

Testimony of

Jared Snyder

**Assistant Commissioner for Air Resources, Climate Change and Energy
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1010**

Before the

**U.S. Senate Committee on Environment and Public Works
Subcommittee on Clean Air and Nuclear Safety
“Oversight: EPA’s Proposal for Federal Implementation Plans to Reduce
Interstate Transport of Fine Particulate Matter and Ozone.”
406 Dirksen Senate Office Building
Thursday, July 22, 2010, 10:00 AM**

My name is Jared Snyder and I am the Assistant Commissioner of the New York State Department of Environmental Conservation for Air Resources, Climate Change and Energy. I am New York’s representative on, and a past Chair of, the Ozone Transport Commission (OTC), a body established by the 1990 amendments to the Clean Air Act to coordinate activities of the twelve states and the District of Columbia that comprise the ozone transport region (OTR). Although I am familiar with the views of the OTC on the interstate transport of air pollutants, I am testifying today only on behalf of New York.

Introduction

I appreciate the opportunity to testify today about EPA’s July 6, 2010 proposed air pollution transport rule (the “transport proposal”). At this time, I can offer only a preliminary reaction to this proposal, which is over one thousand pages in length. As I will explain, however, even a preliminary review reveals that this proposal makes many

improvements on the 2005 Clean Air Interstate Rule (CAIR) that it will replace. The transport proposal requires substantial reductions of sulfur dioxides (SO₂) and will help in reducing levels of fine particulate pollution throughout the eastern half of the country. It will set specific emission caps for each state, requiring each covered state to reduce its SO₂ emissions substantially. Because it does not allow sources to use banked emission allowances, the required emission reductions will occur sooner than under CAIR. Although we undoubtedly will have comments to offer on the details, we generally support these and other aspects of EPA's proposal, as explained further below.

At the same time, however, the transport proposal's treatment of ozone is disappointing. Although we have made major strides in reducing the emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) that contribute to elevated ozone levels, the ozone levels in the eastern United States are still unhealthy. To underscore this point, over the July 4th holiday weekend this year, New York State experienced 27 separate exceedances of the 2008 national ambient air quality standard (NAAQS) for ozone, a standard that EPA has determined is itself inadequate.

Next month, EPA will finalize its proposed rule to set a new NAAQS for ozone at a level between .060 and .070 parts per million, based on its determination that higher levels of ozone are not protective of public health. But the transport proposal is only targeted to reduce ozone levels to the much higher .084 level of the NAAQS set by EPA in 1997. Simply put, the transport proposal does not require the reductions in NO_x

emissions needed to lower the levels of ozone in the air that people breathe to healthful levels. Today I will focus on the inadequacy of the NOx reductions. But first, I will highlight the positive elements of EPA's proposal.

Benefits of the Transport Proposal

The SO2 reductions that will result from the transport proposal will result in substantial reductions in fine particulate levels. Although the SO2 cap is comparable to the cap imposed in the second phase of CAIR, the proposal's cap must be met earlier and must be achieved by actual emission reductions rather than the use of banked SO2 allowances. As a result, the public will reap the public health and environmental benefits of the SO2 cap sooner than under CAIR. The benefits of this proposal will include thousands of lives saved annually and other public health benefits that EPA values in the billions of dollars annually. The SO2 reductions will also reduce acid rain to the benefit of our lands, lakes and streams that are still being severely impacted by acid rain, and they will enhance visibility in our national parks and wilderness areas will be enhanced.

Two aspects of the transport proposal will help to ensure that all states that contribute materially to air quality problems in another state will participate in the solution. First, we commend EPA for applying a one percent contribution threshold in identifying the states that contribute to the inability of states located downwind to achieve or maintain compliance with the applicable NAAQS. This one percent contribution threshold is consistent with a joint recommendation made by the member

states of the OTC and those that participate in the Lake Michigan Air Directors Consortium (LADCO). Second, EPA's use of state-specific caps also helps to ensure that each state contributes to improving impaired air quality in downwind states. Although EPA's use of "variability limits" allows emissions in each state to exceed the cap by a small margin in some years, overall regional emissions must remain below the regional cap. Although we will have some comments to offer on the implementation of the state-specific caps, EPA's approach is an improvement over CAIR.

