CLEAN AIR ACT ADVISORY COMMITTEE (CAAAC)

October 15, 2003
Grove Park Inn Resort
Asheville, NC

AGENDA

- Introduction and Opening Comments by Assistant Administrator Jeff Holmstead, EPA-OAR
- Presentation and Discussion of the "Super Southeast" (Rapid growth in the southeastern U.S. and its impact on air quality)—Stan Meiburg, Deputy Regional Administrator, EPA-Region IV
- Panel Discussion of the North Carolina Clean Smokestacks Law—Panel Chair, Jim Hendricks, Duke Energy and CAAAC Member; Stan Meiburg, EPA, Region IV; Brock Nicholson, Deputy Director, North Carolina Division of Air Quality; George T. Everett, Vice President, Duke Power; and Michael Shore, Environmental Defense
- Presentation and Discussion of Charlotte, North Carolina's Smart Growth Program—Pat McCrory, Mayor of Charlotte
- Discussion of Early Action Compacts (including summaries of initial community proposals)—Lydia Wegman, EPA-OAQPS
- Subcommittee Reports

Introductions and Opening Comments—Jeff Holmstead, EPA-OAR

Jeff Holmstead, EPA-OAR, began the meeting by thanking the committee members and others who helped to organize the meeting and sponsor the field trip and reception.

Mr. Holmstead noted that Paul Rasmussen, EPA-OAR, the Designated Federal Officer for the CAAAC, would be retiring after more than 38 years of federal service, including 16 years at EPA and 13 years with the CAAAC. Mr. Holmstead noted that Mr. Rasmussen will be joining committee member Steve Owens, Arizona DEQ, at the Arizona Department of Environmental Quality. Mr. Rasmussen thanked committee members, EPA staff members, and others for their time and efforts over the years and reflected on the many great accomplishments achieved since the committee's inception with the CAA amendments in 1990.

Mr. Holmstead briefly outlined the agenda and noted recent key activities at EPA. He mentioned that EPA should soon have a new Administrator and noted a few additional personnel changes within the Agency. Mr. Holmstead said that EPA is hopeful that there will be Congressional action regarding Clear Skies in 2003. He said that the Equipment Replacement Rule, which is part of EPA's New Source Review (NSR) reform package was signed in August 2003 and would be published in the *Federal Register* in October.

In addition, Mr. Holmstead noted a few other recent EPA actions. In September, EPA released the 2002 Air Quality Trends Report, which states that air quality continues to improve. EPA is expanding its air quality forecasting system to be a year-round system. As of October 1, EPA will provide $PM_{2.5}$ forecasts in addition to ozone forecasts. $PM_{2.5}$ forecasts will be given in over

100 cities, while ozone forecasts will be given in over 300 cities. Mr. Holmstead noted that since the June CAAAC meeting, EPA has issued 13 new Maximum Achievable Control Technology (MACT) standards. He said that the remaining five standards will be proposed in December 2003 and February 2004. Mr. Holmstead noted that EPA's SunWise School Program, which educates children and adults regarding protecting their skin from ultraviolet radiation, received an Excellence in Cancer Awareness Award from the Congressional Families Action for Cancer Awareness. About 8,000 schools have registered to use the SunWise program.

Regarding other activities, Mr. Holmstead noted that EPA continues to work to implement the 2007 Diesel Rule and the Off-Road Heavy-Duty Diesel Rule, which EPA hopes to finalize in April 2004. He said that the Clean School Bus Grants Program awardees would be announced in November. EPA also will be holding an event to acknowledge the new Tier II vehicle fleets.

Presentation and Discussion of the "Super Southeast" (Rapid growth in the southeastern U.S. and its impact on air quality)—Stan Meiburg, Deputy Regional Administrator, Region IV, U.S. EPA

Stan Meiburg, EPA-Region IV, began the presentation by providing attendees with an overview of the Region IV environment. He noted that Region IV contains eight states and is the most populous of all of the EPA regions. Mr. Meiburg also drew attendees' attention to the fact that Region IV has both large population growth and very sensitive natural resources, which must be protected. He touched briefly on numerous issues, including environmental justice, agriculture, the changing economy, changes in land use patterns, vehicle miles traveled growth and emissions, water shortage issues, air quality non-attainment issues, and air toxics problems.

Mr. Meiburg said that the southeast strives to work effectively with partners, state and local governments, non-governmental organizations, and community groups to find creative ways to solve air quality problems that take advantage of national measures but also involve the communities in coming up with solutions to their own problems (e.g., Early Action Compacts). He spent some additional time talking about water issues in Region IV. He then emphasized the importance of forming creative partnerships to address problems. Current partnerships include: the Southeast Natural Resource Leaders Group, an association of federal agencies who come together to address problems of common concern; and, the Southeastern Ecological Framework, which is a means of looking at the value of interconnectedness between ecological regions in the southeast. Region IV also worked with numerous other agencies on the Southern Forest Resource Assessment, which was done to compile and analyze data and information to evaluate the condition of forest resources in the southeastern United States.

