OZONE TRANSPORT COMMISSION

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December 14, 2020

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attn: Docket ID No. EPA–HQ–OAR–2020–0272

Re: *Proposed Rule – Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*

Dear Administrator Wheeler:

The Ozone Transport Commission (OTC) is providing these comments on the U.S. Environmental Protection Agency's (EPA's) proposed Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 ozone national ambient air quality standard (NAAQS) [85 Fed. Reg. 68964 (October 30, 2020)]. The OTC is a non-partisan multi-state organization created under the Clean Air Act (CAA) and led by the governors and their designated representatives from 12 states and the District of Columbia[1] to advise the EPA on addressing our shared ground-level ozone problem. Ozone pollution affects the health of more than 66 million people in the Ozone Transport Region (OTR), particularly the young, elderly, and persons with compromised health. Protecting public health and the environment from the harms of ozone pollution is at the core of the OTC's work.

The OTC is pleased that EPA is now proposing a rule to address multiple prior court decisions requiring EPA to develop federal implementation plans (FIPs) that align with the CAA-required ozone attainment deadlines. While we continue to have concerns with EPA's approach, in light of the short timeline available to achieve attainment by the 2021 deadline, we encourage EPA to finalize this proposal as soon as possible. This will accomplish a meaningful level of reduction in emissions of nitrogen oxides (NOx) and improvement in public health and environmental protection in the near-term.

While we encourage EPA to quickly finalize this proposal, we do not agree that the proposal fully addresses interstate transport of ozone and its precursors under the 2008 ozone NAAQS. EPA has not appropriately included all reasonable NOx reduction options prior to the 2021 attainment deadline. EPA instead delays additional NOx reductions through post-2021 state NOx emission budget adjustments assuming installation of ultra-low NOx burners after 2021 that it deems highly cost effective. There remain, however, important NOx emission reductions that should, as both a public health and a statutory requirement, occur prior to the 2021 attainment deadline.

[1] The Washington, DC mayor designates its two OTC representatives.

In addressing our continuing ozone problems, we recognize that other major NOx emission sectors, such as motor vehicles, are also important contributors outside the subject matter of this proposal. The timescale of vehicle fleet turnover, however, is not at a pace that will achieve our needed NOx emission reductions by the attainment deadline. While these other source sectors must be addressed, public health protection demands, and the Clean Air Act requires, that the NAAQS "be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment" (42 U.S.C. § 7502(a)(2)(A)). This reinforces the need to achieve as soon as possible all feasible NOx reductions that are available at reasonable cost by the July 20, 2021 attainment deadline.

The proposed Revised CSAPR Update rule needs to be implemented quickly to secure emission reduction benefits for the 2021 ozone season, but it is not a full remedy addressing good neighbor state implementation plan (SIP) obligations for the 2008 ozone NAAQS

While the OTC supports EPA moving expeditiously to finalize this rule, we do not agree that the rule, on its own, fully satisfies the good neighbor SIP obligations for the 2008 ozone NAAQS.[2] The earlier inadequate transport rules promulgated by EPA and subsequently remanded back to the agency or entirely vacated by the courts have left downwind states in a precarious position as they face another pending ozone attainment deadline with limited options available to fully achieve the needed NOx reductions. For the 2008 ozone NAAQS, states needed to submit fully compliant plans in 2011 that contained sufficient enforceable emissions reductions to resolve their significant contributions by the relevant attainment deadlines. At that time, 2015 was the deadline for what were then marginal nonattainment areas. A number of those areas failed to achieve attainment by that deadline. With the imminent arrival of the 2021 attainment deadline, years after upwind states were required to meet their original obligations, we already have preliminary data from the 2020 ozone season suggesting that the problem receptor sites are likely greater in number than EPA projects in its modeling for this proposal.

