



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

TAB A

JUN 24 2005

OFFICE OF  
AIR AND RADIATION

Peter C. Harvey  
Attorney General of New Jersey  
25 Market Street  
PO Box 093  
Trenton, NJ 08625-0093

Jon P. Devine, Jr.  
Natural Resources Defense Council  
1200 New York Avenue, NW  
Suite 400  
Washington, DC 20005

Dear Counselors:

On May 31, 2005, EPA received two petitions for reconsideration of the final rule entitled "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" (the "final Section 112 rule").<sup>1</sup> See 70 Fed. Reg. 15,994 (Mar. 29, 2005). This letter contains EPA's preliminary response regarding those petitions.

Generally, petitioners claim that the final Section 112 rule contains legal interpretations and information that are of central relevance to the final rule, but that were not sufficiently reflected in the proposed rule. Petitioners further contend that they believe that additional information is, or has become, available since the public comment period, and that this information, too, is of central relevance. Finally, petitioners conclude that they did not have an adequate opportunity to provide input on these matters during the designated public comment periods.

EPA recognizes the high degree of public interest in this rule. The public had three opportunities to submit comments, following the January 30, 2004 Notice of Proposed

<sup>1</sup> One petition was submitted by 14 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The other petition was submitted by five environmental groups and four Indian Tribes: Natural Resources Defense Council, Clean Air Task Force, Ohio Environmental Council, U.S. Public Interest Group and Natural Resources Council of Maine; Aroostook Band of Micmacs, Houlton Band of Maliseet Indians, Penobscot Indian Nation and Passamaquoddy Tribe of Maine. Both groups are referred herein as "petitioners."

Rulemaking, the March 16, 2004 Supplemental Notice of Proposed Rulemaking, and the December 1, 2004 Notice of Data Availability. EPA received, reviewed, and responded to thousands of documents. Thus, a robust public discussion of the rule has already occurred. Nonetheless, in the interest of ensuring ample opportunity to comment on this important rule, we plan to initiate a reconsideration process. The particular issues EPA plans to reconsider, and the specifics of the reconsideration process, will be set out in a forthcoming Federal Register notice. We are sending this letter now because we wanted to inform you promptly that we are initiating the reconsideration process.

Without prejudging any information that petitioners and other members of the public may provide in the reconsideration process, our preliminary review of the petitions has not persuaded us that our final decisions were erroneous or inappropriate. We will, of course, consider objectively all information generated during the reconsideration process. Our initiation of the reconsideration process, however, should not be taken as an indication that we agree with petitioners' claims.

Petitioners also requested that EPA stay the effect of the final Section 112 rule under Clean Air Act ("CAA") section 307(d)(7)(B) pending administrative reconsideration. For the reasons set forth below, EPA denies all pending stay requests.<sup>2</sup>

EPA promulgated both the final Section 112 rule and the Clean Air Mercury Rule ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2003), after an exhaustive rulemaking process during which EPA received and considered thousands of comments. These rules represent the first time that EPA has regulated utility mercury emissions. When fully implemented, CAMR will reduce emissions of mercury from U.S. coal-fired power plants by 70 percent. Through CAMR, EPA has created strong incentives for the development of new and highly effective mercury control technologies that can be used both in the U.S. and in other countries to combat the global mercury problem.

Staying the Section 112 rule would be a step backward, not forward, in our efforts to reduce utility mercury emissions. There are no pre-existing federal mercury emission standards for existing coal-fired utilities. Thus, because staying the final Section 112 rule would necessitate staying the final CAMR rule, a stay would leave existing U.S. coal-fired power plants free from direct federal regulation of mercury emissions. Regardless of the outcome of the reconsideration process, it is important to keep regulations addressing utility mercury emissions in place, so the states and industry can start planning accordingly and mercury reductions can be realized as soon as reasonably practicable.<sup>3</sup> Again, the final Section 112 rule is part of a larger

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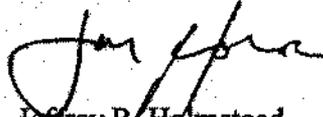
<sup>2</sup> On March 30, 2005, EPA received a letter from four environmental groups requesting a stay of the effective date of the final Section 112 rule under the Administrative Procedure Act ("APA"), 5 U.S.C. § 705, or, alternatively, CAA § 307(d)(7)(B) ("Stay Letter"). The letter was sent on behalf of the Chesapeake Bay Foundation, the Clean Air Task Force, the National Wildlife Federation and the Natural Resources Defense Council.

