



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

**Testimony of Christopher Korleski
Director of the Ohio Environmental Protection Agency**

**Before the
U.S. Senate Subcommittee on Clean Air and Nuclear Energy;
Senate Environment and Public Works Committee**

July 9, 2009

Good Morning. My name is Chris Korleski and I am the director of the Ohio Environmental Protection Agency (Ohio EPA). I would like to thank Chairman Carper, Ranking Member Vitter, and all the members of the subcommittee for the opportunity to meet with you again to discuss the status of CAIR and its potential impacts on Ohio.

As we all know, the Clean Air Act requires states to develop approvable state implementation plans ("SIPs") which set forth the emission reduction measures that states will implement in order to achieve attainment with the air standards. Stated simply, the initial CAIR rule served, and continues to serve, as an integral component of Ohio's SIP to achieve necessary reductions in both nitrogen oxides ("NO_x") and sulfur dioxide ("SO₂") from power plants. Based on US EPA's projected emission reductions for Ohio, the initial CAIR rule was anticipated to reduce NO_x from power plants in Ohio from 355,000 tons per year in 2003 to 93,000 tons per year by 2009 and 83,000 tons per year by 2015. Similarly large decreases for SO₂ emissions were projected.

It is critical to remind ourselves that a state's obligation to timely achieve the standards for ozone and PM_{2.5} remain firmly in place despite whatever might happen with CAIR. For example, Ohio was required to achieve compliance with the "old" ozone standard (*i.e.*, 84 ppb) in marginal non-attainment areas by June of 2009 and in moderate non-attainment areas by June of 2010. Now, I am happy to tell you that Ohio has attained the old ozone standard in all but one of our non-attainment areas. However, our delight over this significant progress must be short-lived, because new, more stringent standards for ozone (*i.e.*, 75 ppb) are now in place. Indeed, under the new, more stringent ozone standard, we expect some of our urban areas to be designated nonattainment in 2010, including some areas that only just recently achieved timely compliance with the old standard. All of this means that Ohio needs the reductions achieved by CAIR to not only maintain compliance with the old standards, but to help us achieve the new standards too.

Now, I should emphasize that a number of power plants in Ohio have installed NO_x controls and SO₂ scrubbers on their largest, newer units in anticipation of the 2009

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

compliance deadline under the first phase of CAIR. However, we know that this first phase of controls will not be sufficient for Ohio to meet the revised ozone and PM_{2.5} air quality standards. But, while we know that some form of enhanced CAIR is unquestionably needed to help states meet their attainment targets, we do not know what the final version of CAIR will look like.

I can tell you that several mid-western states, including Ohio, have been having discussions with the northeastern states in an attempt to try and develop joint recommendations to U.S. EPA for a CAIR replacement rule. Although these discussions have not concluded, I believe there is recognition by mid-western and northeastern states that additional controls on power plants beyond the initial version of CAIR **will** be necessary to achieve the revised air quality standards for ozone and PM_{2.5}. The issue of contention is likely to be the degree to which power plant emissions can reasonably be expected to be lowered. Further, Ohio believes firmly that when revising CAIR, US EPA must recognize that power plant emissions are not the main contributor to ozone non-attainment in urban areas. Rather, it is primarily the impact of transportation-related emissions that continues to hamper mid-western and northeastern states' from achieving the ozone standard. Additionally, US EPA must carefully consider what level of impacts from one state on another's non-attainment should be deemed unacceptable (*i.e.*, 1% of the problem? 4% of the problem?) as well as the issue of the proper remedy to be applied when the threshold is exceeded.

Even more importantly, Ohio continues to believe that US EPA must, when replacing CAIR, squarely address the issue of emission trading. However, given the language of the Court's decision, it appears that without additional legislative authority, a comprehensive, uniform, regionwide trading program cannot be developed. And, to put it very simply, we know such a program works. The acid rain program is an excellent example where trading has produced significant additional emission reductions for SO₂.

As non-attainment with air quality standards threatens both public health and economic development, I would be concerned by a revised CAIR that does not include a regional trading plan. In Ohio's view, since there is recognition that a level of control "beyond CAIR" is needed, it becomes imperative that a trading program be enacted. In short, while we do not believe that there will ultimately be any large uncontrolled power plants in Ohio, we also believe that the smaller plants (*i.e.*, those that are the least cost-effective to control) will best be able to obtain emission reductions through the application of a trading program.

As noted above, it will be difficult, to say the least, for US EPA to include a regional trading plan given the Court's July 2008 decision and the language of the existing Clean Air Act. Therefore, let me again respectfully suggest a solution to this issue.

The heart of the Court's concern with the initial version of CAIR derived from the Court's interpretation of a single section of the Clean Air Act: Section 110(a)(2)(D)(i)(I). In essence, the Court concluded that the cost-effective "regionwide" trading approach on which CAIR was originally based did not accord with the requirement in Section

110(a)(2)(D)(i)(I) of the Act that SIPs must prohibit sources “within a state” from contributing significantly to non-attainment in another state.^a

I again respectfully suggest to this subcommittee that Congress address the loss of the significant flexibility imbedded in the initial version of CAIR by a surgical, laser-like, amendment to section 110. Such an amendment would allow US EPA to successfully promulgate a revised CAIR such that certain and significant emission reductions would be achieved while, at the same time, the flexibility needed in order to obtain significant reductions in a cost-effective manner would be preserved. Indeed, Ohio will again take the liberty of proposing a new Section 110(a)(2)(E) (set forth below) which would provide the authority for a regional trading approach to serve as a starting point for consideration and discussion:

Nothing in section 110(a)(2)(D) shall be construed to prohibit the Administrator from requiring the development and implementation of a regional emission reduction approach (including but not limited to an emission reduction trading approach), that, in the Administrator’s judgment, will eliminate or minimize any significant contribution to nonattainment caused by the impacts of pollution from upwind states on downwind states. Inclusion in an implementation plan of the regional emission reduction approach may, in the judgment of the Administrator, satisfy a state’s obligations under 110(a)(2)(D).

In conclusion, Ohio respectfully requests that Congress provide clear authority to U.S. EPA to promulgate a CAIR rule which incorporates regional emission trading. The previous multistate rule promulgations by U.S. EPA have included trading, resulted in significant emission reductions, and most importantly, were successful in improving air quality.

I thank you for your time and the opportunity to speak to you about this important issue.

^a The Court rejected US EPA’s approach of achieving significant emission reductions on a regional basis because it concluded that, in violation of Section 110, CAIR failed to:

[r]equire elimination of emissions from sources that contribute significantly ... [to] downwind nonattainment areas. To do so, it must measure each state’s “significant contribution” to downwind nonattainment even if that measurement does not directly correlate with each state’s individualized air quality impact on downwind nonattainment relative to other upwind states.