

**CAIR Replacement Rule  
Discussions between LADCO and EPA  
March 16, 2009**

**I. Introduction**

On Monday, March 16, 2009, EPA held a call with the Lake Michigan Air Directors Consortium (LADCO) to discuss the CAIR replacement rule. See Appendix A for a list of the participants in the call. The notes that follow are a detailed summary of the call.

**II. EPA Opening Comments**

Sam Napolitano, CAMD, began with a short introduction, explaining that EPA was beginning the process of creating a replacement rule for CAIR. The Agency is reviewing all options, setting up analyses, and preparing technical models. The goal is to finalize a replacement rule within two years.

The primary objectives are to help states comply with the NAAQS and to reduce interstate transport. Therefore, EPA has decided that it would be best to start working with states immediately. EPA would like to hear from the states about what type of replacement rule would most help them meet air quality requirements. Sam stressed that this is the beginning of a dialogue process, and that EPA intends to continue these types of discussions throughout the rule development process.

This is a chance for the states to talk to the key EPA staff that will actually develop and write the rules, as well as the OGC attorneys assigned to the rule development. Sam stressed that EPA is interested in hearing the states' thoughts and concerns. Everything is on the table as EPA puts together ideas for the new Assistant Administrator for Air and Radiation, who should arrive within the next couple of weeks.

In the spirit of listening to the states, Sam asked Mike Koerber to lead the discussion through the topic agenda and to outline the states' thoughts or ideas on the major issues: baseline; significant contribution; remedies; and coverage and timing issues.

**III. LADCO Opening Comments**

Mike Koerber, LADCO, began by noting that LADCO and the states had anticipated listening more to EPA than speaking. However, they are excited and encouraged by EPA's desire for dialogue.

LADCO has been working with the northeast states and more recently the southeast states through the state collaborative process, which has been going on for over four years. In their efforts to meet the 1997 standards, states banded together to address regional transport. They found that individual state programs overlapped and thought that it might be possible to develop consistent programs. While the states recognize that a federal program would achieve the desired consistency, there was not much federal action a few years back, and so the states stepped in to fill the void.

In June 2008, fifteen states and the District of Columbia signed a letter asking for dialogue about regional problems. Although there was no response to the letter, which Mike attributes to the issues EPA has faced during the past year, it appears that EPA intends this meeting to be the beginning of the effort to re-establish a federal-state dialogue. LADCO and the states are very interested in this and appreciate EPA's efforts in this regard.

A similar group of fifteen states and the District of Columbia created a framework document calling for a strategy to deal with power plant emissions in response to the court decision on CAIR. The near term focus is on the 1997 standards, which are still an issue for many states. Although progress has been made, nonattainment areas remain, and states continue to finalize plans to meet the 1997 standards.

The framework document also recognizes the new, tighter standards for PM<sub>2.5</sub> and ozone. The states believe that coordination with EPA will be critical to meeting those standards. A strong federal program for PM<sub>2.5</sub> and ozone transport in the power sector and possibly in other sectors is necessary to provide for attainment.

ICI boilers are an example of non-power sector units that might need to be controlled. There were discussions with EPA recently about these boilers. Also, the state collaborative process established a workgroup that spent two years looking at options to meet the standards. The workgroup did not focus just on power plants because the states recognize that other sectors will need to be controlled to meet attainment. The workgroup developed performance-based standards, did solid cost analysis, and performed emissions modeling and analysis. The entire package is not yet complete, but the group should have a recommendation soon.

While the states look forward to sharing the official recommendation, the key element that Mike said he wanted to highlight was the recognition by states that any program seeking to address the stricter PM<sub>2.5</sub> and ozone standards would have to include units other than large EGUs.

#### **IV. Importance of Regional Planning**

Mike said that before proceeding to address each item of the agenda, he wished to speak briefly about regional air quality planning.

LADCO is the second oldest regional air quality planning group. Numerous benefits have been realized through 20 years of group collaboration, including improved air quality, technical benefits from a common emissions inventory, and policy benefits. Although LADCO was established through a series of lawsuits between the states and EPA, it is important to recognize that progress has been made since that time, and that there is now greater collaboration between LADCO and EPA.

