



September 4, 2013

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Air and Radiation Docket and Information Center
Mail Code: 2822T
1301 Constitution Avenue, N.W.
Washington, DC 20460
Attention: Docket ID No EPA-HQ-OAR-2010-0885

Re: Proposed Rule to Implement the 2008 Ozone National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements

Dear Administrator McCarthy:

The Connecticut Department of Energy and Environmental Protection (DEEP) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) proposed rule entitled, *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Proposed Rule* (78 FR 34178-34239; published June 6, 2013) (proposed rule). The proposed rule represents an important step forward towards protecting public health by laying out the requirements that states must meet to implement the 2008 ozone national ambient air quality standard (NAAQS). The comments in this letter, and those included in Attachment A hereto, are intended to assist EPA in reaching this goal as expeditiously as practicable – and in a manner that is equitable to states, such as Connecticut, that have worked diligently over the past forty years to comply with previous ozone NAAQS yet still are nonattainment due to transported air pollution.

Successful Implementation of the 2008 Ozone NAAQS Requires Collective Focus and Nonattainment Designations that Reflect Current Ozone Levels

Given the public health benefits associated with reduced concentrations of ozone in the ambient air and the uncertain timing of the next ozone NAAQS review, the States and EPA must concentrate our collective effort on the successful implementation of the 2008 NAAQS. While the proposed rule establishes the scope and timing of the required State Implementation Plan (SIP) elements that states must employ to provide for timely attainment of the 2008 ozone NAAQS in all areas, the proposed rule should also be more forward looking and provide a more equitable and practical level of emphasis on the transition between the previous and current NAAQS. Anti-backsliding requirements are necessary to preserve air quality improvements achieved under the previous NAAQS, but EPA's primary efforts should be directed at ensuring compliance with the 2008 ozone NAAQS.

Unfortunately, numerous areas¹ designated as attainment of the 2008 NAAQS in 2012 are now in violation of that standard. Despite their current non-compliance, these areas will not be subject to the nonattainment provisions of the proposed rule and will only be required to meet minimal anti-backsliding safeguards. This will likely result in unanticipated and unaddressed public health impacts in these local areas and increased ozone transport into downwind nonattainment areas.

EPA should modify the proposed rule to ensure all areas designated as attainment that are currently violating the 2008 NAAQS are subject to the Clean Air Act's (CAA) nonattainment provisions while also providing appropriate flexibility for anti-backsliding provisions that will allow limited state resources to be brought to bear on efforts that will improve future air quality. Connecticut urges EPA to exercise its authority under CAA section 107(d)(3) to establish revised designations for those areas classified as "attainment", but are in fact now violating the 2008 NAAQS based on current ozone design values. Connecticut believes that if EPA initiates this action as soon as possible, revised designations could occur in the same timeframe as finalization of the proposed rule. As part of this effort, EPA should link revocation of the 1997 ozone NAAQS to the same date that the revised designations become effective. Doing so will properly ensure that CAA nonattainment provisions apply to all areas currently violating the 2008 NAAQS and provide a more appropriate level of relief from anti-backsliding and other requirements to those areas that warrant such treatment. EPA should also include provisions in the rule to permanently relieve states of CAA section 185 fee obligations once EPA has issued a ruling that an area has attained the corresponding NAAQS.

Flexibilities Must Comport with the Clean Air Act

EPA is proposing or considering several provisions that would provide flexibility to states regarding implementation of reasonable further progress (RFP), reasonably available control technology (RACT), control techniques guidelines (CTG), vehicle inspection and maintenance (I/M) programs, and other CAA requirements, as well as SIP submittal deadlines. In general, DEEP supports EPA's efforts to provide practical flexibilities grounded in sound science (e.g., meeting 15% RFP with reductions of nitrogen oxides (NO_x) rather than volatile organic compounds (VOC)) or that provide additional time for submission of plans without delaying actual air quality improvement (e.g., 30-month RACT SIP submittals). However, DEEP is very concerned that some of the proposed flexibilities under consideration are not consistent with the plain requirements of the CAA. In particular, DEEP opposes the proposed option whereby areas could avoid implementing VOC RACT and CTGs, which are minimum control levels that are clearly mandated by the CAA for moderate nonattainment areas and all states in the Ozone Transport Region (OTR).

