits, and does not adequately account for the numerous national and regional programs already on the books or pending that may address many nonattainment situations and significantly reduce transport into other areas.

The specific DEQ Air Division comments are provided below by major topic:

8-hour Ozone Nonattainment Designations

Although this issue was not specifically included in the public notice and meetings, the issue of how and what areas are to be designated nonattainment for the new standard and what criteria will be used to make these determinations is a key issue. The debate here appears to revolve around what data and/or other considerations should be used to define the location and geographic extent of these nonattainment areas. Our specific comments on this issue is as follows:

- The Section 107 of the Clean Air Act (CAA) clearly identifies the process and responsibilities involved in the designation of areas under the NAAQS. In this section, the governors of each state are given the sole responsibility of making area recommendations, EPA is responsible for making any appropriate but clearly limited revisions to the state recommendations. We do not believe that this section of the Act supports widespread nonattainment designations to address transport in areas that are not in the immediate (nearby) vicinity.

- This section of the Act also identifies air quality data as the main if not sole determinant for making designation determinations. We do not believe that extrapolation of air quality data in areas without monitors for the purpose of making designations is appropriate or supported by the Act. Likewise the use of other criteria such as emissions or population should only be used when evaluating and determining the extent of nonattainment areas already identified using actual air quality data.

- The process, criteria and procedures used to make designations must be consistent throughout the Country.

- Consideration should be given to delaying the designation or effective dates for areas with design values just above the standard (marginal or sub-marginal). Mounting evidence shows that many of these areas will attain the standard through the implementation of one or more of the pending national or regional control programs, and without the need for the lengthy planning process and local control requirements associated with nonattainment designations. Since many of these areas are mostly rural in nature, the effects of local controls would be insignificant in terms of local air quality or for reducing transport to other areas. Formal designation of these areas could go forward if air quality data continues to show nonattainment after the implementation of the national/regional measures (around 2007).

- We reject the notion promoted by some that designations must be made to inform the public of the air quality status of their areas. Ample access to current ozone air quality data and forecasts are available through EPA and individual states to keep the public informed on this issue.

8-hour Ozone Nonattainment Area Classifications

As a result of the Supreme Court decision, EPA must at least consider Subpart 2 of the Act when making nonattainment area classifications. In doing so, we believe that EPA must design a system of classification that retains the element of flexibility for all classifications. This is especially critical for marginal or submarginal areas that are projected to attain without rigorous local planning or control requirements. Furthermore, much care taken with regard to mandatory measures even in higher nonattainment classifications, since the benefits of some programs identified in Subpart 2 such as stage II vapor recovery and vehicle inspection & maintenance programs are now uncertain at best. Our specific comments on this issue is as follows:

- To the extent that any classification system including a submarginal category would allow for additional implementation flexibility using Subpart 1, we generally support any system that includes such a classification.

- The option of classifying areas into the existing Subpart 2 categories, based on 8-hour design values is also acceptable, if again sufficient flexibility can be retained for the implementation of the standard, given the problems presented by the Subpart 2 control mandates for potentially ineffective control strategies.

- We would object to any plans that would link the nonattainment classification system to long range transport issues that can be addressed through other existing or new mechanisms.

Ozone Transport Mitigation through Standard Implementation

Much of the debate surrounding the implementation of the new standard deals with how to best address the transport of ozone and ozone precursors from one area to another. One approach being promoted to address this issue is to greatly expand the extent of existing and new nonattainment areas and require blanket controls throughout these nonattainment areas. It would also link approval of air quality plans in all these areas to the worst case nonattainmnent situation. We reject this proposal because it would:

- Create an administrative nightmare to perform air quality and transportation planning in such large geographic areas with numerous political jurisdictions.

- Potentially hold individual area SIPs hostage and in limbo until the worst scenario is addressed.

- Impose stringent control requirements that have not yet been demonstrated to be effective in reducing the transport of ozone and its precursors.

Instead we would propose the continuation of the regional planning process and implementation of national and regional control programs to evaluate and address ozone transport. This again would avoid the establishment of widespread nonattainment areas. Under such a scenario, RPOs would evaluate ozone formation and transport in each region and recommend regional or national measures most appropriate to address either situation. If additional reductions are needed, individual state reduction targets could be developed. It would then be up to the individual states to achieve these reductions as they see fit. This regional planning process should be integrated into the same process established to address other regional pollution programs such as haze and $PM_{2.5}$. Once again we strongly urge that Virginia be included in the Southeast planning organization for this purpose since we share the most common in terms of demographics, issues, and problems with the other states in this region.

Harmonizing Dates for $PM_{2.5}$ and Ozone

In general, we do not object to the concept of integrating the planning schedules for ozone and $PM_{2.5}$ (and haze) as long as the same regional planning groups are used. However, EPA should be aware of the increased planning and administrative burden that this integration would place on states. EPA should consider providing additional support to the states to complete an integrated air quality planning process.

Revocation of the 1-Hour Standard

Due to the fact that the new standard is more protective of human health, there is little or no need to keep the old standard in place for areas any longer than necessary. If an area is in attainment or has an approved maintenance plan for the 1-hour standard, it should be revoked as soon as possible. For the remaining 1-hour nonattainment areas, the standard should be revoked once an attainment plan, including anti-backsliding commitments, is developed and approved for the area.

Attainment Deadlines

EPA should develop attainment schedules that allow for the following:

- Provides for sufficient time for marginal or submarginal areas to determine compliance with the standard (at least 3 years of monitoring data), after the implementation of at least the regional NO_X emission reduction program (NO_X SIP Call), and perhaps other transport measures.

- Provides sufficient time for areas of higher classification to attain while utilizing the regional planning process to evaluate and implement additional strategies (if needed) to address any remaining transport issues.

Reasonable Further Progress

EPA should rely as much as possible on the flexibility allowed under Subpart 1 to allow states to design and implement their own plans to meet attainment or emission reduction requirements under the new standard. The nature of the 8-hour ozone problem requires detailed analysis to develop the most effective control strategies for states and regions.

Transportation Planning Issues

We believe that marginal or submarginal nonattainment areas should be exempted from transportation conformity requirements. At the least, these requirements should be greatly reduced. In addition, EPA should revise its conformity rule to better coordinate and integrate the SIP and transportation planning processes and evaluation horizons.

Thank for this opportunity to comment on these very important issues concerning the implementation of the new ozone standard. Please contact me at (804) 698-4300 if you have any questions concerning these comments.

Sincerely,

John M. Daniel, Director
Division of Air Program Coordination