Mr. Meiburg closed by briefly discussing the former site of Atlantic Steel in Atlanta, Georgia. He said that the land has been purchased and will be converted into a mixed-use development, which ultimately will house about 20,000 people. He noted that this success could not have been achieved without a partnership among numerous agencies.

Questions and Comments

Tony DeLucia, American Lung Association, asked Mr. Meiburg what the biggest challenge is for the southeast. Mr. Meiburg responded that the biggest issue is finding a way to integrate all of the issues that the region is facing, especially at the governmental level. He noted that there is a strong tradition in the southeast of state and local autonomy and it is difficult to get people to work together towards a larger vision.

Elaine Mowinski Barron, JAC Paso del Norte Air Quality Management District, noted that many of the southwest's problems are similar to those in the southeast. She asked if Region IV found that it was more effective to address both air and water issues at the same time. Mr. Meiburg said that Region IV found that, as is true in a number of areas, it took a crisis (i.e., the Atlanta conformity lapse) to get people to work together. He noted that it is difficult to sustain this cooperation over time, but said that the population is growing to understand that they must take steps to protect natural resources if they want to continue living in and enjoying their environment.

Charles Goodman, Southern Company Generation, asked whether the region is addressing environmental issues effectively enough to stay ahead of the various pressures. Mr. Meiburg said that the region still must figure out what can be done at the governmental level to effectively facilitate cooperation among the various stakeholders.

Ben Henneke, Clean Air Action Corporation, noted that it seems that the environmental agency has the potential to become the integrator of information to ensure that all perspectives are conveyed to stakeholders and interested parties. He asked what the general business community could do to aid in improving the local and regional environment. He also asked what committee members could do to help expand the region's partnerships. Mr. Meiburg agreed that additional partnerships would be helpful. Regarding how committee member could help, Mr. Meiburg said that committee members should continue to engage in dialogue, especially with elected officials, to help people see the long-term challenges in addition to the more immediate issues.

Mr. DeLucia commented that areas within the region will continue to grow with the expansion of roads and transit systems. He asked Mr. Meiburg to comment on the Tennessee Valley Authority (TVA). Mr. Meiburg responded that in the southeast, there is a split between urban and rural areas. He noted that many rural areas have shrinking populations. Regarding TVA, Mr. Meiburg said that the region aims to put past differences behind them and recently has worked effectively and cooperatively with TVA on resource issues.

Panel Discussion of the North Carolina Clean Smokestacks Law—Panel Chair, Jim Hendricks, Duke Energy and CAAAC Member; Stan Meiburg, EPA, Region IV; Brock Nicholson, Deputy Director, North Carolina Division of Air Quality; George T. Everett, Vice President, Duke Power; and Michael Shore, Environmental Defense

Jim Hendricks, Duke Energy, opened the panel discussion on the North Carolina Clean Smokestacks Law by introducing each of the participants.

Brock Nicholson, North Carolina Division of Air Quality, began his presentation with a discussion of the bill's provisions. The bill includes NO_x and SO_2 caps by utility company, a phased compliance schedule, actual reductions, a unique cost recovery feature, recommendations rather than specific caps or goals on mercury and CO_2 to get the Act passed, and reduction credits held by the state rather than allowing cross-state trading (to prevent increased emissions in nearby states and to acknowledge that the ratepayers should own the credits). Mr. Nicholson noted that air quality issues, however, cannot be fully resolved through in-state activities. The discussion also addressed economic concerns and the political actors who helped develop the bill.

In his presentation, Mr. Nicholson addressed specific utility plans and efforts to encourage emission reductions in other states. He noted that his presentation handouts included additional information on control of mercury and CO_2 and reports to the legislature. He said that NO_x and SO_2 reductions would be about 75 percent.

Mr. Nicholson presented some additional graphics included in the handouts showing that reductions from other states would make a large difference for North Carolina and others.

Mr. Meiburg stated his support for the Southern Appalachian Mountain Initiative process. He said that data and partnerships are important, and the process and Act are a credit to all of the stakeholders. He stated that some of the challenges with implementation are making sure that the reductions are in the appropriate place and that the trading system works well, especially with NO_x. In terms of mercury reductions, Mr. Meiburg noted that reductions in a local area are important, as indicated by some research being done in the Florida Everglades. Another challenge is the integration of this legislation with Clear Skies and a potential regional fine particles State Implementation Plan (SIP) Call.

George Everett, Duke Power, presented on the bill development process. He said that there was substantial interest from the governor and governors of nearby states. The state senate was involved as were the regulatory and environmental communities. The initial timetables and caps proposed by the environmental community were very aggressive and did not seem achievable to utilities. Utilities asked for slightly longer time frames and provisions to address costs given the SIP Call, the possibility of heading toward a deregulated market, and potential solvency issues for customers—especially manufacturing industries. Mr. Everett noted that the general assembly session reached agreement on reduction targets and time frames in 2001 and reached agreement on costs and rates in 2002. The costs are $1.5 billion, 90 percent of which is from SO_2 control costs.

