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Washington, DC 20460

Subject: **Docket ID No. EPA-HQ-OAR-2005-0172**
Comments on EPA's proposed rule, "National Ambient Air Quality Standards for Ozone," *Federal Register* 40 CFR Parts 50 and 58

Dear Ladies and Gentlemen:

Thank you for the opportunity to comment on the Environmental Protection Agency (EPA) Office of Air and Radiation's proposed rule, "National Ambient Air Quality Standards for Ozone," published in the Federal Register (FR) on January 19, 2010 (75 FR 2938). On behalf of the North Carolina Division of Air Quality (NCDAQ), I would like to offer the following comments.

Let me begin by saying that the NCDAQ believes the Administrator should establish standards for ozone that protect the public health with an adequate margin of safety as prescribed in the Clean Air Act. However, as EPA reconsiders the ozone standards, our State and our nation now face the most serious economic recession since the Great Depression. As of January 2010, North Carolina's unemployment rate was 11.1 percent, according to the Bureau of Labor Statistics, well above the national average of 9.7 percent. Many North Carolinians have lost their jobs and their health insurance, and face the real possibility of losing their homes. Therefore, the NCDAQ strongly believes that it is important to balance the concerns about the potential for health impacts of ozone with the current economic situation. Lack of employment, loss of health care, and in some cases, loss of a home, also affect the health of our citizens. As a result, NCDAQ suggests that EPA consider deferring action on further reductions in the ozone standards to ensure that the State can take the initial steps toward meeting the new standard without slowing the economic recovery.

Furthermore, EPA has noted in their rationale for the proposed range of the primary standard that an analysis of "exposures of concern" was conducted using three discrete benchmark levels (i.e., 0.080, 0.070, and 0.060 ppm). This concept is viewed with greater confidence and less uncertainty about the existence of health effects at the upper end of the benchmark levels, and less confidence and greater uncertainty as one considers increasingly lower ozone exposure levels. The NCDAQ agrees that it is important to balance the concerns about the potential for health impacts with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower ozone levels. As such, if EPA elects to further strengthen the primary ozone standard at this time, the NCDAQ would encourage the EPA to set the level of the primary standard at the upper end of the range to maximize the confidence and minimize uncertainty in the health benefits. The same consideration should also be used in the setting of the secondary standard.

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The NCDAQ has concerns with regards to certain implementation aspects of the proposed range of the primary and secondary ozone NAAQS. Background ozone levels in the Southeast approach 50 to 65 percent of the proposed range of the primary standard. The average winter time ozone concentration is currently about 0.040 ppm at rural sentinel monitoring locations operated by EPA in western North Carolina. Average winter time ozone concentrations, during the least photochemically active portion of the year, is an indicator of background levels. This average concentration is slightly higher than the range of policy relevant background (PRB) levels referenced in the January 2007 EPA Final Ozone Staff Paper, but is identical to the EPA's previously adopted value for PRB. The EPA's Clean Air Scientific Advisory Committee (CASAC) has also noted that as levels for ozone standards move closer to background levels, new issues may arise with implementation. The NCDAQ recommends that CASAC and EPA carefully study and fully understand the role of varying background levels when setting the ozone NAAQS now and in the future.

North Carolina has a long history of addressing environmental challenges, including the implementation of control measures to attain the various national ambient air quality standards (NAAQS) through the years. North Carolina strongly supports science-based standards and our state has demonstrated its leadership on air quality improvement. In order to attain the 1997 ozone standard, two progressive pieces of legislation were passed by the North Carolina General Assembly (NCGA). First, in 1999, the Clean Air Bill was passed to require a vehicle inspection and maintenance program in 48 of the State's 100 counties. As a result of this legislation, approximately 80 percent of the light duty gasoline vehicles registered in North Carolina are tested each year to assume emissions control on the vehicles are operating properly. Next, to address not only the ozone standard, but also the fine particulate matter (PM2.5) standard and regional haze issues in the State and region, the NCGA passed the Clean Smokestacks Act in 2002. This multi-pollutant legislation was one of the first of its kind in the United States. Implementation of this legislation and other State and Federal measures led to attainment of the 1997 ozone standard at all but one monitor in the State by the end of 2009, as well as attainment of the annual PM2.5 standard a year early. The emission reductions resulting from this legislation also led to all areas in the State being in compliance with the daily PM2.5 standard at the time of designations. These actions show the State's commitment to implementing appropriate control measures geared toward attaining the ambient standards and protecting the public's health.

