



February 13, 2017

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**Attention: Docket ID No: EPA-HQ-OAR-2016-0202**

**RE: Proposed Rule - Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements**

Dear Acting Administrator McCabe

The Ozone Transport Commission is a multi-state organization created under the Clean Air Act led by Governors and state air official representatives from 12 states and the District of Columbia to advise the Environmental Protection Agency (EPA) on finding solutions to the common problem of ground level ozone and precursor pollutants. The Commission is inherently non-partisan and united in its efforts to ensure public health protection by identifying practical and cost-effective solutions. Ground-level ozone is a conventional pollutant whose precursors are formed and transported across large distances directly affecting the health of more than 66 million people in the northeast and mid-Atlantic region particularly the young, elderly, and persons with compromised health.

The OTC is charged with regional assessment of ozone and pollution transport, and recommending programs and policies that relieve the burden of member states in the development of their state implementation plans to attain and maintain the ozone health standard. A science-based focus and understanding of the formation and transport of ozone pollution in the eastern United States has resulted in policies and programs that have significantly improved public health and contributed to a sustainable economy of the region. Today we better understand the nature of transport of ozone precursor pollutants across the eastern United States where sources of pollution many hundreds or even a few thousand miles upwind do negatively, measurably and significantly impact the

health of a downwind area in the region. The sources of this transported pollution are diverse requiring significant communication and coordination at both the technical and policy level among local, state, regional and national programs. While initiatives and programs have led to successes in reducing transported ozone pollution within and to the region, sources upwind of the region continue to harm states in the region economically and hamper the ability of states to provide adequate public health protection.

The OTC appreciates the opportunity to provide comment on the proposed implementation rule so the region and member states can better address their responsibilities and perform the critical work needed to protect public health as required by the Clean Air Act. This implementation rule is timely in guiding the processes that lead to attaining the ozone standard finalized in 2015, in facilitating the transition from the 2008 to the 2015 ozone NAAQS, and in connecting states' individual responsibilities with those responsibilities of being a good neighbor to other states. The causes of transported ozone are well understood as is the effectiveness of solutions. We encourage EPA to finalize this rule and initial designations before the end of 2017 so states can efficiently and timely apply the planning processes leading to securing the more health protective 2015 NAAQS for the region. Specific comments on the proposed rule are provided below.

### **Revoking 2008 Ozone NAAQS**

**EPA is proposing and seeking comment on two alternative approaches for revoking the 2008 ozone National Ambient Air Quality Standards (NAAQS) and, where applicable, establishing anti-backsliding requirements for areas that are designated nonattainment at the time the 2008 ozone NAAQS is revoked:**

- **Option 1: Revoke the 2008 ozone NAAQS for all purposes in each area 1 year after the effective date of the designation for the 2015 ozone NAAQS.**
- **Option 2: Revoke the 2008 ozone NAAQS for all purposes in an area only when designated attainment for that NAAQS, no sooner than 1 year after the effective date of the designations for the 2015 ozone NAAQS.**

While both Options 1 and 2 proposed by the EPA to revoke 2008 ozone NAAQS contain shortcomings, the OTC states generally prefer Option 1 with the following modification as it avoids duplicative efforts on multiple planning requirements. Given that the 2015 NAAQS has the same averaging time as the 2008 NAAQS, **the planning effort for the more protective standard should ensure maintenance requirements as under the old, revoked standard.** In instances where this will not occur, the EPA must ensure that adequate anti-backsliding/backstop provisions are in place to preserve the maintenance provisions of Clean Air Act Section 110. The agency must also ensure that no relaxation of SIP requirements will occur in an area that does not have an approved 110(a)(2)(D)(i) plan that adequately protect downwind impacts. For areas in attainment of the 2008 NAAQS where a redesignation request and maintenance plan could be implemented, the EPA must provide additional time for states to create and submit appropriate redesignation requests and maintenance plans.

