

ANDREW M. CUOMO
GOVERNOR



JOE MARTENS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

JUN 20 2012

Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
USEPA Headquarters – Mail Code: 1101A
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

I am writing to you concerning an issue of the utmost importance to the State of New York, attainment of the ozone standards. The United States Environmental Protection Agency (EPA) recently promulgated a final rule designating the New York-N. New Jersey - Long Island, NY-NJ-CT area (New York City metropolitan area) and Jamestown (Chautauqua County) as nonattainment of the 2008 ozone national ambient air quality standard (NAAQS).¹ I am asking EPA to take immediate action to address the transport of pollutants that contribute significantly to nonattainment in New York. In addition, I am requesting that you reclassify the New York City metropolitan area as a “moderate” nonattainment area.

After receiving your letter of April 30, 2012 notifying him of these pending designations, Governor Cuomo asked me to write you regarding the transport of ozone into New York State. In your letter to the Governor, you recognized “that pollution crossing state boundaries can contribute to downwind violation of National Ambient Air Quality Standards.” For New York, and other northeastern states, addressing transported ozone will be critical to meeting the 2008 ozone standard.

For over twenty years, New York State and the other Ozone Transport Commission (OTC) states have implemented a series of ever stricter control measures to reduce nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions. Many upwind contributor states have yet to adopt the most basic of these control measures. Nevertheless, EPA has granted NO_x waivers to some of those states (as recently as 2010) that allow significant large sources of NO_x emissions to remain uncontrolled. This approach results in an inequitable distribution of control costs and is causing, or significantly contributing to, ozone nonattainment problems in New York City and western New York (Jamestown).

¹ - 77 Federal Register 30088, “Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards”

In 2004, after many years of debate and analyses, reductions from the NO_x SIP call were realized and regional ozone levels declined. Despite this clear example of the importance of regional NO_x reductions, EPA is proposing to designate some upwind areas (Detroit and Louisville) as attainment even though 2009 to 2011 ozone data shows nonattainment of the NAAQS. Furthermore, EPA staff advises us that the Agency will not take action to reduce significant upwind contributions until after the next review of the ozone NAAQS is completed in late 2014. New York and other eastern seaboard states need EPA's assistance now in achieving regional NO_x reductions. Fulfilling our mutual obligation to protect public health from harmful air pollution does not allow us to wait until the latter half of the decade, after EPA makes designations in 2016 under a new ozone standard that may be adopted in 2014.

I am also requesting a "Five Percent" reclassification of the New York City metropolitan area from "marginal" to "moderate" pursuant to Clean Air Act section 181(a)(4). The New York City metropolitan area is eligible for this reclassification because its design value of 0.084 ppm is within five percent of 0.085 ppm, the threshold for a "moderate" classification. In the alternative, please consider this a voluntary reclassification request under the provisions of section 181(b)(3) of the Clean Air Act.

Predictive air quality screening modeling conducted by the Department of Environmental Conservation (DEC) indicates NO_x emission reductions on the order of 68% from 2007 levels throughout the Eastern United States are needed to attain the ozone NAAQS in the New York City metropolitan area. Accordingly, DEC estimates that the earliest that the New York City metropolitan area will be able to attain the 2008 ozone NAAQS is the year 2018. Additional supporting information is provided in the enclosed analysis.

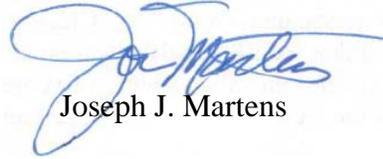
This reclassification will not delay proposed environmental improvements and emission reductions in New York State. New York has implemented measures that will continue to reduce emissions (CA low emission vehicle program); will get additional reductions from adopted regulations still to be implemented (i.e. NO_x RACT); and is moving forward with additional control measures as expeditiously as practicable. However, as shown in the enclosed analysis, these reductions alone will not be enough to realize attainment.

The "marginal" classification is intended for those areas that are expected to come into attainment due to the reductions of ozone precursors from already adopted programs. Application of the marginal classification to areas that clearly need additional reductions will only serve to delay implementation of needed programs. It will result in states taking a "wait and see" approach that will not result in any appreciable planning and control implementation to reduce ozone. A "moderate" classification will require DEC to engage New Jersey and Connecticut in an ozone planning process. This process will identify the emission reductions in the New York City metropolitan area and in upwind areas that are needed to attain the 2008 ozone NAAQS. Without a strategy to adequately address both local and transported pollution, it is likely to take even longer to attain the standard.

I look forward to your approval of this request and to working with you to address the challenge of reducing ozone levels across the eastern United States.

Please call me at (518) 402-8540 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Martens", is positioned above the printed name "Joseph J. Martens".

