

News from U.S. Rep. John Spratt (D-SC)

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US House of Representatives – Washington, DC

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S.C. Lawmakers Press EPA Administrator on Air Quality

Last Minute Appeal: Don't Include York County in the Charlotte-Mecklenburg "Non Attainment Area"; EPA Decision Due Tomorrow

WASHINGTON – U.S. Rep. John Spratt (D-SC) and U.S. Senator Lindsey Graham (R-SC) yesterday engaged the Administrator of the Environmental Protection Agency, Michael O. Leavitt, in an eleventh hour appeal not to include York County in the Charlotte-Mecklenburg Air Quality Non-Attainment Area. Separately, Governor Mark Sanford made a similar plea by telephone to Administrator Leavitt. The Administrator is in the process of deciding this and other Clean Air non-attainment issues, and is set to announce his decisions on Thursday, April 15.

Spratt today released a copy of the letter that he, Senator Graham, and Senator Hollings submitted to Administrator Leavitt following a meeting with him on March 3. "This letter makes the case for York County as strongly as we can state it," said Spratt. "We make it abundantly clear that we are not asking for the Clean Air Act to be waived in our favor. After all, York County is in attainment with the Clean Air Act. Secondly, we point out that South Carolina has in place Early Action Compacts with York, Lancaster, and Chester and other counties that promise quicker compliance with the new air quality standards than the law requires."

The letter emphasizes that in March 2003, South Carolina's Department of Health and Environmental Control (DHEC), at EPA's urging, worked out a Memorandum of Understanding with the North Carolina Department of the Environment and Natural Resources. Both agencies declare that "their joint goal...is to act together and cooperatively to achieve ozone attainment for the entire [Charlotte-Mecklenburg] Metropolitan Statistical Area (MSA)." DHEC agrees to "require and/or implement the controls...found necessary to address the Charlotte-MSA non-attainment."

The letter also recites DHEC's record of accomplishment. During the 1980s, DHEC made existing emission sources in South Carolina subject to "Reasonably Available Control Technology" and new sources subject to "Lowest Achievable Emission Reduction." As a result, volatile organic compound emissions (VOCs) in York County were reduced from 13,912 tons in 1980 to 1,826 tons in 1990. DHEC has put plans in place to comply with new air quality standards by 2005 instead of 2007 as required by law.

The letter also points to precedent. York County was not included in the Charlotte-Mecklenburg non-attainment area in 1990, when the Clean Air Act was last amended, based upon an arrangement between EPA and DHEC, which Spratt helped work out. "DHEC has not used this exclusion to avoid the consequences of the Clean Air Act. To the contrary, South Carolina has worked to improve air quality, and in particular, emissions that may contribute to Charlotte's problems."

Spratt called the conversation with Administrator Leavitt positive but non-committal. Leavitt must resolve similar appeals from counties in a number of other states, including Missouri, Mississippi, Texas, Tennessee, Indiana, Ohio, and North Carolina. About three hundred counties are likely to be declared in violation on April 15, and more than 100 neighboring counties could be deemed in violation as contributors to their neighbors' problem.

The list EPA is to release on April 15 results from a revision of Clean Air Act standards initiated by EPA in 1997. The old standards measured air quality compliance over one-hour periods. The new standards are tighter but measure compliance over eight hours instead of one. The new standards also apply to particulate matter as well as to ozone and its precursors.

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March 16 Letter to EPA Administrator from Hollings, Graham, Spratt:

March 16, 2004

The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Room 3000, Mail Code 1101A
Washington, D.C. 20460

Dear Administrator Leavitt:

Thank you for meeting with us and our staff on March 3, 2004, to discuss the air quality situation in York County, South Carolina. We want to underscore the strong case for excluding York County from the Charlotte-Mecklenburg non-attainment area. At the close of our meeting you told us that President Bush had given you two broad mandates: one is to clean the air, and the other is to allow the economy to grow. We argue below that you can best serve both mandates by not including York County in the Charlotte-Mecklenburg air quality attainment zone.