Implementation flexibilities can reduce administrative costs for states and result in greater environmental benefit, but flexibility is only warranted if it is in compliance with the

¹ For example, Harrisburg PA, Richmond VA, Erie PA, Youngstown OH, Detroit MI, Louisville KY, Evansville IN, Nashville TN and Winston-Salem NC, among others, are designated as "attainment" but are now violating the 2008 NAAQS (based on 2012 ozone design values).

CAA. Furthermore, flexibility should be implemented equitably and so that it promotes a better environmental outcome. Past attempts by EPA to incorporate flexibilities not squarely based on the CAA have resulted in legal challenges and substantial delays in the states' ability to meet CAA deadlines and achieve air quality improvements, which compromised environmental benefits associated with previous NAAQS. EPA should ensure it has established a firm legal basis before moving forward to include any flexibilities in the final rule. EPA should also consider equity concerns raised by some of the proposed flexibilities from the perspective of states that have previously invested significant resources to meet these CAA requirements. For example, Connecticut and many states in the OTR have recently completed regulation updates to achieve timely compliance with newly issued CTGs for numerous VOC source categories.

RACT Guidance Should be Updated and Sources Should Operate Existing Controls

EPA's NO_x RACT and Alternative Control Techniques (ACT) guidance is more than 20 years old and does not reflect recent technology advances and reductions in the cost of air pollution control equipment. Although the proposed rule's preamble refers states to other available information for evaluating RACT options, this piecemeal approach will likely result in drastically different interpretations of appropriate RACT levels across the country and compel states to expend considerable resources on RACT determinations. EPA should instead issue updated, comprehensive, and uniform national guidance to ensure states make consistent RACT determinations. Such national guidance will provide a level of certainty to states and also serve to assist with rule adoption where state law or stakeholder resistance may otherwise present obstacles to reasonable state actions.

In addition to issuing updates to RACT guidance to provide for the next round of NO_x reductions under the 2008 ozone NAAQS, EPA should also ensure that NO_x sources with previously installed air pollution control equipment are required to fully operate those controls during the ozone season. Currently, some sources are complying with Clean Air Interstate Rule (CAIR) ozone season requirements without fully operating their controls on days conducive to ozone formation. With underutilized air pollution control equipment already in place on many large stationary sources², EPA must require a thorough RACT analysis that should include, as an element of any new RACT certification, a requirement for sources to operate controls throughout the entire ozone season.

The Transport Issue Must Be Resolved

As EPA acknowledges in the preamble, the proposed rule does not address states' good neighbor responsibilities under CAA section 110(a)(2)(D)(i)(I) concerning upwind emissions that significantly contribute to ozone nonattainment or interfere with maintenance in downwind states. Connecticut supports EPA's current efforts before the US Supreme Court to clarify the legal framework necessary to address interstate air pollution, but reminds EPA that both CAIR

² See the Stationary Area Source Committee [presentation](http://www.otcair.org/upload/Documents/Meeting%20Materials/OTC%20103%20Annual%20Meeting%20-%20SAS%20Committee%20-%20Mirzakhali.pdf) (slides 6 - 13) from the 2013 OTC Annual Meeting: <http://www.otcair.org/upload/Documents/Meeting%20Materials/OTC%20103%20Annual%20Meeting%20-%20SAS%20Committee%20-%20Mirzakhali.pdf>

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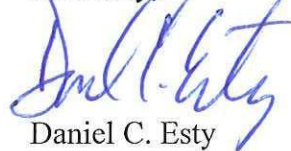
Page 4

and the Cross State Air Pollution Rule were directed at meeting the 1997 ozone NAAQS. As such, a separate transport rule is needed as soon as possible to begin to address the 2008 ozone NAAQS. The transport rule will help solve the transport problem; however, it does not eliminate each state's responsibility to address transport under the good neighbor provisions of the CAA.