LADCO is grateful for the significant funding received from the states and other groups. While LADCO realizes that EPA has cut some funding, it hopes that the Agency continues to emphasize regional solutions. States will continue to fund some of LADCO's operations, though

not likely at the 100 percent level. Thus, federal funding for RPOs and other regional initiatives is critical to the future of the regional planning process.

Vinson Hellwig, MDEQ, reiterated that many of the air quality problems facing states are regional and that solutions will have to be broader than one state or locality can deal with. Laurel Kroack, IEPA, voiced strong agreement on this.

Mike concluded his opening remarks by noting that the technical work LADCO is undertaking in support of this framework includes the Northeast, and that even some of the Southeast states are participating. While the Southeast states did not sign the framework document, they were involved in some of the technical discussions and participated in some of the modeling. He wanted to recognize their technical contributions even though those states might not be ready to sign policy documents.

Mike then turned the discussion back to EPA.

## **V. Core Issues Outlined by EPA**

Sam Napolitano said that EPA would lay out the issues, but that he would be unable to indicate how EPA would eventually proceed, as the Agency is uncertain at present as to how to respond to the issues raised by the CAIR court decision. The purpose of this meeting is to gather different ideas and thoughts to present to the new Assistant Administrator for Air, whose responsibility it will be to decide how to address the ramifications of the court decision.

Sam invited Tim Smith, OAQPS, to talk about the key issues EPA is considering in the CAIR replacement rule. He asked that speakers identify themselves as notes of the meeting were being prepared and would be shared with LADCO.

Tim outlined the following major issues:

### **1. Baseline**

What is the starting point? What is the baseline? When the original CAIR rule was developed there were many questions about how to set up a baseline and what to take into account when creating the baseline. The situation has continued to change, and EPA would like to know how states believe the baseline should be created, and what factors should be considered in the baseline.

### **2. Quantifying significant contribution**

This is one of the key issues from the court decision. The court held that CAIR failed to quantify adequately each state's significant contribution. There are many smaller issues that come up under this general rubric, but the key questions pivot on how significant contribution is quantified.

Sonja Rodman, OGC, noted that EPA is uncertain as to how to respond to the decision of the D.C. Circuit Court. In some ways, the decision is quite clear, but in others it is rather murky.

For example, it is very clear that the court found what EPA did unacceptable. However, it is less clear precisely what the court would find acceptable. EPA continues to struggle with what the decision means, as well as with how the decision limits EPA and/or might impact future programs.

One of the biggest areas of uncertainty is how to define significant contribution. The court held that EPA had failed to identify and quantify each state's significant contribution. Thus, the Agency is seeking new ways to think about significant contribution.

### **3. Remedy**

What remedy should be applied to the quantified significant contribution? What types of approaches should be considered? Is the trading option practical?

### **4. Affected Area/Standards**

Which states or regions should be covered by the rule? What should the timing of the rule look like? Should EPA start with existing standards? Or, should it try to integrate the newer standards into a replacement rule? Timing becomes a key element when considering which standards to target.

Sam Napolitano noted that rule development might take considerably longer if EPA tries to incorporate the newer standards. But if EPA relies on older standards, the rule may be seen as irrelevant. The resource issue is linked to the timing issue because developing a program to meet new, stricter standards will require additional staff time and effort. In addition to dealing with these issues, EPA must address the court's concern about the attainment deadlines. EPA is seeking state input on how to address all of these issues and concerns.

Lastly, Sam said that EPA career staff share LADCO's concern about industrial boilers and other boilers. Many questions remain about how to regulate those types of sources. Can they be treated in a manner similar to how large EGUs are treated? Are there other sources to consider in this rule? Or should other sources be left to a companion rule? Is there anything else EPA should be doing regarding the NAAQS?

Now is the time to share views. As noted earlier, a goal of these discussions is to bring ideas to the new Assistant Administrator for Air, whose task it will be to set the agenda and priorities, and to implement and allocate resources. Sam encouraged the states to think broadly, suggesting that ideas can always be scaled back or set aside.

He also said that EPA is operating under the assumption that there will not be a legislative fix or a new court opinion. The Agency must create a rule that satisfies the current regulations and related court opinions. Because the legal landscape is complex, pragmatic decisions will have to be made about the new rulemaking process.