1) Is York County in 8-hour ozone attainment?

The one York County air quality monitor located near York registers 8-hour ozone levels at .083 parts per million, below the .085 parts per million required for non-compliance. Air quality sensors in the Arrowood section of Charlotte, a large industrial park just north of the border between York and Mecklenburg, also meet the ozone standard. Air quality readings become significantly worse northeast of Charlotte, indicating that Charlotte is the dominant cause of its own air quality problems. Furthermore, counties to the south, east, and west of York County in South Carolina are all below the non-attainment threshold, so the immediate “bubble” around York County attains the standard. This suggests that York County may not have a significant impact on the air quality of Charlotte-Mecklenburg.

2) Has York County demonstrated its commitment to clean air?

Since 1980, existing emissions sources in South Carolina have been subject to “Reasonably Available Control Technology” and new sources have been subject to “Lowest Achievable Emission Reduction.” As a result, volatile organic compound (VOC) emissions in York County were reduced dramatically, from 13,912 tons in 1980 to 1,826 tons in 1990, and York County has been in compliance with respect to ozone and carbon monoxide.

Furthermore, to facilitate emission reductions and speed up attainment of the 8-hour ozone standard, the South Carolina Department of Health and Environmental Control (DHEC), with EPA’s support and concurrence, has developed an Early Action Compact for York, Chester, Lancaster, and Union, all counties within the Charlotte region. This compact was approved by J. I. Palmer, Jr., Administrator of Region IV, by letter to DHEC dated December 31, 2002. Mr. Palmer recognized that “early actions taken in South Carolina will be important to the success of the Charlotte Region Integrated Air Quality Pilot Project. Therefore, in addition to the milestones for identifying and adopting early control measures established in this Early Action Compact, one of our further requirements in accepting the compact is that South Carolina will continue to actively participate in the Charlotte Project and will agree to implement appropriate controls needed for attainment in the Charlotte area, even if they are beyond the controls developed for the compact.” In response to this requirement, DHEC has entered into a Memorandum of Understanding with the North Carolina Department of Environment and Natural Resources to improve air quality.

In 2001, DHEC began to receive numerous permit applications for merchant power plants in the I-85 corridor of South Carolina, of which York County is part. These plants were attracted to the I-85 corridor because of access to a natural gas transmission pipeline and to the electric power grid. Since this area was vulnerable with regard to ground-level ozone, DHEC determined that authorizing the large amounts of additional nitrous oxide (NOx) emissions proposed by these and similar NOx sources would not be appropriate without affirmative proof that additional emissions would not adversely affect this area. Because of DHEC’s determination, NOx emissions estimated at 3,610 tons per year were not authorized.

3) Has South Carolina demonstrated a commitment to clean air?

South Carolina has a proven record of attaining national air quality standards. No areas in South Carolina are currently designated as non-attainment, and South Carolina was one of the first, if not the first, state to have an area re-designated in attainment following implementation of the 1-hour ozone standard under the 1990 Clean Air Act Amendments.

DHEC anticipates having plans in place by April 2005 for statewide compliance with 8-hour ozone standards well before EPA's deadline of April 2007. We understand that compliance will not be required until 2009 for some areas in marginal and moderate non-attainment, and until 2024 for areas with the worst air quality.

The South Carolina General Assembly has passed, and Governor Sanford has signed, a joint resolution endorsing Early Action Compacts and encouraging state agencies to lead by example and develop programs that focus on reduction in ground-level ozone. At the end of 2002, 45 of South Carolina's 46 counties (including York County) had entered into Early Action Compacts to implement ozone reduction strategies earlier than federally required. These counties, along with other government entities, industry, environmental groups, and various stakeholders have worked together at the local and state levels on strategies to reduce ozone pollution. These efforts affirm our state's commitment to improve air quality for all of South Carolina. As a matter of fact, the stakeholders involved in this early action process identified 675 initiatives to obtain ozone reductions at the local level. To ensure that growth does not adversely affect South Carolina's ability to meet the 8-hour ozone standard, the state is on schedule to impose regulations to address NO_x emissions from new and existing stationary sources and open burning activities statewide. These requirements will have the potential of reducing and preventing the addition of over 5,500 tons of NO_x to the state's current emissions inventory.