DEEP routinely measures ozone levels at Connecticut's upwind boundaries that violate the 2008 NAAQS. EPA and other available modeling provide substantial evidence that Connecticut cannot comply with the 2008 ozone NAAQS without additional large-scale reductions in upwind ozone precursor emissions. At a minimum, EPA should adopt a suite of new stringent national rules addressing mobile sources, electric generating units (including a focus on periods of high electric demand), and industrial/commercial boilers -- which would be the most cost effective and legally defensible manner to achieve attainment with the 2008 ozone NAAQS as expeditiously as practicable.

Thank you for the opportunity to comment on the proposed implementation rule. Please contact Anne Gobin (860-424-3026) with any questions related to these comments.

Sincerely,



Daniel C. Esty
Commissioner

Attachment

c: Anne Gobin, DEEP
Dave Conroy, EPA Region 1
Arthur Marin, NESCAUM
Wick Havens, OTC

ATTACHMENT A

Connecticut Department of Energy and Environmental Protection (DEEP) Supplemental Comments on EPA's Proposed Ozone Implementation Rule (Docket ID No EPA-HQ-OAR-2010-088578 for 78 FR 34178-34239; published June 6, 2013)

This attachment supplements the primary comments provided in the cover letter submitted by the Connecticut Department of Energy and Environmental Protection (DEEP) regarding the Environmental Protection Agency's proposed implementation rule for the 2008 national ambient air quality standard (NAAQS) for ozone. The proposed ozone NAAQS implementation rule (proposed rule) represents an important step forward towards further protecting public health by laying out the requirements that states must meet to implement the standard. Connecticut's comments are intended to assist EPA in reaching this goal as expeditiously as practicable and in a manner that is equitable to states, such as Connecticut, that have worked diligently over the past forty years to comply with previous ozone NAAQS, yet still are nonattainment due to impacts of overwhelming air pollution transport.

The DEEP's primary comments are included in the cover letter to this attachment. The DEEP also offers the following supplemental comments to improve the proposed rule, organized by subject matter (with page number references to the proposed rule noted).

SIP Submission Timelines

The proposed rule (pg. 34184) includes an option for states with areas classified as moderate or higher nonattainment to choose between two timelines for submitting required State Implementation Plan (SIP) revisions. Under the first option, states could elect to follow the timelines described in the CAA, which vary from two years after attainment/nonattainment designations are finalized to submit inventories and RACT SIPs and up to three or four years (depending on the severity of nonattainment classification) to submit reasonable further progress (RFP), reasonably available control measures (RACM) and attainment demonstration SIPs. Under the second option, states could choose to submit all of the required SIP elements within 30-months after the effective date of designations.

The DEEP supports this flexibility if EPA is able to establish a firm legal basis before finalizing the proposed rule. The 30-month option provides a more realistic timeframe for completion of inventories and adoption of any new RACT regulations. If this flexibility is included in the final rule, EPA should make it clear that any associated RACT, RACM or other control measures must be implemented according to mandated CAA deadlines to ensure expeditious attainment.

Addressing High Electricity Demand Days (HEDD) in Photochemical Modeling

In the proposed rule's preamble (pg 34185), EPA describes the potential for significantly higher NO_x emissions from electric generating units (EGUs) of all sizes during periods of increased power demand on hot summer days to meet peak power demands. In some areas, the NO_x emission increases can be disproportionately higher during these periods because much of the increased electricity demand is met by older, dirtier and less efficient load-following and/or peaking unit EGUs that usually emit NO_x at higher rates and/or are less controlled than many

base-load EGUs. Since increased NO_x emissions on HEDD often coincide with ozone episode periods, EPA points out that these emissions should be properly incorporated into photochemical modeling, accounting for the specific days and hours that they occur.

EPA indicates that it will consider whether updates to existing modeling guidance are needed to better address HEDD situations. DEEP encourages EPA to consult with all eastern U.S. regional grid operators, and state and regional modeling partners to obtain specific HEDD emissions profiles and develop explicit HEDD procedures for incorporation into the modeling guidance. DEEP also notes that the Eastern Regional Technical Advisory Committee (ERTAC) has gathered and analyzed available EGU data to develop a tool that projects hourly growth rates in EGU generation during peak-demand times. This information could prove useful in developing appropriate procedures to more accurately simulate HEDD emissions in photochemical modeling.