In this light, we strongly urge EPA to immediately commence on a renewed evaluation of contributions from upwind NOx emissions to downwind ozone problems for the 2008 (as well as 2015) ozone NAAQS. For this evaluation, we ask EPA to consider the effectiveness of strategies that are specifically targeted at obtaining the maximum NOx reductions on those days they are most needed, including but not limited to strategies relating to high electric demand days conducive to ozone formation.

EPA should require all reasonable NOx reductions achievable by the 2021 attainment deadline

In response to Comment C-1, we believe that EPA continues to pursue a NOx emissions trading program that contradicts the legislative requirement to address interstate transport by the 2021 attainment deadline. In the case of existing selective non-catalytic reduction (SNCR) controls, EPA dismisses their readily achievable near-term reductions because it views the estimated cost of $3,900/ton as not meeting its step 3 marginal control cost threshold. Based on already adopted state rules, however, a cost of $3,900/ton in this context is generally considered quite reasonable by our members.[3] As such, it is our position that the marginal control cost threshold of

[2] A number of OTC members will be separately submitting comments on their own behalf detailing the shortcomings they find with EPA's proposed rule in addressing good neighbor SIP obligations.

[3] In case-by-case reasonably available control technology (RACT) assessments, Connecticut considers NOx control costs of up to $13,635/ton to be economically feasible (RCSA section 22a-174-22e(h)(1)(A), amended October 8, 2019). In its "good neighbor" supplemental SIP submittal for the 2008 ozone NAAQS, New York State bases its

$1,600/ton used in step 3 is not appropriate. As shown in Table VII.C.1-2 of the proposal, almost 3,000 tons in NOx reductions are achievable by the 2021 ozone season if EPA were to require operation of existing SNCR controls in this regulation concurrently with the start of the 2021 ozone season. Instead of requiring the use of existing SNCR controls by 2021, EPA opts for "budget adjustments" that would require additional NOx reductions after 2021, through the assumed future installation of ultra-low NOx burners. In doing so, EPA is once again deferring achievable near-term NOx emission reductions beyond an ozone attainment deadline in direct contravention to four court cases clearly stating it cannot do so (Comment C-21).[4]

Furthermore, while EPA downplays the SNCR NOx reduction potential as "approximately only 3,000 tons," we point out that of the 22,829 tons in NOx reduction potential at a marginal control cost of $1,600/ton, about 5,000 tons of that reduction would not occur until *after* the statutorily required 2021 attainment deadline.[5] In that light, the 3,000 tons of achievable NOx reductions in the near-term are quite comparable to the additional emission reductions EPA projects to occur after the 2021 ozone season. A key difference, however, is that the 3,000 earlier tons would be consistent with the statutory attainment deadline and drive greater public health protection more quickly. Because the serious area attainment deadline is July 20, 2021, compliance with that date will be determined by the 2020 ozone season. Since that season is now past and the projected design value for the NY-NJ-CT nonattainment area continues to exceed the 2008 ozone NAAQS, it is essential for all reasonable NOx control requirements to be in place immediately at the beginning of the 2021 ozone season.

We agree that EPA should require additional NOx reductions after 2021, because as EPA's modeling analysis indicates, there will be remaining nonattainment and maintenance problems of the 2008 ozone NAAQS. We clearly will need additional NOx reductions that may not be technically feasible to achieve in the remaining time prior to the 2021 attainment deadline. The existence of those reductions after 2021, however, should not be used to dismiss technically feasible NOx reductions achievable at reasonable cost prior to the attainment deadline. We request that EPA promulgate a final rule incorporating the additional NOx reductions achievable by the July 2021 attainment deadline from running existing SNCR controls.