Joseph J. Martens

Enclosures

New York Metropolitan Area Reclassification Analysis

The New York-N. New Jersey-Long Island, NY-NJ-CT area (New York City metropolitan area) has been designated nonattainment with a “marginal” classification for the 2008 ozone national ambient air quality standard (NAAQS). Clean Air Act (CAA) section 181(a)(4) provides that a state may request that the EPA reclassify a nonattainment area within the state to a higher classification if the design value is within five percent of the next higher classification. The design value for the New York City metropolitan area is 0.084 ppm.

The New York State Department of Environmental Conservation (DEC) has analyzed attainment modeling results, estimated required emissions reductions to attain the NAAQS, reviewed emissions trends and considered economic realities. Consequently, the Department hereby requests a voluntary reclassification of the New York metropolitan area from “marginal” to “moderate” for the following reasons:

As indicated in the chart below, preliminary modeling conducted by the Department for the Ozone Transport Commission (OTC) Modeling Committee shows that NO_x emissions reductions on the order of 68% from 2007 levels throughout the Eastern United States are needed to attain the 2008 NAAQS of 0.075 ppm in the New York City metropolitan area. Even with those levels of reductions, the Bayonne, NJ monitor, which is part of the New York metropolitan nonattainment area, is still actually predicted to exceed the nonattainment threshold.

Screening Run Design Values (ppb Ozone)

Monitor		2005–09	N48/V23	Sc. 4	N68/V23
Bayonne	NJ	85	82	80	76
White Plains	NY	86	77	73	69
Camden	NJ	88	77	73	67
Bristol	PA	90	77	72	66
Greenwich	CT	86	76	72	66
Babylon	NY	88	75	71	65
NEA	PA	88	75	70	64
NYC-Queens	NJ	86	74	72	71
Clarksboro	NJ	86	74	69	63
...					
Edgewood	MD	91	71	66	57
Chicopee	MA	88	70	65	58

5/24/2012

NOTE: A full set of results were provided in the packets

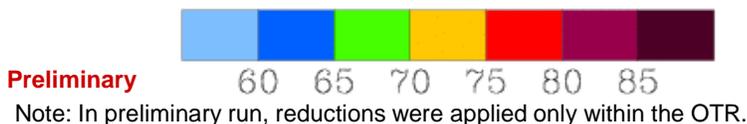
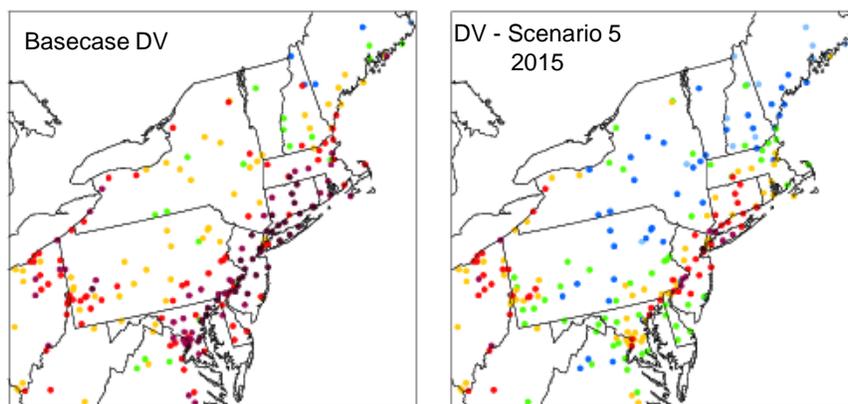
20

The DEC predicts that it will take from 6 to 10 years to implement the measures necessary to realize this level of control throughout the Eastern United States. Therefore, a moderate ozone nonattainment classification is needed to allow sufficient time to plan for, adopt and implement the measures needed to attain. A marginal ozone nonattainment classification will actually have

the perverse effect of delaying attainment since it does not carry any required emission reductions nor does it require any planning efforts to determine the level of reductions needed to attain. The presumption is that the marginal area will come into attainment through reductions from measures already in place. Without the impetus of the Clean Air Act requirements of a higher classification, it is unrealistic to assume that any meaningful planning and control measure development will actually take place. This will no doubt result in continued nonattainment in 2015 and beyond which will have the effect of delaying the necessary programs to attain the 2008 ozone NAAQS at least another three (3) years.

