

**Connecticut Department of Energy and Environmental Protection  
Maryland Department of the Environment  
Massachusetts Department of Environmental Protection  
New York State Department of Environmental Conservation  
Rhode Island Department of Environmental Management**

May 15, 2017

Mr. Scott Pruitt, EPA Administrator  
United States Environmental Protection Agency Headquarters  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Dear Administrator Pruitt:

In December 2013, Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont petitioned the U.S. Environmental Protection Agency (EPA) to add Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia and West Virginia to the Ozone Transport Region (OTR) pursuant to Section 176A of the Clean Air Act (CAA or Act), 42 U.S.C. § 7506a. More than a year and a half past the statutory deadline to act, on January 19, 2017, EPA has proposed to deny the petition.<sup>1</sup> For the reasons expressed below, EPA should grant the petition to ensure that all states that contribute to elevated ozone levels across the northeastern United States also contribute to the emission reductions that are necessary to reduce regional ozone pollution.

**Background**

CAA Section 176A provides that the Administrator, upon petition, may add any state or portion of a state to any transport region whenever the Administrator has reason to believe that interstate transport of air pollutants from such state significantly contributes to a violation of the national ambient air quality standard (NAAQS) in the transport region. The December 2013 petition identified the named states as significantly contributing to violations of the ozone NAAQS in states currently in the OTR. It included an extensive technical justification for expanding the OTR to include the states named in the petition, based on photochemical grid modeling and the EPA metric for significant contribution (1% of the NAAQS).

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<sup>1</sup> See 82 FR 6509, January 19, 2017.

Reducing upwind emissions is essential to protecting the health of millions of people in the petitioning states who continue to be at risk of adverse health impacts when ozone levels are high. High daily ozone concentrations are associated with more asthma attacks, increased hospital admissions, increased daily mortality and other markers of morbidity, in addition to respiratory impacts including coughing, throat irritation, chest tightness, wheezing, and shortness of breath.

CAA Section 184, 42 U.S.C. § 7511c, established the Northeast OTR and includes several specific requirements for states included in the region, all of which are intended to reduce ozone levels in the region. In addition to certain base control requirements covering large plants and motor vehicles, states in the OTR are required to collaborate on the development of strategies to reduce regional ozone levels. Recognizing that the initial composition of the OTR may change as regional ozone transport is better understood, Section 176A provides EPA with the authority to expand the OTR to include other states with emissions that contribute to elevated ozone levels in the OTR.

As EPA observes in its proposed decision, the Section 176A and Section 184 interstate transport commission provisions are not the only sections of the CAA that address pollution transport. Section 110(a)(2)(D)(i) of the CAA, 42 U.S.C. § 7410(a)(2)(D)(i), requires states to develop, within three years of the adoption of a new NAAQS, state implementation plans (SIPs) that contain adequate provisions prohibiting emissions from a source or other activity within the state from contributing significantly to nonattainment, or interfering with maintenance, of any NAAQS in any other state. Since states with areas designated nonattainment for ozone are generally required to develop attainment SIPs within 5 years of the adoption of a revised ozone NAAQS, these attainment SIPs, by design of the CAA, would be able to include these provisions that states developed to prohibit emissions significantly contributing to nonattainment or interfering with maintenance. If states fail to adequately address their contribution to downwind nonattainment or interference with maintenance by the statutory deadline, EPA is required under Section 110(k)(5), 42 U.S.C. § 7410(k)(5), to issue a federal implementation plan (FIP) with the corrective action within two years. In addition, if a state with a nonattainment area believes that an out of state source or a group of out of state sources significantly contribute to nonattainment or interferes with maintenance of a NAAQS, the state can petition EPA to take corrective action under Section 126(b) of the CAA, 42 U.S.C. § 7426(b).

### Reasons to grant the petition

Of these available mechanisms, the collaborative process inherent in the Ozone Transport Commission's (OTC) mission is efficient and uniquely suited to address transport and achieve timely attainment of the ozone NAAQS and clean air in all the OTR states. Expansion of the OTR will reduce unhealthy regional ozone levels through two important mechanisms: the establishment of a minimum level of baseline emission control in the area, and a framework for states to collaborate in the development and implementation of measures to solve the problem. By approving the Section 176A petition, EPA would give states primary leadership responsibility to address ozone

transport throughout the region in a timely manner through ongoing cooperation, limiting the need for EPA to resort to the tried and failed method of individual transport plans. This collaborative process would help upwind states satisfy their CAA Section 110(a)(2)(D)(i) “good neighbor” obligations, reduce the need for CAA Section 126 petitions except in more egregious situations, and potentially obviate the need for future EPA “good neighbor” FIPs. Since expansion of the OTR, through the Section 176A petition process, is the primary mechanism established by the CAA to enable collaboration between states when addressing transported ozone pollution, EPA should not decline to expand the OTR simply because it desires to use other CAA authorities that would reduce transported pollution to a lesser extent and on a broader, less targeted, scale.