The NCDAQ has significant concerns about an individual state's ability to reach the new standards with a significant portion of the proposed range attributable to background levels. For the state of North Carolina, our Clean Smokestacks Act has already brought about significant reductions in nitrogen oxides, a key precursor to ozone development, by our two largest utility companies. While some additional stationary source reductions at other facilities are possible, they are smaller facilities and reductions from them will not have the same significant impact on our ambient air quality concentrations. As a result, North Carolina and other states will have to rely on regional and national emission reduction initiatives and federal regulation on vehicular emissions to reach the more stringent NAAQS. Therefore, it is paramount that EPA promulgates expeditiously the replacement for the remanded Clean Air Interstate Rule (CAIR) and the Maximum Achievable Control Technology Standards (MACTs) for utility boilers and industrial boilers. The NCDAQ urges EPA to align the compliance date for additional nitrogen oxide limits under the CAIR replacement rule with the expected attainment dates under the new ozone standard. Such alignment would be consistent with the July 11, 2008 D.C. Circuit court ruling on the CAIR. Additionally, with this revision of the ozone NAAQS, it will be necessary for the EPA and the federal executive branch to develop a partnership with neighboring countries to make similar reductions in the emissions of ozone precursors that are transported into the United States to ensure the NAAQS can be attained.

Although the EPA did not request comments on the accelerated schedule for the primary standard, the NCDAQ has significant concerns with this schedule. It is our understanding that EPA established the accelerated designation and attainment demonstration schedule as a compromise to speed the transition to a more protective standard. However, if the EPA elects to further strengthen the ozone standards at this time, the NCDAQ believes that there is not an adequate amount of time to fully educate and discuss boundary recommendations with elected officials and the general public in areas that have never been designated nonattainment. Additionally, states need the time to assess how the Federal control programs that have yet to be promulgated, such as the replacement for the remanded CAIR and boiler MACTs, will be implemented. With the proposed range, the NCDAQ believes we will also need innovative control strategies, above and beyond the Federal control programs yet to be promulgated, which will require additional time to develop, model, and send through a proper stakeholder process for rule development. Therefore, the EPA needs to allow a full year for boundary recommendations and a full three years for states to develop attainment demonstrations.

Another concern is the NCDAQ, like many state air control agencies, is in poor financial condition due to the current economic situation. The NCDAQ has eliminated twenty-three positions within the last two years and expects to eliminate another nine positions in the next few months. In addition to the cost of deploying new ozone monitors to meet the requirements in the proposed ozone monitoring rule, the NCDAQ is in need of replacing most of its ozone monitors, as the aged units are approaching their anticipated end-of-life. The NCDAQ also has to determine how to fund the additional monitoring requirements for the new lead, sulfur dioxide, and nitrogen dioxide standards. Furthermore, the NCDAQ is expending resources to implement and enforce the generally available control technology (GACT) regulations, not to mention the expected resources that will be needed for the future climate change regulations. The new requirements and shrinking funds are placing the NCDAQ in a position where it will not be able to afford to implement all of the new monitoring requirements for the various pollutants.

Therefore, EPA needs to fully fund the cost of implementing the ozone monitoring requirements. These funds need to be in the form of Section 103 grant monies rather than Section 105 grant monies. If the monitoring is funded with the Section 105 grant, many states may not be able to meet the matching funds requirements for Section 105 grant monies.

This letter only serves to highlight the NCDAQ's larger concerns with the proposed revision to the ozone NAAQS. More detailed comments on the proposed changes to the ozone NAAQS are offered in the attachment to this letter.

Thank you again for the opportunity to comment on the proposed revisions to the ozone NAAQS, and for taking the time to thoroughly consider the NCDAQ's recommendations.

Sincerely,

Sheila Holman

for B. Keith Overcash, P.E.

cc: Sheila Holman
Michael Abraczinskas
Laura Boothe
Donnie Redmond
Joette Steger

Primary Standard for Ozone:

Level of the Primary Standard for Ozone

(75 FR 2998) EPA proposes setting the level of the 8-hour primary ozone standard to within a range of 0.060 to 0.070 ppm. The proposed 8-hour primary standard would be met at an ambient air monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to the level of the standard that is promulgated.