<sup>3</sup> Even if one believes that CAMR should have been more stringent, that belief would not justify staying the rule. As EPA said in the preamble to the final rule, if future information demonstrates that additional control is warranted, EPA is committed to reopening and reevaluating the CAMR standards.

approach which for the first time imposes a control program, with regulatory deadlines, on mercury emissions from the fleet of U.S. coal-fired power plants. Thus, EPA believes the public interest would be best served by moving forward with our rules, not by delaying their benefits through a stay.

Thank you for your interest in the final Section 112 rule. EPA looks forward to any comments you may supply during the reconsideration process.

Sincerely,



Jeffrey R. Holmstead  
Assistant Administrator

cc: Bill Lockyer, Attorney General of California  
Richard Blumenthal, Attorney General of Connecticut  
M. Jane Brady, Attorney General of Delaware  
Lisa Madigan, Attorney General of Illinois  
G. Steven Rowe, Attorney General of Maine  
Thomas F. Reilly, Attorney General of Massachusetts  
Kelly A. Ayotte, Attorney General of New Hampshire  
Patricia A. Madrid, Attorney General of New Mexico  
Eliot Spitzer, Attorney General of New York  
Susan Shinkman, Chief Counsel, Department of Environmental Protection  
Patrick C. Lynch, Attorney General of Rhode Island  
William H. Sorrell, Attorney General of Vermont  
Peggy A. Lautenschlager, Attorney General of Wisconsin  
Ann Brewster Weeks, Clean Air Task Force  
Douglas J. Luckerman, Law Office of Douglas J. Luckerman  
Jon Mueller, Chesapeake Bay Foundation  
Neil Kagan, National Wildlife Federation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

TAB B  
AUG 19 2005

Mr. John D. Walke  
Natural Resources Defense Council  
1200 New York Avenue, NW  
Suite 400  
Washington, DC 20005

OFFICE OF  
AIR AND RADIATION

Mr. Peter C. Harvey  
Attorney General  
State of New Jersey  
Trenton, NJ 08625

Mr. Stephen C. Fotis  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson Street, NW  
Washington, DC 20007

Ms. Tanja Shonkwiler  
Duncan, Weinberg, Genzer & Pembroke, P.C.  
1615 M Street, NW  
Suite 800  
Washington, DC 20036

Dear Counselors,

On July 18, 2005, EPA received four petitions for reconsideration of the final rule entitled "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the "Clean Air Mercury Rule or CAMR").<sup>1</sup> See 70 Fed. Reg. 28,606 (May 18, 2005). This letter contains EPA's preliminary response to those petitions.

Generally, petitioners claim that the final CAMR contains legal interpretations and information that are of central relevance to the final rule, but that were not sufficiently reflected in the proposed rule. Petitioners further contend that they believe that additional information is,

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<sup>1</sup> One petition was submitted by 15 States: New Jersey, California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Pennsylvania, Rhode Island, Vermont, and Wisconsin. Another petition was submitted by five environmental groups: the Natural Resources Defense Council, the Clean Air Task Force, the Ohio Environmental Council, the U.S. Public Interest Research Group and the Natural Resources Council of Maine. The Integrated Waste Service Association and the Jamestown Board of Public Utilities also submitted petitions. These groups are collectively referred to as "petitioners."

or has become, available since the public comment period, and that this information, too, is of central relevance. Finally, petitioners conclude that they did not have an adequate opportunity to provide input on these matters during the designated public comment periods.

The EPA recognizes that there is a high degree of public interest in this rule. The public had three opportunities to submit comments on whatever matters they deemed relevant to the rulemaking, following the January 30, 2004 Notice of Proposed Rulemaking, the March 16, 2004 Supplemental Notice of Proposed Rulemaking, and the December 1, 2004 Notice of Data Availability. EPA received, reviewed, and responded to thousands of documents. Thus, a robust public discussion of the rule has already occurred. Nonetheless, in the interest of ensuring ample opportunity to comment on all meaningful aspects of this important rule, we plan to initiate a reconsideration process. The particular issues EPA plans to reconsider, and the specifics of the reconsideration process, will be set out in a forthcoming Federal Register notice. We are sending this letter now because we want to inform you promptly that we are initiating the reconsideration process.

