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**U.S. Environmental Protection Agency (EPA) Hearing on EPA Proposal to
Issue Federal Implementation Plans to Reduce Interstate Transport of Fine
Particulate Matter and Ozone (75 Federal Register 45210)**

**Docket No. EPA-HQ-OAR-2009-0491
August 26, 2010**

Good morning. My name is Adam Cutler, and I am the Director of the Public Health and Environmental Justice Law Project at the Public Interest Law Center of Philadelphia. Thank you for the opportunity to testify today concerning EPA's proposed rule to limit the interstate transport of emissions of nitrogen oxide (NO_x) and sulfur dioxide (SO₂), which I will refer to in my testimony as the Transport Rule.

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The Public Health and Environmental Justice Law Project provides legal services to environmental justice communities in Pennsylvania. Our work is centered primarily in and around Philadelphia, including communities in Delaware County and Montgomery County. Through the Project, I work closely with communities where residents – mostly of color or poor or both – suffer disproportionately from adverse health effects associated with pollution. In some of these communities, like the City of Chester or the Borough of Eddystone, both in Delaware County and both close to coal-fired power plants and other sources of air pollution, a recent household health survey reports asthma rates among children are in excess of 25%. My clients and their communities, therefore, are acutely affected by particle pollution and ozone, which are known to exacerbate asthma among other human health impacts.

My comments today are my own, and are not made on behalf of any particular client group or community. They are, however, rooted in the work I do, and are focused specifically on the implications of the Transport Rule for environmental justice communities. I will provide more detailed comments on the agency's proposal during the written comment period.

The Transport Rule contemplates reducing electric power plant emissions of nitrogen oxide and sulfur dioxide in 31 states and the District of Columbia, so that by 2014, EPA projects that EGU sulfur dioxide emissions would be cut by 71% versus 2005 levels, and nitrogen oxide emissions would be reduced by 52%. These reductions would represent significant progress toward finally achieving attainment standards for PM_{2.5} and ozone that have been mandated under the Clean Air Act since 1997, and moving closer to achieving the 2006 24-hour average PM_{2.5} standard. Although the cuts could -- and should -- be deeper, particularly with respect to nitrogen oxide, and could -- and should -- cover more sources, the welcome public health and environmental benefits from the proposed reductions in these dangerous pollutants are unmistakable, and will far outweigh the costs of compliance with the Transport Rule.

That said, I want to comment specifically on the fact that EPA's preferred rule would allow unlimited intrastate trading and limited interstate trading of allowances between EGUs as part of the agency's strategy to -- in the words of the Transport Rule's preamble -- "assure environmental results while providing some limited flexibility to covered sources." Under the agency's first alternative, only intrastate trading would be allowed. Even under the second alternative, which would set emissions limits for each power plant individually, company-level averaging for sites within a given state would be permitted.

Under any of the Transport Rule proposals, then, environmental justice communities may suffer a perverse fate. Take Pennsylvania, a covered state for both nitrogen oxide and sulfur dioxide, as an example. A facility located in the less populous central part of the state that achieves more than its required reductions might then trade its extra allowances to a power plant located close to one or more environmental justice communities in the more populous southeast part of the state. Although the overall state emission budget might thus be met, the power plant located near the environmental justice communities would, thanks to trading, be allowed to continue emitting pollutants at higher levels. (The same result could occur under Alternative Two, which allows company-level averaging.) Because local pollution would remain high, the nearby environmental justice communities would not receive the same public health and environmental benefits under the Transport Rule as the communities surrounding the facility on the other end of the trade. Indeed, the disproportionate imposition of environmental burdens on vulnerable communities would be perpetuated.

If EPA's nascent focus on environmental justice under Administrator Jackson is to be seen as something other than mere lip service, the agency must ensure that the Transport Rule is consistent with its environmental justice obligations. If there is to be allowance trading -- whether intrastate or interstate -- it must be controlled in a manner that offers true protection to the environmental justice communities who would otherwise bear the pollution burdens. Environmental justice communities are, to borrow the memorable words of civil rights activist Fannie Lou Hamer, "sick and tired of being sick and tired." EPA should not, in promulgating a Transport Rule that can provide so many public health and environmental benefits to all, leave open the possibility that vulnerable communities of color and of poverty will continue to be subjected to unequal treatment, based solely on the vicissitudes of power sector variability.

Thank you for the opportunity to comment. I am happy to take any questions.