NCDAQ's Comments: Under normal circumstances, the NCDAQ believes the Administrator should establish standards for ozone that protect the public health with an adequate margin of safety as prescribed in the Clean Air Act. However, as EPA reconsiders the ozone standards, our State and our nation now face the most serious economic recession since the Great Depression. As of January 2010, North Carolina's unemployment rate was 11.1 percent, according to the Bureau of Labor Statistics, well above the national average of 9.7 percent. Many North Carolinians have lost their jobs and their health insurance, and face the real possibility of losing their homes. Therefore, the NCDAQ strongly believes that it is important to balance the concerns about the potential for health impacts of ozone with the current economic situation. Lack of employment, loss of health care, and in some cases, loss of a home, also affect the health of our citizens. As a result, NCDAQ suggests that EPA consider deferring action on further reductions in the ozone standards to ensure that the State can take the initial steps toward meeting the new standard without slowing the economic recovery.

Furthermore, EPA has noted in their rationale for the proposed range of the primary standard that an analysis of "exposures of concern" was conducted using three discrete benchmark levels (i.e., 0.080, 0.070, and 0.060 ppm). This concept is viewed with greater confidence and less uncertainty about the existence of health effects at the upper end of the benchmark levels, and less confidence and greater uncertainty as one considers increasingly lower ozone exposure levels. The NCDAQ agrees that it is important to balance the concerns about the potential for health impacts with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower ozone levels. As such, if EPA elects to further strengthen the primary ozone standard at this time, the NCDAQ would encourage the EPA to set the level of the primary standard at the upper end of the range to maximize the confidence and minimize uncertainty in the health benefits. The same consideration should also be used in the setting of the secondary standard.

AQI Reporting Requirement

(75 FR Page 2999) EPA proposes setting the 100 level of the AQI at the level of the primary standard, with proportional adjustments to other AQI breakpoints. Require AQI reported in areas where ozone monitoring is required, as determined by the latest census numbers.

NCDAQ's Comments: The NCDAQ appreciates the USEPA recognizing the importance of revising the AQI in a timely manner to be consistent with any revisions to the NAAQS. The NCDAQ encourages the USEPA to hold fast to this acknowledgement and to appropriately revise the AQI with respect to any revisions to the primary ozone standard at the time of final rulemaking. The NCDAQ strongly recommends that the USEPA set the 100 AQI level at the same level as set for the primary ozone standard resulting from this rulemaking. The 50 and 150 AQI breakpoints should also be appropriately set consistent with how the 2008 primary ozone standard and other NAAQS pollutants AQIs were set. Finally, the NCDAQ does not have any significant opposition to the proposed change to the AQI reporting requirements to be based on population from the latest available census figures rather than the latest decennial U.S. census.

For ease of transition, the NCDAQ suggests the administrator make the new AQI effective after the 2010 ozone forecast season. Switching to a new AQI scale in mid season could cause public confusion about air quality levels. A delay in the effective date to November 1, 2010 would minimize the number of states impacted by the transition, which would allow states to develop outreach material to educate their citizens of the change outside of their ozone forecast period.

Secondary Standard for Ozone:

Form of Secondary Standard (Averaging Times)

(75 FR 3021) The EPA proposes a secondary ozone standard that is a three-year average of the maximum 3-month, 12-hour W126.

NCDAQ's Comments: The proposed reconsideration of the ozone standard stated that CASAC's recommendation for the secondary standard should account for the accumulated effect over the three maximum ozone months of the summer growing season. Therefore, the NCDAQ believes that the EPA should establish the standard to make sure that the three-month period considered is in the summer growing season and does not occur outside that period. The NCDAQ agrees that a 3-year average should be used to determine compliance with the standard.

Level of Secondary Standard

(75 FR 3026) The EPA proposes secondary standard in the a range of 7–15 ppm-hour for a cumulative, seasonal secondary ozone standard expressed as an index of the annual sum of weighted hourly concentrations (i.e., the W126 form), cumulated over 12 hours per day during the consecutive 3-month period within the ozone season with the maximum index value, averaged over three years.