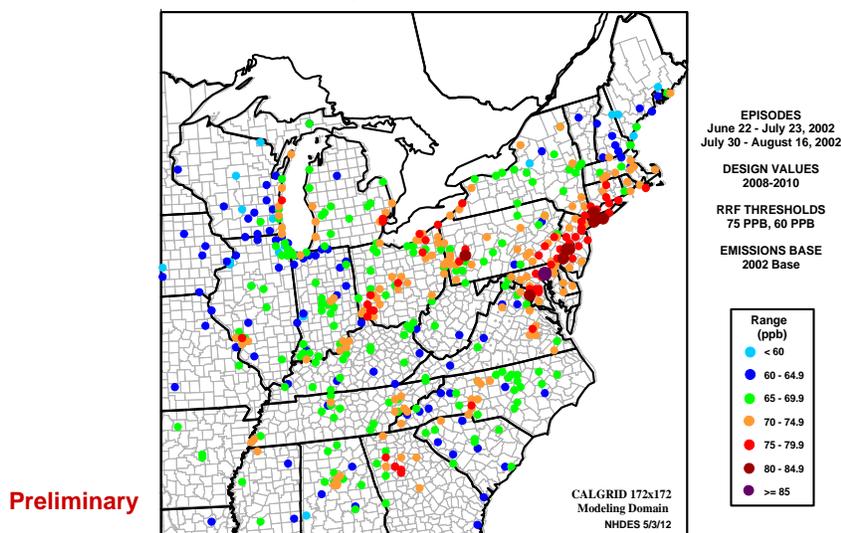
New York State and other OTC states, as a result of CAA requirements and through their own volition, have already adopted a series of measures, including reasonably available control technology (RACT) control measures, low emission vehicle standards, limits on consumer products and high electric demand day initiatives to reduce NO_x and volatile organic compound (VOC) emissions. These programs will have the effect of reducing ozone levels in the near term. The OTC modeling committee has performed other modeling which illustrates the impacts of those measures on ozone air quality. It is clear from this analysis, however, that without substantial emission reductions from areas throughout the Eastern United States, the New York City metropolitan area will not be able to attain the 2008 NAAQS by 2015 as demonstrated in the two following charts.

CMAQ Scenario 5 Results – OTR Only 2015



CALGRID Scenario 5– 2015

Future Design Values for 8-Hour Ozone
Scenario 5 - 2015 Base Case



Scenario 5 represents estimates of emission reductions from existing programs and additional reductions from programs that will be implemented by 2015. As seen above in CMAQ and CALGRID Scenario 5 modeling results, even with the additional reductions from adopted measures in New York, the OTC and the entire Eastern United States, nonattainment will persist. Scenario 5 for CMAQ modeled a 48% reduction of on-road NO_x emissions and a 43% reduction of electric generating unit (EGU) NO_x emissions in 2015. Scenario 5 for CALGRID modeled a 37% reduction of on-road NO_x emissions and a 31% reduction in EGU emissions in 2015. With a projected design value of 0.082 ppm in 2015, it is the obligation of the EPA to reclassify the New York City area to moderate nonattainment. This reclassification will actually serve to expedite the efforts needed to attain the standard.

It also should be noted that the EPA's own analysis for the final implementation rule for the 2008 ozone NAAQS predicts nonattainment beyond the 2015 marginal attainment deadline.² Accounting for reductions from adopted measures throughout the country, the EPA predicts that the New York City metropolitan area ozone design value will be 0.0795 ppm in 2015.³

On a related note, in 2011 the EPA finalized the Cross-State Air Pollution Rule (CSAPR) to reduce annual sulfur dioxide (SO₂) emissions, annual nitrogen oxides (NO_x) emissions and/or

² 77 Federal Register 30160 (May 21, 2012) [EPA-HQ-OAR-2010-0885, FRL-9667-9]

³ EPA-HQ-OAR-2010-0885-0011 "Nonattainment Area Projections of 2008-2010 Design Values to 2015"

ozone season NO_x emissions from power plants to address the section 110(a)(2)(D) transported air pollution requirements, thereby assisting States in attaining the 1997 ozone and fine particle and 2006 fine particle NAAQS⁴. It does not address the 2008 ozone NAAQS. As seen by the analyses presented here, significant reductions in upwind areas are necessary to address nonattainment. As documented in the CSAPR rulemaking, at least fifteen (15) upwind states contribute significantly to nonattainment of the 2008 ozone NAAQS in the New York City metropolitan area.⁵ The EPA has yet to determine how it will address states' failure to address their obligations under section 110(a)(2)(D). It should be noted that many states have not yet adopted basic control strategies such as major source NO_x RACT and some upwind states have been granted NO_x waivers which allows those states to leave large significant sources of NO_x emissions uncontrolled. This situation is causing an inequitable distribution of control costs; and is causing, or significantly contributing to, ozone nonattainment in downwind areas, including the New York City metropolitan area.

4 76 Federal Register 48208 (July 6, 2011) [EPA-HQ-OAR-2009-0491; FRL-9436-8]

5 EPA-HQ-OAR-2011-0338-0002 "Air Quality Modeling Final Rule Technical Support Document (TSD)" June 2011"