

# STATE OF CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION



June 8, 2009

Ira Leighton, Acting Regional Administrator  
U.S. Environmental Protection Agency  
EPA New England Regional Office  
One Congress Street, Suite 1100 (Mail Code CAQ)  
Boston, MA 02114-2023  
Docket Identification Number: EPA-R01-OAR-2008-0117

**Re: *Comments of Connecticut Department of Environmental Protection:  
Proposed Disapproval of the Southwest Connecticut Attainment Demonstration for the  
1997 Ozone NAAQS***

Dear Administrator Leighton:

On May 8, 2009, the U.S. Environmental Protection Agency (EPA) proposed to disapprove the Connecticut Department of Environmental Protection's (CTDEP's) plan, which demonstrated, through air quality modeling and additional weight of evidence, attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) in the Connecticut portion of the greater New York City nonattainment area (NY-NJ-CT area or Southwest Connecticut). On June 1, 2009, CTDEP by letter requested an extension of the comment period on this proposal to September 30, 2009, the end of the 2009 ozone season. As EPA has not acted upon our request for such extension, we offer the following comments on EPA's proposal.

CTDEP urges EPA to wait until the end of the 2009 ozone season before taking final action on CTDEP's attainment demonstration. This approach is consistent with the principle of science-based decision-making championed by Administrator Jackson and will produce an outcome consistent with actual air quality data.

EPA's proposed disapproval is based on a lack of confidence in CTDEP's prediction of attainment by the 2010 deadline. While CTDEP recognizes a degree of uncertainty in its plan, CTDEP believes EPA's evaluation did not fairly consider: (1) the importance of the 2009 ozone season to determine whether Connecticut qualifies for a one-year extension under Clean Air Act (CAA) sections 172(a)(2)(C) and 181(b)(3); and (2) the importance of transported emissions.

Connecticut's monitored air quality has steadily improved in recent years and we expect this trend to continue. Furthermore, the significant down turn in our nation's economy will likely lead to lower emissions-related activity. Taken together, there is a reasonable expectation that summer 2009 ozone levels will allow for CTDEP to request a one-year extension of our attainment date. CTDEP understands that if we monitor clean data for the 2009 ozone season and request a one year extension, it would be incumbent upon EPA to grant our request under CAA sections 172(a)(2)(C) and 181(b)(3).

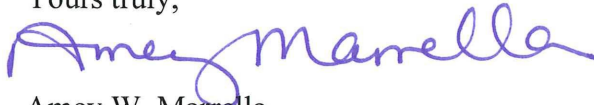
In making our request to delay final action on our plan, we remind you that CTDEP submitted a state-wide attainment demonstration to EPA on February 1, 2008, yet EPA has delayed taking action until May 8, 2009 for the NY-NJ-CT area. Given that EPA took fourteen months to publish a proposed decision for Southwest Connecticut, it is reasonable for EPA to provide an additional four months to receive definitive air quality monitoring data.

In making our request to delay final action on our plan, CTDEP reminds EPA once again of the importance of reductions in upwind emissions to allow the NY-NJ-CT area to reach attainment of the 8-hour ozone NAAQS. We cannot understand why EPA's proposed disapproval of CTDEP's attainment demonstration failed to acknowledge the transport issue. We also do not understand why EPA would selectively propose disapproval of the SIPs of a few Northeast states when the Clean Air Interstate Rule (CAIR) has been remanded by the D.C. Circuit Court of Appeals to EPA. The Court found that CAIR, the cornerstone of EPA's "solution" to CAA section 110(a)(2)(D) concerns, contained "fatal flaws" as identified by the Court. In light of the Court's decision, we would have expected EPA to take a fresh look at all SIPs which relied on CAIR to satisfy the requirements of CAA section 110(a)(2)(D).

It is clearly within EPA's authority to address approved State Implementation Plans (SIPs) that claim to satisfy section 110(a)(2)(D), but fail to do so. In 1998, EPA, through the "NOx SIP Call<sup>1</sup>," required states to submit SIP revisions to reduce the regional transport of ozone – even though such states had approved CAA section 110 SIPs in place. The factual circumstances now before EPA are even more compelling than those of 1998. EPA's own air quality modeling in support of CAIR conclusively demonstrates that sources and groups of sources in upwind states contribute significantly to downwind nonattainment of the ozone NAAQS. We do not understand how, faced with this information and the Court's decision, EPA can selectively consider the SIPs of receptor states without simultaneously addressing the inadequacy of SIPs that relied on CAIR to satisfy every state's obligation under Section 110(a)(2)(D).

Finally, we urge EPA to remain in communication with CTDEP as it refines its plan for action on this proposal. For our part, we pledge to watch our ozone air quality data closely and remain open to new approaches in response to the data results. Please communicate regularly regarding the matters addressed in this letter, either directly with me, or with Anne Gobin, Chief of the CTDEP Bureau of Air Management, at 860-424-3027. Thank you for your consideration of these comments.

Yours truly,



Amey W. Marrella  
Acting Commissioner

cc. Robert M. Sussman, Senior Policy Counsel EPA HQ

---

<sup>1</sup> See 63 Fed. Reg. 57356 (October 27, 1998)