

February 1, 2016



Gina McCarthy, Administrator  
United States Environmental Protection Agency  
EPA Docket Center  
Mailcode 28221T  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

Attention: Docket ID No. EPA-HQ-OAR-2015-0500

Connecticut

RE: Proposed Rule - Cross State Air Pollution Rule Update for the 2008 Ozone NAAQS

Delaware

Dear Administrator McCarthy:

District of Columbia

The Ozone Transport Commission (OTC) appreciates the opportunity to comment on the United States Environmental Protection Agency (EPA) proposed Cross State Air Pollution Rule (CSAPR) update for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), published in the Federal Register on December 3, 2015 (80 FR 75706). The OTC was created by Congress under the Clean Air Act (CAA) Amendments of 1990 to work with the EPA and states in the Ozone Transport Region (OTR) to coordinate ground-level ozone pollution control planning in the Northeast and Mid-Atlantic region of the United States ( 42 U.S.C. § 7511c(a)).

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

The OTC is supportive that the CSAPR update is now moving forward, despite a long delay. EPA must adopt this rulemaking on schedule to ensure emission reductions occur as early as possible so the air quality benefits are achieved by the 2017 ozone season. While this rule is being finalized, the EPA needs to also fully address significant contribution responsibilities under CAA section 110(a)(2)(D). More specific comments are provided herein.

Rhode Island

Vermont

Virginia

#### **Timing of CSAPR Updated Rule**

EPA must promulgate the CSAPR update by June 2016. The OTC supports the EPA's conclusion that the agency's Federal Implementation Plan (FIP) obligation addressing the Good Neighbor provision for the 2008 ozone standard was triggered on June 2, 2014, the date of the judgment issued by the U.S. Supreme Court in the *EPA v. EME Homer City* case. Therefore, the EPA is obligated to issue a FIP to address transported pollution by June 2, 2016. The EPA is also obligated, pursuant to a judgement issued by the Northern District of California in *Sierra Club v. McCarthy*, to take final action on several Good Neighbor State Implementation Plans (SIPs). The timing for completing Good Neighbor SIPs or a FIP is critical to ensuring requisite reductions in transported NOx emissions to enable all ozone nonattainment areas to attain and maintain the ozone standards. Historically, however, many states have failed to submit timely and complete Good Neighbor SIPs, or any SIP at all, with no resulting action by the EPA. As a result, the state and federal actions for the 2008 ozone standard are severely overdue. We urge the EPA to promulgate the CSAPR update by June 2016.

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### **EPA Must Act to Fulfill its Statutory Requirement under the Clean Air Act**

OTC points out that the EPA's CAA FIP requirement and the mandates of the court orders mentioned above will not be fully satisfied until all states have implemented emission reductions that fully address the CAA section 110(a)(2)(D) Good Neighbor requirements for the 2008 NAAQS. Therefore, the EPA should expeditiously act to propose and finalize a supplemental FIP to provide the full remedy. The full remedy should consider all source categories and not be subject to lead-time restrictions, such as the 2017 implementation restriction used for the partial remedy that resulted in additional cost-effective control measures not being considered.

### **Ensuring CSAPR Update Emission Reductions**

We agree with the EPA that the proposed CSAPR update provides only a partial, rather than full remedy to Good Neighbor obligations, and in this context, the final CSAPR update needs to ensure the full emission reduction benefits that can be provided by this rule by 2017. The OTC fundamentally disagrees with the EPA not fulfilling its statutory requirements under the CAA by proposing only a partial remedy. That said, the EPA must finalize this already delayed rule and must strive for as much emission reductions as possible to quickly protect public health.

The EPA used projected years emissions to determine contributions by states. Inherent in these emissions projections from 2011, the EPA included assumptions of operations in the EGU sector to the projected attainment date of 2017. These projections then formed the basis used to determine significant contribution. To ensure that assumed emissions levels are reliable and do not cause significant contribution, the EPA needs to review and verify that the emission reductions included in these projections are real, quantifiable and enforceable and any excess emissions do not undermine the benefits provided under CAA section 110(a)(2)(D).

As proposed, the CSAPR update concentrates on emission reductions that would be achieved relatively inexpensively and cost-effectively either with already installed control technologies or changes in operations. A portion of these reductions would come from optimizing the advanced control technologies that have been installed over more than the past decade. At a minimum, the CSAPR update should ensure that EGUs with these already installed controls run control equipment optimally throughout the ozone season, to reduce ozone precursor emission reductions needed during days of peak ozone events and downwind exceedances.

