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September 10, 2009

The Honorable Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW, Mail Code 1101A
Washington, DC 20460

Dear Administrator Jackson:

On September 2, 2009, the five LADCO States, along with 12 other States in the eastern half of the U.S., sent recommendations to the Environmental Protection Agency (EPA) as it develops a replacement rule for the Clean Air Interstate Rule, in light of the December 23, 2008, remand by the U.S. Court of Appeals for the D.C. Circuit.

The recommendations follow through on the commitment we made in the March 9, 2009, Framework Document to work together to address the transport requirements of Section 110(a)(2)(D) of the Clean Air Act (CAA), and to attain the ozone and PM_{2.5} National Ambient Air Quality Standards (NAAQS). Please understand that in preparing these recommendations our fundamental air quality objective is to achieve attainment and ensure maintenance of the NAAQS as expeditiously as practicable.

Consistent with the September 2, 2009, joint letter, we wish to provide further recommendations on two issues: the EGU point source strategy (in the national/regional control program), and the state-led attainment planning process. Our specific recommendations are provided below.

LADCO Recommendation 1

A. National/Regional Control Program

1. EGU point source strategy (applicable to units \geq 25 MW)

Regional Emissions Cap: We recommend that EPA establish regional emissions caps (as referenced in the September 2, 2009, joint letter) effective by 2017. We believe that regional emissions caps for any earlier year (e.g., 2015) should not be established, either in addition to or in lieu of a 2017 cap. We conducted a state-by-state analysis of what level of EGU control for NO_x and SO₂ is achievable over the next several years. A fundamental assumption in our analysis is a July 2012 start date for the planning, engineering, and construction of any new NO_x and SO₂ controls. This date reflects a January 2011 promulgation date for a CAIR replacement rule and another 18 months for adoption of state rules. Four "layers" of control were considered: (1) all NO_x and SO₂ controls to comply with the original CAIR Phase I program; (2) optimization of existing NO_x and SO₂ controls by 2014; (3) application of low capital cost NO_x controls (e.g., combustion modifications) by 2015; and (4) installation of new NO_x and SO₂ controls (e.g., SCRs for NO_x and FGDs for SO₂) by 2017. We believe that the first three measures identified above are all that can be done by 2015.

Performance Standards: We understand that EPA is considering a hybrid approach in its CAIR replacement rule involving regional emissions trading and unit-specific performance standards (cite: July 9, 2009, testimony by Regina McCarthy before the Subcommittee on Clean Air and Nuclear Safety, Committee on Environment and Public Works, U.S. Senate). As discussed in the September 2, 2009, joint letter, we strongly support and encourage EPA to include regional emissions trading to the fullest extent allowed under the Clean Air Act.

We believe, however, that unit-specific performance standards go beyond the requirements of section 110 and the scope of a CAIR replacement rule; inhibit trading; and that performance standards with a near-term compliance timeframe, such as 2017, are not practical for all EGUs. Although we firmly believe that it is not appropriate to include performance standards in a CAIR replacement rule, if EPA decides to consider including performance standards, then EPA should work with the states to take into account the basis and timing of the requirements identified in the September 2, 2009, joint letter, cost effectiveness, site specific factors (such as space limitations) and the pollution control equipment already in place on the existing fleet of EGUs. Specifically, on this last point, we believe that EPA should not require replacement or repowering of units or control systems that are sound technology and operating at a reasonable effectiveness.

LADCO Recommendation 2

B. State- Led Attainment Planning

We recommend the use of a state-led attainment planning process concurrent with developing the transport SIP to address areas of interest that are not expected to attain after implementation of the national/regional control program. The advantages of this state-led planning effort include:

- A one-size-fits-all federal solution cannot provide the most appropriate and cost-effective solution for each area;
- Attainment planning is more effective and more likely to succeed if it is done on a non-attainment area basis with a limited number of states;
- Additional controls are identified where they are needed; and
- States maintain their responsibility under the Clean Air Act to establish state implementation plans.

A major contributing state (i.e., a state which contributes at least 4% to a downwind area of interest that is not expected to attain after implementation of the national/regional program) must also either:

1. In conjunction with other major contributing states, develop, adopt, and implement an appropriate attainment strategy for the area of interest, as follows:
 - a. An upwind state's responsibility for achieving air quality benefits in a downwind area should be commensurate with the magnitude of the upwind state's contribution to the downwind air quality problem.
 - b. To facilitate flexibility in developing control programs and reduce control costs, state planning efforts should accommodate interstate emissions trading to the fullest extent allowed by the Clean Air Act.
 - c. Photochemical modeling, performed in accordance with EPA modeling guidance, should be conducted to determine the amount of emission reduction needed to provide

for attainment and the relative contributions of the participating states and source sectors, and to assess candidate control measures.

2. In the event that the multi-state planning effort is unsuccessful, then each 4% state may still be able to satisfy its section 110(a)(2)(D) obligation if it can demonstrate to EPA that it has emission reductions measures for significantly contributing source categories that are commensurate with a Reasonably Available Control Measure analysis for the affected area. These measures should be determined by first identifying key pollutants and source categories that contribute to the air quality problem, and then identifying and evaluating control measures for the contributing source categories.

Enclosed please find supporting materials for these recommendations.

If you wish clarification of these comments, then please contact Michael Koerber, Lake Michigan Air Directors Consortium.

Sincerely,



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Director, Illinois Environmental
Protection Agency



Thomas Easterly
Commissioner, Indiana Department
of Environmental Management



Steven E. Chester
Director, Michigan Department of
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Christopher Korleski
Director, Ohio Environmental Protection
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Matthew J. Frank
Secretary, Wisconsin Department of
Natural Resources

Enclosure

- c: Regina McCarthy, Assistant Administrator, Office of Air and Radiation, U.S. EPA
Bharat Mathur, Acting Regional Administrator, U.S. EPA, Region V
Cheryl Newton, Director, Air and Radiation Division, U.S. EPA, Region V