Accounting for Non-Creditable Reductions in RFP Target Calculations

In the proposed rule's preamble (pg 34189), EPA presents an alternative to eliminate the CAA section 182(b)(1)(D) obligation for states to adjust RFP emission target levels to account for reductions from non-creditable pre-1990 motor vehicle control measures. EPA notes that the emission impacts from these pre-1990 model year vehicles were a minimal portion of total emissions in 2011 and will be even smaller in future years as more of those vehicles are retired from the fleet, and thus can be treated as de minimis.

The DEEP agrees that it is appropriate, in most cases, to no longer require that states perform the tedious calculations involved in quantifying the magnitude of these pre-1990 controls relative to a 2011 baseline. However, the pre-1990 calculation will be necessary if EPA decides to allow areas submitting a first-time 15% RFP Plan to substitute NO_x for VOC reductions. In those cases, EPA indicates in the preamble (pg 34188) that such areas must first demonstrate that a 15% VOC reduction was achieved relative to a 1990 baseline. Since those areas would be required to look back to a 1990 baseline, the emission reductions from pre-1990 control measures are not likely to be de minimis, so they would need to be considered.

Baseline Year for RFP Calculations and for Multi-State Areas

EPA is proposing (pg 34190) that states use the most recently available triennial inventory (in this case, 2011) as the "default" RFP baseline year inventory. EPA is also proposing a state option to justify the use of another RFP baseline year if states can demonstrate that the required 15% RFP reduction occurs in the 6-year period starting in January of the year after the selected baseline year, and is followed by an additional 3% per year emission reduction for each year up to the start of the required attainment year. DEEP agrees that this is a reasonable approach, as long as sufficient justification is provided and the alternate baseline year does not significantly deviate from the design value period used to establish designations.

For multi-state areas, EPA is proposing (pg 34191) that multi-state nonattainment areas must consult and agree on the same year to use as a baseline year for demonstrating RFP. DEEP does not agree with this proposal. CAA 182(j)(1)(A) requires multi-state areas to take all reasonable

steps to consult and coordinate when developing SIP plans. There may be reasonable and legitimate reasons justifying the use of different RFP baseline years by the states in a multi-state area. For example, one state may want to take RFP credit for a state control strategy implemented just prior to the “default” baseline year, thus justifying expending the additional resources needed to generate an inventory for a year outside the triennial emission inventory cycle. Meanwhile, another state in the multi-state area may not have the same motivation, instead preferring to rely on the most recent triennial inventory as the RFP baseline inventory. Generally, as long as each state within the multi-state area is able to independently demonstrate RFP for its portion of the area for the 2008 NAAQS, RFP should be achieved in the nonattainment area as a whole, especially when the sizeable emission reductions expected from mobile source fleet turnover are considered.

RACT Flexibility

EPA is soliciting comment (pg 34193) on modifying existing guidance for implementing CAA section 182(b) RACT requirements. EPA notes that, in some areas, additional VOC reductions have been shown to have limited impact on reducing ozone concentrations. EPA is requesting comment on whether evaluations of the potential air quality benefit (or lack thereof) of further VOC controls can be taken into consideration when determining what is “reasonable” and “economically feasible” in a RACT analysis.

Connecticut opposes consideration of ozone improvement when implementing the RACT requirement. The plain text of the CAA and EPA’s previous interpretations of it make it clear that RACT is a required control level for specific sources, with no direct link to a level of ozone improvement or to any required demonstration of attainment. CAA section 182(b)(2) establishes the requirement for “implementation of reasonably available control technology” on all VOC sources covered by a CTG document and all other major sources of VOCs in an area classified as moderate or higher. CTGs are typically prescriptive, requiring specific controls or equivalent emission reductions for specific types of sources. EPA has further defined RACT (see footnote 33 on p 34191 of the preamble) as “the lowest emission limitation that a *particular source* is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility” (emphasis added). RACT/CTGs are a minimum control requirement for these areas; consideration of related ozone improvements should continue to be restricted to any additional RACM measures needed to achieve attainment.