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presumptive RACT NOx emission limits for fossil fuel power plants and industrial facilities on an inflation-adjusted control cost of $5,500/ton (Proposed New York State Implementation Plan Revision: Transport Supplement for the 2008 Ozone National Ambient Air Quality Standards, submitted to EPA Region 2 on September 25, 2018). New Jersey has adopted NOx RACT rules determining that control costs are reasonable at levels up to $18,000 ton for oil-fired boilers and up to $44,000/ton for "high electric demand day" turbines [40 N.J. Reg. 4390(a) (Aug. 4, 2008), adopted 41 N.J. Reg. 1752(a) (Apr. 20, 2009), codified in N.J. Admin. Code § 7:27-19 (subchapter on control and prohibition of air pollution from oxides of nitrogen)]. New Jersey also found as reasonable NOx control costs for natural gas compressor engines and turbines ranging from $3,044 to $26,020/ton [49 N.J. Reg. 14(a) (Jan. 3, 2017), adopted 49 N.J. Reg. 3518(a) (Nov. 6, 2017), codified in N.J. Admin. Code. §§ 7:27-19.5(1) and -19.8(g)]. *See also,* NJ DEP, *State Implementation Plan Revision for the Infrastructure and Transport Requirements for the 8-hour Ozone National Ambient Air Quality Standards and Negative Declaration for the Oil and Natural Gas Control Techniques Guidelines*, Final SIP, May 2019, p. 15; at https://www.nj.gov/dep/baqp/itr.html.

[4] *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008); *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019); *New York v. EPA*, 781 Fed. App'x 4 (D.C. Cir. 2019); *New Jersey v. Wheeler*, No. 1:20-cv-1425 (S.D.N.Y. July 28, 2020).

[5] This is based on EPA's estimated combined reduction amount from running and optimizing existing SCR controls in 2021 along with post-2021 new ultra-low NOx burners (85 Fed. Reg., at 68996, Table VII.C.1–2).

The Group 3 NOx trading program should be among sources that significantly contribute to the same downwind problem areas

Finally, to the extent EPA retains a NOx trading program in the final rule (Comment C-23), we ask that it remove sources in Louisiana from the Group 3 program. According to EPA's modeling analysis using a one percent contribution threshold to ozone monitors modeled to be in nonattainment or maintenance in 2021, Louisiana is included in the trading program because it affects Houston, Texas; it is not a significant contributor to ozone problems in the OTR. Similarly, none of the states determined by EPA to be significant contributors to ozone problems in the OTR are significant contributors to the Houston ozone problem area. Unlike past transport rules addressing multiple nonattainment and maintenance areas across the East, this proposal essentially seeks to address only two very discrete and geographically separate areas – Houston, Texas and Connecticut sites downwind of New York City. With only two areas this far apart and not linked to a set of common upwind states (according to EPA's contribution threshold), there is no purpose or scientific basis for NOx allowance trading between sources in Louisiana and the other Group 3 states. Allowing such trades opens the possibility for under control of NOx emissions contributing to ozone problem areas either downwind of Louisiana or the other Group 3 states because upwind sources can purchase allowances from other sources that do not affect the same problem area. EPA should only allow NOx allowance trading among sources in states that significantly contribute to the same downwind nonattainment or maintenance areas, in this regulation as well as in any other future regulations pertaining to NOx trading.

In summary, the OTC welcomes and supports the proposed Revised CSAPR Update rule because it achieves real reductions in transported interstate ozone pollution by the required 2021 CAA attainment deadline. We also support and encourage EPA to finalize the rule as quickly as possible. We do not, however, agree that this rule fully addresses upwind states' significant contributions to continuing ozone problems in the OTR for the 2008 ozone NAAQS. It also fails to require all technically feasible and reasonably achievable NOx reductions prior to the 2021 ozone season based on its use of a cost threshold that appears generally inappropriate. In finalizing this proposal, we ask that EPA strengthen these elements consistent with the goals of the Clean Air Act.

Sincerely,

Terrence Gray, P.E.
Deputy Director for Environmental Protection
Rhode Island Department of Environmental Management
OTC Chair

cc: OTC Commissioners and Air Directors
U.S. EPA Regional Administrators, Regions I, II, and III