

Congress of the United States
Washington, DC 20515

July 25, 2003

The Honorable Marianne Lamont Horinko, Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W. (1101A)
Washington, DC 20460

SUBJECT: Air Docket #OAR 2003-0079

Dear Ms. Horinko:

We are writing in regard to the U.S. Environmental Protection Agency's (EPA's) proposed rule to implement the 8-hour ozone National Ambient Air Quality Standard (NAAQS). We seek further information regarding the effect of the proposed rule in Michigan, the legal flexibility afforded by the Clean Air Act, and to convey some of our specific concerns relating to the situation in Michigan.

We strongly support the Clean Air Act's goal of achieving cleaner air in Michigan's communities. However, we also believe that implementation and enforcement of the Clean Air act should occur in a flexible manner that does not impose unnecessary economic, social and administrative costs. We can ill afford to jeopardize either our citizens' health or economic well-being. Sound environmental protection policy demands that we satisfy both needs at all times. We stand ready to work with you to achieve that goal.

We are generally heartened that the EPA proposal offers options for flexibility in state planning for attainment of the 8-hour ozone standard and that the agency expresses a desire to use balanced and equitable means to reach this goal. We encourage this outcome and would ask that EPA take all steps authorized under the Clean Air Act to provide reasonable requirements and deadlines for Michigan's communities, particularly to the extent that communities have already demonstrated the will and means to achieve compliance with the one-hour standard.

As you know, the issue of transported air pollution is a large one and EPA has long recognized the intensity of the ozone transport in the Lake Michigan region. The final rule must strike an appropriate balance between transported air pollution and local control measures, consistent with the requirements of the Clean Air Act. Our areas will need the ability to engage with you and your staff, and to provide their expertise and knowledge of local and regional conditions, to craft the most effective and sensible solution to these complex and interrelated problems. We seek your personal assurances that such a dialogue and outcome will be the end result of the process outlined in the proposed rule. We encourage you to make changes in the final rule that guarantee that result.

Ozone Transport

West Michigan's situation is particularly troublesome because of the transport issue. There is acknowledgement from the agency and other scientific sources that, for these Lake Michigan coastal areas, situations arise when incoming ozone and precursors are sufficient to cause ozone violations, even in the complete absence of local emissions. The proposed rule suggests minimal relief in this circumstance, offering the possibility of reclassification to a more serious nonattainment status. While such action would provide communities with extended deadlines, it would leave them subject to even more stringent local control requirements. As the agency moves forward with this rule, a comprehensive approach to ozone control issues, which includes necessary measures to balance transport, local control requirements and appropriate timing, will be needed, particularly in Western Michigan. We expect the EPA to look carefully at the specifics of that situation and to work with state and local regulators to develop a control strategy that will ultimately achieve clean air as quickly as possible and in the most cost effective way. We are concerned that this may not be the case.

The proposed rule does not distinguish between regional transport - the regional build-up of diffuse background ozone - and the overwhelming transport that occurs with the unique land-lake interface in the Lake Michigan region. The percent of out-of-state transported ozone contribution to the design values obtained from the ozone monitors in Allegan, Benzie, Berrien, Cass, Mason, Muskegon, Mason and Ottawa counties provides strong evidence that West Michigan's ozone problems are distinct from regional transport in general. We expect EPA to take appropriate cognizance of this fact as it moves forward with specific air quality decisions relating to western Michigan.

Rural Flexibility

Section 182(h) of the Clean Air Act addresses rural transport, and states that the Administrator can use discretion to grant a rural transport classification to an area based on a demonstration that sources in the area do not make a significant contribution to ozone concentrations in the area or in other areas. We encourage EPA to use this provision to the maximum extent possible, consistent with existing law. It would appear that EPA does not have authority to apply this provision in areas that are designated as Metropolitan Statistical Areas. Is this correct? Does the agency have administrative discretion to grant rural transport classification status for communities that are delineated as Metropolitan Statistical Areas (MSAs) by the U.S. Office of Management and Budget(OMB)? If not, why not? Are there sound reasons for such a policy, related to air quality, as opposed to administrative changes resulting from OMB delineations?

OMB's Metropolitan Statistical Area Changes

As noted above, last month, the White House Office of Management and Budget made significant changes to the delineation of metropolitan statistical areas. These changes could have significant impacts on Michigan's implementation strategy. For example,

under the 1999 Census, Benzie County could have been classified as a "Rural Transport Area" but now it is part of the Traverse City MSA. Similar potential problems could occur in southeast lower Michigan, where changes to the Detroit-Ann Arbor CMSA make possible a variety of required implementation schemes. To the maximum extent possible, EPA should consider decisions on the air quality specific demonstrations submitted by the states in making boundary decisions. These demonstrations include factors regarding ozone concentrations, emissions locations, population, traffic and commuting patterns, meteorology, emission controls, and geography. What is EPA's legal authority in this regard? Can EPA consider the input of states and local areas in determining appropriate nonattainment boundaries relating to the factors described above and if so, will it do so? If not, what is the result of the OMB changes and how does this relate to sound decisions regarding clean air?

Vehicle Inspection and Maintenance

Vehicle Inspection and Maintenance programs, along with vapor recovery, are critical issues in Michigan. As you know, all areas in Michigan are currently in attainment for the 1-hour ozone standard and do not have I&M programs. Implementation of the new 8-hour standard carries with it the possibility of an I&M requirement for some areas that may be neither cost effective, nor necessary to reach attainment. Considering the motor vehicle design changes incorporating on-board diagnostic and vapor recovery equipment, in some instances, vehicle Inspection/Maintenance and Stage II vapor recovery measures may provide minimal relative air quality benefits when weighed against the costs to re-establish and operate such programs. Moreover, Michigan's automobile fleet is newer than the national average. We urge EPA to examine the issue of I&M programs and to the maximum extent possible provide states flexibility to balance the relative impacts of all potential implementation requirements against their effectiveness in meeting the updated air standard.

Impact of the NOx SIP Call on Ozone Attainment

We also note that the EPA is proposing to consider the positive impacts on ozone background levels that will be brought about by pollution reductions mandated by the Nitrogen Oxides State Implementation Plan (NOx SIP) Call in setting classifications and attainment deadlines. We urge the EPA to also give consideration to the situations in which these reductions will be counterproductive. Air quality analysis has suggested that the Detroit area can expect to see higher ozone concentrations after the NOx reductions take place. Does EPA agree that this is the case? If so, will this fact be accounted for as part of the air quality planning efforts? How?

We want to emphasize that these are serious issues, requiring resolution by EPA before it may proceed appropriately. Our communities have already demonstrated the ability to comply with Clean Air Act requirements. We need to build on these efforts and allow existing emission reductions efforts to take effect, while pursuing reasonable additional measures that take into account the unique atmospheric and geographic characteristics of areas in Michigan.

Flexibility in the implementation of the new 8-hour standard will be the key to reducing ozone levels while minimizing the adverse and unnecessary impacts on Michigan businesses. We urge you to give careful consideration to achieving the needed balance among these policies, utilizing the maximum flexibility allowed under the Clean Air Act, so that Michigan's citizens can continue their good-faith efforts to improve air quality consistent with sound economic policy.

Sincerely,



Carl Levin
U.S. Senator



Debbie Stabenow
U.S. Senator



John D. Dingell
Member of Congress



Fred Upton
Member of Congress



Dave Camp
Member of Congress



John Conyers
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