INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

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Docket #OAR 2003-0079
U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W., Room B108
Mail Code: 6102T
Washington, DC 20460

RE: Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard

Dear Acting Administrator Horinko:

This letter provides the Indiana Department of Environmental Management's (IDEM) comments regarding the Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard. IDEM appreciates the opportunity to provide input on this important clean air issue.

The State of Indiana is strongly committed to assuring clean, healthy air for all of its citizens. Tremendous progress has been made in the past two decades: only one area of the state continues to violate the one hour ozone standard. Investment in pollution control technology, innovative manufacturing approaches and advances in motor vehicle standards have lead to these improvements. The combination of national measures and local implementation plans, driven by planning and attainment deadlines contained in the Clean Air Act, has been effective, although achievement of the goals has taken longer than intended.

With the promulgation of the eight hour ozone standard in 1997 and the designation of nonattainment areas expected in April 2004, states face a new challenge: the next increment of air quality improvement necessary to improve the health and quality of life of our citizens. Because of the significant advances in our understanding of the science of ozone formation and modeling tools that allow us to evaluate and address the causes of this pollution, we are in a much better position to develop and implement clean air plans that will be effective at improving air quality. And with the full implementation of the regional NOx SIP Call by 2004, these tools predict that most areas of the country will be able to meet the eight hour standard by 2007 without the implementation of additional controls. This is good news.

IDEM recognizes that EPA's guidance must be consistent with the federal Clean Air Act and court mandates. The 1990 Clean Air Act Amendments provide highly specific requirements for attainment of the one hour ozone standard and do not make provision for a revised ozone standard. With the attainment of the one hour ozone standard in many areas through the application of regional controls, which are having beneficial effects throughout the region, the very prescriptive approach of Subpart 2 may not be appropriate for many areas, despite the direction of the United States Supreme Court. It has been a challenge for EPA to develop guidance that comports with the Act while addressing this next phase of clean air improvement. IDEM appreciates the creativity EPA has brought to this challenge and recognizes that EPA is trying to make the existing language of Subpart 2 of the Act, which the Supreme Court has directed must be followed, fit the needs of the eight hour standard, for which it was not designed.

IDEM supported EPA's original proposal of a "transitional" classification for areas that meet the one hour standard, do not currently meet the eight hour standard, but will meet both standards upon the implementation of the NOx SIP Call. Most of Indiana's likely eight hour nonattainment areas are in this situation. IDEM's overriding concern is that EPA not impose mandatory new source review requirements on areas expected to attain the eight hour ozone standard with the implementation of existing state and federal requirements unless they fail to meet the eight hour standard by 2007. IDEM recommends that EPA defer until 2007 the implementation of mandatory measures, such as new source review and transportation conformity, in areas that will meet the eight hour ozone standard by 2007 (3 years following the implementation of the NOx SIP Call). These measures would go into effect if the area fails to comply with the standard by the close of the 2007 ozone season. If mandates for these areas are unavoidable, EPA should establish a less stringent form of new source review and transportation conformity. We address this further in Attachment A.

While it makes sense to avoid or minimize increases in emissions in nonattainment areas, we now know that these NSR requirements can have unintended consequences, that, in many cases, just push new development to the outskirts of a nonattainment area. As a result, these requirements have contributed to sprawl, loss of farmland and are inconsistent with policies that promote the development of brownfields. Development immediately adjacent to nonattainment areas can have just as deleterious an effect on local air quality as if the development occurred in the nonattainment area itself.

Indiana urges EPA to retain maximum flexibility for local communities to design clean air plans that will meet local and regional air quality needs and be as compatible as possible with other local needs. Lack of flexibility will create a situation where programs with significant actual or perceived negatives are imposed on communities in the face of scientific evidence that those measures are not necessary. EPA should avoid to the greatest extent possible mandatory control programs, especially for areas likely to meet the standard without any additional controls beyond the NOx SIP Call reductions. States and EPA must work together, combining their areas of expertise and authority, to fashion cost-effective plans to meet air quality standards on a prompt schedule.

Indiana's specific comments on the draft implementation guidance are provided in Attachment A to this letter, and comments on EPA's modeling guidance are provided in Attachment B.

We appreciate the opportunity to provide comments and recommendations to U.S. EPA concerning this matter. Likewise, we look forward to working with your staff as U.S EPA moves forward with the implementation process. If you or your staff has any questions about Indiana's comments, or wish to discuss them with us further, please contact Janet McCabe of the Office of Air Quality at 317-232-8222 or jmccabe@dem.state.in.us.

Sincerely,

Lori F. Kaplan

Lori F. Kaplan
Commissioner

LFK/jgm/sad

Attachments

cc: Cheryl Newton, EPA-Region 5
J. Elmer Bortzer, EPA-Region 5

Attachment A
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IDEM's specific comments on the draft guidance are as follows:

- EPA should grant maximum flexibility to the states in implementing the eight hour ozone standard, including all decisions concerning local control strategies.