The EPA has specifically requested comment on surrender ratios for banked allowances generated pre-2017 ozone season. Of greater concern for the OTC, is that the allowance bank has prevented the current CSAPR program from achieving real emission reductions in a timely manner for attainment and needs to be corrected in the CSAPR update. The amount of pre-2017 NO<sub>x</sub> allowances remaining in the allowance bank is expected to be significant - projected to be between 200,000 to 400,000 tons - with associated cost close to the current \$190 per ton of ozone season NO<sub>x</sub> allowance. Due to the excessive amounts of low cost pre-2017 NO<sub>x</sub> allowances available, OTC expects that source owners will continue to purchase allowances rather than running installed control technologies, thus negating the intent of the proposed CSAPR update. EPA must be more aggressive in addressing this deficiency. The EPA needs to set up a process such that any pre-2017 allowances in a bank cannot be used in the early years of the CSAPR update program to undermine already long overdue emission reductions. Secondly, the EPA must provide adequate safeguards such that allowances cannot be used during peak

ozone days and High Electricity Demand Days to further undermine the benefits of the proposed CSAPR update and the ability of every downwind area to attain the ozone standard. A seasonal ozone cap in itself is not sufficient to ensure critical ozone precursor emission reductions needed during high ozone daily and episodic events.

### **Opt-in for Non-CSAPR Update States and Sources**

While the OTC understands the potential value of the EPA including opt-ins of other states and sources, both in the electric generation sector and other sectors, the CSAPR update needs to move expeditiously to finalize this CSAPR update relying on the core of the CSAPR framework. Adding additional geographic areas or sectors at this time can complicate or delay finalizing the CSAPR update and the resulting emission reductions, and should not be included in this rulemaking, but rather addressed in an independent rulemaking leading to a complete solution under CAA section 110(a)(2)(D) for the 2008 ozone standard.

### **Other Issues**

The OTC requests the EPA consider the undue hardship imposed on OTC states most impacted by transported air pollution with regard to cost of controls in the updated CSAPR rule. The states in the OTR continue to implement strategies to control emissions at costs that are orders of magnitudes greater than the cost to reduce emissions in non-OTR states. To create equity, the resulting cost factor the EPA applies should reflect this reality, and incorporate control strategy costs applied in the OTR versus non-OTR states. Equity of the cost factor is necessary to reduce placing an unfair burden of reduce transported emissions on downwind states.

In the technical analysis for the CSAPR update, the EPA should not anticipate any benefits from the Clean Power Plan. While clean energy programs are important to OTC states, the inclusion of such programs into the 2017 emission reductions should not overly complicate or delay finalization of the CSAPR update. OTC anticipates state and local clean energy programs will be incorporated into future emissions projections and will build on reductions that result in SIP credits for ozone and other requirements.

The OTC understands that there may be technical errors in the way states budgets were allocated or with the underlying modeling in the proposed CSAPR update; however, the CSAPR structure is legally sound, and the CSAPR update allows states to petition the EPA to correct technical issues. Thus, there is no justification in delaying finalization or implementation of the CSAPR update to resolve technical issues. Any delay would be in violation of the CAA, and would delay the much needed health benefit to the residents of the OTR. In the current rulemaking process, the EPA needs to work within the CSAPR framework to ensure that the final rule is both technically sound and that federally enforceable emissions reductions are not further delayed.

### **In Conclusion**

While OTC's comments today are focused on quickly finalizing and implementing the CSAPR update, the EPA also needs to expedite the complete solution for the 2008 ozone standard, and begin the process of ensuring complete and timely Good Neighbor emission reductions for the 2015 ozone standard. With the CSAPR framework upheld in the U.S. Supreme Court, the EPA and states now have the opportunity to create and implement a process that will fully and punctually address CAA section 110(a)(2)(D) obligations for the 2015 ozone standard. As the

EPA begins to address these obligations for the 2015 ozone standard, OTC urges the EPA to use its authority under CAA section 110(a)(1) to address the 2015 ozone standard requirements in advance of the statutory deadline of 2018, and avoid the severe delays experienced in implementing the 2008 ozone standard so that people may breathe clean air sooner.

The OTC appreciates the opportunity to submit these comments and welcomes discussion on this matter. Please contact the undersigned at (202) 508-3840 with questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Foerter', with a stylized flourish at the end.

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cc: OTC Commissioners