NCDAQ's Comments: The NCDAQ has concerns about a secondary standard being effectively more stringent than the primary health standard. The NCDAQ believes the setting of the standards should focus primarily on protecting public health versus public welfare. The NCDAQ agrees with the Administrator that an appropriate balance needs to be considered in setting the secondary standard and that the standard should be set within the range that would be sufficient but not more than necessary to protect public welfare. Based upon the uncertainties in the current scientific studies, the NCDAQ believes that the upper range would sufficiently protect public welfare.

Evidence for the Secondary Standard

(75 FR3027) EPA asks for comments on the weight that is appropriately placed on the various types of evidence and analyses upon which this proposed standard is based, and on the appropriate weight to be placed on the uncertainties in this information, as well as on the benefits to public welfare associated with the proposed standard relative to the benefits associated with the standard set in 2008."

NCDAQ's Comments: The NCDAQ agrees with the Administrator that an appropriate balance needs to be considered in setting the secondary standard and that the standard should be set within the range that would be sufficient, but not more than necessary to protect public welfare. Based upon the uncertainties in the current scientific studies, the NCDAQ believes that the upper range would sufficiently protect public welfare.

Interpretation of the NAAQS for Ozone and Proposed Revisions to the Exceptional Event Rule:

Monitoring Period Used for Secondary Standard (required only, or all monitored)

(75 FR 3028) EPA proposes the use of only the required monitoring season data in calculating the secondary standard.

NCDAQ's Comments: If the EPA insists on using an index based on the three highest consecutive months, then the NCDAQ urges the EPA to limit the data used to determine compliance with the secondary standard to only the data from the required ozone monitoring season. If the purpose of the secondary standard is to protect plant life during the growing season, it does not make sense to include monitoring data outside of the ozone season since this period is not part of the summer growing season. Additionally, by allowing any additional period of monitoring undertaken voluntarily by a state to be used in attainment and nonattainment decisions would punish those states that voluntarily collect additional data outside the ozone monitoring season. The NCDAQ believes that it is to the State's and EPA's benefit to have some ozone monitors run outside the season to provide additional data for determining the adequacy of the ozone season, etc. If these data will be used to determine that an area is nonattainment, states and local agencies may opt to stop voluntarily operating these monitors. The NCDAQ believes this decision would be detrimental to both the states and the EPA.

Secondary Standard Calculation (Maximum Spanning a Calendar Year)

(75 FR 3028) EPA expects that the three months over which the cumulative weighted index value is highest will generally occur in the middle of each year. Therefore, the proposed new section 4 of Appendix P presumes this, and does not address a situation in which the three months of maximum cumulative index spans two calendar years, for example December to February.

NCDAQ's Comments: The need for including Nov – Jan and Dec – Feb averages in the proposed standard appears to be small; however the NCDAQ believes there is no harm in allowing it for the sake of consistency in the rule making. The NCDAQ further asserts that the rule will need to specify which one of the two calendar years the averages should count against, as there should be only 12 such averages counted within one calendar year. For example, a Nov – Jan average would only count against the same calendar year as the year in which November and December occurred. Finally, if the purpose of the secondary standard is to protect plant life during the growing season, there needs to be some assurance that the if the winter period is the highest three months that this is a growing season for the area.

Data Substitution Exception Rules (Primary Standard)

(75 FR Page 3030) In some data substitution cases, using the lowest observed same-hour concentration might not be low enough to eliminate all possibility that the value used for substitution is higher than the missing concentration value. To reduce this likelihood to essentially zero, EPA is proposing that if the number of same hour concentration values available for the required ozone monitoring season for the year is less than 50 percent of the number of days during the required ozone monitoring season, one-half the method detection limit (MDL) of the ozone instrument would be used in the substitution instead of the lowest observed concentration.

NCDAQ's Comments: The NCDAQ agrees that the fifty percent threshold seems reasonable, and would further suggest that 100 actual days would be an adequate minimum for completeness purposes. The NCDAQ would also suggest that the EPA consider, for this standard revision or possible future revisions, adding a distribution requirement to ensure the days are spread across the entire monitoring season to further enhance data substitution.

