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Statement Submitted to the  
Senate Committee on Environment and Public Works  
Subcommittee on Clean Air, Climate Change and Nuclear Safety

By Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency  
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Regarding U.S. EPA's 8-hour Ozone Implementation Rule

Senator Voinovich, Senator Carper, members of the subcommittee, I am Joe Koncelik, director of the Ohio Environmental Protection Agency. Thank you for allowing me to address this important issue regarding the State's ability to meet the new 8-hour ozone standard. U.S. EPA's implementation rule for the 8-hour ozone standard has dramatic repercussions for the States. Ohio believes that the current federal approach to improving air quality lacks coherency. The federally mandated air pollution control programs are on much longer implementation schedules than the deadlines established by U.S. EPA for States to meet the 8-hour ozone standard. A better balance needs to be struck.

On June 15, 2004, U.S. EPA finalized the 8-hour ozone implementation rule. The rule establishes firm deadlines for all of the counties within the States to meet the new, more stringent, 8-hour ozone standard. In all, Ohio has 33 counties that don't meet this standard. By June 2007, Ohio EPA must finalize air pollution control plans that will demonstrate reductions in air emissions enough so as to bring all 33 counties into attainment with the standard.

U.S. EPA has classified all of the nonattainment counties based on air monitoring data. The higher the readings of ozone above the standard, the higher classification that county will receive. The classifications from lowest to highest are: basic, moderate, serious, severe and extreme. Most nonattainment areas in the country are designated basic nonattainment. In Ohio, only Northeast Ohio (a total of 8 counties) was classified as moderate nonattainment.

Under this classification scheme, the higher the classification, the more time U.S. EPA gives to meet the standard. Areas classified as basic nonattainment have until 2009 to demonstrate attainment with the new standard. Areas classified as moderate nonattainment have until 2010 to demonstrate attainment. However, there is a tradeoff for getting more time: higher nonattainment classifications are accompanied with more stringent federally mandated control programs. In addition, areas with higher classifications have more limits placed on economic growth.

Bob Taft, Governor  
Bruce Johnson, Lieutenant Governor  
Joseph P. Koncelik, Director

From the day U.S. EPA issued the final implementation rule, Ohio has been concerned with the method used by U.S. EPA to establish the deadlines for the various classifications to meet the 8-hour standard. Despite the fact that the 8-hour standard is far more stringent than the previous 1-hour ozone standard, U.S. EPA gave areas exactly the same amount of time to comply with the new standard. For example, moderate nonattainment areas had six years to comply with the 1-hour ozone standard and are given 6 years to comply with the 8-hour standard.

Ohio's concerns grew once it reviewed the logic behind establishing the deadlines for the 8-hour standard. The 1-hour ozone standard deadlines were established by Congress. In setting the deadlines, Congress engaged in a thoughtful process to determine reasonable, appropriate timeframes. Congress concluded that the amount of time required for attainment depends on the available controls and the time it takes to add these controls to existing sources. The congressional record is replete with testimony regarding science and available technology to meet the 1-hour ozone standard. Even though it engaged in this thoughtful process, many areas still were unable to meet the 1-hour standard within the deadlines established despite best efforts to comply.

In developing the compliance schedule for the new 8-hour ozone standard, U.S. EPA ignored the thoughtful process Congress used to establish time frames. Instead, U.S. EPA used the 1-hour time frames for the new, stricter 8-hour standard. U.S. EPA failed to consider any new evidence regarding the feasibility of meeting the new 8-hour standard. The result? U.S. EPA established unrealistic deadlines for large regions of the country.

Despite the concerns with the methods used to establish the 8-hour compliance schedule, Ohio EPA has been working very hard to determine exactly what new air pollution controls will be required to put all of its counties into attainment with the 8-hour ozone standard. For basic nonattainment areas, Ohio EPA believes a reasonable level of new controls will be needed to reach attainment by 2009. The enormous challenge lies in moderate nonattainment areas, like Northeast Ohio. Right now, there is no viable air pollution control plan that would place Cleveland and the rest of Northeast Ohio into attainment by 2010. The failure to meet the current federal deadline will have dramatic repercussions on economic growth in the Cleveland area, an area already facing significant challenges in its economy.

To demonstrate the impossibility of the task of meeting the standard in Northeast Ohio, we have performed studies that show that even if all of industry was shut down and the area depopulated, it would just barely be able to meet the standard by 2010, the applicable deadline under the federal rule. However, those same studies show that Northeast Ohio could attain the new standard by 2015 using almost exclusively existing local and federal control programs.

Why does the picture change so dramatically in such a relatively short period of time? The reason is that U.S. EPA has implemented effective regional air pollution control programs that will dramatically improve air quality. However, the mandated reductions will not occur fast enough to benefit areas like Northeast Ohio. These new federal programs include controls on utilities (CAIR rule) and motor vehicles (clean fuels and new engine standards). U.S. EPA's studies of the effectiveness of these controls show they will be highly effective in helping states meet the new ozone standard. A critically important reason why the federal programs are so effective is that they mandate reductions on a regional basis. Regional control programs have been shown to be the most effective means of improving air quality in order to meet the 8-hour standard. Alternatively, local control programs on industry and vehicles are shown to be very limited in their effectiveness to reduce 8-hour ozone levels. As a consequence, the most effective tools in improving air quality lie with the federal government, not the states.

Although U.S. EPA has the most effective tools, it has placed the states in an impossible situation of mandating compliance with the standard much faster than its control program will achieve reductions. All of the federal programs that reduce emissions from motor vehicles rely on turnover of the existing fleet of cars and trucks to gain those emission reductions. For example, emissions from diesel engines are predicted to be reduced by 80% from 2000 levels. However, that level of reduction will not occur until 2030 because they are tied to turnover of the fleet. A similar time period is at issue with the federal plan to control utility emissions. Emissions from power plants are projected to be reduced by 70% from 2003 levels. However, those reductions will not be achieved until after 2015 due to the phased-in approach contemplated under the rules.

Ohio EPA understands and supports the need to balance the economic costs of these reductions by phasing them in over time. However, U.S. EPA failed to take into account the need for balance when it established the deadlines for meeting the ozone standard. While the emission reductions mandated by U.S. EPA for utilities and vehicles are on a 10- to 25-year schedule, the states must meet the new standard in most areas no later than 2010, five years from now.

The federal air pollution programs for vehicles and utilities will account for major reductions and will aid the states in complying with the 8-hour ozone standard. But because of the short deadlines established by U.S. EPA for states to reach the 8-hour ozone standard, the benefits of those reductions will be too late to avoid mandatory local controls that will, by comparison, do little to reduce ozone. The reductions will also be too late for areas like Northeast Ohio to avoid federal sanctions for failing to meet its designated deadline for compliance. These sanctions and mandated local controls will have significant and unnecessary consequences on Northeast Ohio's economy.

So what is the appropriate solution? U.S. EPA should have adjusted the attainment dates so states can take full advantage of these federal programs. All nonattainment areas are not faced with the same dilemma. Most basic areas have a realistic and fair chance of meeting their 2009 deadline. But most moderate nonattainment areas have no chance of meeting their 2010 deadline. Ohio EPA believes these areas should be provided relief. We are not advocating doing nothing more to improve air quality in these areas, but rather that an appropriate balance be struck between the length of time provided to comply and a reasonable number of new cost-effective pollution control programs that will help accelerate compliance.

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I would like to thank Senator Voinovich for holding this hearing on such a critically important issue to the states. Ohio stands ready and willing to engage in discussion that would lead to a practical solution that strikes the right balance between improved air quality and the economic costs of compliance.