Sam concluded by saying that this is the first of a series of teleconferences with states and other stakeholders, including OTC, NACAA, the southern states, Texas, industry representatives, and environmental groups. When this series has concluded, EPA will meet with states to report

what EPA has heard from all of the groups. This will allow the states to react and respond, and to continue the general dialogue.

## **VI. LADCO Response to Core Issues**

Mike Koerber mentioned that LADCO and the states had recently developed a one-page summary of the internal discussions concerning what LADCO states hope will emerge from the state collaborative framework discussions with the Northeast and Southeast states. However, as the one-page summary is still out for comment he inquired whether the states would agree to sharing its contents on this call.

Dan Murray, IDEM, said he was comfortable with doing so. He did not think it would surprise EPA that states are talking about whether CAIR satisfies the BART or RACT requirements as it was supposed to do under the original rule. Indiana has continued to voice support in the LADCO discussions for meeting the BART and RACT requirements through the replacement CAIR rule. However, he has not been hearing as much about that in the collaborative process discussions and was interested in discussing it in this call. Laurel Kroack and Bob Hodanbosi agreed that the summary of discussions should be shared with EPA.

There were no objections from the other states on this matter. Mike noted that the summary document responded to most of the issues raised by EPA's agenda. The group agreed that the summary would provide a good framework for the discussion. But before moving to this discussion, several of the states asked for time to respond to some of the issues EPA had raised earlier.

## **VII. State Responses to EPA's Presentation**

### **1. Baseline**

Vinson Hellwig stressed that Michigan believes any replacement program will have to consider sources other than EGUs. EPA must especially consider industrial boilers and cement kilns. Although these are of particular concern, there may be other sectors that should be included in the rule.

Tim Smith responded that EPA is starting to look at non-EGUs, and is attempting to assemble data on inventories and the percentage of contribution from each sector. EPA welcomes any information the states might have about industrial boilers and cement kilns.

Laurel Kroack agreed that industrial boilers and cement kilns could be controlled in a highly cost-effective manner. She suggested that EPA should at least cover the 1997 and 2006 standards in any new rule. She was less certain about the 2008 standards, which Illinois is still grappling with. She also noted that the dates suggested in the LADCO summary were acceptable to Illinois.

Larry Bruss, WDNR, agreed that any future rule would have to consider more than just EGU sources. He stressed that it is critical to have a broad view in developing a replacement rule. Issues can be looked at piece by piece, but in the end the whole rule must work together. It

is important that the same logic extends throughout the rule to avoid having one logic drive the definition of contribution areas and another how a remedy is applied. Lastly, in reviewing the rule during development to ensure consistency it is absolutely essential to be certain that the rule fully conforms to the court's decision.

Dan Murray agreed with Larry. However, he cautioned that he would like to see modeling showing what level of reductions would be required from other source sectors to meet the requirements of section 110(a)(2)(D). He would like to be certain that there are data to justify putting controls on additional sectors.

Sam Napolitano then asked states which other sectors might need to be controlled and what data Dan would like to see to support further control efforts.

Dan responded that his main concern was to be sure that the data justified controlling additional sectors. Furthermore, which units within a sector are affected should be driven by the data. For example, he agreed that large ICI boilers probably should be affected, but was less sure about smaller ones. His key point was that before deciding which classes of units and which sectors to look at, EPA should gather data and make the decision based on what would be most effective to control.

Mike Koerber followed up on Dan's point about ICI boilers, noting that states have many different boilers and fuel types; thus, it is difficult to fit one size to all the states. The Midwest states want to focus on coal boilers with over 100 mmBtu/hr, as that is where the emission mass is concentrated in the Midwest inventories. Given its various fuel types, the Northeast has a different perspective. Such fundamental regional differences will be a challenge.

## **2. Standards**

Bob Hodanbosi discussed the standards that the rule should address. He noted that it would be perplexing if EPA were to release a rule in 2011 that does not account for the 2008 standards. Even though looking at the new standards might require substantial effort, developing any type of rule will require a great deal of effort. It would be very confusing if EPA were to spend time and money developing a rule to old standards, especially as those old standards would be met and exceeded by the new ones.

