



Connecticut Department of

**ENERGY &
ENVIRONMENTAL
PROTECTION**

Robert J. Klee, Commissioner

April 13, 2017

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

RE: ***Docket ID No. EPA-HQ-OAR-2016-0596; Response to December 9, 2013, Clean Air Act Section 176A Petition***

Dear Administrator Pruitt:

I am writing on behalf of my Agency and the state of Connecticut with a simple message: EPA needs to accept and act favorably on the Clean Air Act (CAA) Section 176A petition submitted on December 9, 2013 by Connecticut and eight other states.

This action is necessary to protect the health and well-being of Connecticut residents. For the past four decades, we have been forced to breathe unhealthy air created when ozone pollution is transported from upwind states. EPA leadership must help resolve this because upwind and downwind states have not been able to do it otherwise.

The entire state of Connecticut is designated nonattainment for ozone. We measure the highest levels of ozone in the Northeast. More than 90% of this pollution blows in to our state from other places. On some days, every power plant and factory in our state could shut down and Connecticut would still exceed the ozone NAAQS.

That is not fair to the people of Connecticut and it places the health of our population at severe risk. The unhealthy levels of ozone in our air, through no fault of our own, impacts the health of our population – especially vulnerable groups such as senior citizens and infants – by irritating respiratory systems, and aggravating asthma and other chronic lung diseases. Ozone and other air pollutants have also been linked to premature death.

As it noted in a letter submitted for the record by Connecticut's Commissioner of Public Health, children, females, Hispanics, non-Hispanic Blacks, and residents of Connecticut's five largest cities are disproportionately affected by asthma. Connecticut is above the national average in asthma sufferers, and in 2014, Connecticut incurred over \$135 million in acute care charges due to asthma.

In addition to placing our health at risk, the interstate transport of air pollution also undermines our economy and places us at a competitive disadvantage. In a nonattainment area, industries face additional administrative and air pollution control costs when applying for a new permit or expanding their business.

As is noted in a letter submitted for the record by Connecticut's Commissioner of Economic and Community Development, industries in our state are required to install the most stringent emissions controls in the country when building a plant, and have to purchase pollution credits to offset new emissions. This can add millions of dollars to the cost of doing business in Connecticut.

The cost of removing an additional ton of pollution in Connecticut and other downwind states, where we already have stringent requirements in place, is estimated at \$10,000 to \$40,000 per ton. Compare this to the estimated cost of as little as \$500 to \$1,200 per ton it takes to remove the same amount of pollution in upwind states, where even some basic control technologies have not been installed at various facilities.

The 176A petition submitted by Connecticut and the other partner states asks EPA to have nine upwind states to join the Ozone Transport Region (OTR). Including these nine states in the OTR would require them to take actions to limit air pollution consistent with the efforts of Connecticut, and the other petitioning downwind states, including the use of reasonably available control technologies and reliance on cleaner fuels to generate power.

Connecticut strongly believes that including the petitioned states in the OTR is the most efficient and equitable method to address interstate air pollution transport. In fact, when creating the Ozone Transport Commission (OTC), Congress recognized that the interstate transport of ozone pollution needed to be addressed regionally, and understood that individual states could not solve the problem on their own. After 30 plus years, EPA's own ozone models continue to show states outside of the OTR significantly contributing to ozone levels in Connecticut, highlighting the fact that interstate air pollution transport is even broader than originally thought.

To satisfy the intent of the "Good Neighbor" provision in the Clean Air Act, EPA must expand the OTR to reduce unhealthy regional ozone levels. This will establish a minimum level of baseline emission control in the upwind states that will be a step in leveling the playing field with the OTR states. It will also give the upwind states a seat at the OTC table to collaborate in the development and implementation of measures to solve the problem. EPA must approve this petition and give states the ability to address ozone transport expeditiously through cooperation as opposed to the adversarial method of attacking individual transport plans and filing petitions.

In Connecticut, we respectfully disagree with the manner in which EPA has proposed to deny our 176A petition.

If EPA finalizes this proposed action it will not be required to present a technical rationale supporting denial. This will represent a failure on the part of EPA to review the merits of the petition. If EPA does not find technical, scientific and legitimate policy concerns, it will clearly undermine the legislative intent behind Section 176A. While EPA has discretion to deny that petition on the merits, it does not have the discretion to fail to meaningfully consider the petition, thereby gutting Section 176A and rendering it redundant or even obsolete. EPA acknowledges that

the Administrator “must adequately explain the facts and policy concerns she relied on in acting on the petition and conform such reasons with the authorizing statute.” EPA has not done so.

Furthermore, the explanation EPA has articulated for the denial is inadequate. For example, EPA repeatedly states that it would be more cost effective to use Sections 110 and 126 of the CAA rather than 176A to address the impact of interstate ozone transport. Yet, EPA offers no analysis whatsoever of the relative costs of the various approaches. Similarly, EPA contends that it is more efficient to use other CAA sections, but it is illogical to suggest that a piecemeal approach of requiring each state to submit a scientifically-supported 126 petition regarding each major source of interstate pollution is more efficient than the collective regional approach available under Sections 176A and 184, which was endorsed by Congress in creating the existing OTR in 1990.

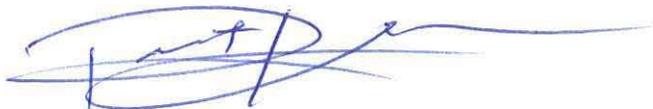
Finally, efforts by the petitioning states to obtain relief under the alternative sections cited have been less than fully successful, so the availability of those sections cannot itself provide a valid justification for denying the 176A petition. The recent CSAPR update provides only a partial remedy for Connecticut – as EPA itself acknowledges in the proposed decision – and EPA routinely fails to take timely action on Section 126 petitions, as is evidenced by a long pending 126 petition from Connecticut. This lack of timely EPA action has forced Connecticut’s Attorney General to file a Notice of Intent to Sue EPA. This is hardly the best use of everyone’s limited resources.

In Connecticut, we believe now is the time for EPA action to help improve the air quality of downwind states. EPA should act to approve the Section 176A petition to give states the ability to effectively address ozone transport through cooperation, as opposed to the adversarial method of attacking individual transport plans and filing petitions.

In a letter we have filed for the record, Connecticut’s Governor, Dannel Malloy, clearly articulates our state’s position in this matter. He writes, “Now is the time to require upwind states to take action. EPA must move to include the petitioned states in the collaborative and efficient OTC process to resolve finally the illegal transport of air pollution into Connecticut. Connecticut is tired of serving as the tailpipe of America. The health of our citizens depends on a positive resolution of this matter – which can only be accomplished by EPA accepting our 176A petition and implementing the requirements it proposes.”

We urge you to approve the 176A petition.

Sincerely,



Robert J. Klee
Commissioner