Mr. Hendricks indicated that timing was a critical issue. On a facility level, inadequate space for retrofits becomes an issue.

Michael Shore, Environmental Defense, provided a presentation called "The Possibility of Clean Smokestacks." He noted that in 2000, no one believed North Carolina would be able to pass this bill. He noted that the utilities and environmentalists agree on the story of what happened. A sympathetic sponsor in the Senate with Senator Metcalf was helpful, but the bill almost died in the House of Representatives—despite a sympathetic sponsor there as well—due to the addition of manufacturing concerns. The governor was essential in bringing the stakeholders back to the

table and overcoming the problems. The attention of the public and environmentalists kept the issue alive. The state environmental agency was also very supportive and provided ground-truthing advice to the legislature. Mr. Shore noted that Duke Energy was being sued under NSR, which may have suggested to the company that they definitely would have to make these reductions, and that making them on good terms would be a preferable approach.

Mr. Shore stated that the two most important factors in the passage of the bill were the open-mindedness and commitment of the utilities and the governor's leadership. The governor's leadership was key once manufacturers were added to the process, which was too much for the legislature to handle alone. Mr. Shore added that, as a policy issue, it was important that the environmentalists and public supported allowing the utilities to seek cost recovery. In terms of emission credits, it was important that the emission credits were not sold out of the state but represented real overall reductions. The agreement also was shaped by a New York State court case that indicated that such restrictions must be designed so as not to interfere with the Interstate Commerce Clause.

Questions and Comments

Carolyn Green, Sunoco, asked whether the utilities get a tax credit or some compensation for the lost value of the permits. Mr. Everett indicated that there was an agreement outside of the legislation about holding those credits. The utilities did not ask for compensation. He did not believe there were any issues with the permits through the Internal Revenue Service. He said that it is possible, according to the agreement, that the utilities will never hold those credits.

Mr. Shore referred committee members to his article, "Enlightenment," which was included in the committee packet, and which discusses the subject.

John Paul, RAPCA, asked how the utilities are positioned to address mercury. Mr. Everett answered that it is a high risk issue for Duke. Duke is working with the Department of Energy on ways to deal with this (e.g., upgrading precipitators and using bag filters as well as other technologies). They hope to get their units to the level of national MACT standards.

Mr. Hendricks noted that a major issue is co-benefits and sorting out technologies.

Lisa Gomez, Sempra, asked about certainty and how the utilities became comfortable that this legislation would be compatible with future national laws and regulations. Mr. Everett answered that for SO_2 reductions, the technology required, scrubbers, is fairly standard. For NO_x, the question is how low to take these numbers. Selective Catalytic Reduction (SCR) is very expensive at $700 million per unit for NO_x reductions for the SIP Call. They are looking at less expensive approaches toward reductions for additional reductions beyond the SIP Call that cost a total of $200 million for 24 additional units.

Patricia Mariella, Gila River Indian Community DEQ, asked if the utility rate commissioners were elected publicly and whether they had an effect on the process. Mr. Everett answered that the commissioners are appointed and were deeply involved. Emissions would go down, but rates would stay the same, which provided a double victory for the utilities commission. Mr. Nicholson stated that the commissioners were very involved in the design process, especially in

the last year of the process, because they still have to approve the costs and rates. Mr. Shore indicated that the public utilities commissioners were only barely involved in the first year. In the second year, the utility commission took a prominent role to make it happen.

Barbara Bankoff, Eli Lily, asked about the fuel mix and the difference in fuel mix between Progress and Duke. Mr. Everett stated that the fuel mix for Duke will not change. Coal is half of their fuel mix. Progress probably has a similar mix within North Carolina.

Carter Keithley, HPBA, asked to what extent the reductions will help the state's regions in terms of air quality standards.

Mr. Nicholson said that his modeling shows great progress toward attainment for all regions —except for some continued issues for Charlotte—by 2007. They view this law, along with mobile sources efforts, as a centerpiece of the state's approach for ozone and PM fine.

Tim Johnson, Corning, asked the speakers' perspective on how this initiative might affect federal proposals.

Mr. Meiburg responded that, to the extent that states are considered a laboratory for democracy, the law would provide a good model. Mr. Nicholson added that it would be easier to ask other states or EPA for reductions if North Carolina took action first.

Andrew Ginsburg, Oregon DEQ, asked panel members how they were able to keep all 12 environmentalist groups working together. Mr. Shore said that not all environmental groups were comfortable with the final bill, although most were. He noted that it was a unique achievement for the state.

Presentation and Discussion of Charlotte NC's Smart Growth Program—Pat McCrory, Mayor of Charlotte

Mr. Holmstead introduced Pat McCrory, Mayor of Charlotte, as a figure of regional and national importance. Mr. Hendricks continued the introduction by stating that Mr. McCrory truly understands regional development. He stated that Mr. McCrory is the four-term mayor of Charlotte, as well as the head of the Energy and Environment Committee for the U.S. Conference of Mayors.