This potential option to avoid VOC RACT based on evidence of negligible ozone improvements is not supported by the Clean Air Act and appears to be equivalent to the NO_x waivers EPA has previously granted under CAA section 182(f). In the Phase 2 Rule for the 1997 NAAQS, EPA responded to a comment urging EPA to expand the waiver provisions of section 182(f) to VOC RACT as well as NO_x RACT (70 CFR 71662; 11/29/2005), saying: “*We [EPA] do not see any provision in the CAA that would give us the authority to create such an exemption. While Congress could have created a VOC waiver at the same time the section 182(f) NO_x waiver provisions were enacted, Congress chose not to do so.*” EPA went on to note that the Congressionally required CAA section 185B study conducted by the National Academy of

Sciences concluded that, unlike NO_x, “*control of VOCs never leads to a significant increase in ozone.*” Thus, the section 185B report does not support a waiver provision for VOC.”

In addition to the concerns described above, there are significant equity issues that EPA should consider. Connecticut, and several other states in the OTR, has expended considerable resources to implement major source VOC RACT controls and a host of CTGs (some very recently). If EPA finalizes this proposal allowing states to avoid VOC RACT and CTG implementation, it would only serve to exacerbate the inequitable level of clean air costs between regions.

RACT for Municipal Waste Combustors

EPA is currently recalculating the emissions limits for large and small municipal waste combustors (MWC). The Maximum Achievable Control Technology (MACT) standard for MWCs addresses nine different pollutants including NO_x; therefore, the revised CAA section 129 and 111(d) emissions limits have implications for states required to submit RACT SIPs for the 2008 ozone NAAQS. EPA should act to move forward with the analysis needed to determine appropriate revisions to the MACT, preferably before the end of 2013 so that states can take them into account when preparing RACT analyses. If further delays occur in the issuance of MACT limits, states may be faced with modifying regulations twice to comply with both the MACT and RACT requirements.

Inspection and Maintenance Programs

The DEEP disagrees with EPA’s assertion in the proposed rule (pg 34180) that Inspection and Maintenance (I/M) programs may no longer be relevant because of technological advances or alternative solutions. As the proposed rule acknowledges, (pg 34195) I/M programs are much easier to implement than in the past, and remain important in controlling motor vehicle emissions, which continue to be a large contributor to the ozone problem. While the overall light duty fleet is cleaner than in the past, there remains a significant gap between well-maintained vehicles and malfunctioning gross-emitting vehicles that can best be identified through mandatory I/M inspections. EPA should be consistent in its message about I/M programs in new nonattainment areas and require that all I/M programs meet applicable I/M performance standards consistent with the requirements of the CAA and EPA’s I/M regulation. Furthermore, any contemplated changes in deadlines for submittal of I/M SIP revisions should be legally justified, and in no case should result in delays in required I/M program implementation. Finally, Connecticut firmly believes that EPA should defer making I/M program changes through this rulemaking, and instead pursue a separate rulemaking specific to the I/M program.

Transportation and General Conformity (pg 34196)

As part of the final ozone classification rulemaking (77 FR 30160; May 21, 2012), EPA established that the 1997 ozone NAAQS would be revoked for the purposes of transportation conformity as of July 20, 2013, one year after 2008 NAAQS designations became effective. As a result, areas designated nonattainment for the 2008 NAAQS (including Connecticut) are required to continue demonstrating that transportation plans conform to the SIP. Areas previously designated as nonattainment or maintenance for the 1997 NAAQS, and currently

designated as attainment for the 2008 NAAQS, are no longer are required to demonstrate conformity for either standard.

Multiple areas designated as “attainment” for the 2008 ozone NAAQS are currently violating the standard. Because of their initial attainment designation, these recently violating areas are not subject to transportation conformity restrictions to protect air quality, which could lead to unrestrained growth in mobile source emissions in areas that should be subject to CAA nonattainment requirements. As recommended earlier, EPA should act quickly under CAA section 107(d)(3) to make sure all areas violating the 2008 NAAQS are properly designated as nonattainment and thus properly subject to transportation conformity requirements.