We will, of course, consider objectively all information generated during the reconsideration process; however, our preliminary review of the petitions has not persuaded us that our final decisions were erroneous or inappropriate. Our initiation of the reconsideration process should, therefore, not be taken as an indication that we agree with petitioners' claims.

In their petition for reconsideration, State petitioners also requested that EPA stay the effectiveness of the final CAMR under Clean Air Act ("CAA") section 307(d)(7)(B) pending administrative reconsideration. For the reasons set forth below, EPA denies this stay request.

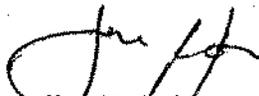
EPA promulgated CAMR and a companion rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-fired Electric Utility Steam Generating Units from the Section 112(c) List", 70 Fed. Reg. 15,994 (March 29, 2005), after an exhaustive rulemaking process during which EPA received and considered thousands of comments. CAMR represents the first time that EPA has regulated utility mercury emissions. When fully implemented, CAMR will reduce emissions of mercury from U.S. coal-fired power plants by 70 percent. Through CAMR, EPA has created strong incentives for the development of new and highly effective mercury control technologies that can be used both in the U.S. and in other countries to combat the global mercury problem.

Staying CAMR would be a step backward, not forward, in our efforts to reduce utility mercury emissions. There are no pre-existing federal mercury emission standards for new or existing coal-fired utilities. Thus, staying CAMR would result in new coal-fired units not having limits on their mercury emissions and leave existing U.S. coal-fired power plants free from direct federal regulation of mercury emissions. Regardless of the outcome of the reconsideration process, it is important to keep regulations addressing utility mercury emissions in place, so the

States and industry can start planning accordingly and mercury reductions can be realized as soon as reasonably practicable.<sup>2</sup> Again, the final CAMR is part of a larger approach which for the first time imposes a control program, with regulatory deadlines, on mercury emissions from the fleet of U.S. coal-fired power plants. The EPA, therefore, believes the public interest would be best served by moving forward with the rule, not by delaying their benefits from the rule through a stay.

Thank you for your interest in the final CAMR. EPA looks forward to any comments you may supply during the reconsideration process.

Sincerely,



Jeffrey R. Holmstead  
Assistant Administrator

cc: Mr. Jon P. Devine, Jr.  
Natural Resources Defense Council  
1200 New York Avenue, NW  
Suite 400  
Washington, DC 20005

Ms. Ann Brewster Weeks  
Clean Air Task Force  
18 Tremont Street, Suite 530  
Boston, MA 02108

Mr. Bill Lockyer  
Attorney General  
State of California  
Sacramento, CA 94244-2550

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<sup>2</sup> Even if one believes that CAMR should have been more stringent, that belief would not justify staying the rule. As EPA said in the preamble to the final rule, if future information demonstrates that additional control is warranted, EPA is committed to reopening and reevaluating the CAMR standards.

TAB C

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-1097

September Term, 2004

Filed On:

State of New Jersey, et al.,  
Petitioners

v.

Environmental Protection Agency,  
Respondent

Utility Air Regulatory Group, et al.,  
Intervenors

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT  
FILED

AUG 4 2005

CLERK

Consolidated with 05-1104, 05-1116, 05-1118,  
05-1158, 05-1159, 05-1160, 05-1163, 05-1174,  
05-1176

**BEFORE:** Sentelle and Brown, Circuit Judges

**ORDER**

Upon consideration of the motion for stay pending review and for expedited consideration, the responses in support and in opposition thereto, and the reply, it is

**ORDERED** that the motion for stay be denied. Petitioner has not satisfied the stringent standards required for a stay pending court review. See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2002). It is

**FURTHER ORDERED** that the motion for expedited consideration of the motion for stay be dismissed as moot.

**Per Curiam**

**FOR THE COURT:**

Mark J. Langer, Clerk

BY:

*MaryAnne McMain*

MaryAnne McMain

Deputy Clerk/LD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

TAB D

AUG -- 1 2005

OFFICE OF  
AIR AND RADIATION

VIA FACSIMILE (202-338-2416) AND US MAIL

Stephen Fotis, Esq.  
Van Ness Feldman  
1050 Thomas Jefferson Street, N.W.  
Washington, DC 20007

Dear Mr. Fotis:

The Environmental Protection Agency (EPA) has received the Petition for Reconsideration you submitted on July 11, 2005 on behalf of the Integrated Waste Service Association (IWSA). As you know, this petition asks the EPA to reconsider the treatment of municipal waste combustors in the final Clean Air Interstate Rule (CAIR) published at 70 Fed. Reg. 25162 (May 12, 2005). After reviewing your petition, we have decided to grant reconsideration on the issue of the definition of electric generating unit (EGU) in the final CAIR as it relates to solid waste incinerators (and particularly municipal waste incinerators). Therefore, EPA hereby grants the petition from IWSA to the extent it seeks reconsideration of this issue.

We are reconsidering this issue in the rulemaking proceeding initiated by the proposal regarding the CAIR Federal Implementation Plan (FIP) and our proposed response to North Carolina's section 126 petition. This proposed rule will be signed by the Administrator on August 1, 2005 and published in the Federal Register shortly thereafter. We will also be accepting comments in that rulemaking on the proposed revisions to the definition of EGU in the final CAIR as it relates to solid waste incineration.

If you have any further questions please contact Dwight Alpern of my office at (202) 343-9151 or Sonja Petersen in the Office of General Counsel at (202) 564-4079.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Holmstead".

Jeffrey R. Holmstead  
Assistant Administrator

cc: Richard Ossais, OGC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

TAB E

AUG - 1 2005

OFFICE OF  
AIR AND RADIATION

VIA FACSIMILE (617-292-5636) AND US MAIL

Robert W. Golledge, Jr  
Commissioner  
Commonwealth of Massachusetts  
Department of Environmental Protection  
One Winter Street  
Boston, MA 02108

Dear Commissioner Golledge:

The Environmental Protection Agency (EPA) has received the Petition for Reconsideration you submitted on July 8, 2005 on behalf of the Commonwealth of Massachusetts, Department of Environmental Protection. As you know, this petition asks the EPA to "reconsider its treatment of a class of facilities, namely Municipal Waste Combustors" under the final Clean Air Interstate Rule (CAIR) published at 70 Fed. Reg. 25162 (May 12, 2005). After reviewing your petition, we have decided to grant reconsideration on the issue of the definition of electric generating unit (EGU) in the final CAIR as it relates to solid waste incinerators (and particularly municipal waste incinerators). Therefore, EPA hereby grants the petition from the Commonwealth of Massachusetts, Department of Environmental Protection to the extent it seeks reconsideration of this issue.

We are reconsidering this issue in the rulemaking proceeding initiated by the proposal regarding the CAIR Federal Implementation Plan (FIP) and our proposed response to North Carolina's section 126 petition. This proposed rule will be signed by the Administrator on August 1, 2005 and published in the Federal Register shortly thereafter. We will also be accepting comments in that rulemaking on the proposed revisions to the definition of EGU in the final CAIR as it relates to solid waste incineration.

If you have any further questions please contact Dwight Alpern of my office at (202) 343-9151 or Sonja Petersen in the Office of General Counsel at (202) 564-4079.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Holmstead".

Jeffrey R. Holmstead  
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

TAB F

OFFICE OF  
AIR AND RADIATION

AUG - 1 2005

Robert Manning, Esq  
Hopping Green & Sams  
P.O. Box 6526  
Tallahassee, FL 32314

Dear Mr. Manning:

On July 11, 2005, the Environmental Protection Agency (EPA) received the petition you filed on behalf of the Florida Association of Electric Utilities (Petitioner) for reconsideration and stay of the Clean Air Interstate Rule (CAIR). As you know, this petition asks EPA to reconsider specific aspects of the CAIR and to stay implementation of the CAIR in the State of Florida pending the outcome of the petition. For the reasons below, EPA denies Petitioner's request for a stay. EPA recognizes the significant public interest in the CAIR and will continue to consider whether to reopen the public discussion on the specific aspects of the CAIR challenged in the petition. This letter addresses only Petitioner's request for a stay of the CAIR in Florida.