Finally, we fully support EPA's decision to create new allowances for each of the pollutants covered by the proposal. By not allowing the use of old allowances, EPA eliminated the large banks of allowances that could have been used to delay timely reduction of pollution that contributes to nonattainment or interferes with maintenance of the applicable NAAQS.

Inadequacy of the NOx Reductions

While EPA is to be applauded for many aspects of the proposal, the NOx reductions are inadequate to achieve healthful ozone levels. For people with asthma and other respiratory illnesses, this means visits to the emergency room and the horrible feeling of not being able to breathe. For the millions of healthy Americans living in the eastern United States, this means more spring and summer days with warnings against outdoor exercise and other physical activity. This proposal, if finalized, will not address what we know right now – that more NOx reductions are needed to remedy the elevated ozone levels experienced across the eastern United States every summer. In

fact, as EPA concedes, the proposal may not even lead to regionwide attainment of the inadequate and obsolete 1997 standard for ozone.

From the perspective of reducing ozone, the transport proposal may not even be an improvement on CAIR and it may not result in any NO_x reductions beyond those that have already been achieved. Direct comparison with CAIR is complicated by the fact that the states covered by the transport proposal are not identical to those covered by CAIR. But a comparison can be made of the caps applicable to the states that are encompassed within both CAIR and the transport proposal. Under CAIR phase 2, which was to begin in 2015, the ozone season budget for the states that are also covered by the transport proposal was 429,000 tons. The ozone season budget for the same states under EPA's current proposal is 475,000 tons. Although that cap level is less than the CAIR phase 1 budget of 507,000 tons, it is well above current emissions in those states, which totaled only 407,000 tons in 2009. For the people of New York, who have suffered through elevated ozone levels this summer, this aspect of the transport proposal is particularly troubling, especially considering that EPA's modeling in this proposal indicates that the New York City metropolitan area will continue to be challenged to maintain compliance with the 1997 ozone standard.

We recognize that the die was cast to a large degree by decisions made under the prior administration. As the Court of Appeals found, EPA did not adhere to the requirements of the Clean Air Act in adopting CAIR. EPA compounded that error by

replacing the ozone standard underlying CAIR with a new standard that did not provide the public health protection deemed necessary by EPA's own expert scientific advisors. As a result, the Obama Administration inherited a significant challenge. EPA was required by a court order to issue a rule that addressed the shortcomings of CAIR and was based on the applicable air quality standards. But EPA was in the process of reconsidering the ozone standard that would govern that determination. That led EPA to face the question of which ozone standard should be the focus of the transport rule: the obsolete and unprotective 1997 standard, the better but still inadequate 2008 standard, or the upcoming standard to be announced in August.

In this rule, EPA has decided to base the emission reductions on those needed to meet the least protective alternative – the 1997 ozone standard. This is truly an ironic outcome. Because EPA has determined that the 2008 standard is not protective, it is basing the transport rule on the even less protective 1997 standard. New York and many other states in the east are already meeting, or close to meeting, the obsolete 1997 standard and, as a result, significant additional regional emission reductions may not be needed to meet that standard (unless the high ozone levels seen so far this summer continue). But substantial reductions in NO_x emissions undoubtedly would be needed to meet either the 2008 standard or a new, even lower, standard that EPA is expected to propose next month.

New York and the OTC states urged EPA to base the transport proposal on the 2008 ozone standard that EPA is now reconsidering. Although we agree with EPA that

that standard is inadequate, it does provide more protection than the 1997 standard. But another option is now available. EPA will be finalizing a new ozone standard next month, well before it finalizes the transport proposal next spring. To provide the public with the reduced ozone levels that public health protection requires, we urge EPA to base its final transport rule next spring on the requirements that will exist at that time, including the new ozone standard to be announced next month.

