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**Testimony of
Tad Aburn
National Association of Clean Air Agencies**

**U.S. Environmental Protection Agency (EPA) Hearing on EPA Proposal to
Issue Federal Implementation Plans to Reduce Interstate Transport of
Fine Particulate Matter and Ozone (75 *Federal Register* 45210)**

**Docket No. EPA-HQ-OAR-2009-0491
August 26, 2010**

Good morning. My name is Tad Aburn, and I am the Director of the Air and Radiation Management Administration of Maryland's Department of the Environment, as well as the Criteria Pollutants Committee Co-Chair of NACAA – the National Association of Clean Air Agencies. Thank you for the opportunity to testify today. I am here to present the views of NACAA – which is the association of air pollution control agencies in 52 states and territories and over 165 major metropolitan areas across the country – on EPA's proposal to limit interstate transport of emissions of nitrogen oxide (NO_x) and sulfur dioxide (SO₂) in 32 states¹, which I will refer to as the Transport Rule.

NO_x and SO₂ emissions contribute to fine particulate matter (PM_{2.5}) and ozone pollution, which cause significant public health problems, including premature deaths, infant mortality, nonfatal heart attacks, hospital admissions for respiratory and cardiovascular issues, and emergency room visits for asthma. Electric power plants – the sources proposed to be controlled under the Transport Rule – represent 70% of SO₂ emissions and 20% of NO_x emissions in the 32 states covered by the rule and thus are significant contributors to ozone and PM_{2.5} pollution. Controlling these sources is highly cost effective; EPA's own analysis shows a 40 to 1 – and up to a 100 to 1 – benefit-to-cost ratio for the power plant controls in the Transport Rule. Accordingly, this rule provides EPA with a tremendous opportunity to assist state and local air pollution control agencies throughout the eastern half of the United States with meeting their clean air obligations.

It is difficult to fully assess the impacts of EPA's proposed Transport Rule since the agency's overall program to address transport is split into two phases, and the details of the full program will not be available until EPA finalizes Transport Rule II. Notwithstanding this, NACAA has undertaken a preliminary assessment of EPA's currently proposed Transport Rule, which I will share with you today. We will provide more substantive comments on the agency's

¹ 31 states and the District of Columbia.

proposal during the formal comment period. I'd like to first share with you several of the positive features of the proposed rule that we have identified.

We applaud EPA for thoughtfully considering how to remedy the "fatal flaws" identified in the court decision striking down the Clean Air Interstate Rule (CAIR). For example, we are encouraged by EPA's provisions limiting interstate trading. These will ensure that a substantial portion of a state's assigned emissions reductions occur in that state (rather than through the purchase and use of out-of-state allowances to achieve compliance with the rule). We are also pleased that EPA has attempted to align the rule's compliance deadlines with attainment deadlines for the 1997 ozone, 1997 PM_{2.5} and 2006 PM_{2.5} air quality standards. NACAA also supports the agency's use of air quality factors and a health benefits assessment in calculating states' emissions budgets, rather than basing the budgets solely on the availability of highly cost-effective controls. Furthermore, at this time the proposed SO₂ caps - especially the tightened 2014 cap - appear to be sufficiently stringent to meet most states' needs.

We are also pleased that EPA has committed to quickly finalizing a second Transport Rule - Transport Rule II - in recognition that much tighter NO_x caps will be needed to address the pending revision to the 8-hour ozone standard. NACAA strongly supports EPA's pledge to review whether a new or revised Transport Rule is needed each time it revises an air quality standard.

I would now like to turn to several important areas of the rule that NACAA believes need to be strengthened. In our 2004 comments on the proposed CAIR, NACAA concluded the following:

While EPA has taken an important first step to address transport, we are still concerned that the agency has not done enough. We believe the compliance deadlines are too long, the emissions caps are too weak, and an insufficient number of sources are covered.

Unfortunately, six years later, many of these concerns remain unaddressed. In the Preamble to the proposal, the agency has expressed a willingness to further examine these areas in the second Transport Rule. However, we believe at least some of these concerns should be addressed in this rulemaking effort.

For example, the NO_x emissions caps in the proposed Transport Rule are not stringent enough. While EPA proposes to lower the SO₂ cap in 2014, the agency makes no such adjustment for NO_x. Instead, EPA proposes to keep the same overly-generous NO_x cap for 2014 that is proposed for 2012. This is especially problematic because EPA's Transport Rule still leaves several areas vulnerable to interstate transport problems even under the ozone standard of 85 parts per billion (ppb), adopted in 1997,² let alone the proposed 60-70 ppb

² EPA revised the ozone standard in 2008, lowering it to 75 ppb. However, implementation of that standard was stayed while EPA reconsiders the standard (EPA has proposed a range of 60-70 ppb). Since the 2008 standard was stayed, state and local air agencies are not developing

range EPA is considering. Although EPA says it will address the NO_x reductions needed to meet the soon-to-be promulgated revised ozone standard in Transport Rule II, it is imperative that the agency include in *this* Transport Rule a second, tighter NO_x cap in 2014 to assist states in attaining the 85 ppb ozone standard. Then, as EPA plans, the agency should turn to the forthcoming ozone standard and promulgate a far more stringent NO_x cap in Transport Rule II that achieves the maximum emissions reductions that are technologically feasible and cost effective to ameliorate the entire transport problem associated with the revised ozone standard.

In addition, the Transport Rule fails to include all sources that contribute significantly to transport, such as industrial, commercial and institutional boilers, and cement kilns. These additional source categories represent a significant percentage of the states' NO_x and SO₂ emissions inventories and also contribute to interstate transport problems. We recognize that to include these sources, EPA would need to repropose Transport Rule I, which, in the interest of time, we do not support. Thus, EPA *must* address these source categories as well when it proposes its Transport Rule II.

Furthermore, EPA's analysis in the Transport Rule is not complete. There are dozens of states that will need to do more in order to satisfy their Clean Air Act obligation to address transport: more specifically, there are 10 states for which the agency has "only quantified a minimum amount of emissions reductions needed" for the 1997 ozone standard and "15 states for which the agency has not completely quantified total significant contribution or interference with maintenance" for the 2006 PM_{2.5} standard. We are disappointed that after spending a year-and-a-half to analyze interstate transport, EPA presents us with an incomplete solution.

Finally, and very critically, NACAA urges EPA to finalize Transport Rule II quickly. EPA must promulgate a second Transport Rule no later than 2012 if the agency is indeed serious about helping state and local air pollution control agencies to address interstate transport, meet their statutory obligations under the Clean Air Act (e.g., meet the attainment deadlines for moderate nonattainment areas) and to ultimately attain the health-based standards. In short, EPA is asking state and local air pollution control agencies to place a tremendous amount of faith in the agency's ability to quickly promulgate a strong and effective Transport Rule II. We look forward to working with the agency to accomplish this important goal.

Thank you for the opportunity to comment. I am happy to take any questions.

implementation plans to meet the 2008 standard; rather they are implementing plans aimed at achieving the 1997 standard.