Connecticut Department of Energy and Environmental Protection
Delaware Department of Natural Resources and Environmental Control
Maryland Department of the Environment
Massachusetts Department of Environmental Protection
New Hampshire Department of Environmental Services
New York State Department of Environmental Conservation
Pennsylvania Department of Environmental Protection
Rhode Island Department of Environmental Management
Vermont Department of Environmental Conservation

April 6, 2016

Ms. Gina McCarthy, EPA Administrator
United States Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Dear Ms. McCarthy:

On December 10, 2013, Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont sent you, as the Administrator of the U.S. Environmental Protection Agency (EPA), a petition, pursuant to section 176A of the Clean Air Act (Act), to add Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia and West Virginia to the Ozone Transport Region (OTR) established pursuant to section 184 of the Act. We also requested that EPA provide an opportunity for public participation, including public notice and comment, with regard to the petition. To date, EPA has not acted on either request despite a legal obligation to have done so by June 10, 2015.

States within the OTR have adopted stringent emissions controls at significant cost on a statewide basis. Continued nonattainment of the ozone National Ambient Air Quality Standards (NAAQS) threatens public health, burdens our economies and deters economic growth. States outside of the OTR are only required to install the most basic controls in nonattainment areas. This letter requests that EPA take immediate action to grant the December 10, 2013 petition because expansion of the OTR will aid in addressing ozone transport which will result in more reductions of precursor emissions that significantly contribute to ozone nonattainment in our states and would result in a fairer distribution of the burden of controlling this pollution.

The original petition, and the technical support document that accompanied it, relied heavily on EPA's significant contribution analysis for the 2011 Cross-State Air Pollution Rule (CSAPR) for the 2008 ozone NAAQS, which clearly identified non-OTR states that significantly contribute to nonattainment in the current OTR. More recently, technical support documents and associated data files[1] for the proposed update to CSAPR (80 FR 75706; December 3, 2015) show that most of the upwind states named in the petition continue to significantly contribute to ozone nonattainment in the OTR.

While EPA's proposed update to CSAPR supports states' obligations to address air pollution transported across state lines and helps address EPA's role in backstopping states' obligations under the Clean Air Act, it is only a partial remedy, meaning that it does not fully address the problem of transported ozone pollution in the East. In fact, EPA's modeling for the CSAPR update projects continued nonattainment of the ozone NAAQS in the New York-Northern New Jersey-Long Island, NY-NJ-CT area, and renewed nonattainment in the Baltimore, Maryland area in 2017; with interstate transport from upwind states continuing to contribute significantly to that nonattainment[2]. Without a full remedy at the federal level, the upwind states have demonstrated little interest in implementing meaningful emission reduction measures in their Good Neighbor State Implementation Plans beyond what is specified by CSAPR. Indeed, the named upwind states have thus far declined to commit to any additional legally enforceable measures to address ozone transport. In addition, we remind EPA that it is critical to promptly finalize a full transport remedy that requires states contributing to downwind ozone nonattainment to implement additional enforceable control measures as necessary to help downwind areas meet their attainment requirements.

States that are added to the OTR will be required to implement measures, including reasonably available control technology, designed to reduce ozone levels. Accordingly, granting the petition will also facilitate efforts to meet the 2015 ozone NAAQS as well as future updates to the NAAQS.

In conclusion, given current ozone nonattainment in the OTR, projected nonattainment in the OTR in 2017, and a proposed federal transport rule that only partially addresses ozone transport, we strongly urge EPA to grant the December 10, 2013 petition to expand the OTR.

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[1] http://www.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule

[2] See "Data File with 2017 Ozone Contributions (XLS)" at http://www.epa.gov/airmarkets/proposed-cross-state-air-pollution-update-rule

Sincerely,

Robert Klee, Commissioner
Connecticut Department of Energy and Environmental Protection

David Small, Secretary
Delaware Department of Natural Resources and Environmental Control

Benjamin Grumbles, Secretary
Maryland Department of the Environment

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection

Thomas Burack, Commissioner
New Hampshire Department of Environmental Services

Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation

John Quigley, Secretary
Pennsylvania Department of Environmental Protection

Janet Coit, Director
Rhode Island Department of Environmental Management

Alyssa Schuren, Commissioner
Vermont Department of Environmental Conservation

cc: Lisa Bonnett, Illinois Environmental Protection Agency
Carol S. Comer, Indiana Department of Environmental Management
R. Bruce Scott, Kentucky Department of Environmental Protection
Keith Creagh, Michigan Department of Environmental Quality
Don van der Vaart, North Carolina Dept. of Environment & Natural Resources
Craig W. Butler, Ohio Environmental Protection Agency
Bob Martineau, Tennessee Department of Environment and Conservation
David Paylor, Virginia Department of Environmental Quality
Randy Huffman, West Virginia Department of Environmental Protection