Laurel Kroack agreed that it was important to have a comprehensive approach. She reiterated, however, that Illinois continues to review the 2008 standards to determine whether local VOC will be sufficient or whether regional NO<sub>x</sub>, or something even more stringent, would be required. It is difficult to discuss specifics without the modeling in hand.

Bob responded that although modeling was certainly needed, it was already clear that transport would be a component of the SIPs. He reiterated that people would be confused by a rule released in 2011 that does not consider 2008 standards.

Bob Lopez, WDNR, said that one starting point is to determine what significant contribution is and to define it in a replacement rule. As state air directors have discussed significant contribution at length, this might be a good place to start.

## **VIII. LADCO's Summary Document**

Mike Koerber agreed and noted that the discussion of significant contribution was a good segue into the three-step approach in the summary of LADCO's position in the state collaborative framework discussions.

Mike noted that LADCO offers this approach as a way to deal with significant contribution to nonattainment and interference with maintenance. LADCO believes this approach would both deal with the transport problem and satisfy the requirements of section 110(a)(2)(D) consistent with the D.C. Circuit Court's opinion.

### **1. Coverage/Timing**

Areas of interest for nonattainment and maintenance should be identified through a monitoring plus modeling process, similar to the process for identifying areas in CAIR. Both the current monitoring and the future year modeling would need to show nonattainment or maintenance issues in order for the area to be defined as an area of interest.

The states suggest using the most current air quality data from 2006–2008. These data are already quality-assured and should provide a sound basis for analysis. With regard to future year modeling, the states did regional analysis for 2012 and 2018. The states realize that these dates may not fit EPA's schedule. However, because they had the modeling framework and the inventories prepared, using these dates allowed the states to produce quick results. In particular, the states can provide EPA the data for nonattainment projections for 2012 and maintenance projections for 2018.

### **2. Significant Contribution**

The CAMx model was used to perform source apportionment for 2012 to help quantify significant state contribution to nonattainment. Modeling for 2018 continues, and although most of the results are available, they have yet to be finalized.

### **3. Remedy**

The states' preferred remedy would be reduction requirements for states that contribute to nonattainment or maintenance issues. The states propose to use 1% and 4% as the levels of significant contribution that would trigger controls. States contributing 1% would be required to meet CAIR Phase I type reductions, while states contributing 4% would be required to make deeper emissions reductions.

For the 1% base level of control, the states realize that EGUs are already subject to the CAIR reductions for 2009 and 2010. They propose that if EPA includes large non-EGUs in the program, it use 2012 as the compliance date for those units.

For the higher level of control, triggered at 4%, the states would like to see more stringent controls than CAIR. The states believe that this would most likely include large non-EGU

sources. Also, because more time would be required for sources to prepare for the more stringent controls, the states propose a future compliance date between 2015 and 2018, depending on the stringency of the program.

The 1% and 4% are relative to the total source contribution in the areas of interest. The states believe that using a relative metric is easier to understand and provides consistency across pollutants and standards. EPA used a different metric in the past and may feel bound by precedent to use something other than a relative metric. However, although it appears that the courts approved EPA's previous metric, the states believe that the metric they are proposing is easier and more straightforward.

Trading and banking should be part of the program. While intrastate trading should be allowed freely, interstate trading should have geographic controls. One option would be for states in the 4% bracket to be allowed to trade only with other states in the 4% bracket. Banking should be allowed, but with strong flow control.

## **IX. Discussion of LADCO's Proposal**

### **1. Thresholds**

Tim Smith asked LADCO to clarify what 1% referred to. Mike Koerber responded that it was 1% of the total contribution at a given downwind nonattainment area or monitor.

Sam Napolitano clarified that LADCO was looking at total contribution -- not simply EGU contribution, but the total upwind state contribution for both the annual and the daily PM<sub>2.5</sub>, as well as ozone standards. He then asked why LADCO chose 1% and 4% as the thresholds for control.

Mike indicated that the 1% was adopted from what EPA used in CAIR for PM<sub>2.5</sub>, with the difference being that EPA used 1% of the standard, and LADCO is using 1% of contribution. When LADCO looked at source apportionment it appeared that 1% would capture the largest mass of state emissions. Between 4% and 5% there is very little difference in which states are contributing. Four percent still captures a high percentage of the contributing states.