To its credit, EPA has created a template for achieving reductions needed to comply with the revised ozone standard that it intends to issue next month. Under the expedited implementation schedule that EPA has described for a new ozone standard, EPA plans to designate nonattainment areas (areas not projected to attain the NAAQS) by August 2011; state implementation plans to achieve compliance with the NAAQS in those nonattainment areas would be due in December 2013; and nonattainment areas designated as “moderate” nonattainment would need to achieve compliance with the standard by 2017. In the transport proposal, EPA has explained that it plans to issue a second transport rule in 2012 to require the regional reductions in NO_x emissions needed to achieve compliance with the new ozone standard.

Unfortunately, even if everything goes according to schedule, EPA’s strategy may not produce emission reductions in time to meet the 2017 attainment deadline. In order for states to demonstrate compliance with a new standard by 2017, emission reductions should be achieved by the beginning of the ozone season in May 2014, since attainment is based upon the latest three years of air quality data. In the current

transport proposal, EPA expresses its view that polluting sources cannot be expected to have controls installed and operational until the beginning of 2014. If EPA applies the same constraints to the second transport rule, to be finalized in 2012, it is not likely that EPA would set a schedule that requires additional reductions prior to 2015, at the earliest, too late for states in the east to demonstrate compliance by 2017.

A second concern we have with the ozone portion of the proposal is that EPA recognizes that its proposal may not fully address all sources of NO_x reductions needed to enable compliance with the 1997 ozone standard. EPA states it “must determine whether further NO_x reductions are warranted in certain upwind states that affect two or three areas with relatively persistent ozone air quality problems.” (Transport proposal, pg. 17.) These areas are Houston and Baton Rouge, which may have difficulty achieving the standard, and the New York City metropolitan area, which could have difficulty maintaining its compliance with the standard. Although EPA states that it will address these issues in future rulemakings, further delay in any reductions that may be needed to address the 1997 ozone standard is unfortunate.

More NO_x reductions can and should be achieved now. Based upon EPA’s evaluation of costs and benefits associated with the proposal, approximately \$40 of benefit is realized for each dollar of cost incurred by industry and society. This is consistent with the analyses conducted by New York and the OTC states, which demonstrate that reductions from the power sector are highly cost-effective compared to other ozone reduction strategies. Nevertheless, in order to reduce ozone levels, New

York and the other OTC states have implemented numerous strategies to reduce ozone levels, from imposing more stringent requirements on power plants and factories to adopting California's stringent automobile emission standards and regulating paints, gas cans and other consumer products. When EPA strengthens the ozone standard, we will find it more difficult, if not impossible, to achieve compliance with that standard without the benefit of substantial, cost-effective, regional emission reductions from the power sector.

The issue goes beyond simply meeting an obligation that the Clean Air Act places on states to demonstrate compliance with the applicable NAAQS. Elevated levels of ozone lead to asthma attacks and other respiratory illness, and contribute to increased mortality. Simply put, regional NO_x reductions beyond those required by the transport proposal will make it easier for residents of the eastern United States to breathe on hot summer days. The NO_x reductions will have many additional environmental benefits beyond reduced ozone levels. The reduction in NO_x emissions will further reduce the acid deposition that decimates the lakes and streams in New York's Adirondack park region and other portions of the northeast. Further NO_x reductions would also improve visibility in our national parks and other natural areas. NO_x reductions are also essential to reducing the excessive nitrogen deposition in sensitive coastal ecosystems such as Chesapeake Bay and Long Island Sound.

Conclusion

Regardless of whether EPA sets the new ozone standard at .070 parts per million or at a lower level, meeting the standard will pose a tremendous challenge for states across the east and in many other parts of the country. In New York this summer, we have experienced many days with ozone levels well above that standard. To have any chance of reducing those ozone levels and complying with a new ozone NAAQS, we will need regional NO_x reductions that are much more substantial than EPA is proposing now. Requiring those reductions in this transport proposal will result sooner in cleaner air and fewer asthma attacks and other illnesses for people across the eastern United States.