CLEAN AIR TASK FORCE

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Testimony of Ann B. Weeks, Litigation Counsel
EPA Public Hearing on the Proposal to Implement the 8-Hour Ozone National Ambient Air Quality Standard,
68 Fed. Reg. 32,802 (June 2, 2003).

Alexandria, Virginia, June 27, 2003

Good Morning. My name is Ann Weeks. I am Litigation Counsel to the Clean Air Task Force. Thank you for the opportunity to come here today to present our views on this proposal. We also plan to submit detailed written comments by the August 1st deadline.

The Clean Air Task Force is a not-for-profit environmental organization providing legal representation and technical expertise to other non-profit environmental and public health organizations around the country. We are the authors of several reports on the public health damage associated with the air emissions from the nation's older coal- and oil-fired electric power plants.

EPA's stated purpose in issuing this proposal is to finally put in place the requirements for meeting the more stringent 1997 8-hour ozone standard

– which the Agency and the courts have recognized is essential to protect the public health. With this proposal, however, EPA seems to be deliberately avoiding the more stringent requirements Congress specifically added into the Clean Air Act to deal with the nagging, seemingly intractable ozone problem. The Agency instead seems to be universally favoring more "flexibility," longer timelines to attainment, and new, and vaguely defined "offramps" for nonattainment areas from the process of actually getting to attainment and getting there quickly.

Now, I say "the Agency *seems* to be," because frankly, there's no way of really telling from this Federal Register notice exactly what EPA is going to require of non-attainment areas. Indeed EPA has not modeled the health impacts of this proposal precisely because this proposal is not yet well-defined enough to model.

The Emperor has no clothes! We are all here, participating in a public hearing, trying to predict what the outcome of this proposal will be, when EPA has not yet put forward a framework to analyze. Let's be clear: EPA's proposal consists of 68 triple-columned Federal Register pages describing a complex collection of mix and match "options" – but EPA has not yet provided us with the proposed rule text. This is highly irregular. Like the

courtiers in the famous Hans Christian Anderson fairy tale, we are being asked to note and evaluate the fine weave and pattern in the cloth – even though there is no actual cloth on the loom.

I have only 5 minutes here, so I won't digress into the fairy tale. And I won't comment on specific details about cloth I cannot see. We are told that EPA does plan to make rule text available to us in the coming weeks, while the comment period is still open. So today, I would like to provide some thoughts about what we are looking to see in the proposed rule language, when EPA finally makes it available to us.

First, EPA must not return us to a world of endlessly extended deadlines for reaching attainment, and insufficient control measures in new 8-hour nonattainment areas. The EPA proposal seems to put this scheme forward as its preference when it suggests that all areas designated ozone nonattainment for the first time in 2004 will be governed by the less rigorous requirements of subpart 1 of the Act. We believe it is a mistake to so cavalierly throw away the greater structure and rigor of subpart 2 in these areas.

Second, we view with real concern the method EPA proposes to use in transitioning between the 1-hour standard and the 8-hour standard. The proposed rule language, when it is released to us, should include provisions providing that areas that are currently not attaining the 1-hour standard will, in fact, be required to attain it, and to continue with measures designed to achieve that goal, until it is attained. It is true that the 8-hour standard responds to the need for protections from lower levels of ozone experienced over longer time periods. But exposure to high levels of ozone over shorter periods of time remains a significant health issue, and measures that have been put in place to guard against such events should not simply disappear when the new standard is implemented. Public health requires protections against both kinds of exposure to this pollutant.

Third, we ask EPA to eliminate the "incentive feature" from its subpart 2 classification system for the dirtiest areas. This preamble suggests that an area that is both violating the 1-hour standard and also the 8-hour standard could get a lower 8-hour classification rating (and therefore be required to do less to combat smog) on the basis only of computer modeling showing that the area will attain the 8-hour standard in the shorter timeframe associated with the lower classification. We are concerned about gaming – indeed EPA's preamble does not provide any detail about what models

would be acceptable or not for this purpose. Moreover, we are concerned about what happens when the area does not achieve the standard in the time it claims it will. More delay?

Finally, we note that the Bush Administration's policy choices – to provide additional flexibility, allow backsliding, and promote offramps from the more stringent provisions of subpart 2 of the Act – seem strongly driven by an assumption that its Clear Skies Initiative power plant legislation will become law. But, in fact Clear Skies is not law, nor are any of the several other, stronger, more health-protective competing legislative proposals yet law. Congress has not made that choice yet, and the Agency must not assume it has or will make that choice. This is one more instance in which the Emperor's outfit is significantly lacking at best! More seriously, it's an exceedingly bad way to make important policy choices that will impact the health of children, seniors, and other vulnerable people in our society.

Thank you again for the opportunity to share the Clean Air Task Force's views on this preamble.