

## **CLEAN AIR ACT ADVISORY COMMITTEE (CAAAC)**

**October 15, 2003  
Grove Park Inn Resort  
Asheville, NC**

### **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. 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. Mr. Holmstead briefly outlined the agenda and noted recent key activities at EPA.

### **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 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. He emphasized the importance of forming creative partnerships to address problems.

### **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 becoming more aware of the need to protect natural resources.

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 asked Mr. Meiburg to comment on the Tennessee Valley Authority (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<sub>x</sub> and SO<sub>2</sub> 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<sub>2</sub> 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). The discussion also addressed economic concerns and the political actors who helped develop the bill. Mr. Nicholson also addressed specific utility plans and efforts to encourage emission reductions in other states.

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 also noted some of the challenges to implementation.

George Everett, Duke Power, discussed the bill development process. He 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.

Michael Shore, Environmental Defense, provided a presentation called "The Possibility of Clean Smokestacks." He noted some of the reasons the bill survived and eventually was passed, including the governor's efforts to keep stakeholders at the table, attention from the public and

environmentalists, support from the state environmental agency, and utilities' participation. 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.

### **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. 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 mercury and 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<sub>2</sub> reductions, the technology required, scrubbers, is fairly standard. For NO<sub>x</sub>, the question is how low to take these numbers. Selective Catalytic Reduction (SCR) is very expensive at \$700 million per unit for NO<sub>x</sub> reductions for the State Implementation Plan (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. 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 the panel 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**

Pat McCrory, Mayor of Charlotte, presented on Charlotte, North Carolina's smart growth program. 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 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.

Mr. McCrory discussed a number of innovative ways 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 focuses on in-fill development, as it boosts the City's tax base and local economy.

Mr. McCrory also discussed Charlotte's plans for a new transit system, as an alternative to driving in an increasingly heavy traffic city. 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. A \$100,000 grant from EPA will be used for Charlotte area counties to discuss each others' air, water, and ground issues, in order to come up with a cohesive regional plan; the goal of this collaboration is to create consistent policy and solutions.

### **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 people to become less focused on political boundaries. He also 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 attracting businesses to Charlotte involved offering incentives to companies. He noted that Charlotte offers a quality of life incentive.

Ms. Barron asked how Mr. McCrory had managed to get builders and developers on board. Mr. McCrory attributed his success to helping developers realize that smart growth is a money making plan.

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

Mr. DeLucia asked if Charlotte can look to its banks to lead in planning, and if Charlotte will become an alternative to New York City as a financial center. Mr. McCrory replied that Charlotte competes with a number of major cities for banking headquarters, and that, to date, banks have helped with smart growth.

Rob Brenner, EPA-OAR, stated 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 EAC measures. Ms. Wegman described the overall program, and noted the concentration of EAC areas in the southeast. She stated that as the EAC program is not an official component of the Clean Air Act, and 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. She discussed the five major categories of measures submitted by EAC areas for the June 16, 2003 milestone: mobile/transportation, stationary and point-source, education and awareness, land use management and planning, and energy conservation and efficiency. She also discussed specific measures that were submitted.

Ms. Wegman discussed flexible SIP policy for voluntary and innovative measures. She outlined the process by which innovative measures can be approved and discussed program requirements. She also emphasized that innovative measures must be evaluated periodically for effectiveness. Ms. Wegman concluded her presentation by discussing 8-hour ozone designations and boundaries for urban non-attainment areas.

### **Questions and Comments**

Mr. Henneke stated that there is a new focus on controlling air pollution at the local level. He stated that localities need the tools to go after small sources, since quantification of reductions is hard. He asked how EPA and the CAAAC are responding to localities' questions on quantification, modeling, and credit. Ms. Wegman stated that EPA is in the process of setting up a senior management team to review and approve innovative measures.

Mr. Trisko stated that EPA should be commended for helping EAC areas with innovative approaches. He asked if the agency has quantified potential reductions. Ms. Wegman stated that innovative measures are responsible for small reductions, but as modeling is not 100 percent effective, innovative measures may have more of an impact on reductions than is assumed.

Mr. Brenner stated 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.

Mr. Henneke noted the importance of recognizing effective ideas.

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

Bill Goldsmith, Cornell, stated that EAC areas do not seem to use land use planning or other long-term measures. 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 land use planning must work in tandem with short-term planning and policy, not at cross-purposes with it.

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 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 meet more regularly to sort through questions about potential measures that are ripe for use, and can be used in many different EACs. 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.

Ms. Barron stated that economic incentives are important to companies. 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 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. 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.

### **Questions and Comments**

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 (e.g., state issue rates, state backlogs, the possibility for a national certification process). **The subcommittee** also 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**. The subcommittee would like to advise the Agency 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 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.

Mr. Paul gave additional detail regarding the discussion. Mr. Paul said that during the meeting, members raised questions about the utility MACT. Ms. Shaver said that the proposal is incomplete and has not gone to the Office of Management and Budget. The Agency is looking at subcategories. The group raised questions about options. Some had heard that the Agency 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 the Agency is still on schedule.

Mr. Paul said that the subcommittee closed its meeting with an NSR discussion. As part of the discussion, Bill Harnett, EPA-OAR, talked about upcoming EPA activities including a proposal on de-bottlenecking. Mr. Harnett also discussed codification of existing policy on aggregation. Mr. Harnett also discussed a proposal on allowable plantwide applicability limits.

Mr. Paul said that Mr. Harnett then discussed a complicated set of court decisions, including the Southern Indiana decision, the TVA decision, the Ohio Edison decision, and the **Duke Energy decision**. Mr. Harnett also discussed **Senate requests for analysis, which will be difficult for the Agency 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. Mr. Harnett said that companies may be getting section 114 requests from the Agency 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 progress on existing rules.

In closing, Mr. Paul noted that STAPPA/ALAPCO will be releasing in draft form, model rule options for NSR. Mr. Paul said that STAPPA/ALAPCO tried to identify revision options that states may want to pursue and put them 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. Ms. Shaver stated that EPA is trying to mobilize on several fronts now. Later, the Agency will be able to address these issues on the community level, which can be used for the national level. Although the Agency 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 lots of 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 the Agency 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 the Agency is working on that. Mr. Shore commented that the rulemaking process has been somewhat 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.