Mr. McCrory presented on Charlotte, North Carolina's smart growth program. He described Charlotte as the 19th largest city in the United States, the second largest banking center in the U.S., and the home to numerous Fortune 500 companies. Mr. McCrory posed two questions to be asked of every large urban area: in 10 to 20 years, what will this city look like? And, even more importantly, what do we want this city to look like in 50 to 100 years? Mr. McCrory stated that the land use decisions that shape a city today will influence it in the distant future.

Mr. McCrory noted that the City of Charlotte must walk the fine line between protecting its economic growth and improving quality of life for its residents. He stated that Charlotte encompasses 280 square miles, including the suburbs over which the City has jurisdiction. While 280 square miles frames the area with which he can work directly, Mr. McCroy also

emphasized the importance of decision-making in tandem with surrounding counties, even those across the border in South Carolina.

Mr. McCrory stated that one of his biggest challenges is doing land use planning in neighborhoods that did not use land use planning in the 1970s, 1980s, and 1990s. He stated that he has learned through experience that it is much less expensive to design neighborhoods well than to retrofit them after they already have been built. Thus, the City of Charlotte wants to grow and build things the right way first. Mr. McCrory discussed a number of innovative ways in which Charlotte is promoting smart growth. For instance, the City does not allow cul-de-sac development, but encourages a grid system in new developments, which facilitates traffic flow and creates more people-friendly, accessible neighborhoods.

Mr. McCrory stated that Charlotte has focused on in-fill development, revitalizing old industrial parks and brownfields. The Charlotte Panthers Stadium was built on a former brownfield; its location in an existing grid system helps traffic to leave the area efficiently. Mr. McCrory explained that in-fill development boosts the City's tax base and local economy. Downtown Charlotte used to clear out after offices closed in the evening, so the City offered cheap loan rates for housing downtown and instated mixed-use zoning. These measures helped to attract 6,000 new residents to downtown Charlotte. Their presence brought two grocery stores into an area that once had none. In the past, neighborhoods were not designed with pedestrians in mind, and Mr. McCrory emphasized that Charlotte is trying to change that. For example, Phillips Place is the first mixed-use, mixed-income development in Charlotte since the 1920s.

Mr. McCrory also discussed Charlotte's plans for a new transit system, as an alternative to driving in an increasingly heavy traffic city. He described plans for the new transit line, which will run through Charlotte's convention center, its arts district, and a number of densely populated neighborhoods, all the way to the South Carolina border. The citizens of Charlotte voted to support the transit system several years ago by passing a ½ cent tax that goes directly to development of the transit system. Mr. McCrory noted that EPA has been essential in development efforts and has helped Charlotte government to realize that smart growth is a regional issue. A $100,000 grant from EPA will be used for Charlotte area counties to review and discuss each other's air, water, and ground issues and regulations, in order to come up with a cohesive regional plan. Mr. McCrory stated that the goal of this collaboration is to create consistent policies and solutions, and to get South Carolina counties on board with regional plans. In closing, Mr. McCrory stated that his biggest current challenge is to work across political boundaries, which can serve as barriers to solid, effective policy.

Questions and Comments

Bob Wyman, Latham and Watkins, asked Mr. McCrory what would help him most in the planning process. Mr. McCrory replied that he wanted two things to happen most. First, he wanted people to become less focused on political boundaries. Second, he wanted states to become more engaged in smart growth issues, rather than leaving land use planning to cities and towns alone.

Benjamin Cooper, Printing Industries of America, asked Mr. McCrory if his planning process incorporates attracting manufacturing jobs to Charlotte. Mr. McCrory stated that General

Dynamics had just made the decision to relocate to Charlotte. He further stated that attracting businesses to Charlotte involved offering incentives to companies, particularly to their upper management teams. Mr. McCrory noted that Charlotte offers a quality of life incentive, as a city where executives would want to live now and 25 years from now.

Ms. Barron asked how Mr. McCrory had managed to get builders and developers on board with his plans for smart growth. Mr. McCrory attributed his success to helping developers realize that smart growth is a money-making plan. He admitted that initially he had to step on a lot of toes to get his program up and running, such as vetoing a compromise that would have written sidewalks out of developments.

Ursula Kramer, Pima County DEQ, asked how Charlotte had determined where the transit corridor would run. Mr. McCrory stated that the corridor runs through largely blue collar neighborhoods, where residents can truly use a mode of transportation to get to and from Charlotte.

Mr. DeLucia asked if Charlotte could look to its banks in the future for taking a lead in smart growth planning. He also asked if Charlotte will become an alternative to New York City as a financial center. Mr. McCrory replied that Charlotte is actually in competition with a number of major cities for banking headquarters. He confirmed that banks have been helping with smart growth plans in Charlotte already. For instance, the Charlotte Chamber of Commerce was instrumental in helping to get the transit tax passed.

