N.C. Attorney General
Roy Cooper

N.Y. Attorney General
Eric T. Schneiderman

March 14, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Finalizing Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone

Dear Administrator Jackson:

Our States have long suffered from upwind smokestack pollution carried hundreds of miles downwind, threatening the health of our citizens, detrimentally impacting our natural resources, and interfering with our ability to restore and maintain clean air. We write to underscore the importance of your leadership in timely carrying out EPA's responsibilities under the Clean Air Act to address harmful interstate air pollution, *see* 42 U.S.C. § 7410(a)(2)(D)(i)(I), and to urge EPA to promptly finalize the proposed Transport Rule, 75 Fed. Reg. 45,210 (Aug. 2, 2010), to put all States in the best position to protect the public health and welfare and to meet our regulatory responsibilities. We respectfully request that you provide an update on EPA's anticipated timeline for finalizing the Transport Rule. In particular, we would like to know the dates by which the Agency will (i) complete its principal work on a draft final rule, (ii) transmit a draft final rule to the Office of Management and Budget for interagency review, and (iii) sign a final rulemaking notice, so that we can be assured that a timely remedy is forthcoming.

In July of 2008 – more than two and a half years ago – the United States Court of Appeals for the D.C. Circuit concluded that EPA's Clean Air Interstate Rule (CAIR) was unlawful because, among other things, the Rule's compliance deadlines were not as swift as required by the Clean Air Act. *North Carolina v. EPA*, 531 F.3d 896, 911-12 (D.C. Cir 2008). In that case, brought by North Carolina and supported by New York and nine other States as *amici*, the Court stated that CAIR's delayed deadlines would require downwind nonattainment areas to attain the NAAQS without the required assistance from upwind sources. This would

"forc[e] downwind areas to make greater reductions than section 110(a)(2)(D)(i)(I) requires." *Id.* at 912.

The proposed Transport Rule would respond to the Court's decision in *North Carolina* in part by coordinating "compliance deadlines for upwind states to eliminate emissions that significantly contribute to or interfere with maintenance in downwind areas with the NAAQS attainment deadlines that apply to the downwind nonattainment and maintenance areas." 75 Fed. Reg. at 45,215. In order to accomplish this, the reductions required by the proposed Transport Rule would be both deeper and quicker than under CAIR. Thus, in 2012, the proposed Transport Rule would result in 1 million fewer tons of SO_2 emissions and 100,000 fewer tons of NO_X emissions when compared with CAIR. *Id.* at 45,217. In 2014, the proposed Transport Rule would result in 1.3 million fewer tons of SO_2 and 100,000 fewer tons of NO_X when compared with CAIR. *Id.* As a result, EPA projects that the proposed Transport Rule would protect public health by avoiding 14,000 to 36,000 premature deaths and 1.8 million work-loss days per year, amounting to annual monetized benefits ranging from $120 billion to $290 billion. *Id.* at 45,346-47.

Finalizing the Transport Rule by the end of June 2011 would enable States to receive the Rule's air quality benefits in 2012, addressing the Court's concerns in *North Carolina* and providing our States with the statutory protections against upwind pollution that the Clean Air Act requires. The Court in *North Carolina* was explicitly concerned with timing – noting that CAIR's compliance deadlines were not properly coordinated with the deadlines for downwind States to attain the NAAQS. 531 F.3d at 931. In deciding to remand the rule rather than vacating it, the Court again underscored the importance of EPA taking prompt corrective action: "[W]e do not intend to grant an indefinite stay of the effectiveness of this court's decision." 550 F.3d at 1178. Timing is central to the protections under EPA's proposed Transport Rule, which frequently reiterates the importance of significant reductions in 2012 both to assure the viability of 2014 reductions and to coordinate the compliance deadlines under the Transport Rule with state deadlines for attaining the NAAQS. *See, e.g.*, 75 Fed. Reg. at 45,285 ("We do not, however, intend to delay the reductions in this proposed rule because those reductions have a substantial impact on states' abilities to attain the NAAQS in the required time period and have large health benefits.").

Final EPA action no later than June 2011 is central to States' abilities to carry out their obligations under the Act. As EPA recognized, "the air quality improvements brought about by reducing transport can greatly assist States in the development of SIPs and attainment demonstrations." 75 Fed. Reg. at 45,227. Delaying the final rule would only increase the burden on States by complicating our air quality planning and management responsibilities. States adversely impacted by upwind smokestack pollution have patiently waited two and a half years for EPA to take corrective action. We must be assured that EPA will complete the Transport Rule no later than June 2011. Adhering to this schedule will also pave the way for

EPA to move forward expeditiously with its "Transport Rule II" to put in place the additional NO_X reductions that will be necessary for downwind States to meet ozone air quality standards.

The Clean Air Act provides for dual federal and state responsibilities in restoring and maintaining healthy air for our nation. Our States are committed to protecting the health of our citizens from air pollution. We respectfully request your leadership in carrying out EPA's central responsibilities in remedying the upwind smokestack pollution that interferes with our ability to restore and maintain healthy air for our citizens. We respectfully request that you provide the dates by which you will complete your principal work on the draft final Transport Rule, transmit a draft final Transport Rule to the Office of Management and Budget, and sign a final rule. We greatly appreciate your commitment to reducing interstate pollution and protecting human health and the environment.

Sincerely,

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