



November 10, 2008

The Honorable Stephen L. Johnson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

Anna Garcia  
Executive Director

**USEPA's Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emissions Increases for Electric Generating Units, May 8, 2007, 72 Federal Register 26202, Docket ID No. OAR 2005-0163**

Dear Administrator Johnson:

We write on behalf of the Ozone Transport Commission (OTC) to request that the U.S. Environmental Protection Agency abandon its apparent plan to promulgate a final rule that would apply New Source Review (NSR) requirements only to plant changes that increase the maximum hourly emission rate at a plant. Since the proposed rule would increase air pollution and is contrary to the plain language of the Act, EPA should not proceed with the proposed rule, which will likely result in substantial emission increases.

The NSR requirements in the Clean Air Act (the "Act") apply when a source undertakes a physical or operational change that increases emissions. Although Congress did not define how the emission increase should be measured, court decisions have made clear that the NSR requirements are triggered by changes that increase actual emissions, not just by changes that increase a plant's hypothetical maximum hourly capacity. Given that the proposed rule would allow projects that increase actual emissions to avoid NSR review, it is plainly contrary to Congress' intent in crafting the NSR provisions of the Clean Air Act.

Perhaps more importantly, proceeding with the proposed change to the emission test will adversely affect air quality nationwide and in the twelve states and the District of Columbia that comprise the Ozone Transport Region. If EPA's hourly emission rate proposal is enacted, the vast majority of the nation's coal-fired power plants that operate at less than peak capacity will be able to undertake plant refurbishments that allow them to increase operations without complying with NSR emission control requirements. The result will be more emissions from these power plants unaccompanied by the installation of the best available control technology as required by the Act's NSR provisions. According to a Clean Air Task Force analysis submitted to EPA on October 31, 2008, such plant modifications have the potential to increase annual emissions from these plants by approximately 1.6 millions tons of sulfur dioxide (SO<sub>2</sub>) and 500,000 tons of nitrogen oxides (NO<sub>x</sub>).

When EPA initially proposed this revision to the NSR emission test, it relied on the existence of its Clean Air Interstate Rule (CAIR) and its Clean Air Mercury

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Rule (CAMR) to partially mitigate emission increases that could result from the rule. That reliance was misplaced because while CAIR and CAMR capped total emissions, these cap and trade programs fail to prevent or limit increases at specific plants, which may adversely impact local air quality and public health. Therefore, they do not prevent the local emission increases that the NSR requirements are intended to protect against. EPA's reliance on CAIR and CAMR is even more misplaced now, given the decisions of the U.S. Court of Appeals for the D.C. Circuit vacating CAIR and CAMR.

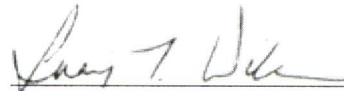
The states of the OTC already face an extremely difficult task of achieving attainment of the national ambient air quality standards (NAAQS) for ozone and fine particulate matter (PM 2.5), as a result of the D.C. Circuit's decisions vacating CAIR and CAMR. Proceeding with the proposed rule at this time will further harm air quality and hinder the states' efforts to comply with the applicable NAAQS.

To promote our mutual interest in protecting air quality and public health, we request that EPA abandon the proposal at this time. Thank you for considering our position in this matter.

Sincerely,



Jared Snyder, Chair  
Assistant Commissioner  
New York Department of  
Environmental Conservation



Shari Wilson, Vice Chair  
Secretary  
Maryland Department of the  
Environment



Laurie Burt, Secretary/Treasurer  
Commissioner  
Massachusetts Department of  
Environmental Protection