Sam then asked the states what their goal was for reductions, and whether they had determined how much reduction would be required from upwind states. Mike responded that states would need to achieve whatever level of control their contribution percentage triggered.

In summarizing his understanding of the states' proposal, Sam noted that the states want the same cap levels as those outlined in the old CAIR plan, with stronger controls required in 2015. He also asked the states to confirm that they had chosen 2012 and 2018 as their modeling years because those data were available, and not because those years had some special significance.

The states confirmed this understanding. They indicated that although they were uncertain as to what the stronger controls should be for 2015, LADCO and the member states would like to work with EPA to develop the specifics of those controls.



Sam then told LADCO that EPA wants to be sure the Agency is helping states with attainment and maintenance.

In response, Mike noted that attainment planning goes beyond the LADCO summary document, which is about the emissions transport provisions of section 110(a)(2)(D). A program that both addresses transport and provides attainment in the downwind areas is desirable. However, there are numerous nonattainment situations in which local source contribution is very important. The states are dealing with such local issues, which will need to be addressed in conjunction with regional controls. They understand that achieving attainment will require the right mix of local and regional controls. However, the LADCO summary document is not actually intended to solve nonattainment, but rather the transport issues associated with nonattainment.

## **2. Concerns about Significant Contribution**

Sonja Rodman expressed concern that the process LADCO proposes closely mirrors the process that was used for CAIR, a process that was rejected by the court. The three steps seem very similar to the CAIR process: (1) identifying areas of interest; (2) establishing reduction requirements; and (3) implementing a remedy.

Sonja said that this approach does not appear to include the important step of quantifying each individual state's significant contribution. Under the court's decision EPA is required to quantify each state's contribution, identify and quantify the part of the contribution that EPA deems to be significant, and eliminate all of the significant contribution. She expressed concern that if it fails to specifically quantify and then eliminate each state's significant contribution this plan might encounter the same difficulties that CAIR did. The court was quite clear in deciding that EPA had failed to quantify each state's individual contribution in CAIR.

Dan Murray replied that the states had been having a similar discussion and felt that the court recognized that there is a significant contribution threshold. The issue is where that threshold lies. The emissions do not need to be zeroed out from upwind sources but instead reduced below the significant contribution threshold.

Sonja agreed that emissions from upwind sources do not need to be completely eliminated. However, it is important to remember that the threshold used in CAIR was part of the linkage analysis. For example for PM<sub>2.5</sub>, if the contribution analysis showed that a state's total contribution was over a certain threshold it was required to participate in CAIR. However, that threshold was not used to define the amount by which a state had to reduce emissions. The state specific emission reduction requirements were defined through a complex process that took into account cost and assumed interstate trading as a remedy. The court concluded that this analysis was not adequate to quantify each state's significant contribution and that EPA had failed to eliminate each state's significant contribution.

Larry Bruss replied that he thought the summary document might be unclear about LADCO's proposal, and that all that was required of states is that they reduce to either a 1% or 4% level. Second, he said that eliminating all of the significant contribution from a source might

be impossible. For example, southeast Wisconsin is immediately downwind from Chicago and will likely always be affected on high ozone days. However, people still need to live and work in Chicago, making it nearly impossible to zero out all of Chicago's emissions. The same can be said for a number of other areas. It is impossible to remove enough emissions from the atmosphere to eliminate significant contribution. That is why the states propose a plan in which all states must address some level of contribution (1%), and that those states that have a severe impact would really have to reduce emissions (4%).

Sonja suggested that there might be some confusion in this discussion, and she explained that the statute requires the elimination of all significant contribution. In CAIR, however, significant contribution was defined, not on the basis of air quality threshold contribution, but on the basis of cost. Significant contribution was defined as the reductions that a state could achieve through implementation of highly cost-effective controls, and the highly-cost-effective analysis assumed trading. Thresholds were used as justification for inclusion in the CAIR region. Thus, what should the role of the replacement plan be in reducing contribution? Should the new rule eliminate all significant contribution, or only reduce it?