The final CAIR, formally titled "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule): Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call," was published in the Federal Register on May 12, 2005 (70 FR 25162). The CAIR will achieve substantial reductions in emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) and is a powerful component of the Administration's plan to help over 450 counties in the eastern United States meet air quality standards for ozone or fine particles. EPA determined that reducing upwind precursor emissions will assist downwind PM<sub>2.5</sub> and ozone non-attainment areas in meeting the NAAQS, and that attainment will be achieved in a more equitable, cost-effective manner than if each non-attainment area attempted to achieve attainment by implementing local emissions reductions alone. EPA conducted extensive modeling of interstate transport of emissions of SO<sub>2</sub> and NO<sub>x</sub> and their contribution to downwind PM<sub>2.5</sub> and ozone non-attainment. This modeling is explained in greater detail in the March 2005 Technical Support Document for the Final Clean Air Interstate Rule: Air Quality Modeling (available on EPA's website at [www.epa.gov/cair/technical.html](http://www.epa.gov/cair/technical.html)). Based on this modeling, EPA concluded that the State of Florida should be included in the CAIR regions for both ozone and PM<sub>2.5</sub>.

Petitioner objects to the inclusion of Florida in the CAIR regions and, on the basis of the arguments presented in the petition, asks EPA to stay the implementation of CAIR in Florida

pending the outcome of the petition. The petition asks EPA to reconsider its interstate air transport modeling to the extent it establishes that Florida contributes significantly to non-attainment and interferes with maintenance of the NAAQS in downwind states, in part because Petitioner has not yet been able to replicate EPA's modeling results. Petitioner also claims it was not given adequate notice of EPA's decision to include Florida in the CAIR program, and that Florida's existing air quality "is a reflection of Florida's status as a 'good neighbor.'" Finally, Petitioner asks EPA to reconsider two aspects of the CAIR that would apply nationwide: the threshold for determining whether an upwind states' emissions significantly impact downwind states' attainment with the PM2.5 NAAQS; and the January 1, 2009 compliance deadline for the first phase of NOx emission reductions.

Based on the arguments in the petition, Petitioner requests that EPA stay implementation of the CAIR in Florida pending the outcome of the petition. Petitioner acknowledges that EPA's authority under section 307(d)(7)(B) of the Clean Air Act only permits the Administrator to stay the effect of a rule for a period not to exceed three months. The petition thus requests that EPA grant a stay using the notice and comment rulemaking procedures in 5 U.S.C. § 553.

In determining whether to stay the effectiveness of a rule, EPA and courts evaluate the following factors:

- (1) the likelihood that the party seeking the stay will prevail on the merits;
- (2) the likelihood that the party seeking the stay will be irreparably harmed absent a stay;
- (3) whether a stay would substantially harm other parties interested in the proceedings; and,
- (4) the public interest in granting a stay.

Cuomo v. United States Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Cooper v. Town of East Hampton, 83 F.3d 31, 36 (2<sup>nd</sup> Cir. 1996); Serono Lab., Inc. v. Shalala, 158 F.3d 1313, 1317, 1318 (D.C. Cir. 1998); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); In re Public Service Co. of New Hampshire et al. (Sea Brook Station Units 1 and 2) NPDES Appeal No. 76-7, 1 EAD 389 (Aug. 12, 1977).

Without prejudging whether it would be appropriate to reopen the issue for further public input, our preliminary review of Petitioner's arguments for excluding Florida from the CAIR regions has not persuaded us that our final decision was erroneous or inappropriate. EPA conducted extensive modeling for the final CAIR and is confident of its models' accuracy and sufficiency. The CAIR modeling for PM2.5 was conducted over a domain including the entire continental U.S. at a resolution of 36km. This modeling showed that Florida should be included in the CAIR region for PM2.5. The ozone modeling was conducted over an eastern U.S. domain using two nested grids (one 36km "coarse grid" and one 12km "fine grid"). Modeling based on the coarse grid domain showed that Florida should be included in the CAIR region for ozone. EPA evaluated the base case model performance for both the PM2.5 and ozone modeling, and both were determined to be performing acceptably.