Rob Brenner, EPA-OAR, thanked Mr. McCrory, stating that people and public policy can make things change, and that EPA is excited about projects like Charlotte's smart growth program.

Discussion of Early Action Compacts—Lydia Wegman, EPA-OAQPS

Lydia Wegman, EPA-OAQPS, presented an overview of the 8-Hour Ozone Early Action Compacts (EAC) and Designations Program. She emphasized that EPA is trying to give credit for innovative measures taken by EAC areas, if these measures will lead to emissions reductions. Ms. Wegman first described the overall program, stating that there are 33 EAC areas in 14 states and that each EAC area must meet a series of milestones in order to be eligible for a deferred effective date of non-attainment designation for the 8-hour standard. She noted that there is a concentration of EAC areas in the southeast, and that all of South Carolina has signed up for the program.

Ms. Wegman stated that because the EAC program is not an official component of the Clean Air Act, which raises some legal concerns, it is highly important for EACs to involve all stakeholders in collaboration on emissions reduction plans.

Ms. Wegman outlined the milestones for EAC areas, two of which have passed already, and the last of which will occur on December 31, 2007. She stated that each EAC area must have plans showing containment through 2012. Ms. Wegman discussed the emissions reduction measures submitted by EAC areas for the June 16, 2003 milestone. There were five major categories of measures submitted by EAC areas: mobile/transportation, stationary and point-source, education and awareness, land use management and planning, and energy conservation and efficiency. She

discussed the following specific measures that were submitted: truck stop electrification; diesel cetane fuel additive, urban heat island reduction, and energy efficiency/renewable energy.

Ms. Wegman also discussed flexible SIP policy for voluntary and innovative measures. She outlined the process by which innovative measures can be approved and discussed program requirements. Ms. Wegman stated that there is a limit on SIP credit from voluntary (3 percent) and innovative (5 percent) measures. She also emphasized that innovative measures must be evaluated periodically for effectiveness. As an example of implementing flexible SIP policy, Ms. Wegman discussed draft guidance on SIP credit for energy efficiency/renewable energy.

Ms. Wegman concluded her presentation by discussing 8-hour ozone designations and boundaries for urban non-attainment areas. She discussed factors to be considered in determining non-attainment boundaries, including emissions data, air quality data, population density, and jurisdictional boundaries. Ms. Wegman outlined the 8-hour ozone designation/implementation timeline from its inception in 2000 through 2021, at the far end of the attainment date range.

Questions and Comments

Mr. Henneke stated that there is a new focus on controlling air pollution at the state and local level. Whereas recently the focus of emissions reduction was on the national level, Mr. Henneke noted that now EAC areas are taking the necessary actions to achieve attainment. He pointed out that as localities are dealing primarily with small sources, they need the tools to go after small sources, since quantification of emissions reductions is so difficult. He asked how EPA and the CAAAC are going to respond to localities' questions about modeling, credits, and quantification. He stated that currently models with a 35 percent rate of error are being used to see if a 2 percent reduction has been achieved. He also noted that EACs have refocused local governments on air quality issues. Ms. Wegman stated that EPA is in the process of setting up a senior management team to review and approve innovative measures.

Eugene Trisko, Attorney, stated that EPA should be commended for helping EAC areas with innovative approaches. He asked if EPA has quantified potential reductions. Ms. Wegman stated that innovative measures are individually and collectively responsible for small reductions. She also noted that as modeling is not 100 percent effective, it may turn out that innovative measures have even more of an impact on reductions than is currently assumed.

Mr. Brenner stated that one of the lessons learned has been that it can be time consuming to address the uncertainty about how much credit can be earned for innovative measures. He recommended getting a group of people together who would have the capacity to review and evaluate a proposed measure in a matter of weeks, rather than months. He emphasized that EPA wants to be able to give EAC areas an idea of what measures they can use, as soon as possible.

Mr. Henneke noted the importance of recognizing effective ideas. He stated that electrification and locomotive ideas were given Clean Air Excellence Awards by the CAAAC two years ago, and that EAC areas have been pursuing both types of measures since the awards.

Mr. DeLucia stated that if models are so far off, stakeholders could overestimate the potential of

certain measures.

Bill Goldsmith, Cornell, referred to Mr. McCrory's presentation and pointed out that EAC areas do not seem to be using measures that involve land use planning or other measures that take a long time to come into fruition. He stated that the link between land use, air quality, and transportation remains too amorphous. Ms. Wegman stated that a sequel project could focus on the future beyond 2007, and on long-term transportation and environmental planning issues.

Ms. Green stated that EPA needs to make sure that regulatory perfection does not get in the way of high-quality land use planning, as the EAC time-frame is so short. She further stated that while land use planning will not impact attainment immediately, it must work in tandem with short-term planning and policy, not at cross-purposes with it.