### **3. Modeling**

Turning to the specifics of the states' modeling, Sam Napolitano asked about the CAMx modeling, and whether the states had enough information to say which sectors had the largest role in significant contribution. For example, in a target area could the states say whether it was EGUs, large industrial boilers, or mobile sources that contributed the most?

Mike responded that LADCO looked at contribution by chemical species and did its modeling based on geographic zones defined by state boundaries. The data were then broken down by source sector, including EGU, non-EGU, on-road, and off-road. The results showed that the EGU contribution was important, but that it was not necessarily the largest at each location. Mike indicated that he would have to review the results to discuss this with more specificity. He noted, however, that mobile sources were an important category at many locations.

Sam confirmed with Mike that the geographical areas considered were only states, not partial states, and that LADCO had tried to use the same types of nonattainment areas that EPA uses so that everyone's data would be comparable. Sam concluded by saying that should the states feel comfortable sharing these data, EPA would really benefit from their technical work.

### **4. Timing**

Tim Smith next discussed the court's concerns about coordinating compliance schedules with achievement of reductions. In particular, the court found that EPA was not proposing to accomplish enough by 2010; however, he noted, by its ruling the court made it impossible to have a rule in place by then. He interpreted that as a general direction from the court to be more mindful of attainment deadlines in relation to compliance dates. He indicated that he thought EPA would have to better explain the relationship between the two in any new plan, and he asked whether the states had considered this issue, specifically with regard to the 1% and 4% thresholds they were proposing.

Mike Koerber responded that the 1% base level is from the existing CAIR program, and that those compliance dates have passed or will soon arrive. The states foresee a longer compliance timeline only if EPA decides to tighten the CAIR replacement rule by adding other sectors such as boilers. An additional 2-3 years might then be required.

However, for the more stringent level of control, triggered at the 4% threshold, more time might be needed depending on exactly where the thresholds were set, and on what types of reductions were required. Either way, with a higher level of control the states thought it was only logical that it would take longer to implement.

Tim asked what percentage of states in the CAIR region LADCO thought would trigger the 4% threshold. After some discussion, Mike summarized by explaining that most CAIR states would end up in the 1% category. The 4% category would be a smaller subset of states, for the most part eliminating fringe states such as Iowa, Florida, Mississippi, and Louisiana. He added that Minnesota contributed at 1% in this study.

## **5. Trading**

Sam Napolitano then turned to interstate trading and asked how the restrictions would work.

Mike Koerber noted that the court had strong reservations about EPA's trading program, and that the need to preserve "linkages" must be considered. The limits on interstate trading would be geographically based and would allow states in the 4% category to trade only with each other. The nonattainment demonstrations might need to be revisited if trades of large magnitudes were made. The states realize that these restrictions might be complicated, but they believe that trading is an important cost control element of the plan.

Sam asked if the states had any special provision concerning intrastate trading. Mike replied that he would not speak in detail about intrastate trading, as it is fairly simple and would not be restricted.

Laurel Kroack said she was not concerned about the Chicago area or the down-state utilities, noting that if the intrastate numbers are set correctly trading should not be a problem. She added that Illinois generally supports trading as the most cost-effective way to get the deepest reductions.

Regarding interstate trading, Rich Damberg, OAQPS, asked for a clarification as to whether states over the 4% threshold could trade with any state. For example, Illinois would be able to trade with Missouri, but could it also trade with New York?

Mike replied that Illinois could only trade with states with which it was also significantly contributing to nonattainment.

Dan Murray noted that the trading provision had been incorporated into the document during the group's last discussion, and that the group would have to discuss it further. He added

that he would like to pursue a greater degree of interstate trading. Further modeling and study would obviously be required, and there might still be some geographic limitations, but a broader trading program would help to provide more cost-effective reductions.

## **6. Banking and Flow Control**

Sam Napolitano raised the subject of flow control, asking the states to explain the environmental objective and the protocols they foresaw implementing.

Mike Koerber replied that the states had not discussed flow control in detail and thus could not offer a suggestion at present.

Tim Smith then raised the subject of banking, noting that there was a large SO<sub>2</sub> bank, and that the manner in which any replacement plan dealt with those banked allowances would greatly affect the nature and timing of the controls that companies might choose to add. Because of the high level of uncertainty, there is concern that many companies may choose to use the bank until the regulatory situation is more certain. This means that there is a potential for a short term increase in emissions while companies use more banked emissions. EPA has encountered difficulties in modeling this situation, and Tim asked whether the states had thoughts to share on this issue.