South Carolina has also implemented a comprehensive ozone-forecasting program that covers twenty-nine of the state's forty-six counties, including those most vulnerable to higher ozone levels. Citizens in those counties are advised on a daily basis about predicted air quality so that they can take actions to protect their health. In addition, South Carolina is an original partner with EPA on the AIRNow project, which makes current and forecast ozone and particulate matter air quality information available to citizens statewide.

DHEC has also been working with the largest existing industrial sources in the more vulnerable areas of South Carolina to reduce NO_x emissions. These efforts will result in a reduction of 12,458 tons per year in NO_x emissions from 8 facilities, and these reductions will be captured through permit limits.

Finally, South Carolina has invested significant resources to conduct a statewide 8-hour ozone modeling analysis. Modeling results demonstrate that all areas of South Carolina will attain the 8-hour ozone standard by 2007 due to the reductions attributed to the federal and regional requirements currently in place. In fact, modeling results indicate a 12% statewide average decrease in ozone levels. In addition, a modeling analysis for 2012 demonstrates continued attainment. The results of this modeling validate the regional modeling done by EPA,

which also demonstrated attainment for all South Carolina areas. The modeling completed to date does not incorporate the benefits to be derived from the Early Action Compact plan requirements or EPA's proposed non-road requirements, from which we anticipate significant air quality benefits. The modeling to date also does not include the benefits from reductions that the additional regulatory and permitting activities mentioned elsewhere in this letter will achieve.

4) Has York County made an effort to address clean air concerns with the Charlotte-Mecklenburg non-attainment area?

On March 14, 2003, DHEC entered into a Memorandum of Understanding (MOU) with the North Carolina Department of Environment and Natural Resources (NCDENR). In this MOU, DHEC agreed to "require and/or implement the controls...found necessary to address Charlotte-MSA non-attainment." DHEC agreed to "support and provide further reductions to assist non-attainment areas to return to compliance where reductions are identified or believed to be needed." Both state agencies declared that their "joint goal...[is] to act together and cooperatively to achieve ozone attainment for the entire MSA." Both state agencies also agreed to "fully and actively participate in the Sustainable Environment for Quality of Life (SEQL) project, which encompasses 11 counties in North and South Carolina, including York County." The SEQL project focuses on air quality, water quality and sustainable growth issues with the goal of developing integrated and long-term solutions to identify and address solutions regionally, while enacting policy change at the local level.

In the Memorandum of Understanding, SCDHEC and NCDENR also agreed that both states would:

- Retain the ability to make recommendations for areas with boundaries differing from the EPA presumptive boundary, where appropriate documentation can be provided;
- Participate fully and actively in the implementation of the Sustainable Environment for Quality of Life (SEQL) comprehensive regional environmental plan;
- Collectively and cooperatively seek additional support at appropriate federal, state, and local levels to support the delivery of cleaner air sooner to our citizens through the Early Action Compact process;
- Continually work cooperatively together to share appropriate technical information and to identify those reductions that may be necessary to support the collective needs to attain and maintain compliance with both the 1-hour and 8-hour ozone standards;
- Continue full and open communication and cooperation on all issues affecting the Charlotte Metropolitan Statistical Area;
- Implement appropriate controls needed for attainment in the Charlotte region.

5) Is there precedent for excluding York County from the Charlotte-Mecklenburg non-attainment area?

York County's status came under similar scrutiny when the Clean Air Act amendments passed Congress in 1990. Greer Tidwell, Administrator of EPA Region IV, and William

Rosenberg, Deputy Administrator of EPA, both examined the case for including York County in the Charlotte non-attainment area, and both decided in favor of leaving York County out.

