

July 14, 2005

The Honorable Max Baucus
United States Senate
511 Senate Hart Office Building
Washington, DC 20510

Re: Ozone Bump-up Provisions in the Energy Bill

Dear Senator Baucus:

The Northeast States for Coordinated Air Use Management (NESCAUM) -- the regional association of air pollution control officials from Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont -- would like to draw your attention to section 1443 of H.R. 6 (The Energy Policy Act of 2005 as passed by the House of Representatives), known as the "bump-up" provisions. If enacted, these provisions would amend the Clean Air Act to require the U.S. Environmental Protection Agency (EPA) to extend attainment deadlines for any area not in compliance with the National Ambient Air Quality Standards for ground level ozone that is affected by transported pollution. We concur with the State and Territorial Air Pollution Prevention Administrators' and the Association of Local Air Pollution Control Officials' (STAPPA/ALAPCO) opposition to the proposed bump-up provisions, and urge you to oppose inclusion of such language in any final energy legislation.

EPA created a bump-up policy in 1994, and revised it 1998, in an effort to help areas afflicted by ozone transport. The policy allowed, on a case-by-case basis and through a public process, an area that failed to attain the ozone NAAQS to wait for upwind reductions from higher-classified areas with later deadlines. This one time exception was achieved by extending the area's attainment deadline without requiring it to undertake any additional action to address air pollution. While many areas are affected by transported pollution to varying degrees, local sources of pollution also contribute significantly to those areas' air quality problems, and it is incumbent upon all areas to mitigate local pollution in order to protect their citizens from the adverse public health impacts of ozone exposure. In this regard, we believe that EPA's policy addressed a symptom, rather than the cause, of continuing ozone nonattainment and may in fact have helped to perpetuate the problem.

While touted by proponents as a codification of EPA's policy, H.R. 6's bump-up provisions contain criteria that differ from EPA's policy and are of great concern to us. First, the extensions would be mandatory, rather than on a case-by-case basis, for any area that receives a "significant contribution" from transported pollution, regardless of whether the area could take action to lower its emissions. EPA's recently promulgated Clean Air Interstate Rule (CAIR) includes new "significant contribution" determinations for 25 Eastern states and the District of Columbia. If enacted, the provisions of H.R. 6 would apply to many more areas across the Eastern U.S. than under EPA's policy. Second, deadline extensions would be granted without any public review process. Third, H.R. 6's language is vaguely worded such that the deadlines could be extended for very protracted

periods of time. For example, given the deadlines for reductions required under the CAIR, attainment deadlines for “marginal” nonattainment areas could be automatically extended from 2007 to 2015 under H.R. 6’s provisions.

As attractive as deadline extensions may be to areas subject to transported ozone, it is important to recognize that most of the areas that would receive extensions also contribute to poor air quality elsewhere. Extending attainment deadlines without requiring additional actions to stem that pollution means that areas downwind will continue to receive ozone pollution from outside their borders, thus creating continuing ozone nonattainment for the foreseeable future. Ozone pollution harms the health of each area's residents, the health of people who live and work downwind, the health of economies with increases in missed work days, hospital admissions, and health care costs, and extends its financial toll on to the ever increasing cost of health insurance.

While perhaps well intentioned, provisions to amend the Clean Air Act to allow bump-up will significantly delay the public health protections promised our citizens under the Act, and exacerbate rather than mitigate transported air pollution. As such, we urge you to oppose such provisions in the energy bill.

Sincerely,



Arthur N. Marin
Executive Director