Inventory Requirements

The CAA requires marginal and above nonattainment areas to submit a base year inventory (CAA section 182(a)(1)) and periodic inventories every three years after the base year inventory (CAA section 182(a)(3)(A)). In the preamble to the proposed rule (pg 34202), EPA notes that the annual emissions reporting rule (AERR) also requires all states, regardless of attainment status, to submit triennial statewide inventories. EPA goes on to propose that states apply the AERR reporting requirements if they are subject to both of the three-year inventory requirements described above and consolidate those requirements in a single submission.

The proposed rule is unclear as to whether the previous obligations for nonattainment areas to quantify ozone precursor emissions based on a “typical summer day” rather than annual emissions because the AERR is currently open for comment and proposes to eliminate the daily and seasonal reporting requirements relevant to ozone. Given the challenges of addressing HEDD and likely need to design control programs that address peak ozone levels, EPA should clarify the final implementation rule and the AERR to specify that emission inventories must be representative of days that produce high ozone. On August 5, 2013, DEEP submitted comments on the proposed AERR urging EPA to retain the daily and seasonal emissions reporting requirements relevant to ozone as a critical tool for ozone planning.

Transition Requirements

As described in the proposed rule’s preamble (pg 34218), for areas designated attainment for the 2008 NAAQS and with approved CAA section 175A maintenance plans (175A plan) for the 1997 NAAQS, EPA is proposing that an approved 175A plan will satisfy the maintenance plan obligation for the 2008 ozone NAAQS under CAA section 110(a)(1). For areas designated attainment for the 2008 NAAQS and retaining a nonattainment designation for the 1997 NAAQS (at the time that standard is revoked), EPA’s preferred proposal is that approved PSD SIPs for these areas will satisfy the maintenance plan requirements of CAA section 110(a)(1).

The DEEP would have no significant concerns with this approach if current designations accurately reflected current air quality. However, given that numerous areas designated as “attainment” for the 2008 NAAQS are now measuring violations of that NAAQS, EPA’s proposed approach only makes sense from an air quality perspective if the designations of those recently violating areas are quickly updated under CAA section 107(d)(3). In addition, EPA’s

transition and anti-backsliding proposals will be more equitably applied and more protective of air quality if the effective date of the implementation rule and the revocation date of the 1997 NAAQS occur together.

Redesignation Substitute

EPA is also proposing (p 34222) a new “redesignation substitute” procedure for states to satisfy anti-backsliding requirements for the revoked 1997 and/or 1-hour ozone NAAQS while pursuing and implementing CAA requirements for the 2008 NAAQS. Under the previous Phase 1 Rule (69 FR 23951, April 30, 2004), the EPA lacked a rule-based method that, like redesignation to attainment for a current standard, could serve as a demonstration that applicable nonattainment requirements have been satisfied for a revoked standard. Since EPA has established that it can no longer formally redesignate an area for a revoked NAAQS, the “redesignation substitute” proposal serves as a successor to that process for areas that would have been eligible were it not for revocation. The rule would require the state to provide a demonstration addressing the substance of the CAA section 107(d)(3) redesignation criteria. EPA would conduct notice-and-comment rulemaking, but would not require the state to follow formal SIP submission procedures, since formal redesignation cannot occur for a revoked NAAQS.

Connecticut generally supports EPA’s proposal to create a redesignation substitute mechanism for areas that reach attainment of a revoked standard. The new procedure addresses an inequity in the Phase 1 Rule, where such areas were subject to more stringent requirements than areas that were redesignated to attainment prior to revocation of a standard. The redesignation substitute procedure provides areas attaining a revoked NAAQS with a reasonable pathway to set aside outdated anti-backsliding requirements while demonstrating continued maintenance of the revoked standard. Meanwhile, the area remains subject to ongoing (and potentially new) requirements to meet the new more stringent NAAQS, providing for continued air quality improvement.