The geographic coverage of the current OTR does not encompass the extent of the ozone transport problem in the Eastern United States. The petition presented to EPA and EPA’s own transport rules identify an area far wider than the current OTR for interference with maintenance and significant contribution to ozone nonattainment in the eastern United States. In fact, EPA itself acknowledges that the petitioning states “submitted a technical analysis intended to demonstrate that these nine upwind states significantly contribute to violations of the 2008 ozone NAAQS in one or more of the current OTR states.”<sup>2</sup> EPA states that it “does not dispute that certain named upwind states in the petition might significantly contribute to violations of the 2008 ozone NAAQS in one or more downwind states.”<sup>3</sup>

EPA acknowledges that the Administrator “must adequately explain the facts and policy concerns relied on in acting on the petition and conform such reasons with the authorizing statute.” Instead of finding that the petition is technically inadequate, however, EPA bases the proposed denial on its belief that CAA Sections 110(a)(2)(D)(i), 126(b) and 110(k)(5) provide better mechanisms for states and EPA to develop a remedy to address interstate ozone transport. This explanation is inadequate. For example, EPA repeatedly states that it would be more cost-effective to use Sections 110 and 126 rather than Section 176A to address the impact of interstate ozone transport, yet EPA offers no analysis of the relative costs of the various approaches. Similarly, EPA contends that it is more efficient to use other CAA sections, but it does not and cannot explain how a piecemeal approach of requiring each state to submit scientifically-supported Section 126 petitions regarding each major source of interstate pollution is more efficient than the collective and collaborative regional approach available under Sections 176A and 184, which was endorsed by Congress in creating the existing OTR under Section 184 in 1990.

EPA’s reasoning is also belied by its history of delay in developing and implementing the alternative transport remedies. After more than 25 years, CAA Section 110(a)(2)(D)(i) has not proven to be a successful mechanism to fully eliminate significant contributions to ozone transport. EPA’s Cross-State Air Pollution Rule (CSAPR) Update, finalized on September 7, 2016, provides only a partial remedy for

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<sup>2</sup> 82 FR 6510; January 19, 2017

<sup>3</sup> 82 FR 6520; January 19, 2017

ozone transport, as EPA recognizes, and is intended to address an eight-year-old ozone standard, rather than the more stringent standard adopted in 2015. This partial remedy places the burden on the downwind states to make up the shortfall in emission reductions due to the absence of a full remedy for ozone transport.

EPA action on recent CAA Section 126 petitions claiming that certain sources in upwind areas significantly contribute to nonattainment or interfere with maintenance has been delayed. States have been left with no recourse but judicial channels to force EPA to fulfill its obligations to address transport. If the upwind States were included within the OTR, they would be required to contribute to the additional emission reductions needed, without the need for further action from EPA.

While the petitioning states fully support the availability and use of these alternative authorities, we expect that they will continue to be insufficient on their own in the timeframe needed for certain OTR states to demonstrate attainment with the ozone NAAQS. Continued nonattainment of the ozone NAAQS threatens public health and constrains economic growth. States within the OTR have adopted stringent emissions controls at significant cost on a statewide basis. EPA's "preferred approach" has so far resulted in a disparity in the level of emission control between states within the OTR and states outside the OTR. Further exacerbating the inequity between OTR and non-OTR states, EPA has repeatedly overestimated the costs of NO<sub>x</sub> controls in its transport rules and undersold the ability of sources to meet more stringent emission limitations. This disparity has resulted in lost opportunities for cost-effective emissions reductions and continued significant contribution to nonattainment and interference with maintenance by under-controlled, upwind states.

Based on EPA's history of delay and failure to adequately address transport, the agency should reconsider its proposed denial of the aforementioned states Section 176A petition and, consistent with Section 176A, require that all states with sources that interfere with maintenance or contribute significantly to the OTR ozone levels participate in the ongoing collaborative process of identifying and implementing solutions to ozone transport. EPA should set the boundaries of the transport region based on scientific evidence. Participation of all contributing states in the OTR provides a venue and opportunity for all affected states to participate in identifying and implementing solutions to reduce ozone precursor emissions when EPA adopts a revised ozone standard, as in 2015, rather than waiting for EPA to act.

Largely as a result of ozone transport, two petitioning states -- Connecticut and New York -- failed to attain the 2008 ozone NAAQS by the attainment deadline and several of the southern areas of the OTR are being driven into nonattainment of the 2015 ozone standard. Projection modeling by EPA and the petitioning states shows that attainment of the 2008 ozone standard for Connecticut and New York in 2018 is unlikely and upwind states continue to significantly contribute to that nonattainment. Because EPA's proposed alternatives will not enable petitioning states to meet current attainment deadlines, denial of the Section 176A petition at this time would be arbitrary and

capricious. Therefore, EPA should grant the petition and take any additional steps needed to address ozone transport expeditiously.

Sincerely,

A handwritten signature in blue ink that reads "Robert Klee". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Klee, Commissioner  
Connecticut Department of Energy and Environmental Protection

A handwritten signature in blue ink that reads "Benjamin Grumbles". The signature is cursive and somewhat stylized.

Benjamin Grumbles, Secretary  
Maryland Department of the Environment

A handwritten signature in black ink that reads "Martin Suuberg". The signature is cursive and features a prominent loop at the end.

Martin Suuberg, Commissioner  
Massachusetts Department of Environmental Protection

A handwritten signature in black ink that reads "Basil Seggos". The signature is cursive and has a long horizontal stroke at the end.

Basil Seggos, Commissioner  
New York State Department of Environmental Conservation

A handwritten signature in blue ink that reads "Janet Coit". The signature is cursive and somewhat compact.

Janet Coit, Director  
Rhode Island Department of Environmental Management