

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

December 19, 2005

Docket ID Number OAR-2002-0056
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode 6102T
1200 Pennsylvania Avenue, NW
Washington DC 20460

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

Dear Sir/Madam:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for this opportunity to provide comments on EPA's Notice of Reconsideration of the "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List" and the "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (70 *Federal Register* 62200 and 62213, respectively). Both reconsiderations were published on October 28, 2005.

As we have commented in the past, we believe EPA's rules addressing emissions of hazardous air pollutants from electric utilities, published on March 29, 2005, are inadequate to protect public health and the environment. Specifically, the emission limits contained in EPA's *Clean Air Mercury Rule* (CAMR) are much weaker than the requirements of the Clean Air Act and the deadlines are far too protracted. Additionally, EPA's cap-and-trade approach under Section 111 is inconsistent with the mandates of the law, which clearly called for a technology-based regulation under Section 112 to reduce emissions of hazardous air pollutants, including mercury, from power plants. Attached are comments STAPPA and ALAPCO previously submitted on this issue (June 29, 2004 and January 3, 2005). Those comments address several of the issues EPA has raised again in the reconsideration notices. Please carefully consider our comments during your decisionmaking process.

We believe the Clean Air Act clearly envisioned that emissions of hazardous air pollutants from electric utilities would be addressed under the technology-based provisions of Section 112. To issue standards under Section 111 instead is inappropriate and appears to be a contrivance that was devised in order to permit something the Clean Air Act did not allow: a cap-and-trade program for HAP emissions from utilities. We agree with the regulatory determination that was issued in December 2000, indicating

that regulations under Section 112 are both “appropriate” and “necessary” and do not believe EPA’s revision of that decision on March 29, 2005 was proper.

EPA has requested comments on the specifics of the cap-and-trade rule under Section 111 (beginning on page 62213 of the *Federal Register* notice). As stated above, we believe EPA should not have issued the rule under Section 111 at all but, rather, should have established a technology-based rule, as Congress envisioned when it included electric utilities in the provisions of Section 112 of the Clean Air Act. Also, Section 111, if it were applicable, requires performance standards based on the “best system of emission reduction” for each source and a cap-and-trade program fails to do this. STAPPA and ALAPCO believe that CAMR is not the best system for mercury emission reductions from electric utilities, especially in comparison to regulation under Section 112. Therefore, we are not providing comments on the detailed issues related to the cap-and-trade rule under Section 111 that EPA raised in the reconsideration notice because we do not believe they are relevant. The rule addressing emissions of mercury from utilities should have been issued under the technology-based provisions of Section 112.

In light of the concern that the members of STAPPA and ALAPCO have with CAMR, the associations developed a model mercury rule that we believe more accurately reflects the intent of the Clean Air Act with respect to controlling mercury from electric utilities. On November 14, 2005, STAPPA and ALAPCO released *Mercury from Power Plants: A Model Rule for States and Localities*, which provides state and local governments with useful examples of requirements to obtain more significant reductions in mercury emissions than the EPA rule and on an earlier schedule. We also feel it outlines an approach that EPA should adopt in revamping the agency’s mercury utility rule. We are providing you with a copy of the STAPPA/ALAPCO Model Rule.

Mercury from Power Plants: A Model Rule for States and Localities describes two options for a utility mercury rule that require expeditious application of state-of-the-art emission control technology to each electric generating facility, which is an approach that is more protective of public health and the environment than the CAMR. We believe the approach outlined in our model rule is far preferable to the CAMR in various ways, including the following:

Deadlines – The STAPPA/ALAPCO Model Rule includes two phases – 2008 and 2012. The CAMR includes two phases, with deadlines in 2010 and 2018. However, the amount of emissions reductions that will be achieved by 2018 under the CAMR is highly uncertain, due to banking. Therefore, the cap may not be met until the 2020s. Our model rule calls for more expeditious reductions.

Emission Reductions – The STAPPA/ALAPCO approach calls for 80-percent capture of mercury emissions in Phase 1 and 90-95 percent capture in Phase 2. The CAMR calls for reductions of only 21 percent from current levels in Phase 1, which are based on collateral benefits from the Clean Air Interstate Rule, and Phase 2 reductions of 69

percent. Moreover, as stated above, the Phase 2 reductions in the CAMR may not be realized until much later, due to banking.

Requirements for New Facilities – Our Model Rule requires state-of-the art control technology, updated on a periodic basis, while the CAMR only requires sources to meet less stringent New Source Performance Standards.

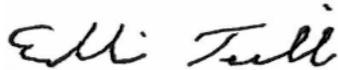
Trading – While the CAMR allows interstate trading of mercury emissions, our Model Rule prohibits it.

Additional Flexibilities – The CAMR relies on trading for flexibility. The STAPPA/ALAPCO Model Rule provides for intrastate averaging in Phase 1 (provided it is limited to the same owner) and extensions of Phase 1 deadlines (under one of the two options) if multi-pollutant control commitments are made.

We urge you to consider carefully the approach we have outlined in this Model Rule and incorporate our recommendations into an amended mercury utility rule.

Please do not hesitate to contact us if you need additional information.

Sincerely,



Eddie Terrill
President of STAPPA



John A. Paul
President of ALAPCO

Attachments