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

MAR 15 2006

THE ADMINISTRATOR

Mr. David K. Leff
Deputy Commissioner
State of Connecticut
Department of Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

Dear Mr. Leff:

The Environmental Protection Agency has considered the requests in the State of Connecticut's July 17, 2005 letter, from then Deputy Commissioner Jane Stahl, requesting reconsideration of specific aspects of the Clean Air Interstate Rule (CAIR). This letter outlined Connecticut's concerns regarding the method and data used to calculate the State's CAIR ozone season nitrogen oxides (NOx) budget. Connecticut asks EPA to reconsider and make technical corrections to its CAIR ozone season NOx budget based on information provided in the comment letter. The State expressed its support in advancing CAIR, but requested assistance on the following three issues:

1. Potential applicability of CAIR to municipal waste combustors;

2. discrepancies between EPA and Connecticut identified sources subject to CAIR; and

3. use of EPA's NOx SIP Call budget finalized in 1999 as the basis for Connecticut's ozone season NOx budget.

As you are aware, EPA has already addressed one of these issues. In the proposed rulemaking for the CAIR Federal Implementation Plan (FIP) and response to North Carolina's Section 126 petition, EPA proposed changes to the definition of "Electric Generating Unit (EGU)" as it relates to solid waste incinerators (particularly municipal waste combustors). These proposed changes are being finalized in the final action on the CAIR FIP and response to North Carolina's Section 126 petition, which is being signed today. After careful consideration, and for the reasons explained below, EPA now denies the remaining requests in the 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) for fine particles and ozone. 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 of 2005. The robust public dialogue was an important part of the rulemaking process. In the CAIR proposal, EPA specifically requested comment on the methodology used to calculate the Connecticut NOx budget (69 FR 4622).

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

(1) 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 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 ozone 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 requested public comment on the issues under reconsideration. EPA is taking final action on reconsideration of these issues in a separate rulemaking signed today.

As noted above, EPA has already addressed Connecticut's concerns regarding municipal waste combustors (MWCs). Connecticut asks EPA to reconsider its treatment of MWCs in CAIR and to either exempt them from the CAIR or recalculate Connecticut's NOx budget to account for the MWCs in Connecticut. As part of the CAIR FIP final rulemaking signed today, EPA is revising the definition of "(EGU)" to clarify that MWCs are not covered by CAIR. The revised definition of "EGU" is used in both the CAIR and the CAIR FIP. This change should alleviate the State's concern over NOx allocations, and help ensure an appropriate ozone season NOx budget.

The petition also raises two additional issues relating to the sources in Connecticut subject to CAIR and the ozone season NOx budget for Connecticut. As discussed below, EPA has determined that reconsideration of these issues is not warranted under section 307(d) (7) (B) of the Clean Air Act (CAA). Consequently, EPA is not required to respond to Petitioner's substantive arguments. Nonetheless, EPA briefly discusses each issue of concern to Petitioner below.

Petitioner cited discrepancies between the sources EPA and Connecticut have identified as subject to CAIR, and the absence of data from specific sources in calculating Connecticut's ozone season NOx budget. The Petitioner makes the case that EPA should have considered heat input from a number of facilities that it believes were incorrectly excluded from the budget determination. The Petitioner is incorrect in this assertion.

The primary reason for this is that the budget provided in the final CAIR is strictly for electric generating units (EGUs) only, and the majority of sources listed by Connecticut as excluded do not qualify as EGUs. Those were not considered as appropriate according to the methodology described in CAIR. If Connecticut chooses to bring non-EGUs into the CAIR ozone season NOx trading program, it will carry its SIP Call budget for non-EGUs forward into the CAIR ozone season NOx trading program. In doing so, its total CAIR ozone season NOx budget will be larger than the EGU budget listed in the final CAIR, reflecting these additional units. For this reason, EPA's budget calculation did not need to incorporate peaking units and industrial units, as Connecticut suggests.

Of the retired units listed by Connecticut, EPA's allocation methodology considered heat input from retired units that had operating data between the years 1999 to 2002 reported to either EPA or the Energy Information Administration (EIA), consistent with the general State budget approach described in the SNPR and final CAIR. The heat input data considered by EPA included Bridgeport Energy's units. However, as the petitioner correctly notes, after calculating Connecticut's ozone season NOx budget as described in CAIR, EPA replaced it with the CAIR EGU budget. EPA believes that this approach is reasonable, and that it would have been inappropriate for a State that was affected by both the NOx SIP call and CAIR to receive a larger EGU budget under CAIR. Connecticut has not shown that reconsideration of this issue is warranted under section 307(b) of the Clean Air Act. EPA therefore declines Connecticut's request to reconsider this issue. There will be no adjustments or revisions to the number of EGUs that are used to calculate Connecticut's CAIR ozone season NOx budget.

From a procedural standpoint, the CAIR model rule promulgation process provided opportunity to comment on definitions and other aspects of the model rule. In the CAIR notice of proposed rulemaking, EPA described its methodology for calculating the Connecticut NOx budget (69 FR 4622). At this time petitioner had opportunity to comment on acid rain heat input data used in the budget calculation method. Furthermore, all the data used to calculate Connecticut's ozone season NOx budget was made available for public comment in the supplemental notice of proposed rulemaking. The opportunity to comment on the ozone season budget has closed. Connecticut has not shown that reconsideration of this issue is warranted under section 307(b) of the CAA.

Connecticut also urges EPA to reexamine the method used to calculate State's ozone season NOx budget. Connecticut has not, however, demonstrated that this issue meets the criteria for reconsideration in section 307(b) of the CAA, and EPA therefore declines to initiate a reconsideration process for this issue. Further, EPA does not believe the method is flawed.

Connecticut's allocation is based on the 1999 NOx SIP Call budget which incorporated Integrated Planning Model (IPM) projected growth rates that turned out to be inaccurate. A Memorandum of Understanding (MOU) was signed by Connecticut, Massachusetts, and Rhode Island to redistribute the EGU portion of the combined budget. Connecticut proposes that because EPA, Connecticut, Rhode Island, and Massachusetts have established an inherent problem in the NOx SIP budget, the agreed upon allocations of the MOU should be used to determine CAIR NOx budgets for the three States.

EPA disagrees. The MOU referred to by the Petitioner re-distributed 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 IPM projections, was based upon projected negative growth in EGU generation. It is not 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. In CAIR, the apportioning of NOx region-wide budget to the States-level is based on historic heat input, not on 1998 IPM projections.

In addition, the ozone season NOx budget allowances apportioned to the State under CAIR (2559 tons) are greater then the actual emissions of 2003 and 2004 (2080 tons, 2194 tons). The State's ozone season NOx budget also exceeds the projected emissions for 2015 and 2020 using EIA assumptions (2480 tons, 2300 tons). Current projections and actual emissions indicate that Connecticut will have surplus allowances, and no need for an increase in ozone season NOx budget allowances.

Thank you for your continued 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