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

MAR 15 2006

THE ADMINISTRATOR

Mr. Eric J. Brown
Associate Counsel
Connecticut Business and Industry Association
350 Church St.
Hartford, Connecticut 06103-1126

Dear Mr. Brown:

The Environmental Protection Agency has received the July 2005 petition you filed on behalf of Connecticut Business and Industry Association (CBIA) for reconsideration of several aspects of the Clean Air Interstate Rule (CAIR). This petition asks EPA to reconsider specific aspects of the CAIR in regards to its applicability to Connecticut. As explained below, we have already granted reconsideration on two of the issues raised in your petition: the treatment of municipal waste combustors (MWCs), and EPA's use of fuel factors to establish State nitrogen oxides (NOx) budgets. More information on the reconsideration of these two issues can be found in the "Final Action on Reconsideration of Certain Aspects of the Clean Air Interstate Rule" signed today. After careful consideration and for the reasons explained below, EPA denies the remaining requests in your petition for reconsideration.

The CAIR, published in the Federal Register on May 12, 2005 (70 FR 25162), is a powerful component of the Bush Administration's plan to help over 450 counties in the eastern United States meet air quality standards for ozone and fine particles. EPA determined that reductions in upwind precursor emissions will assist downwind areas in meeting the national ambient air quality standards (NAAQS). EPA also determined 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. The CAIR was developed through a process that involved extensive public participation. We received and responded to thousands of comments and held public hearings in February and June 2005. The robust public dialogue was an important part of the rulemaking process.

EPA recognizes the continuing significant public interest in the CAIR. Following publication of the CAIR, EPA received 12 separate petitions for reconsideration, including the one you submitted. In response, EPA granted reconsideration on and reopened for public comment the following six issues:

(1) the definition of "EGU" as it relates to solid waste incinerators (70 FR 49708, 49738);

(2) claims that inequities result from the sulfur dioxide (SO2) allocation methodology to be used by States participating in the EPA-administered trading program (70 FR 72268, 72272);

(3) EPA's use of fuel adjustment factors (1.0 for coal, 0.6 for oil, and 0.4 for gas) in establishing State nitrogen oxides (NOx) budgets (70 FR 72268, 72276);

(4) certain inputs to the fine particle (PM2.5) modeling used to determine whether Minnesota should be included in the CAIR region for PM2.5 (70 FR 72268, 72279);

(5) EPA's determination that Florida should be included in the CAIR region (70 FR 72268, 72280); and,

(6) the impact of New York v. EPA on certain analyses prepared for the final CAIR (70 FR 77101).

EPA published Federal Register notices announcing the reconsideration processes and requesting public comment on the issues under reconsideration. EPA is taking final action on reconsideration of these issues in separate rulemakings signed today. Further discussion of the MWC issue can be found in the final rulemaking on the CAIR federal implementation plans. Further discussion of EPA's use of fuel adjustment factors can be found in the notice of final action on reconsideration.

Petitioner also asks EPA to reconsider the NOx budget allocated to the State of Connecticut. As grounds for reconsideration, Petitioner argues that a public hearing was not held regarding the methodology used to revise allocation numbers. It is unclear to EPA what Petitioner is referring to by "revision of allocation numbers." If this phrase refers to the apportioning of region-wide NOx budget to State-level NOx budget, then this issue is being addressed in a separate rulemaking (the CAIR Reconsideration Notice of Final Rulemaking (NFR)) being signed today. As part of that CAIR Reconsideration NFR, EPA held a public hearing on December 14, 2005. If Petitioner is referring to the unit-level allocations of the model rule, EPA requested comment in the CAIR Supplemental Notice of Proposed Rulemaking (NPR) on the model rule approach to allocating allowances to units (69 FR 32690). A public hearing was held in March 2004 in Alexandria, VA. Furthermore, EPA specifically requested comment on the methodology used to calculate the Connecticut NOx budget (69 FR 4622). EPA also requested comment in the CAIR Supplemental NPR on the model rule approach to allocating allowances to units (69 FR 32690). Petitioner thus had ample opportunity to comment on all aspects of the NOx budget issue (methodology and actual allocations) and thus reconsideration is not warranted under section 307(b) of the Clean Air Act. Consequently, EPA is not required to respond to Petitioner's substantive arguments. Nonetheless, EPA briefly discusses below each issue of concern to Petitioner.

Petitioner argues that EPA should reconsider Connecticut's allocation levels because it asserts they are inconsistent with those agreed to by Connecticut, Massachusetts and Rhode Island through a memorandum of understanding (MOU). The MOU referred by the petitioner redistributed allowances between Connecticut, Massachusetts, and Rhode Island as part of the NOx SIP Call. This was done to respond to Connecticut's budget which, because the NOx SIP Call budgets were developed using 1998 Integrated Planning Model (IPM) projections, was based upon projected negative growth in EGU generation. In CAIR, the apportioning of NOx region-wide budget to the State level is based on historic heat input, not on 1998 IPM projections. In addition, it would not be appropriate to use the MOU budget as the basis for Connecticut's ozone season CAIR budget, since Massachusetts has a smaller budget in the CAIR ozone season than under the MOU, and Rhode Island is not included in the program. This would mean, effectively, that EPA would be allocating additional allowances to Connecticut that no longer exist.

Thank you for your interest in the final CAIR. EPA looks forward to working with you as implementation of the rule proceeds. If you have any questions about this letter, please contact Brian Fisher in the Clean Air Markets Division at (202) 343-9633.

Sincerely,

Stephen L. Johnson