Mr. Henneke introduced Rick Bolton, Tennessee Air Board. Mr. Bolton expressed his appreciation for seeing the CAAAC is action. He stated that he had heard a good, clear message that Tennessee soon would receive answers on potential innovative measures for his local EAC area to use. Mr. Brenner stated that Mr. Bolton had presented some great on-the-ground information during the Economic Incentives Subcommittee Meeting.

Mr. Ginsburg stated that some limits to voluntary and innovative measures are necessary and good, because such limits can prevent false expectations of the effectiveness of these measures.

Mr. Brenner said that direct credit may be given for voluntary and innovative measures, if states promise to make up for any deficiencies that arise out of inaccurate predictions of emissions reductions.

Subcommittee Reports: Subcommittee on Economic Incentive and Regulatory Innovation —Ben Henneke, Co-Chair

Mr. Henneke reported on the Economic Incentives Subcommittee Meeting. He began by describing the subcommittee's decision to help facilitate review and evaluation of potential emissions reduction measures. Mr. Henneke stated that the subcommittee will sort through questions about potential measures that are ripe for use, and can be used in many different EACs. Then, the subcommittee will report relevant questions and measures to EPA. He stated that the first meeting to pursue this goal will occur within three to four weeks, and that the second one will occur before Christmas. He explained that this review and evaluation process would help to get answers on technologies and innovations out to EAC areas rapidly.

Questions and Comments

Mr. Brenner stated that Bill Becker, STAPPA/ALAPCO and Ralph Marquez, TCEQ, were interested in participating in the review group. Mr. Henneke agreed that the review group needed people from the local and regional level, people who have dealt with some of the potential measures on-the-ground. He concluded his presentation by asking about getting SIP credit through partnerships, stating that he needs some suggestions.

Ms. Barron stated that economic incentives are important to companies, which want to know that

what they are doing at the state level will be relevant at the national level. She also suggested that CAAAC conferences should effect change, by facilitating information sharing, especially regarding innovative measures.

Carey Fitzmaurice, EPA-OAR, stated that the subcommittee also should help to tie boundary issues into its overall air quality work.

Mr. DeLucia noted that the presentations have been focusing on taking action. He stated that members of the CAAAC should use their ties to the academic community and people who are taking action, in informing EPA about issues.

Subcommittee Reports: Subcommittee on Linking Energy, Land Use, Transportation, and Air Quality —Bob Wyman, Latham and Watkins

Mr. Wyman stated that the Subcommittee meeting included presentations on smart growth and the Clean Cities Program by three speakers: Jonathan Overly, Executive Director, The East Tennessee Clean Fuels Coalition; Virginia Faust, Architect; and Erica McArthur, Active Communities Consultant. Mr. Wyman gave a brief overview of some of the urban design information given in the two smart growth presentations.

Mr. Wyman said that the subcommittee intends to move forward and address urban design problems. The subcommittee will develop a game plan and a calendar to hold a series of meetings to discuss the relationship between urban design and air quality. The members will identify who is working on this issue to learn what efforts are underway and where the subcommittee can fill any gaps. Mr. Wyman said that the subcommittee will then move to a phase of in-depth discussion to identify the impacts of urban design choices and current impediments to smart design. Mr. Wyman noted that possible work products include: research projects and subcommittee findings and recommendations; tools for communities and states (e.g., simple models); and recommended changes to federal programs to remove barriers and create incentives.

He emphasized how important it is that committee members participate in the subcommittee discussions, and encouraged members to become more involved.

<u>Questions and Comments</u>

Mr. Holmstead noted that zoning laws and regulations are a big impediment to smart growth. While agreeing that the subcommittee should investigate a broad range of issues, Mr. Holmstead urged the subcommittee to focus on recommendations for possible changes that are within EPA's control.

Mr. Ginsburg added that he hopes that the subcommittee will focus not only on local areas, but on the national barriers and incentives (e.g., the national tax code) that contribute to land use patterns. He said that it would be worthwhile to learn from local areas whether they consider these national barriers to be an issue and then engage an organization (e.g., the National Academy of Sciences) to investigate the issue more in-depth.

Ms. Kramer said that while EPA is working to identify strategies and assign SIP credit amounts to them, EPA also should work to identify strategies for attainment areas that are struggling to retain their attainment status.

Ms. Barron supported Mr. Ginsburg's comments and noted that EPA and the subcommittee must retain perspective and consider what incentives programs will work with companies given the current economic situation. She noted that the committee should look at it like a business plan.

Subcommittee Reports: Subcommittee on Permitting, Toxics, and New Source Review —John Paul, Co-Chair

Mr. Paul said that the Subcommittee meeting began with a discussion of Title V permitting issues. He noted that the state issue rates for those states on a schedule are about 81 percent nationally. Some other states are on a schedule but not all received notices of deficiency. Mr. Harnett noted that four states are severely backlogged. Even in states with high issuance rates, other problems may be masked (e.g., leaving the most difficult permits for last). Nationwide, 20 percent of permits have not been issued and 20 percent of renewals have not been acted on. Mr. Paul said that the subcommittee also briefly discussed a national certification process. EPA has given the regions instructions to look for sources that certify compliance, but at the same time are listed as significant violators. The subcommittee discussed three white papers. Mr. Paul noted that EPA is moving more toward rulemaking rather than guidance documents for legal reasons.

