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Testimony of Christopher Korleski
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U.S. Senate Subcommittee on Clean Air and Nuclear Energy;
Senate Environment and Public Works Committee

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Good Afternoon. My name is Chris Korleski and I am the director of the Ohio Environmental Protection Agency (Ohio EPA). I would like to thank the Chairman, Ranking Member, and all the members of the Subcommittee for the opportunity to discuss the effect of the recent *vacatur* of the Clean Air Interstate Rule ("CAIR") on Ohio's plan to attain the national ambient air quality standards ("NAAQS") for ozone and particulate matter ("PM").

As you 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 NAAQS. Stated simply, CAIR served as an integral component of Ohio's plan to achieve necessary reductions in both nitrogen oxides ("NOx) and sulfur dioxide ("SO2") from power plants. Those NOx and SO2 emission reductions would have greatly assisted Ohio and other states in attaining the standards for both PM and ozone, and in addition, were an essential component of US EPA's plan for addressing regional haze.

Based on projected emission reductions for Ohio, CAIR was anticipated to reduce NOx 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, the projected emissions of SO2 from Ohio's power plants would decrease from approximately 1.2 million tons per year in 2003 to 298,000 tons per year by 2010 and 208,000 tons per year by 2015.

Of critical importance to the states is that despite the CAIR *vacatur*, the states' obligation to achieve the NAAQS for ozone and PM in the strict timeframes promulgated by U.S. EPA remain firmly in place. Specifically, Ohio must still achieve compliance with the NAAQS for the "old" ozone standard (i.e., 84 ppb) in marginal non-attainment areas by June of 2009 and in our moderate non-attainment area (northeastern Ohio) by June of 2010, with similar deadlines coming quickly for PM as well. And, new, more stringent standards for ozone and PM, with their own compliance deadlines, are now in

place. Ohio was looking for the reductions achieved by CAIR to not only help us meet the old standards, but would also have helped us towards achieving the new standards as well.

Given the significant reductions we anticipated resulting from CAIR, we have quickly evaluated the direct impact of the decision on Ohio's plans for both ozone and PM. Without the benefit of time to run a detailed modeling and analysis, our preliminary estimate for ozone demonstrates that with Ohio's NOx SIP Call still in place, which requires reductions in NOx from utilities and other larger combustion sources during the summer months, we are hopeful that we will be able to meet our 2009 ozone attainment deadline in our marginal areas. Unfortunately, loss of the additional SO2 and NOx reductions CAIR would have provided will make it more difficult to attain the PM standard and to achieve ozone attainment in our moderate non-attainment area under both the old and the new standards.

Now, it is true that a number of power plants in Ohio have already installed and are operating NOx controls and SO2 scrubbers on their largest, newer units in anticipation of the first phase of CAIR's compliance deadline of January 2009. My intention is to work with the utilities on a one-on-one basis to determine if we can mutually agree to "lock-in" the controls already planned or in place pursuant to CAIR. However, there is no guarantee that that will happen and it is very unclear to me how the power companies will respond to any attempt to do so in light of the *vacatur*.

Ohio continues to work with other midwestern states through LADCO (Lake Michigan Air Directors Consortium) to develop a revised inventory to provide a regional and state specific vision of air quality without CAIR. We hope to have this modeling by September 1. With that information, and the results of discussions with Ohio's utilities, we will determine what remaining air quality gap exists and develop strategies to fill that gap as quickly as possible.

As non-attainment with air quality standards threatens both public health and economic development, I am concerned by the wholesale *vacatur* of a rule which, without question, went a long way to help Ohio and many other states lower ozone and PM levels. So, the question is, "What now?" Do we face years of litigation? Years of waiting while US EPA goes back to the drawing board? Will we be faced with continued non-attainment in Ohio and other states such that US EPA is forced to impose sanctions, bump-up our nonattainment status, or impose costly but not necessarily cost-effective pollution controls on a host of pollution sources?

I would suggest that these options are not in any state's best interest. Therefore, let me respectfully suggest an alternative.

In my view, the heart of the Court's decision lies in its interpretation of a single section of the Clean Air Act: Section 110(a)(2)(D)(i)(I). Boiled down to its essence , the decision concluded that the cost-effective "regionwide" trading approach on which CAIR was based did not accord with the requirement in Section 110(a)(2)(D)(i)(I) that SIPs must

prohibit sources "within a state" from contributing significantly to non-attainment in another state. [a]

For today's purposes, I will not argue the legal merits or demerits of the Court's decision. Rather, I respectfully suggest that Congress address the loss of the significant emission reductions guaranteed by CAIR by a surgical, laser-like, amendment to section 110. Such an amendment would essentially allow US EPA to successfully re-promulgate CAIR such that the certain and significant emission reductions would be re-established. Indeed, Ohio puts forward the following language as a starting point for consideration and discussion:

We propose a new Section 110(a)(2)(E):

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), which, 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, I assert that the loss of CAIR with its associated emission reductions is a startling and dispiriting development. It is Ohio's hope that Congress, US EPA, other states and stakeholders can put other air pollution control issues temporarily aside, and quickly work together to arrive at a solution that will allow for the re-instatement of CAIR or something very much akin to it.

Thank you for your time.

[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.*