- IDEM supports EPA's commitment to develop national measures for sources that are more effectively and efficiently controlled at the national level and to ensure that interstate transport of pollution is addressed. We believe that a combination of regional reductions (achieved through national rulemaking by EPA) and local emission reductions (achieved through SIPs) will be necessary. We encourage EPA to work with states to identify, adopt and implement sufficient regional emission reductions to ensure attainment.

- IDEM supports EPA's proposed approach concerning SIP submittals for areas expected to comply with the standard by 2007 based on existing modeling work, in which no additional attainment modeling will be required. Considerable resources have already been devoted to this technical work. Allowing states to rely on current modeling will allow them to focus resources on additional modeling needed for areas where additional controls will be needed and on PM2.5 nonattainment issues.

- Under the options outlined within the proposed rule for classifying nonattainment areas and applying either Subpart 1 or Subpart 2 requirements, IDEM is supportive of Option 2. Option 2, which uses the Subpart 1 approach for areas where ozone values meet the one hour standard but exceed the eight hour standard, is simpler and provides greater flexibility for communities. However, U.S. EPA should grant flexibility to the states in choosing local controls that are the most cost effective, as opposed to mandatory controls that may be ineffective for certain communities.

- In particular, IDEM does not support mandatory vehicle emissions testing or stage II vapor recovery for "Moderate" areas and above, except for areas that implemented those controls under the one hour standard. These programs are less cost effective than they were a decade ago, with decreased emission reduction benefits due to increased engine standards and emission control technology (i.e. on-board diagnostics and recovery canisters). Communities should be free to consider these programs among other possibly effective programs and choose them if they make the most sense. Under the draft guidance, for example, if Dearborn, Franklin and Ohio counties become part of the Cincinnati moderate nonattainment area, it would appear that both vehicle inspection and maintenance and Stage 2 vapor recovery would be required in those counties. The population of those Indiana counties is less than 5% of the Cincinnati metropolitan area and the costs of building and operating an Inspection/Maintenance network in those three essentially rural counties would greatly outweigh the environmental benefit, as well as making those resources unavailable for other, more cost-effective environmental programs. State and local communities may choose to implement inspection/maintenance as part of their clean air plans, but it should not be mandatory.

- If EPA is unable to avoid requiring mandatory controls such as vehicle emissions testing, states should be given flexibility in addressing the control reduction requirements. For instance,

instead of a mandated basic or enhanced vehicle inspection program, states should be granted the flexibility to implement hybrid programs that use current technology like remote sensing and mobile on-board diagnostics testing.

- Areas that are designated under Subpart 1 that would have an attainment deadline of 2010 if designated under Subpart 2, should be granted until 2010 to reach attainment to provide for three years of monitoring data following SIP submittal in 2007.

- EPA should establish attainment deadlines with a fall date after the close of the ozone season as opposed to an April deadline. This would be consistent with two decades of past practice and only makes sense given the seasonal nature of ozone pollution. It would also be consistent with the assumptions made for the NOx SIP Call controls, which presumed that states would have three full years (2005-2007) to realize the benefits associated with those reductions.

- EPA should provide flexibility in defining "counties affected by overwhelming transport." A rural county that is clearly affected by overwhelming transport should be defined and designated by its rural traits, not its proximity to a Metropolitan Statistical Area (MSA). The MSA boundaries are an imperfect tool to group or distinguish areas for air quality planning purposes. MSA boundaries are not based on air quality considerations and there are many examples where the boundaries do not in fact represent the essentially urban areas.

- EPA has recognized the importance of integrating planning for eight hour ozone and PM2.5 as much as possible, given the overlap in technical work and likely control strategies. States and EPA are currently developing modeling tools that concurrently assess the impacts of control strategies on ozone, fine particles and regional haze. Once EPA designates the ozone and PM2.5 nonattainment areas, planning deadlines for the two pollutants should be consistent so that states can prepare a single SIP for both.

- EPA proposes a type of transitional program in Section VI.O. of the draft guidance, recognizing the principle stated above that it does not make sense for areas projected to meet the eight hour standard by 2007 without additional control programs to be subject to stringent NSR requirements. This flexibility would be available for areas that currently meet the one hour ozone standard and have submitted an attainment plan by April 2004 that demonstrates attainment by 2007, including NOx controls for the areas where the NOx SIP Call applies and any additional local measures needed for the eight hour standard. IDEM submits that for areas where EPA modeling indicates no controls beyond the SIP Call are necessary, submission of a full blown attainment demonstration should not be necessary for EPA to be able to afford either flexibility on NSR or, more simply, deferral of mandatory NSR until 2007. As a practical matter, it would be extremely difficult for Indiana, where as many as five out of seven potential nonattainment regions would be eligible for this approach, to prepare SIPs by April 2004, while also evaluating PM2.5 nonattainment areas and beginning the planning work for areas where additional measures will be needed.