Mr. Paul stated that the subcommittee is considering hosting a forum to hear from states, environmental groups, and other stakeholders about the Title V process on issues such as renewals, periodic monitoring, and reporting. One problem is that reporting quarterly could easily generate thousands of reports, but state agencies do not have the resources to review them all. Another problem is the treatment of insignificant emission units. The subcommittee would like to advise EPA on how to improve the process.

Mr. Paul said that the subcommittee next discussed Toxics. Sally Shaver, EPA-OAQPS, gave a presentation on residual risk. After issuing all of the MACT standards, EPA must determine how to analyze and deal with residual risk. Ms. Shaver said that this can be done both on a risk basis and a technology review. Ms. Shaver said that to deal with cancer-causing agents, EPA can accurately inventory an industry that has had a MACT standard applied to it, or can determine if there is a residual risk by modeling it. She noted that it is unclear how EPA should handle non-cancer risk. If there are multiple MACT standards, and some apply now while others apply in the future, it is unclear how EPA should handle current risk.

Mr. Paul gave additional detail regarding Ms. Shaver's presentation, noting that EPA also is looking at community-based risk assessment. She noted that within communities, there may be individual risk from individual plants, but EPA also must account for the higher risk associated with having multiple sources within a neighborhood. There are a number of potential compliance options—technology, low risk demonstrations, facility risk, and community-based risk options, among others. The subcommittee discussed current programs and specific funded projects throughout the country. Ms. Shaver said that there are many good studies looking at risk. The group raised questions about the utility MACT. The proposal is incomplete and has

not gone to the Office of Management and Budget. EPA is looking at subcategories. The group raised questions about options. Some members had heard that EPA would come out with a set of options and not a recommendation. Ms. Shaver said that EPA would be more specific than that. She also encouraged subcommittee members to look at the docket to find out more information about meetings with stakeholders. The bottom line is that EPA is still on schedule. Ms. Shaver said that she would make her presentation available to the entire committee.

Mr. Paul stated that the subcommittee closed its meeting with an NSR discussion. As part of the discussion, Mr. Harnett talked about upcoming EPA activities including a proposal on de-bottlenecking (i.e., how to calculate emissions of sources that are affected both upstream and downstream of a unit being modified). Mr. Harnett also discussed codification of existing policy on aggregation. EPA created this policy to discourage companies from breaking up projects to avoid triggering NSR. Instead, it has done the reverse. Mr. Harnett also discussed a proposal on allowable plantwide applicability limits. He said that EPA did reconsider certain issues that were a part of the December rulemaking. They are considering a response by the end of October. The response can be included in the briefs that need to be submitted on the litigation on the December rulemaking. Mr. Harnett said that the equipment replacement portion of the rulemaking on routine maintenance, repair, and replacement will soon be printed in the *Federal Register*. Until then, the litigation cannot be filed. If it goes forward, the litigation should be heard early next year, and wrapped up in late summer or fall of 2004. Mr. Harnett estimated that the response to the routine maintenance and replacement rule will be nine months behind that rule.

Mr. Paul said that Mr. Harnett then discussed a complicated set of court decisions. The Southern Indiana decision was a summary judgement that indicated that the current interpretation of routine maintenance, repair, and replacement is reasonable. In the TVA decision, none of the central issues were decided on. EPA issued an administrative compliance order, which was judged as unconstitutional. The Ohio Edison decision is seen as a narrow decision. The Duke Energy decision said that the language was not plain and that the calculation concerning future emissions should be done comparing pre- and post-modification and keeping the hours the same. Mr. Harnett said that the judge probably did not realize that he was talking about doing an allowables to allowables test instead of an actual to potential test. Mr. Harnett said that Duke links to NSPS when the Prevention of Significant Deterioration rules are written. Also, the decision said that a failure to obtain a permit is an ongoing violation. Mr. Harnett noted that the real question is regarding what emissions test should be used to determine if there are increases as a result of modifications. Mr. Harnett also discussed Senate requests for analysis, which will be difficult for EPA to accomplish. They already are looking at the minor permits issue to understand what minor new source permits were taken to avoid NSR. They also want to look at major permits that would no longer be needed. He said that companies may be getting section 114 requests from EPA regarding modifications undertaken or avoided. Companies also may receive requests for information regarding routine maintenance, repair, and replacement projects undertaken over the past several years.

Regarding future work, Mr. Paul said that the subcommittee wants to look at the Title V renewal process. They also want to consider the progress on existing rules.