## **Reasonable Further Progress (RFP)**

### **RFP Baseline Year**

**EPA has proposed that the RFP baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA at the time of designation as nonattainment (2017). EPA also allows states to elect an alternative year (i.e., other than 2017) between the year of the revised NAAQS issuance (2015) and the year in which nonattainment designation is effective. This alternative approach allows states to account for reductions associated with early implementation of control measures. EPA is seeking comment on requiring states to use the year of an area's nonattainment designation as the baseline year for the RFP inventory requirement.**

OTC supports the flexibility to use an alternative baseline year (other than 2017) for RFP. Inventories take several years to develop and allowing for an alternative year will better ensure that data is readily available to meet SIP deadlines, as well as give states the flexibility to use the same year as the modeling inventory. Limiting states to the year of designation may not provide enough time and resources to meet SIP deadlines. It also might not provide an appropriate year for other planning purposes such as ozone modeling, which would result in wasted resources if two inventories were needed. The EPA should also allow states to consider years prior to 2015 (2014) so that states can claim credit for early action on control measures.

### **RFP Baseline Year Agreement**

**The EPA is proposing that all states associated with a multi-state nonattainment area must consult and agree on the same alternative year to use as the baseline year for RFP.**

The EPA should allow individual states within a shared nonattainment area to choose an alternative baseline year for RFP without consultation or agreement from the other states if 2017 is not used. The RFP demonstration is specific to the state's progress towards attainment and does not rely on a regional inventory. Requiring states to use the same baseline year would eliminate the ability for a state to claim credit for early implementation of control measures.

### **RFP Milestone Demonstration**

**The EPA is proposing that each area classified Serious or higher, shall submit a demonstration that an RFP milestone has been met no later than 90 days after the date on which the milestone occurs. An air agency will have the option to demonstrate an RFP milestone compliance in terms of either: (1) Compliance with control measures requirements in an RFP plan that complies with the requirements of the CAA (e.g., percent implementation), or (2) actual emissions reductions, as demonstrated with periodic emissions inventory data required under CAA section 182(a)(3)(A).**

OTC agrees with EPA, as discussed in the preamble, that demonstrating percent compliance with control measure requirements in the approved RFP plan would be sufficient for an air agency to demonstrate milestone compliance. The requirement for air agencies to demonstrate compliance with milestones based on an assessment of actual emissions data would not be

feasible because the data would not be available in time to meet the deadline. Compliance with the RFP commitment can be demonstrated by showing that the effective date of the emission reductions in the rules matches the RFP plan commitments.

#### **Methodology used to establish thresholds for nonattainment designation classification**

EPA is proposing to use the same “percent-above-the-standard” methodology (based on Table 1 from CAA Sec. 181 initially used to classify nonattainment areas for the 1979 1-hour NAAQS) as was used for establishing thresholds for nonattainment classifications for the 1997 and 2008 8-hour ozone standards. EPA proposes to translate the classification thresholds from the table into a corresponding set of 8-hour design values (DVs) that are the same percentages above the 2015 ozone NAAQS as the DV levels in the original table are above the 1-hour ozone NAAQS.

The "Percent above the standard" threshold was created for addressing the 1-hour standard and since moving from the 1-hour to an 8-hour standard, EPA's nonattainment classification scheme has failed to place nonattainment areas in categories that accurately represent the time and emission reductions required for attainment. We suggest that EPA revise its method to assure that areas are categorized into classifications that are appropriate to the time necessary to come into compliance, and so that the method does not again result in a large proportion of nonattainment areas having to be reclassified to higher levels as they near the designated attainment date.

#### **RACT SIP revision submittal, implementation deadlines, Control Techniques Guidelines (CTG)**

EPA is seeking comment on the proposed submission and implementation deadlines for SIP revisions resulting from reclassification actions or new CTGs.

