



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

July 22, 2010

Good morning. I'm Chris Korleski, 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 U.S. EPA proposed Interstate Transport Rule.

As I begin my comments this morning, I would first like to thank and acknowledge the efforts of our federal colleagues at U.S. EPA for their work on this important, difficult, and long-in-coming rule package. Anyone familiar with the history of the Clean Air Interstate Rule (CAIR) is aware of the bumpy and circuitous route leading up to U.S. EPA's recent proposal, and while we may have some concerns and questions regarding the proposed rule, I certainly commend U.S. EPA for its diligent efforts.

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 national ambient air quality standards (NAAQS) and address the transport of air pollutants downwind from upwind states. The now-moribund CAIR served as an integral component of Ohio's plans to achieve necessary reductions in both nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from power plants. Without question, the NO_x and SO₂ emission reductions under CAIR would have greatly assisted Ohio and other states in attaining the standards for both particulate matter (PM) and ozone and, in addition, were an essential component of U.S. EPA's plan for addressing regional haze.

Before I go into detail about the Interstate Transport Rule, I think it is important that the panel be aware of the significant progress that Ohio has made in achieving ambient air quality standards. In the late 1970s, the highest eight-hour ozone values we were measuring were over 140 parts per billion; now the worst sites in the state are in the range of 80 parts per billion. Currently, the entire state is designated attainment for the 1997 ozone standard of 84 parts per billion. This progress has come primarily as a result of the hundreds of millions of dollars invested in air pollution control equipment in the state. However, we also recognize that more dollars and effort will be needed to meet the seemingly ever-increasing restrictive air quality standards for ozone and other pollutants as well.

Ohio strongly supports the concept of regulating the interstate transport of air pollution and therefore supported U.S. EPA's promulgation of CAIR. We also understand U.S. EPA's

mandate to address judicially recognized flaws in CAIR. On July 6, 2010, U.S. EPA announced the proposal of the new Interstate Transport Rule as a replacement for CAIR. Due to the length and complexity of the proposal, my comments only reflect a first impression of the proposed rule. However, Ohio EPA does have some concerns that we would like to speak to today.

First, we note that U.S. EPA plans to implement a Federal Implementation Plan (FIP) for the Interstate Transport Rule. Although we understand the need for emission reductions as soon as possible, this appears to usurp the fundamental right of the states to develop their own SIPs. The U.S. EPA proposal goes into detail on how states are free to develop state plans as alternatives to the FIP, but also makes clear that U.S. EPA is unsure about (and taking comment on) the appropriate criteria for approval of these state plans. In other words, states are free to start work on their own plans, but cannot be certain as to their approvability until U.S. EPA finalizes those criteria, which will undoubtedly take some time. In our view, this “FIP first” approach is not consistent with the spirit of cooperative federalism imbedded in the essential structure of the Clean Air Act.

Second, we do not understand the significant differences in U.S. EPA’s approach to the proposed budget for SO₂ as compared to the proposed budget for NO_x. Under CAIR, the state budget for SO₂ for electric generating units in 2010 was 333,520 tons per year and in 2015 was 233,464 tons per year. Under the Interstate Transport Rule, U.S. EPA is proposing a much more restricted limit of 178,307 tons per year in 2014. In 2009, Ohio utilities emitted 600,689 tons per year of SO₂. Achieving the substantial SO₂ reductions to meet this proposed SO₂ limit will be a difficult task in the timeframe proposed and additional time may be needed. Further, additional tightening of the SO₂ budget in the future may simply not be technically feasible.

Conversely, with respect to NO_x, we believe that the proposed limits can actually be tightened. The CAIR NO_x budget for Ohio was 45,664 tons during the ozone season of 2009, dropping to 39,945 tons in 2015. The Interstate Transport Rule proposes a budget of 40,661 tons in 2012. In contrast, Ohio utilities emitted 36,076 tons in 2009 (due in part to a relatively cool summer). In short, the 2009 NO_x emissions from Ohio utilities were less than the proposed 2012 NO_x emissions budget. It would be our preference to see a more restrictive NO_x budget, adequate time to reach that lower NO_x level, and then have those NO_x levels maintained for an extended time period.

Next, we are concerned with the concept that each time U.S. EPA promulgates a new (more restrictive) air quality standard, U.S. EPA intends to revise the Interstate Transport Rule by changing the emission budgets. We have two main concerns with this approach. First, we expect that at some point, it will be difficult or impossible to develop and implement technology that can achieve the new, more restrictive budgets. Second, the regulated community must have some degree of certainty to timely plan investments in controls, fuels, and operations at generating facilities in order to achieve necessary emission levels by the relevant deadline. We would recommend that any budget U.S. EPA promulgates for an emissions sector would not change for at least ten years and then only if U.S. EPA demonstrates that additional controls are technically achievable and cost effective.

Finally, we continue to believe that the best approach to reducing SO₂ and NO_x emissions

from utilities would include a surgical legislative fix that, while allowing U.S. EPA to mandate a reasonable level of control, would clearly grant U.S. EPA the authority to set up a more comprehensive trading program to allow for more trading opportunities for criteria pollutants.

Thank you for your time. I would be happy to answer any questions.