

## **SECTION 176A PETITION FACT SHEET**

### **Petition filed under Clean Air Act**

Eight Northeast and Mid-Atlantic states have filed a petition asking the U.S. Environmental Protection Agency (EPA) to address longstanding air pollution problems by adding nine upwind states to the “Ozone Transport Region” as defined under the federal Clean Air Act. If added to the Ozone Transport Region, those states would be required to take additional steps to reduce their air pollution, which has been found to significantly affect downwind states.

The petition asking EPA to add upwind states to the Ozone Transport Region (OTR) was submitted by the states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont. It seeks to add Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia and West Virginia to the Ozone Transport Region.

In May, the downwind states invited those nine upwind states to join the Ozone Transport Region. Officials in those states indicated a willingness to work with downwind states on technical matters relating to reducing air pollution, but no state voluntarily agreed to join the OTR and to implement the air pollution controls this would entail.

In 1990, Congress established the OTR in the federal Clean Air Act in order to address air pollution that is caused by activities in upwind states. Since that time, air quality has improved, but the ozone standard has also been revised to a more stringent level to reflect improved scientific understanding of the health impacts of ozone. The petitioning states believe that advances in the science and the standard necessitate updating the OTR boundaries as well.

The petition was filed as authorized by Section 176A of the federal Clean Air Act. Section 176A permits a Governor of a State to petition the EPA Administrator to add any State or portion of a State to any air quality region established under the Clean Air Act if there is reason to believe that transportation of air pollution across state boundaries (“transport”) significantly contributes to a violation of the National Ambient Air Quality Standard for ozone in the OTR.

The Section requires the EPA Administrator to approve or disapprove such a petition within 18 months of receipt. The petition includes a request from the States that the Administrator provide an opportunity for public participation, including public notice and comment, on the petition.

States added to the OTR would be required to take additional steps to reduce air pollution that has been found to significantly affect downwind states. These steps could include:

- Implementation of Reasonably Available Control Technology (“RACT”) for stationary emissions sources. Under this requirement, State regulators require sources to meet emissions limits developed by the application of controls that are reasonably available considering current technologies and cost.
- Broadened application of preconstruction permit application reviews under the New Source Review (“NSR”) program, which is designed to ensure that new major sources and modifications to major sources do not slow progress toward cleaner air.
- Inspection and maintenance programs to reduce vehicle emissions by ensuring vehicles are in good repair.

### **New ozone standards**

Ozone is a gas that occurs in two layers of the atmosphere. Stratospheric ozone, which is found very high in the atmosphere, is considered “good” as it protects us from the sun’s ultra-violet rays. When, however, ozone occurs near ground-level, it is harmful to human health and our environment. Nitrogen oxides are emitted when fossil fuels are burned. Nitrogen oxides combine with volatile organic compounds to form ground-level ozone when heated by the sun.

To improve public health protection, EPA revised its primary 8-hour ozone standard from 85 parts per billion (ppb) to 75 ppb. In announcing the revision, EPA stated that the Agency estimates that the revised standards will yield health benefits valued between \$2 billion and \$17 billion, adding that those benefits include preventing cases of bronchitis, aggravated asthma, hospital and emergency room visits, nonfatal heart attacks and premature death, among others.

### **Other legal steps underway**

The petition is one of several legal actions being taken by states plagued by persistent ozone pollution from upwind states.

These actions include support for a request for Supreme Court review of a case involving air pollution from power plants. Last August, the U.S. Court of Appeals issued a ruling that vacated the EPA’s [Cross-State Air Pollution Rule](#) (CSAPR), which addresses air pollution, from power plants, that contributes to unhealthy air in downwind states. EPA and environmental groups petitioned for the Supreme Court to review that decision – and, in June, the Court said that it would review the case.

Other legal steps include actions to enlarge nonattainment areas (areas that do not comply with federal air quality standards). Some downwind states have recommended to EPA that nonattainment areas not only include the area that violates the standard but also the area that causes the violation. This expands the geographic areas in which controls are applied and generally reduces control costs. EPA continues to minimize the size of

nonattainment areas. Delaware is leading a court challenge to EPA's decision on the size of nonattainment areas.

The Clean Air Act contains what is known as a "good neighbor" provision, which requires states to examine whether pollution generated in their state contributes to poor air quality in another. If a significant contribution is found, the state must adopt measures to alleviate this contribution and include these measures in its State Implementation Plan. EPA must approve these plans. Some downwind states are challenging EPA approvals of State Implementation Plans to control air pollution for Kentucky and Tennessee because they lack a "good neighbor provision" as required under the Clean Air Act.