pending the outcome of the petition. The petition asks EPA to reconsider its interstate air transport modeling to the extent it establishes that Florida contributes significantly to non-attainment and interferes with maintenance of the NAAQS in downwind states, in part because Petitioner has not yet been able to replicate EPA's modeling results. Petitioner also claims it was not given adequate notice of EPA's decision to include Florida in the CAIR program, and that Florida's existing air quality "is a reflection of Florida's status as a 'good neighbor.'" Finally, Petitioner asks EPA to reconsider two aspects of the CAIR that would apply nationwide: the threshold for determining whether an upwind states' emissions significantly impact downwind states' attainment with the PM2.5 NAAQS; and the January 1, 2009 compliance deadline for the first phase of NOx emission reductions.

Based on the arguments in the petition, Petitioner requests that EPA stay implementation of the CAIR in Florida pending the outcome of the petition. Petitioner acknowledges that EPA's authority under section 307(d)(7)(B) of the Clean Air Act only permits the Administrator to stay the effect of a rule for a period not to exceed three months. The petition thus requests that EPA grant a stay using the notice and comment rulemaking procedures in 5 U.S.C. § 553.

In determining whether to stay the effectiveness of a rule, EPA and courts evaluate the following factors:

- (1) the likelihood that the party seeking the stay will prevail on the merits;
- (2) the likelihood that the party seeking the stay will be irreparably harmed absent a stay;
- (3) whether a stay would substantially harm other parties interested in the proceedings; and,
- (4) the public interest in granting a stay.

Cuomo v. United States Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985); Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Cooper v. Town of East Hampton, 83 F.3d 31, 36 (2<sup>nd</sup> Cir. 1996); Serono Lab., Inc. v. Shalala, 158 F.3d 1313, 1317, 1318 (D.C. Cir. 1998); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); In re Public Service Co. of New Hampshire et al. (Sea Brook Station Units 1 and 2) NPDES Appeal No. 76-7, 1 EAD 389 (Aug. 12, 1977).

Without prejudging whether it would be appropriate to reopen the issue for further public input, our preliminary review of Petitioner's arguments for excluding Florida from the CAIR regions has not persuaded us that our final decision was erroneous or inappropriate. EPA conducted extensive modeling for the final CAIR and is confident of its models' accuracy and sufficiency. The CAIR modeling for PM2.5 was conducted over a domain including the entire continental U.S. at a resolution of 36km. This modeling showed that Florida should be included in the CAIR region for PM2.5. The ozone modeling was conducted over an eastern U.S. domain using two nested grids (one 36km "coarse grid" and one 12km "fine grid"). Modeling based on the coarse grid domain showed that Florida should be included in the CAIR region for ozone. EPA evaluated the base case model performance for both the PM2.5 and ozone modeling, and both were determined to be performing acceptably.

Petitioner has not provided any information, at this point, that would lead EPA to believe that Petitioner's challenges to EPA's modeling efforts would likely succeed on the merits. Petitioner argues that EPA's modeling was insufficient, in part because Petitioner has not yet been able to replicate EPA's modeling results. Petitioner also asks EPA for additional time to conduct "finer-grained computations" to determine whether specific portions of Florida could be excluded from the CAIR region. However, the Courts have clearly recognized that, since the accumulation of emissions can be significant, some aggregation of emissions is obviously necessary, and it is reasonable for EPA to consider "the significance of a state's total . . . emissions [of a particular pollutant]." Appalachian Power Co. v. EPA, 249 F.3d 1032, 1049 (D.C. Cir 2001). Further, Petitioner's arguments rely heavily on the court's analysis of the dispute over modeling for Missouri and Georgia in Michigan v. EPA, 213 F.3d 663 (D.C. Cir. 2000); yet, the primary issue underlying that analysis is not present here. The Michigan court concluded that the record for the rule in question did not sufficiently establish a significant contribution from emissions from portions of the states beyond specific demarcation lines. In contrast, EPA is confident that the modeling for the CAIR and the record for the CAIR rule fully supports the conclusion that Florida is properly included in the CAIR regions for PM2.5 and ozone. Petitioner has not submitted any information sufficient to cause EPA to question this conclusion and EPA therefore concludes that Petitioner is not likely to succeed on the merits of this challenge.