The NCDAQ does have some reservation regarding the one-half the MDL method when data completeness falls below fifty percent. From a purely statistical perspective, if one was concerned with guaranteeing the substitution value is smaller than the true value, using exactly zero would accomplish the same goal and is no less theoretically justified than using one-half the MDL. To mitigate the risk of imputing an 8-hour average that is unreasonably low, the NCDAQ would recommend imputing small concentrations for missing hours only until there are six hours in the average, since six hours are sufficient when no imputation is required.

Alternative Approaches for the Proposed Data Substitution Exception Rules (primary standard)
(75 FR 3030) The EPA proposes to revise portions of Appendix P that describe certain exceptions to the standard data completeness requirements, under which a monitoring site can in some cases be determined to be meeting or violating the primary NAAQS despite not meeting the standard data completeness requirements. EPA is receptive to alternate approaches to the proposed data substitution exception for the primary standard.

NCDAQ's Comments: The NCDAQ would suggest an alternative approach involving the substitution of the smallest of the maximum daily 8-hour averages for the season (or year). The process would entail compiling a data set of the maximum daily 8-hour averages for the season (or year) where data substitution procedures have not been applied. Any 8-hour average periods that contain "too few" data points (less than four) would be omitted from the data set. If a state can produce a data set with at least 100 days worth of maximum daily 8-hour averages, then the smallest value in the set would be a fair value to substitute as a minimal average value for any data substitution rule for missing hourly data.

Alternative Methods Data Substitution Exception Rules (primary standard)
(75 FR 3030) The EPA also invites comment on whether the proposed approach to substitution should be used at all and if not what other approach should be used to address the potential problem just described.

NCDAQ's Comments: The NCDAQ would suggest an alternative approach involving the substitution of the smallest of the maximum daily 8-hour averages for the season (or year). The process would entail compiling a data set of the maximum daily 8-hour averages for the season (or year) where data substitution procedures have not been applied. Any 8-hour average periods that contain "too few" data points (less than four) would be omitted from the data set. If a state can produce a data set with at least 100 days worth of maximum daily 8-hour averages, then the smallest value in the set would be a fair value to substitute as a minimal average value for any data substitution rule for missing hourly data.

Alternatively, the NCDAQ suggests moving to a percentile based standard, instead of the currently proposed order statistic, which would also minimize the impact of incompleteness on the design value. For example, if the ozone monitoring season is seven months long and data capture is 100 percent complete then the 4th maximum is equivalent to the 98^{th} percentile. This percentile of the actual valid data is a reasonable surrogate for the 4th maximum statistic that is unobservable because of any data incompleteness. The associated completeness requirement could then be tailored to any level that is deemed necessary to accurately estimate the percentile statistic. The same percentile-based approach to alleviating daily incompleteness would obviate some of the need for an hourly substitution procedure.

Data Substitution Exception Rules for Days outside Required Monitoring Season (primary standard)
(75 FR 3030)The EPA proposes for days outside the required ozone monitoring season, the substitution value would always be one-half the MDL of the ozone instrument

NCDAQ's Comments: The NCDAQ has reservations regarding the use of one-half the MDL for data substitution values. There is little justification for the use of one-half the MDL as the average of actual values can easily be less than one-half MDL, especially outside of the required monitoring season. From a purely statistical perspective, if one were concerned with guaranteeing the substitution value is smaller than the true value, using exactly zero would accomplish the same goal and is no less theoretically justified than using one-half the MDL.

Data Completeness Across Three Years

(75 FR 3031) EPA proposes to eliminate the 90 percent requirement across three years of data but to retain the 75 percent requirement for individual years.

NCDAQ's Comments: The NCDAQ would agree to eliminate the 90% completeness requirement as it is almost redundant with the 75% annual completeness requirement. There is some concern that if one year's completeness is markedly different from the other two years, then paradoxical or unreasonable design values would be possible. Increasing the individual-year completeness requirement is one way to alleviate this issue; however, the 75 % level seems adequate, given stronger requirements could be unduly burdensome to a monitoring agency.