Bob Lopez replied that the importance of the bank had been implicit in the LADCO discussions, but that the subject had not been addressed internally by the states.

## **7. BART and RACT Requirements**

Tim Smith asked how the states were approaching BART, and whether they would look at BART relative to overall reductions.

Mike Koerber replied that LADCO had not addressed this issue in great detail, but that it intended to do so in future discussions.

Tim explained that when EPA created CAIR participation in CAIR was defined as meeting BART requirements. EPA modeling showed CAIR would achieve greater reductions than BART guidelines. In the CAIR replacement rule, EPA will again need to address how the rule could be integrated with BART requirements. EPA also needs to address the degree to which a CAIR replacement rule could address RACT requirements.

Bob Hodanbosi noted that some of the states had a longstanding disagreement with CAIR, and so had moved forward with the NO<sub>x</sub> RACT, putting on tighter controls irrespective of CAIR.

Larry Bruss noted that other states had problems with a CAIR rule structure that did not provide for reductions in nonattainment areas. As a result, states pursued RACT as though CAIR did not exist. States did not see the same need for immediate action with visibility and took a longer range approach.

As noted earlier in the discussion, all of these programs must fit together, and Tim thought industry would be far more supportive if the regulatory community could show how the programs work together and provide co-benefits. He indicated that EPA would like to hear any thoughts the states have on synergizing the emissions control programs.

Sam Napolitano added that EPA would be interested in any suggestions the states might have for further integrating anything from CAIR or the regional haze programs, and that this was the opportunity for states to raise these types of issues.

Larry Bruss mentioned visibility requirements, noting that while the court did not address them, those requirements are still part of the act.

Mike Koerber agreed that visibility needs to be addressed, but he suggested that it might not be as much of a priority. He thought the CAIR SO<sub>2</sub> and NO<sub>x</sub> requirements would satisfy any section 110(a)(2)(D) visibility requirements.

## **8. Coverage**

Sam then asked whether there were any other topics that states wanted to discuss.

Larry Bruss mentioned that EPA might want to look beyond the traditional eastern U.S. group of states. Especially if EPA uses the suggested 1% threshold, the Agency will find states in the west that may be significant contributors to nonattainment areas. For instance, California probably contributes at significance levels to areas of nonattainment in Arizona.

Sam responded by asking if Larry saw the replacement CAIR program as a fully national program.

Larry replied that he thought it would have to be. Section 110(a)(2)(D) is applied in a similar manner regardless of where a state is located in the country. He suggested having a national perspective when evaluating replacement proposals.

Sam said that EPA understood these concerns and will consider how much larger of a geographic area the Agency should include in the replacement CAIR rule. He noted that one consideration is that 2/3 of western EGUs have scrubbers. Furthermore, the west in general, but California specifically, has a lot of large gas-fired units.

## **9. Maintenance**

Tim Smith then asked Mike Koerber to again explain the section of LADCO's proposal that covers maintenance.

Mike replied that the proposal expands the lists of areas of interest by using a concentration threshold of 4% below the standard. Even though the list of areas would be expanded, he did not think the LADCO plan would offer a lot of additional emissions reductions over the earlier CAIR plan.

## **X. Conclusion**

Sam Napolitano concluded the call by thanking the states for taking the time to discuss the CAIR replacement rule with EPA. He noted that he considers the ideas they laid out to be a “work in progress”, and that he appreciates that states are willing to share ideas that might not be official positions but that are starting points for a strong dialogue between the states and EPA. He reiterated that EPA would hold a series of teleconferences with states, industry groups, and environmental groups, and would then share the results of all these meetings with LADCO and other states.

Mike Koerber thanked Sam for establishing this line of communication. He said LADCO would forward its recommendation, along with the technical work and modeling done to support its proposal, once it is complete in another month or so. He indicated that LADCO would at that point like to meet with EPA to discuss its key recommendations in detail.

## **Appendix A: Participants**

### **LADCO**

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Representatives from EPA Regions 1, 5, and 6