The petition also argues that Petitioner was not given adequate notice of EPA's decision to include Florida in the CAIR region for ozone. EPA also does not believe Petitioner could prevail on the merits of this argument. EPA's notice of proposed rulemaking issued on January 30, 2004 (69 FR 4566) and its notice of supplemental rulemaking dated June 10, 2004 (69 FR 32684) explained the procedures EPA intended to use to identify states for inclusion in the CAIR regions. In addition, EPA issued a Notice of Data Availability (NODA) on August 6, 2004 (69 FR 47828) that provided notice that it was updating its modeling platform, additional information on specific changes to be made, and instructions for interested parties to obtain further information. Further, Petitioner's reliance on Florida's good air quality is misplaced as this issue, while important, is not relevant to the determination of whether emissions from that state significantly contribute to problems in other states. Petitioner also challenges the PM2.5 threshold, but has not presented any evidence that would cause EPA to believe it has a significant chance of prevailing on the merits on this issue. Similarly, at this time, Petitioner has not presented information or arguments sufficient to convince EPA that Petitioner's challenge to the 2009 compliance deadline for the first phase of NOx emission reductions will be successful on the merits.

EPA also does not believe there is a basis to conclude that Petitioner will suffer irreparable harm from the denial of its request to stay implementation of CAIR in Florida pending the outcome of this petition. The only potential harms to Petitioner identified in the petition are unspecified efforts Petitioner would have to undertake to determine and implement compliance strategies for the CAIR. Petitioner identifies no specific expenses or commitments of resources it will be required to make in the immediate future. EPA intends to expeditiously

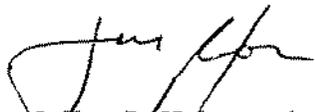
review the modeling issues raised and to make a determination on the request for reconsideration in the near term. Further, the first compliance deadline in the CAIR is January 2009. Sources will have until that date to determine and implement their compliance strategies. EPA also does not believe that the petition raises significant uncertainty regarding the applicability of the CAIR requirements. Given EPA's intent to act on the petition in the near term, EPA's confidence in its modeling results, and the significant lead time before the first compliance deadline, EPA does not believe Petitioner will suffer irreparable harm from the denial of its request for a stay.

In addition, EPA believes that both the interests of other sources and states included in the CAIR region and the public interest weigh against granting a stay of the CAIR in Florida. The CAIR is a critical component of the EPA's efforts to help downwind non-attainment areas meet the NAAQS for PM2.5 and 8-hour ozone. EPA determined that decreases in NOx and SO2 emissions are needed in the states identified in CAIR to enable downwind states to develop and implement plans to achieve and maintain the PM2.5 and 8-hour ozone NAAQS. Implementation of these reductions is necessary to enable downwind states to achieve the NAAQS in order to provide clean air for their residents. A stay of the rule in Florida would increase uncertainty for downwind states developing air quality plans, could delay the Florida state process used to develop a State Implementation Plan to meet the requirements of the CAIR, and could create economic inequities between states. If implementation of the CAIR in one state were delayed, industry in a state not in full compliance with the CAIR might experience an unfair competitive advantage over industry in states that implemented the CAIR in compliance with the deadlines set forth in the final CAIR.

For these reasons, EPA concludes that there is no justification to stay implementation of the CAIR in Florida pending the outcome of the petition. EPA generally does not stay its rules pending judicial or administrative review, and nothing in this petition has demonstrated that justice requires the extraordinary remedy of a stay. This letter serves as notice of denial of the petition submitted by the Florida Association of Electric Utilities to the extent that it requests a stay of implementation of the CAIR in Florida.

Thank you for your interest in the final CAIR rule. EPA looks forward to working with you as it considers the remaining issues raised in your petition. If you have any questions about this letter, please contact Sonja Petersen in the Office of General Counsel at 202-564-4079.

Sincerely,



Jeffrey R. Holmstead  
Assistant Administrator

cc: Richard Ossias, OGC