TESTIMONY OF CHRIS SALMI
ON BEHALF OF THE
OZONE TRANSPORT COMMISSION
BEFORE THE U.S. ENVIRONMENTAL PROTECTION AGENCY
ON FEDERAL IMPLEMENTATION PLANS TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OZONE
40 CFR Parts 51, 52, 72, 78 and 97

August 26, 2010

Good morning and thank you for the opportunity to testify on the U.S. Environmental Protection Agency's (EPA's) August 2, 2010 proposed rule to limit the interstate transport of emissions of nitrogen oxides (NOx) and sulfur dioxides (SO2) in 31 states and the District of Columbia, referred to here as the Transport Rule. My name is Chris Salmi, Assistant Director of the Division of Air Quality in the New Jersey Department of Environmental Protection (NJDEP), and I am pleased to be here today representing the views of the Ozone Transport Commission (OTC). OTC coordinates ground-level ozone pollution control planning among 12 Northeast and Mid-Atlantic States and the District of Columbia. In addition to today's testimony, OTC will submit written comments and supplemental documentation by the October 1, 2010 deadline.

First, we wish to commend EPA for taking an innovative and progressive approach on dealing with air pollution that crosses state boundaries, and for its acknowledgement that transport needs to be addressed as part of any new air quality standards. The transported ozone and particulate matter pollution that is formed from NOx and SO2 emissions endanger the health of our citizens, particularly the very young and elderly, causing lung damage, respiratory illness and premature mortality. Power plants are a significant source of these pollutants, contributing

18 percent of all NOx emissions and 66 percent of all SO2 emissions nationally.[1] By controlling emissions from these sources under the Transport Rule, EPA is achieving badly needed public health benefits that are long overdue utilizing the most cost-effective reductions available. In its own analysis, EPA finds a benefits-to-cost ratio of at minimum 40-to-1 and up to as much as 100-to-1 for the controls on power plants covered under the proposed Transport Rule. The OTC's conceptual model work clearly shows that reducing transport of damaging ozone precursor emissions is the region's number 1 priority. The OTC states have stepped up to the plate willingly and aggressively to address our own sources of ozone for many years. The new "local controls" being developed by the OTC states will help, but the health benefits from these new local controls are small compared to the benefits from regional transport strategies.

We also commend EPA for addressing the Court's and the states' concern with the relationship between emission reductions and downwind contributions, an important transport issue that caused the Court to reject and remand the 2005 Clean Air Interstate Rule (CAIR) back to EPA. The proposed rule provides a strong, science-based methodology that can achieve significant reductions in air pollution from power plants transported from upwind states into and within the OTC region. Further, the proposed rule limits the degree to which such plants can engage in interstate trading of emissions. By restricting *interstate* trading, EPA has taken a major step towards addressing the court's finding and the CAA requirement that each state must reduce its share of transported pollution. We also commend EPA for proposing a methodology for assessing transported air pollution that will provide a framework for more quickly analyzing the impact of transport under future revised air quality standards. For the states to have any chance of developing timely plans to adequately address transport, EPA must identify the

[1] EPA Regulatory Impact Analysis for the Proposed Transport Rule, June 2010, page 224

reductions needed to eliminate significant contribution and interference with maintenance concurrent with the setting of air quality standards. This proposed methodology should be quickly applied to identify the additional reductions in transport needed to meet the new ozone standard EPA expects to issue in late October.

Unfortunately, there are a number of shortcomings in the transport proposal that will prevent achieving healthy air in the eastern United States as expeditiously as practical, as required under the Clean Air Act. To emphasize this point, there have been 53 separate exceedances[2] of the 2008 ozone standard in the region so far during this ozone season and the season is far from over. And because the proposed Transport Rule purports to respond only to the inadequacies of CAIR, which addressed the 1997 ozone standard, it will not provide the NOx reductions necessary to meet the 2008 ozone standard nor its more stringent replacement expected in October. We, therefore, urge EPA to strengthen this Transport Rule, particularly in the areas we will now discuss, to provide greater public health protection in a more timely manner.

It is troubling that the proposed Transport Rule does not completely address the significant contributions from upwind states in the context of the less protective 1997 ozone standards. Section 110(a)(2)(D) of the Clean Air Act mandates that states must include in their state implementation plans provisions that prohibit air pollutant emissions that significantly contribute to non-attainment or interfere with maintenance in any other state. And yet EPA asserts in the proposed Transport Rule (which is a federal implementation plan) that it will only "partially eliminate" the significant contributions of 25 states in relation to the 1997 annual and

[2] Based on a preliminary analysis of 2010 monitoring data through August 15, 2010.

2006 24-hour PM 2.5 NAAQS, and will only "make measurable progress toward eliminating" the significant contributions of 10 states in relation to the 1997 ozone NAAQS. It is not acceptable to the OTC states that a federal implementation plan, which is intended to fulfill the obligations of a state implementation plan, does not meet the letter of the Clean Air Act transport requirements.

A key reason that significant contribution is not eliminated by the proposed Transport Rule is that the NOx caps are not stringent enough. The proposed 2012 NOx caps are actually more generous than those that were required in CAIR phase 2, beginning in 2015. The seasonal NOx budget for the identical states under EPA's proposed Transport Rule is 475,000 tons; the CAIR phase 2 NOx cap was 429,000 tons. EPA further exacerbates the situation by retaining the 2012 NOx cap in 2014, rather than ratcheting it down, as it did for the SO2 caps in the proposed rule. In a recent plant-by-plant analysis by OTC of potential future NOx caps, we determine that a 375,000 ton ozone season NOx cap by 2014 is technologically feasible and cost-effective based on an annual NOx cap of 900,000 tons in the eastern U.S. We urge EPA to tighten the NOx caps in this rulemaking to a level that fully eliminates significant contribution. We believe that cost-effective reductions from power plants are available at cost thresholds greater than EPA's proposed threshold of $500 per ton and we urge EPA to adopt a cost threshold that will result in tighter state NOx budgets.

Another flaw in the proposed Transport Rule is the design of the remedy. EPA proposes to set state EGU budgets , but then allows sources within that state to emit above these already inadequate budgets up to the variability limit. In order to meet the statute's requirement and the Court's mandate, EPA need to implement a trading program that sets a state emissions

budget at the level necessary to eliminate transport and that requires mitigation in a specific state if the collective sources in the state exceed the budget.

A third problem with the proposed rule is its failure to include emission reductions from all NOx sources that contribute to transport, particularly from large industrial, commercial and institutional (ICI) boilers. We understand that EPA proposes to address ICI boilers, as well as other NOx source categories, in a second transport rule that will follow. However, we urge EPA to examine the technical evaluation the OTC developed jointly with the Lake Michigan Air Directors Consortium (LADCO) for ICI boilers and include NOx and SO2 reductions from this sector in the final rulemaking for this proposed rule if possible. If not, we urge EPA to address emissions from ICI boilers in the second Transport Rule, as well as emissions from cement kilns, on-road vehicles, marine engines and locomotives. EPA data shows that emissions from power plants, along with emissions from these other source categories, represent about 75% of the NOx emissions that remain to be regulated.
These source categories are most effectively regulated by national rules promulgated by EPA.

Finally, and most importantly, it is imperative that EPA fulfill the promise it makes in this proposal to quickly adopt, no later than 2012, a second transport rule to address the more health-protective ozone standard anticipated this fall. Under this new standard, further reductions in transported pollution will be needed beginning as early as 2014 for states to meet their transport obligations and to realize the goal of clean air.

The OTC stands ready to work with EPA to address the issues and concerns I have raised today.

Thank you and I look forward to answering your questions.