To cover cases like York County, the report language accompanying the Clean Air Amendments of 1990 states that “where a CMSA or MSA encompasses rural or even some suburban areas, such contributions may not contribute significantly to a violation and where this is so they should not be included. In these circumstances, improvement of control strategies may be more appropriate than expansion of the boundaries of the area.” Furthermore, in the Federal Register notice of the *Standards for Defining Metropolitan and Micropolitan Statistical Areas*, the Office of Management and Budget warns that it “establishes and maintains these areas solely for statistical purposes.” OMB “cautions that Metropolitan Statistical Area...definitions should not be used to develop and implement Federal, state, and local non-statistical programs and policies without full consideration of the effects of using these definitions for such purposes.” We believe this caveat applies to York County, and that this language gives EPA the guidance to exclude the York County from the Charlotte non-attainment area.

6) Does York County have a plan to improve air quality in the future?

EPA has finalized a new formula for gasoline that should be on the market and widely available in York County and surrounding areas by 2007. Cleaner cars are being introduced to this area today. DHEC believes that reformulated fuel and cleaner cars and trucks will cut nitrogen oxides (NOX) emissions in York County by 50%. DHEC continues to support EPA’s efforts for other programs to be implemented at a national or regional level, particularly as these programs are needed to address transport of air pollution.

This action will complement the continued mitigation activities of the Early Action Compact and SEQL program discussed above.

7) Would designation of York County as non-attainment unfairly harm the county’s economy?

South Carolina has suffered grievously from the decline, and near demise, of the textile industry. At least a dozen textile mills have closed in York County alone. In January 2004, unemployment in York County was 8.7%, well above the nationwide rate of 5.6%.

York County must attract new industry and investment and move from textiles to other endeavors. A non-attainment designation cannot possibly help York County make this difficult transition. Before deciding where to locate new facilities, most firms consider multiple sites in various regions. “Non-attainment” would rule York County out of the competition and off most the site list of most new prospects.

What is most important about this case, however, is that EPA can allow York County to grow and not compromise air quality. In fact, our Early Action Compact and our MOU should enhance air quality. If York County were included in the Charlotte-Mecklenburg non-attainment area, it would be required to work with North Carolina counties in restoring the Charlotte-Mecklenburg area to air quality attainment. But the Early Action Compact and MOU already commit York County, *plus* three other counties (Chester, Lancaster, and Union), and for that matter all of South Carolina, to work toward attainment of the Charlotte-Mecklenburg area. This is not only the position of South Carolina's Department of Health and Environmental Control, but also the position of the North Carolina Department of Resources and the Environment. In a July 15, 2003 letter to the EPA Region IV Administrator, NCDENR states:

“North Carolina does not wish to undercut the ability of South Carolina and counties like York to participate in a process with the potential to yield air quality improvements ahead of EPA's deadlines. We support cooperative and voluntary efforts to resolve interstate transport problems if those efforts are effective. We urge EPA to perform a careful evaluation of the effectiveness of the steps that South Carolina and the SC counties that affect that Charlotte region's air quality are taking to achieve more rapid progress in emissions reductions than would result under the requirements that follow from non-attainment designation. We would be happy to support that process in any way we can.”

We do ask not to be unfairly stigmatized as a non-attainment area, but we do not ask for a dispensation from the Clean Air Act or EPA's rules and regulations. To the contrary, we seek to be an integral part of what our sister agency in North Carolina calls “a process to yield air quality improvements ahead of EPA's deadlines.” NCDENR thought well enough of our state's commitment and good faith that it urged EPA to evaluate “the steps that South Carolina...is taking to achieve more rapid progress in emissions reductions than would result under the requirements that follow from non-attainment designation.” We are convinced that “more rapid progress” can be made, and achieved without hobbling the growth of York County. Precedent, report language, and program guidance all give you the authority to grant our request. We earnestly hope that you will see fit to do so.

Respectfully,

Ernest F. Hollings
U.S. Senator

Lindsey O. Graham
U.S. Senator

John M. Spratt, Jr.
Member of Congress

cc: J.I. Palmer, Region 4, U.S. Environmental Protection Agency
C. Earl Hunter, SCDHEC
Robert W. King, Jr., SCDHEC