- **First approach:** EPA is proposing a RACT SIP submission deadline of no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG.
- **Second approach:** EPA is proposing to establish a generic RACT implementation deadline for SIP revisions resulting from new CTGs, while also articulating the Administrator's authority to set a different implementation deadline in the action issuing a new CTG. This would apply to covered sources nonattainment areas and portions of a state located in an Ozone Transport Region (OTR) subject to new RACT SIP obligations. Under this approach, RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or the deadline established by the Administrator in the action issuing a new CTG.

In both approaches, the RACT SIP revisions would be implemented no later than January 1 of the third year after the associated SIP revision submittal deadline.

#### **RACT guidance documents**

EPA must issue updated consolidated guidance documents (CTG or ACT) to assist states with the development of strong RACT programs. OTC states urge EPA to update its requirements to reflect the latest science and technology including the reevaluation of RACT level controls to

conform to 21<sup>st</sup> century standards and previously granted NO<sub>x</sub> waivers (per CAA Sec. 182(f)) considering both local as well as downwind benefits. EPA should issue updated comprehensive RACT/ACT/CTG guidance that builds on the information sources EPA cites to ensure reasonably consistent RACT determinations.

A national guidance will provide a level of certainty to states and may provide air quality agencies with the 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 to operate such equipment. We have attached herewith a whitepaper produced by OTC's Stationary and Area Sources committee which includes a compendium of emission levels, control technologies, and current/pending regulatory measures in the OTC states related to NO<sub>x</sub> emissions from eight (non-large EGU) sources. This documentation is a technical and regulatory resource that could be useful in developing an updated RACT guidance.

CTGs often regulate a great number of small emitters, and outreach, compliance, and enforcement activities for those source sectors are difficult and resource-intensive. Development of a regulation to support the issuance of a new CTG within a nonattainment area or the OTR generally takes much longer than 24 months. This timeline is elongated when EPA issues CTGs without associated, well-developed model rules that contain the compliance standard, monitoring, record keeping, reporting and other necessary compliance provisions for state and federal enforceability. States need, at a minimum, three years to develop the appropriate SIP submissions. Implementation deadlines are also difficult to meet.

#### **Certification SIPs for Non-Attainment Areas**

**EPA interprets the CAA to require an air agency to provide a SIP submission to meet each nonattainment area planning requirement for the 2015 ozone NAAQS...However, where an air agency believes that an existing regulation is adequate to meet the nonattainment requirements of CAA Sec. 182 (or OTR RACT requirements of CAA Sec. 184) for a revised ozone NAAQS, its SIP submission may provide a written statement of the rationale for that determination in lieu of submitting new revised regulations. Other previously approved nonattainment SIP elements that may be sufficient for purposes of an area that has been designated nonattainment for a revised NAAQS might include (but are not necessarily limited to): Nonattainment NSR; vehicle I/M programs; and clean fuels requirement for boilers. An air agency choosing to provide a written statement to meet the submission requirement of the CAA must provide the statement to the EPA as a SIP submission per CAA Sec. 110 and 40 CFR 51.102, 103 and Appendix V. An air agency should identify the related applicable requirements and how each is met for the revised ozone NAAQS by the regulation previously approved for a prior ozone NAAQS. The purpose of the statement is to demonstrate compliance with the nonattainment plan requirements for the new NAAQS. These written statements must be treated in the same manner as any SIP submission and must be provided to the EPA in accordance with applicable SIP submission requirements and deadlines.**

Unless the requirements or the criteria for approval related to these specific SIP elements have changed, we recommend that EPA eliminate this certification for already approved elements To

require the recertification of an already approved element simply because the NAAQS has been revised is a redundant and wasteful process without any environmental benefit. In addition, it would be helpful if EPA prepared a checklist for states to use in certifying that their SIPs include all of the required elements.

## Inventory

### High Electric Demand Days (HEDD)

OTC states firmly believe that as part of the ozone season day emissions inventory requirements, states need to include HEDD data into their modeling to appropriately factor-in their impact. 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.