Alternatively, the NCDAQ suggests moving to a percentile based standard, instead of the currently proposed order statistic, which would also minimize the impact of incompleteness on the design value. For example, if the ozone monitoring season is seven months long and data capture is 100 percent complete then the 4th maximum is equivalent to the 98^{th} percentile. This percentile of the actual valid data is a reasonable surrogate for the 4th maximum statistic that is unobservable because of any data incompleteness. The associated completeness requirement could then be tailored to any level that is deemed necessary to accurately estimate the percentile statistic. The same percentile-based approach to alleviating daily incompleteness would obviate some of the need for an hourly substitution procedure.

Alternative Schedules:

Alternative Schedules for the Secondary Standard Exception Events

(75 FR 3033) EPA proposes two alternative schedules for the secondary standard. Under the first alternative, EPA would designate areas for the secondary standard on the same accelerated schedule discussed above for the primary standard. Under the second alternative, EPA would designate areas for the secondary standard on the maximum 2-year schedule provided under the CAA.

NCDAQ's Comments: Although the EPA did not request comments on the accelerated schedule for the primary standard, the NCDAQ has concerns with this schedule. The NCDAQ believes that there is not an adequate amount of time to fully educate and discuss boundary recommendations with elected officials and the general public in areas that have never been designated nonattainment if the EPA further strengthens the ozone standards. Additionally, the proposed range will require innovative control strategies that will require additional time to develop, model, and send through a proper stakeholder process to develop the necessary rules. Therefore, the EPA needs to allow a full year for boundary recommendations and a full three years for states to develop attainment demonstrations.

The NCDAQ would prefer the designations for the secondary standard be on the same schedule as the primary standard. The NCDAQ feels placing both standards on the same schedule will eliminate duplicative work for both the states and the EPA. Since the modeling that will be required for demonstrating attainment of the primary standard can be used for demonstrating attainment of the

secondary standard, it would reduce the number of future year modeling runs required if the SIP schedules were the same for both standards. Additionally, the submittal of one plan to demonstrate attainment of both standards reduces staff resources for both the states developing the plans and the EPA in reviewing the plans.

Additionally, the NCDAQ believes that the accelerated schedule would pose issues with respect to exceptional event flagging. Under the accelerated schedule, states would need to flag and submit documentation for 2007-2009 by November 1, 2010. With the final rule on the standard scheduled to be released August 31, 2010, states would only have two months to flag and prepare documentation unless they prepare against an assumed level of the standard.

Additionally, the 2nd quarter 2010 exceptional event flags and documentation would need to be submitted by August 30, 2010, a day prior to the scheduled release of the final rule. This goal is not achievable by the states as the level of the new standard will not be known prior to the due date of the exceptional event packages.

Furthermore, with the limited guidance that has been provided by the EPA on exceptional events packages, states will need adequate time to determine what is necessary to demonstrate an exceptional ozone event. States might need to develop new processes and analysis tools to produce comprehensive ozone exceptional event packages; given that these events are very different from fine particulate matter exceptional events. EPA needs to provide guidance that outlines acceptable and unacceptable demonstration strategies in an ozone exceptional events package, which would facilitate the state's ability to produce exceptional event packages on an accelerated schedule.

Designation Schedules with a Secondary Standard

(75 FR 3037) EPA is considering whether an accelerated schedule for a seasonal secondary standard would provide adequate time for resolving issues that we cannot now anticipate, since a secondary standard for ozone has never been set before.

NCDAQ's Comments: Although the EPA did not request comments on the accelerated schedule for the primary standard, the NCDAQ has concerns with this schedule. The NCDAQ believes that there is not an adequate amount of time to fully educate and discuss boundary recommendations with elected officials and the general public in areas that have never been designated nonattainment if the EPA further strengthens the ozone standards. Additionally, the proposed range will require innovative control strategies that will require additional time to develop, model, and send through a proper stakeholder process to develop the necessary rules. Therefore, the EPA needs to allow a full year for boundary recommendations and a full three years for states to develop attainment demonstrations.

The NCDAQ would prefer the designations for the secondary standard be on the same schedule as the primary standard. The NCDAQ feels placing both standards on the same schedule will eliminate duplicative work for both the states and the EPA. Since the modeling that will be required for demonstrating attainment of the primary standard can be used for demonstrating attainment of the secondary standard, it would reduce the number of future year modeling runs required if the SIP schedules were the same for both standards. Additionally, the submittal of one plan to demonstrate attainment of both standards reduces staff resources for both the states developing the plans and the EPA in reviewing the plans.