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**Oral Testimony of James P. Brooks  
on behalf of the Northeast States for Coordinated Air Use Management  
on U.S. Environmental Protection Agency's Proposed Rule  
to Implement the 8-hour Ozone National Ambient Air Quality Standard  
(68 FR 32802-32870)  
June 27, 2003  
Alexandria, Virginia**

Thank you for the opportunity to comment on EPA's proposed 8-hour ozone rule. My name is Jim Brooks, and I am Director of the Bureau of Air Quality at the Maine DEP. I am here today on behalf of the Northeast States for Coordinated Air Use Management, which represents the six New England states plus New Jersey and New York.

The 8-hour ozone standard was promulgated based on findings that the 1-hour standard did not provide adequate public health protection, and that adverse health effects occurred at lower levels and over longer exposure times than the 1-hour standard. Under the revised standard, more people are now known to be exposed to unhealthy ozone levels. In evaluating EPA's proposal, our main consideration is assessing whether it will afford adequate public health protection as expeditiously as possible, as required by the Clean Air Act. My comments highlight a few of our initial responses to the proposal.

First, EPA's proposal is challenging to read. It lacks proposed regulatory language, and offers vague options for each major program component. This scenario easily leads to

misunderstanding, and could result in a severely mismatched final rule. EPA should release for public comment, as soon as possible, draft regulatory language for a single implementation framework, as well as for the options.

Second, in its quest to provide flexibility, EPA appears to stray too far from the text and mandates of the Clean Air Act. While we appreciate EPA's efforts to allow flexibility, and believe some of the proposed options are innovative and worth exploring, certain options come at the expense of public health protection and expeditious implementation.

In 1990, in response to past failures, Congress established specific ozone requirements under subpart 2 to ensure progress and accountability in implementing the ozone standard. We are concerned that EPA's proposal to designate areas under subpart 1 is not based on sound science, does not provide appropriate accountability, will not afford public health protection in a timely manner, and is not responsive to the Supreme Court's decision. Since 1990, states with 1-hour nonattainment areas have made tremendous strides to reduce ozone levels under the provisions of subpart 2. The public health benefits from the past implementation of subpart 2 must not be ignored, and we are concerned that they will be if EPA chooses to implement under subpart 1. Under EPA's preferred option, two areas with identical design values will have very different requirements.

EPA must also ensure that appropriate timeframes and backstops are in place, including sanctions for failing to act. EPA's proposal allows significant leeway to areas that would

be designated under the subpart 1 option, with very few requirements or incentives to act prior to the five-year deadline extension of 2014. This would delay public health protection for citizens in those areas, and creates inequities between areas designated under subpart 1 and 2. This also perpetuates the problem where downwind areas cannot attain because upwind areas do not yet have to attain the standard.

Third, EPA's proposal does little to address ozone transport. Instead of proposing a framework to address transport, such as a SIP approval process requiring section 110(a) assessments of downwind contributions, EPA indicates that the NO<sub>x</sub> SIP Call and the section 126 rules will address transport "up front." While the SIP Call may address transport for the 1-hour standard, it does not do so for the stricter 8-hour standard. Even with the NO<sub>x</sub> SIP Call's significant reductions and stringent controls recently adopted in many Northeast states (e.g., gas can and consumer product rules), EPA's preliminary modeling indicates that air being transported will be at levels near or above the 8-hour standard. Adequate national and regional controls have not been adopted that will reduce background ozone levels to the point where local controls will address these areas' problems.

EPA also indicates that additional reductions could be realized through the Clear Skies Act. Clear Skies is pending legislation and, as such, is not relevant to this proposed rulemaking. EPA's analysis indicates Clear Skies would deliver only marginal ozone benefits a decade after attainment dates. We need commitments to real and significant NO<sub>x</sub> reductions that coincide with attainment dates. We urge EPA to reconsider the

options we submitted in April 2002, through the Ozone Transport Commission, regarding transport and ozone implementation.

Fourth, we are concerned that EPA's proposal relies too heavily on modeling, rather than monitoring results and other metrics, to make critical SIP determinations. EPA has not recommended a specific model, yet modeling will be the cornerstone for many key demonstrations. EPA must ensure that modeling criteria are well defined, and that other metrics are included in demonstrations. Modeling is a tool, and should be used as such. It should not be the sole method for determining whether an area's ozone problem or contribution to a downwind area has been addressed.

NESCAUM will be submitting more detailed written comments. Thank you again for the opportunity to testify.