In closing, Mr. Paul noted that STAPPA/ALAPCO will be releasing in draft form, model rule

options for NSR. He noted that all of the states must revise their NSR regulations in terms of non-attainment and all but thirteen states must revise their regulation with regard to PSD. Even a delegated state may want to alter slightly the federal requirement. Mr. Paul said that STAPPA/ALAPCO tried to identify options states may want to pursue and put the options into the legal language of rulemaking to assist states' efforts.

Questions and Comments

Ms. Barron asked what happened to the urban air toxics strategy that she and other committee members worked on. She asked whether several issues addressed in the strategy document (e.g., environmental justice, the 1994 presidential commission report on health risk assessment and residual risk) are covered in EPA's toxics proposal. She also asked what has been done to incorporate the resources of the National Institute of Environmental Health Sciences (NIEHS) into this work.

Ms. Shaver responded, noting that one of the primary products of the urban air toxics workgroup was the recommendation to allow the approval of state risk based programs in lieu of a federal program. There was a suggestion from the workgroup that the programs would distinguish four levels for states ranging from those that were not allowed to do more than the federal requirement to the more robust programs. Ms. Shaver noted that there were a number of legal questions that could not be handled in a generic forum, so EPA has two pilot efforts underway to see whether these programs will work under section 112(l). In terms of the urban air toxics strategy, it was much more comprehensive and dealt with the area or smaller sources, of which the national air toxics assessment is a part. Ms. Shaver said that there also are over 30 community projects looking at a combination of mobile, area, and stationary sources. The third piece of the urban strategy is to address small sources category-by-category. Twenty percent of the categories represent 80 percent of the risk. Ms. Shaver stated that EPA is trying to mobilize on several fronts now. Later, EPA will be able to address these issues on the community level, which can be used for the national level. Although EPA no longer talks about this as an "urban strategy," it still is following up on the issue. She added that section 112(l) fits in as part of the delegation process for MACT, which explains how to implement MACT and how to substitute a state program for the federal program. The programs must be almost exactly the same. For risk, the programs do not have to be the same, but should have similar health benchmarks. EPA is working to determine how section 112(l) fits for a program for which one need not cover all sources and pollutants. In terms of documentation, Ms. Shaver said that the documents are being peer reviewed, and that by Spring 2004, EPA should have the documents in place to have comparable benchmarks. Those documents are based on other peer reviewed data and models. There should be an opportunity to comment on those in the future.

Mr. Paul said that Ms. Barron's message needs to go to the health commissioners. They can address the issues at the local level, and there are tools, if not money, available to work with strong environmental groups or state agencies. Mr. DeLucia noted that local public health agencies should be included.

Mr. DeLucia asked if EPA will move beyond criteria and work on air toxics exposure to identify the consensus information. He suggested NIEHS as a partner. Mr. Brenner replied that EPA is working on that. Mr. Shore commented that the rulemaking process has been mysterious, which

makes it difficult for the CAAAC to advise EPA. Mr. Paul added that the working group still would like EPA to provide the modeling runs that the stakeholders identified as important. He thought that was the interest of the whole committee and recommended members indicate so to the Agency. Mr. Brenner said he would take that message back to EPA.

Mr. Brenner thanked the committee for attending and participating.

Clean Air Act Advisory Committee Meeting
October 15, 2003
Member Attendee List

NAME:	ORGANIZATION:
Auberle, William	Northern Arizona University
Avant, Jr., Robert	Texas Food and Fibers Commission
Ayres, Richard	Ayres Law Group
Bankoff, Barbara	Eli Lilly and Company
Barron, Elaine Mowinski	JAC Paso del Norte Air Quality
Brenner, Rob	EPA-OAR
Brown, Kelly	Ford Motor Company
Clay, Don	Koch Industries, Inc.
Collett, Charles	NAHB
Cooper, Benjamin	Printing Industries of America
DeLucia, Anthony	American Lung Association
Drewnowski, Ronald	PSEG Power
Farmer, Randall	BP America
Giblin, Pam	Baker & Botts LLP
Ginsburg, Andrew	Oregon DEQ
Goldsmith, William	Cornell University
Gomez, Lisa	Sempra
Goodman, Charles	Southern Company Generation
Goodman, Sandra	E3 Ventures
Green, Carolyn	Sunoco
Hendricks, Jim	Duke Energy
Henneke, Ben	Clean Air Action Corporation
Johnson, Timothy	Corning Incorporated
Keithley, Carter	Hearth, Patio, and Barbeque Association
Kramer, Ursula	Pima County DEQ
Lempke, Douglas	Colorado Department of Public Health and Environment
Mariella, Patricia	Gila River Indian Community DEQ
Marquez, Ralph	Texas Commission on Environmental Quality
Muffat, Jeff	3M
Owens, Stephen	Arizona DEQ
Paul, John	RAPCA
Seitz, John	Sonnenschein, Nath & Rosenthal
Trisko, Eugene	Attorney
Wyman, Robert	Latham and Watkins