

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

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**Statement of John A. Paul
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on behalf of the
State and Territorial Air Pollution Program Administrators
and the
Association of Local Air Pollution Control Officials**

**U.S. Senate Democratic Policy Committee
Hearing on New Source Review**

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Mr. Chairman and Members of the Committee, good morning, my name is John Paul and I am the Supervisor of the Regional Air Pollution Control Agency – RAPCA – a six-county local agency, centered in Dayton, Ohio. I appear here today on behalf of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials. I am pleased to have this opportunity to offer testimony on the impacts of this Administration's changes to the New Source Review (NSR) program, which, over the past nearly 30 years, has been instrumental in achieving millions of tons of emissions reductions that otherwise would not have occurred.

My message this morning is simple and straightforward: the NSR regulatory changes promulgated by the U.S. Environmental Protection Agency (EPA) in December 2002 and August 2003 are serious detriments to public health and environmental protection and severely erode the

ability of state and local air quality regulators to fulfill their obligation to provide clean healthful air for our citizens. I am not alone in reaching this grim, but realistic, conclusion. In fact, it is one that has been reached by state and local air quality regulators across the nation and by our national associations, STAPPA and ALAPCO, for which I serve as Co-Chair of the NSR Committee. And as the ones who established the statutory mandate for a meaningful and effective NSR program, and who have specified in the Clean Air Act that federal leadership is essential to the national mission of preventing and controlling air pollution, you too should be concerned about the adverse impacts on air quality and public health, and the breach of congressional intent that EPA's rule changes represent. To put these NSR reforms – and our concerns related to them – in context, I would like to provide a little background.

NSR is based upon the principle that the best time to put air pollution controls on pollution source is when the source is built or undergoes modification. From an air quality perspective, this principle has served the nation well for the past three decades. However, I do not believe that anyone disputes the need for reforms to the NSR program that has grown out of this very sound principle.

STAPPA and ALAPCO were enthusiastic participants in a productive stakeholder process initiated by the Clinton Administration to improve NSR by providing greater certainty and flexibility for industry without sacrificing the level of environmental benefit of the existing program. Although significant progress was achieved through that inclusive and deliberative process, we simply ran out of time. On January 19, 2001, in the final days of the Clinton Administration, then-EPA Assistant Administrator Robert Perciasepe wrote a memorandum (copy attached) in which he outlined the concepts that had been developed through the

stakeholder discussions, noting that he hoped the new Administration would consider finalizing them. However, within just a few months, the discussions ceased abruptly and it was not until early 2002 that we learned that a comprehensive NSR reform effort was, in fact, preceding, but without the participation of state and local air regulators.

Troubled by the closed process in which the new Administration was engaging and by what we understood the contemplated reforms would allow and the impact these changes would have on clean air efforts, STAPPA and ALAPCO wrote to EPA Administrator Christine Todd Whitman on January 23, 2002 to express our trepidation. In our letter (copy attached), our associations' Presidents detailed our specific concerns with respect to the Administration's contemplated approaches for routine maintenance, like-kind replacements, the determination of what would trigger NSR, the clean-unit exemption and the plant-wide applicability limit, cautioning that

[i]ndividually, each of these reforms will serve to weaken the NSR program by allowing an unacceptably large number of sources that are currently subject to NSR to escape air pollution controls. Even more distressing, however, is that, when taken in combination, these reforms will allow most source modifications to avoid NSR, resulting in unchecked emission increases that will degrade our air quality and endanger public health.

They further expressed our firm belief that reforms as controversial as those under consideration by the Administration would undermine the chances of any reasonable changes to the NSR program ever taking effect.

Throughout the year, STAPPA and ALAPCO continued to articulate our concerns, but to no avail. The final NSR rule package published by EPA on December 31, 2002 not only instituted the very rollbacks we cautioned against – many of which went beyond what industry

requested during our collaborative stakeholder discussions – it made them mandatory upon states, rather than discretionary. In the months immediately following promulgation, our associations held weekly conference calls to delve into the details of the rule changes and assess the impacts, and to prepare our comments on the routine maintenance, repair and replacement component, which was the only piece of the package that was proposed for public comment.

With respect to the routine maintenance proposal, EPA stated that its intent was to simplify and clarify the existing approach for exempting “routine” activities from NSR, and to provide greater certainty without sacrificing the current level of environmental protection from the program. STAPPA and ALAPCO’s analysis, however, found that EPA failed utterly in achieving that intent. As a result, state and local air quality officials from Wisconsin, Arizona, Ohio, New York and Oklahoma represented the associations at EPA’s five concurrent public hearings on March 31, 2003, testifying that we believed the proposal would “eviscerate our nation’s NSR program, which has already been compromised [by the December 31, 2002 final rule changes] and severely undermine the ability of states and localities to achieve and sustain clean air goals” and, therefore, should be rescinded.

Nonetheless, notwithstanding the clear concerns of the state and local officials who are responsible for providing clean air to our citizens, EPA went forward on August 27, 2003 with a final rule for equipment replacement activities that creates a new and almost unbounded categorical exclusion from NSR. Under this new rule, a source can spend up to 20 percent of the replacement cost of the entire unit on equipment replacement and still avoid NSR, irrespective of how great the air pollution increase. This huge exemption does, indeed, provide certainty –

certainty to industry that it can pollute without consequence and certainty to the public that health and environmental protections will be compromised.

Let me give you a brief example of the potential impact of the equipment replacement rule. In Ohio, there are 66 coal-fired utility boilers in operation that are at least 30 years old, the age that many consider to be the reasonable lifetime of a utility boiler. So, these 66 boilers are at the age where they should be deciding whether to renovate in order to extend their life, or shut down and be replaced with modern boilers. Notwithstanding the clear intent of Congress, as expressed in the Clean Air Act, and the historic premise of NSR – which calls for an upgrade in pollution controls to the Best Available Control Technology when any major modification is made – under EPA’s new cost-based rule, which applies “without regard to any other considerations,” the 66 boilers in Ohio could completely rebuild themselves, 20 percent at a time, without ever upgrading their air pollution controls. The citizens of Ohio and, indeed, of the entire nation, deserve far better public health protection than this wholly imprudent public policy affords.

This brings me to the issue of how we have responded to the NSR revisions. As I am sure you are aware, at least 15 states have sued EPA and, in December, the court stayed the equipment replacement rule. At the request of our memberships, STAPPA and ALAPCO have undertaken the significant task of developing a comprehensive menu of regulatory alternatives to the most problematic aspects of both rules; we released a draft for public review and comment in November and will publish the final menu this winter. But we remain very concerned: by the impenetrable process that surrounded the crafting of sweeping changes to a fundamental aspect of our nation’s clean air program, by the Administration’s indifference to the tremendous public

health and environmental consequences of these changes and by the consequences themselves and the daunting challenge state and local air quality officials face in seeking to overcome them.

I thank you for convening a hearing on this critical issue and for the opportunity to provide testimony. I would be happy to answer any questions you might have.