We have attached herewith a whitepaper produced by OTC's Stationary and Area Sources committee which includes an analysis of air quality impacts of non-CAMD HEDD units, estimation of emissions from back-up generators and peak electric generating units, along with recommendations for emissions reduction from such units. This documentation serves as a technical resource that could be useful in developing a national database of HEDD units.

### Managing Emissions from Wildfire and Wildland Prescribed Fire

**EPA recommends that ozone nonattainment plans do not include expected air quality changes over the planning period associated with wildland prescribed fire management, including climate change. EPA recommends that state attainment demonstration modeling should assume that emissions, temporal and geographic patterns associated with wildland prescribed fire and wildfire are the same in the attainment year as that used in the baseline inventory year.**

OTC agrees with this approach.

### Nonattainment NSR (NNSR) Offset Requirement: Inter-pollutant Precursor Trading (IPT) for Ozone Offsets

**EPA is seeking comment on the implementation options on IPT provisions including approval of either case-by-case ozone IPT ratios or area-specific default ozone IPT ratio.**

EPA should not require case-by-case determination for IPT ratios, and must provide area-specific IPT ratios to assist states in permit reviews, or, provide funding to regional multijurisdictional organizations (e.g. OTC, MARAMA, NESCAUM, etc.) to develop representative IPT ratios that will be subject to EPA and states' approval.

Ozone offsets are currently restricted to within nonattainment areas. EPA should expand the geographic boundaries to allow securing offsets from areas that significantly contribute to ozone exceedances in nonattainment areas, using the C-SAPR transport model as an example.

#### **RACM Outside Of NAA Boundaries**

**The EPA is proposing that the SIP revision shall include, as applicable, other control measures on sources of emissions of ozone precursors located outside the nonattainment area or portion thereof, located within the state if doing so is necessary to provide for attainment of the applicable ozone NAAQS in such area by the applicable attainment date.**

The contiguous areas that are contributing to nonattainment should be included in the nonattainment area itself. If the reductions are important to the area attaining the NAAQS, then the area should be expanded to include these important sources.

#### **International Transport and Background Ozone**

**EPA is seeking comment on whether the opportunity for CAA Sec. 179B demonstration (consideration of any emissions from North American or intercontinental sources - 80 FR 12293) should be limited to nonattainment areas adjoining international borders, and on any technical and legal basis for determining whether it is appropriate to have, or conversely whether it is appropriate not to have, such a limitation. Even if an area is impacted by emissions from outside the U.S., Sec. 179B does not affect the designations process.**

OTC states believe that Sec. 179B demonstration, i.e. consideration of any emissions from North American or intercontinental sources should be restricted to just the nonattainment areas adjoining international borders.

All 179B demonstrations regardless of an area's classification (including nonattainment areas classified as Marginal) must include a demonstration that the air agency adopted all RACM, including RACT, for the area in accordance with Sec. 172(c)(1). Such control measures are reasonably available and adopted in many portions of the United States and have been proven to improve air quality.

#### **Inventory Typographical Errors**

**On page 81314 "The emissions values included in the inventory required by this section shall be actual ozone season day emissions as defined by § 51.1300(ee)" and on page 81315 "(c) The emissions values included in the inventories required by paragraphs (a) and (b) of this section shall be actual ozone season day emissions as defined by § 51.1300(ee)", ...**

The "(ee)" cited above should be "(hh)".

**Conclusion**

OTC recognizes the EPA's effort to move forward in a timely fashion with its proposed rule for the implementation of 2015 Ozone NAAQS, and its ability to make improvements in some areas in the final rule compared to the current proposal. The OTC respectfully requests EPA to address and resolve the concerns listed above in a timely manner in order to obtain the full public health protections afforded by the 2015 Ozone NAAQS.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Foerter', with a long horizontal flourish extending to the left.

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CC: Steve Page, Director, OAQPS, USEPA

OTC Air Directors and Commissioners