



## Resolution by the Ozone Transport Commission on Addressing the Interstate Transport of Ozone Pollution and its Precursors

**WHEREAS**, the Ozone Transport Commission (OTC), a multi-state organization created under the Clean Air Act (CAA), is required to advise the United States Environmental Protection Agency (EPA) on practical and cost-effective strategies or measures, based on sound science, to address the environmental and health problems associated with high ground-level ozone levels in the states of the OTC; and

**WHEREAS**, cooperative federalism under the CAA gives states primary responsibility for first developing state implementation plans (SIPs); and

**WHEREAS**, the EPA has separate authority to ensure SIPs meet CAA requirements; and

**WHEREAS**, the CAA requires states to address downwind contributions in the good neighbor provisions of their SIPs prior to downwind nonattainment areas developing control measures for attainment; and

**WHEREAS**, the OTC has previously called upon EPA to fully address cross state transport of ozone and its precursors (June 3, 2016 and November 15, 2017 OTC resolutions); and

**WHEREAS**, the Court of Appeals for the District of Columbia Circuit has held that EPA previously failed to fully address, by the CAA statutory deadline, emissions from sources contributing to the interstate transport of ozone pollution and its precursors, including industrial facilities in addition to fossil fuel power plants (*Wisconsin et. al v. EPA*, decided September 13, 2019); and

**WHEREAS**, not a single state upwind of the Ozone Transport Region submitted a good neighbor SIP for the 2015 ozone national ambient air quality standard (NAAQS) that provided for any additional pollution reductions to help address downwind states' ozone problems despite clear modeling evidence of their contributions; and

**WHEREAS**, without a remedy to upwind contribution to downwind nonattainment, downwind nonattainment states bear the full burden of compensating for the addition of upwind emissions beyond their control; and

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Connecticut

Delaware

District of Columbia

Maine

Maryland

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New Hampshire

New Jersey

New York

Pennsylvania

Rhode Island

Vermont

Virginia

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Executive Director

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**WHEREAS**, the EPA initially disapproved a number of good neighbor SIP submittals for their failure to fully address the contributions of sources within their jurisdictions to downwind ozone problems; and

**WHEREAS**, the EPA, in response to the states' collective failure to address interstate pollution transport for the 2015 ozone NAAQS, issued the Good Neighbor Plan under its separate CAA authority; and

**WHEREAS**, multiple states challenged EPA's disapproval of their good neighbor SIPs in various circuit courts; and

**WHEREAS** of June 11, 2025, the U.S. Supreme Court has stayed the Good Neighbor Plan; the D.C. Circuit has held rule litigation in abeyance; the 6<sup>th</sup> Circuit has vacated EPA's disapproval of Kentucky's good neighbor SIP; and the 5<sup>th</sup> Circuit has upheld EPA's disapprovals of Louisiana's and Texas's good neighbor SIPs while vacating EPA's disapproval of Mississippi's good neighbor SIP; and

**WHEREAS**, EPA announced on March 12, 2025 that it would be reconsidering its Good Neighbor Plan; and

**WHEREAS**, tens of millions of people living within the Ozone Transport Region continue to be exposed to ground-level ozone pollution in violation of the 2008 and 2015 ozone NAAQS; and

**WHEREAS**, the OTC members have increasingly limited options under their authority to address their persistent ozone problems; and

**WHEREAS**, pollution sources in states located outside the Ozone Transport Region and not under the jurisdiction of the OTC members significantly contribute to our region's ozone pollution problems.

**THEREFORE, BE IT RESOLVED**, that the OTC, in the spirit of cooperative federalism, calls upon the EPA to assist downwind states in attaining and maintaining air quality standards by ensuring upwind significant contributions to those problems are fully addressed; and

**FURTHERMORE**, to the extent the EPA must reconsider good neighbor SIP disapprovals or revise the Good Neighbor Plan, it continue to apply a 1% threshold of the ozone NAAQS as the basis for linking emissions in upwind states to downwind problem areas, as agreed upon by 17 states in the East in a September 2, 2009 letter to the EPA; and

**FURTHERMORE**, that the EPA implement the Good Neighbor Plan and any successor interstate plan in a manner that fully addresses the regional ozone transport problem for the ozone NAAQS.

**Adopted by the Commission June 11, 2025**