Mr. William L. Kovacs  
Vice President  
Environment, Technology & Regulatory Affairs  
U.S. Chamber of Commerce  
1615 H Street, N.W.  
Washington, D.C. 20062

Dear Mr. Kovacs:

Thank you for your letter of December 13, 2006, to Administrator Stephen Johnson, petitioning the Environmental Protection Agency (EPA) to issue a regulation to implement Clean Air Act (CAA) Section 179B regarding transboundary air pollution. The Administrator has asked that I respond to your letter. In response, I would like to clarify our understanding of CAA Section 179B, discuss a related provision for exceptional air pollution events, and also discuss the many activities that EPA is undertaking to better understand and address transboundary air pollution.

Emissions from international sources that may contribute to violations of a National Ambient Air Quality Standard (NAAQS) in an area designated as nonattainment may be addressed by Section 179B of the CAA. This section allows EPA to approve a State Implementation Plan (SIP) for a nonattainment area if: (1) the SIP meets all applicable requirements of the CAA; and (2) the submitting State can satisfactorily demonstrate that “but for emissions emanating from outside of the United States,” the area would attain and maintain the applicable NAAQS. EPA has historically evaluated these “but for” demonstrations on a case-by-case basis, based on the individual circumstances and the data provided by the submitting State. These data might include ambient air quality monitoring data, modeling scenarios, emissions inventory data, and meteorological or satellite data. Under proper circumstances this section would provide relief for a designated nonattainment area from certain fee requirements, reclassification requirements, and attainment and maintenance demonstration requirements. Section 179B does not, however, provide authority to exclude monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment. Thus, even if EPA approves a Section 179B “but for” demonstration for an area, the area would continue to be designated as nonattainment and subject to the applicable requirements, including nonattainment new source review, nonattainment conformity, and other measures prescribed for nonattainment areas by the CAA.
In addition to Section 179B, transboundary emissions that affect U.S. air quality may also be addressed by the provisions of CAA Section 319(b)(3). In March of 2007, EPA finalized a rule to establish criteria and procedures for use in determining if air quality monitoring data has been influenced by exceptional events (the Exceptional Events Rule). Exceptional events are events that affect air quality, that are not reasonably preventable or controllable, and that are caused either by human activity that is unlikely to recur at a particular location or by natural events (e.g., dust storms, seismic events, or wildfires). EPA has established a process through regulations at 40 CFR parts 50 and 51 to determine whether a given event qualifies for treatment as an exceptional event. The Exceptional Events Rule establishes the procedures and criteria to be used to identify, evaluate, interpret and use monitored air quality data for comparison to the NAAQS in situations where State, local, and Tribal air quality agencies request special treatment because the data has been affected by an exceptional event. The Exceptional Events Rule also ensures that air quality measurements are properly evaluated and characterized with regard to their causes; identifies reasonable actions that should be taken to address the air quality and public health impacts caused by these types of events; avoids imposing unreasonable planning requirements on State, local, and Tribal air quality agencies related to violations of the NAAQS due to exceptional events; and ensures that the use of air quality data, whether afforded special treatment or not, is subject to full public disclosure and review. In contrast to Section 179B, under appropriate circumstances consistent with the Exceptional Events Rule, EPA may exclude data from consideration in determinations regarding the attainment or nonattainment of a given area and related nonattainment area plan requirements.

We understand your concerns about the impact of foreign emissions on domestic air quality in the United States, and we see it as a challenging and complex problem to assess. In fact, we have been engaged in a number of activities to improve our understanding of international and intercontinental transport of air pollutants and the impacts of such transport on U.S. air quality. For instance, since 2001, EPA has led a multi-phase project entitled “Intercontinental Transport and Climate Effects of Air Pollutants (ICAP).” The ICAP project has established collaborations with many of the leading U.S. researchers in the global atmospheric chemistry community and built the capacity within EPA to model trans-Pacific and trans-Atlantic transport. Also, EPA has supported the establishment of the Networked Environmental Information System for Global Emissions Inventories (NEISGEI), an initiative to improve access to emissions information at local to global scales using the World Wide Web and the latest advances in information technology (see http://www.neisgei.org).

EPA has established an International Transport of Air Pollutants Working Group to improve communication and strategic planning related to international transport issues. Furthermore, EPA’s Global Change Research Program and EPA’s Group on Earth Observations have funded intramural and extramural research projects related to the impacts of intercontinental transport on air quality in the United States.
In addition, EPA has worked through the Air Quality Research Subcommittee under the National Science and Technology Council’s Committee on Environment and Natural Resources to improve communication and strategic planning of U.S. Federal research efforts related to intercontinental transport. The EPA is currently working with the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration and the National Science Foundation to plan and fund a National Academy of Sciences study on the significance of international transport of air pollutants.

At the international level, EPA and the European Commission’s Environment Directorate-General co-chair the Task Force on Hemispheric Transport of Air Pollutants under the United Nations Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution. The Task Force was established in 2004 to improve our understanding of intercontinental transport in the northern hemisphere. The Task Force is currently working to complete an interim assessment report for 2007, focused on hemispheric transport of ozone and fine particles. The Task Force plans to prepare a more comprehensive assessment by 2009, which will also address mercury and persistent organic pollutants (see http://www.htap.org).

Lastly, EPA is working bilaterally with our counterparts in Canada, Mexico, China, and India to build capacity for managing air pollution sources, to improve our understanding of transboundary flows and impacts, and to ultimately decrease international transport of air pollutants and the impacts on the United States.

We believe that as work progresses on all of these activities, we will be able to better address the uncertainties associated with transboundary flows of air pollution and their impacts. These major uncertainties include limits on the capabilities of regional air quality models versus global air quality models; the quality of emissions inventories in regions and countries such as Mexico, China, India, and Africa; and the quantification of transboundary impacts, including the sources, transport, and fate of these emissions. In light of the complexity of this problem and the many unanswered questions that remain, we do not think it is appropriate to begin a rulemaking to implement CAA Section 179B at this time, and that it is more appropriate to continue to evaluate issues concerning international transport on a case-by-case basis, based on the facts and circumstances presented in each situation. The EPA will continue to work with States to ensure that demonstrations submitted by States are sufficient to meet the requirements of Section 179B, and that the States have the benefit of EPA’s developing understanding of issues pertaining to international transport.

We would be glad to keep you informed of developments related to transboundary air pollution on a periodic basis. To request a meeting, please contact Steve Page or Lydia Wegman in the Office of Air Quality Planning and Standards (919-541-5616).
Again, thank you for your letter. I appreciate the opportunity to be of service and trust the information provided is helpful.

Sincerely,

[Signature]

Robert J. Meyers
Principal Deputy Assistant Administrator

cc: Steve Page, OAQPS
    Kevin McLean, OGC