



September 4, 2013

Administrator Gina McCarthy
United States Environmental Protection Agency
Air and Radiation Docket and Information Center
1301 Constitution Ave. N.W., Washington, DC 20460
Mail Code: 2822T.

Connecticut

Attention: Docket ID No: EPA-HQ-OAR-2010-0885

Delaware

Dear Administrator McCarthy:

District of Columbia

The Ozone Transport Commission (OTC) appreciates the opportunity to comment on the proposed rule for the Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements (78 FR 34178, June 6, 2013).

Maine

Maryland

The OTC is a multi-state organization created under the Clean Air Act (CAA), required to advise the U.S. Environmental Protection Agency (EPA) on practical and cost effective solutions to the environmental and public health problem of ground-level ozone transport that negatively impacts the Northeast and Mid-Atlantic regions.

Massachusetts

New Hampshire

New Jersey

Successful Implementation of the 2008 NAAQS requires proper nonattainment designations

New York

Many of the OTC states have implemented measures consistent with the CAA, and beyond what other states have done or been asked to do. Yet attainment of the ozone standard has not been entirely achieved throughout the Ozone Transport Region (OTR). The OTC states request that EPA include in its approach actions that address peak emissions that contribute to high ozone days.

Pennsylvania

Rhode Island

Vermont

Virginia

EPA should modify the proposed rule to ensure all areas designated as attainment that are currently violating the 2008 NAAQS are subject to CAA nonattainment provisions. The OTC states request EPA to exercise its authority under CAA section 107(d)(3) to establish revised designations for areas now classified as "attainment", but violating the 2008 NAAQS based on current ozone design values. The revocation of the 1997 ozone NAAQS for these areas should be linked to the date that the revised designations become effective. This will ensure that CAA nonattainment provisions apply to all areas currently violating the 2008 NAAQS and ensure the appropriate level of relief from anti-backsliding and other requirements is correctly applied to those areas that warrant such treatment.

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Interim Executive
Director

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EPA needs to update its guidance documents

EPA is soliciting comment on modifying existing guidance documents to provide flexibility in implementing section 182(b)(2) Reasonably Available Control Technology (RACT) requirements. EPA's existing guidance is outdated, in some instances over 20 years old. This outdated guidance could result in drastically different interpretations of appropriate RACT. The potential inequities of this outcome may compel some states to expend limited resources reviewing and commenting on other states proposed State Implementation Plans (SIP).

OTC states urge EPA to update its requirements to reflect the latest science and technology; this includes the reevaluation of RACT level controls to 21st century standards and previously granted NO_x waivers (section 182(f) of the CAA), looking both at the local as well as downwind benefits. EPA should issue updated, comprehensive RACT/ACT/CTG guidance that builds off the information sources EPA cites to ensure reasonably consistent RACT determinations. Such national guidance will provide a level of certainty to states and may provide air quality agencies with leverage needed to complete rule adoption where state law or stakeholder resistance may otherwise present obstacles to unilateral state action. In addition, EPA must as part of RACT, or as a separate action, require sources that have installed pollution control equipment continue to operate such equipment.

Flexibility

OTC states appreciate EPA's willingness to provide flexibility to states in preparing their SIP's, however, EPA must do so in a manner consistent with the CAA. In the proposed rule EPA is allowing states to use alternative approaches to achieve Reasonable Further Progress (RFP) goals, flexibility in state RACT determinations regarding whether states could take into consideration, in the evaluation of what is economically feasible, the potential air quality benefit (or lack thereof) of further VOC controls, allowing consolidated nonattainment SIP deadlines, and allowing states to substitute alternative emissions reduction to substitute for an Inspection and Maintenance program. OTC states advise EPA to be certain that any flexibility provided in the proposed rule is permissible under the CAA and existing case law to prevent further delay in implementing the 2008 standards.

Inventory Data

EPA's proposed rule does not clearly state the baseline inventory requirements. EPA's proposed rule mentions only annual data inventory. OTC states firmly believe that a high ozone season day inventory is also required. EPA should expressly state that the baseline inventory for RFP and contingency measures be based on a summer day inventory.

Additionally, as part of the high ozone day inventory, states need to factor in High Electric Demand Days (HEDD) data into their modeling to appropriately factor in the impact of HEDD. The OTC states request that EPA take steps to account for and address peak emissions that contribute to high ozone days. Hourly Clean Air Markets Division (CAMD) data is available for grid connected HEDD units over 25 MW, little or no data is available

on the operation of behind-the-meter electric generators used for demand side management (the OTC states have been unable to obtain any meaningful HEDD data). OTC states request EPA take action to acquire this information so states and EPA can accurately account for its impact to enable success in attaining the ozone health standards. In addition to a high ozone day inventory, OTC states would request clarification on what EPA is requiring of states in their inventory submissions.

Also, EPA should ensure that the final AERR rule and this rule are consistent for ozone planning purposes to support state efforts to design control programs that address peak ozone levels.

Conclusion

The implementation of the 2008 NAAQS is long overdue and the OTC is appreciative of EPA's effort to move forward in this proposed rule. The OTC respectfully requests EPA address concerns listed above in order to obtain the full public health protections afforded by the 2008 NAAQS in a timely manner and believes they need to be resolved in order to prevent any further delay and protect human health. If you or your staff has any questions please feel free to contact Wick Havens at (202)508-3840.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Wick Havens", written in a cursive style.

J. Wick Havens
Interim Executive Director

Cc: OTC Air Directors