- IDEM feels that a deferral of NSR requirements makes more sense for areas projected to achieve the eight hour standard without the imposition of additional controls, but as an alternative agrees generally with the elements EPA has proposed for "transitional NSR", i.e. an applicability threshold of 100 tons per year, Best Available Control Technology instead of

Lowest Achievable Emission Rate as the required technology standard, and no emissions offset requirement but a determination that the source will not contribute to the existing violation, as described in the draft guidance (i.e., the source's emission are in line with growth projections). This approach would bring NSR requirements in these areas essentially in line with NSR in attainment areas.

- IDEM supports EPA's second option for how to apply the 15% plan requirement in areas that would be designated as moderate nonattainment under the eight hour standard. An area that has already developed a 15% plan under the one hour standard should be considered to have met that requirement. Areas not already covered by a 15% plan should also have the ability to demonstrate to EPA that a plan not strictly meeting the requirements of a 15% plan is nevertheless sufficient to meet the standard.

- Revocation of the one hour standard. IDEM strongly believes that states and communities should not have two sets of planning requirements, one for the one hour and one for the eight hour standard, and also that there should be no backsliding from clean air programs put in place to meet the one hour standard and still needed to maintain compliance with that standard and meet the eight hour standard as well. IDEM supports Option 1, in which EPA would revoke the one hour standard one year after the effective date of eight hour designations but, through regulation would retain certain requirements in former one hour nonattainment areas to avoid backsliding. In particular, IDEM believes that one hour maintenance counties designated nonattainment under the eight hour standard should not have to submit updates to the one hour maintenance plan, since they will be developing eight hour attainment plans that will subsume the requirements of the maintenance plan previously in effect.

- IDEM supports EPA's second option for addressing the RACT requirements in areas classified as moderate or above, because it provides greater flexibility to the states and allows states and sources not to pursue what may turn out to be unnecessary analysis or control measures. IDEM also agrees that sources subject to a state's NOx rule should be considered to have met the RACT requirement.

- Form and Timing of Draft Guidance. IDEM has concerns about both the timing and format of the draft guidance. The guidance should have been finalized before states worked with local communities to prepare recommendations for nonattainment area designations. The draft implementation guidance contains no actual rule language and contains so many options that it is impossible to explain clearly to citizens, local officials, and businesses what will be required if their county is designated nonattainment. Uncertainty about the implementation requirements has had a definite impact on Indiana's development of recommendations and has made that process more difficult and controversial than it would have been had the rules been clear. Although this cannot be corrected at this point, IDEM urges EPA to do everything possible to finalize the PM2.5 implementation guidance before states' recommendations on those nonattainment boundaries are due. In addition, states should have the opportunity to supplement their recommendations to U.S. EPA concerning nonattainment designations under the eight hour standard once a final implementation rule is published. The U.S. EPA should not designate areas under the eight hour ozone standard until states have had an opportunity to evaluate the implications of the implementation rule for affected areas and supplement or revise their original recommendations.

EPA also needs to provide actual rule language for public comment. The draft guidance is in narrative form, in the nature of a preamble. IDEM appreciates EPA's offering such a variety of options, but the time to take comment on so many possible approaches is before putting out a proposed rule for comment. Translating concepts and options into regulatory text can be difficult. The public should have the opportunity to comment on the subtleties of actual rule language before it is finalized.

Attachment B
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IDEM's comments specific to modeling issues are as follows. We commend USEPA in developing its draft modeling guidance ("Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS", EPA-454/R-99-004, May 1999). In general, we believe that this guidance is well-written, thorough, and technically sound. We wish to offer the following general comments:

- We agree with the need for a "conceptual description" of an area's nonattainment problem based on readily available air quality, meteorological, and emissions information.

- We support the "one-atmosphere" modeling approach and encourage USEPA to continue to integrate and harmonize efforts to regulate ozone, PM2.5, and regional haze.

- We support the "weight-of-evidence" approach in demonstrating attainment, where modeling results are considered along with complementary analysis of air quality, meteorological, and emissions information.

- We support the use of relative model results, rather than absolute model results, in the modeled attainment test. (Note, however, we encourage EPA to provide further justification for its claims that using models in a relative sense should reduce modeling uncertainty – e.g., a technical evaluation of relative model performance.)

- Given differences in measured weekday and weekend ozone concentrations in many areas (see, for example, http://www.arb.ca.gov/aqd/weekendeffect/final_wewd_5_1/aer_final_report.pdf, further attention should be given to the development of model inputs and evaluating model performance for weekend days.

- While we recognize that the guidance is intended to provide the basis for attainment demonstrations by states, we believe that it should also be used as the basis for general air quality analyses. To this end, we encourage EPA to follow this guidance for estimating the effectiveness of existing control measures (see, for example, discussion on page 32805, Footnote 1) and for conducting modeling to support Federal controls (see, for example, references on pages on 32809 and 32831).

The proposal identifies several changes to the May 1999 document. We offer the following comments on two of these changes:

(a) Year to Model: The guidance should clarify which year (of the 3-year period ending with the attainment year) should be modeled in the attainment demonstration. We do not have a strong position on this issue, but would prefer that the emission estimates reflect the attainment year.

(b) Length of Modeled Period: We agree with the recommendation to model longer time periods (e.g., 10 - 21 days).