OZONE
TRANSPORT
COMMISSION

Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

Christopher Recchia
Executive Director

444 N. Capitol St. NW
Suite 638
Washington, DC 20001
(202) 508-3840
FAX (202) 508-3841
e-mail: ozone@otcair.org

TESTIMONY OF CHRISTOPHER RECCHIA ON BEHALF OF THE OZONE TRANSPORT COMMISSION BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY ON ITS PROPOSED RULE ON FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF NOx AND SO_2 EMISSIONS, AND EPA'S RESPONSE TO NORTH CAROLINA'S SECTION 126 PETITION

September 15, 2005

Good morning, and thank you for the opportunity to provide this oral testimony to the U.S. Environmental Protection Agency (EPA) on its proposed rule on Federal Implementation Plans (FIPs) to reduce interstate transport of NOx and SO_2 emissions, and EPA's response to North Carolina's Section 126 petition. My name is Christopher Recchia and I am the Executive Director of the Ozone Transport Commission (OTC). OTC was created by Congress under the Clean Air Act Amendments of 1990 to coordinate ground-level ozone reduction strategies in the Northeast and Mid-Atlantic region of the U.S and to advise EPA on air transport issues. OTC represents 12 states and the District of Columbia.

Although we have not completed our review of the proposed FIP, the OTC has identified two major concerns with the proposed rule to date. I will outline those concerns in today's testimony, and the OTC will be submitting more comprehensive written comments by the October 24, 2005 deadline.

A first concern with the proposed rule is its treatment of future section 126 petitions from states that have approved CAIR SIPs or states for which EPA has promulgated a CAIR FIP. The OTC finds EPA's assertion that it will deny a section 126 petition in advance very troubling both on policy and legal grounds. The proposed rule sets up a definitional "Catch-22" in which a violation of section 110(a)(2)(D) is a predicate for granting a section 126 petition, and all

significant contribution is purportedly eliminated by CAIR or its federal equivalent. First, we agree with North Carolina that CAIR does not address all "significant contribution" from upwind sources in the first instance, but additionally there may be situations, by the very nature of a trading scheme, where upwind reductions may not occur when and where they are needed for downwind nonattainment on a source-specific basis. To short-circuit a crucial state tool to protect the health of its citizens is an ill-advised preemption of states' rights, wrong as a policy matter, and legally indefensible.

The second concern is with EPA's proposal to satisfy North Carolina's Section 126 petition with respect to PM2.5 via a federal cap and trade program that mirrors the model cap and trade program in the Clean Air Interstate Rule. CAIR is premised on a phased approach to addressing the significant contributions from the EGU sector in upwind states. In particular, CAIR envisions a first phase of controls for PM2.5 precursors of sulfur dioxide and nitrogen oxides starting in 2009, and a second phase in 2015. However, section 126(c) expressly states that a source must comply with a compliance schedule, including increments of progress, provided by the Administrator "in no case later than three years after the date of such finding."

The OTC agrees with the statement in the proposed rule that "If EPA makes any findings at that time [the March 15, 2006 consent decree deadline for final action], and they become effective 60 days later, consistent with section 126(c), compliance with the control remedy must be required no later than May 14, 2009." The OTC does <u>not</u> agree with the assertion that the control remedy that EPA proposes satisfies the 3-year compliance period in section 126(c), nor does the OTC agree with the subsequent statement that "... section 126(c) on its face contemplates that control measures ... may stretch out beyond a 3-year period." The proposed rule states that the "increment of progress" phrase "...can describe a situation where compliance is stretched out over periods exceeding 3 years provided initial action (i.e., an initial

FURTHERMORE, that the OTC States will seek to gain support from other states for a broader inter-regional attainment strategy that, in a multi-pollutant context, adequately addresses the control of emissions from contributing sources, including cost-effective reductions in transported pollutants of concern; and,

FURTHERMORE, that the States develop as expeditiously as possible but no later than June 30, 2006, and in consultation with EPA, an emissions budget and region-wide trading program based on the principles herein as may be necessary to implement their attainment objectives;

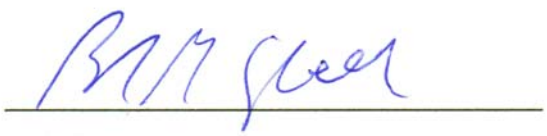
FURTHERMORE, that the States will work together to develop effective implementation mechanism(s) that, if adopted and fully implemented, would result in equitable, enforceable emission reductions of these pollutants that address these sources' contribution toward state attainment objectives; and,

FURTHERMORE, that any final emission reduction targets established for the regional multi-pollutant program reflect relevant factors, including current modeling information, attainment obligations, the costs and benefits of such reductions and the health impacts of the reduction targets; and,

FURTHERMORE, consistent with the Multi-Pollutant Development Strategy, that the OTC states will explore all feasible options to utilize the CAIR framework to accomplish these attainment objectives; and,

FURTHERMORE, that the Air Directors will develop and propose an implementation strategy to accomplish these objectives, with any appropriate implementation mechanisms, including a Memorandum of Understanding (MOU) among the states, to the OTC as expeditiously as possible but no later than June 30, 2006, with a progress report to be provided to the Commission at its Fall, 2005 meeting.

Adopted June 8, 2005



Bradley M. Campbell, Chair