

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Air Resources, Climate Change & Energy, Deputy Commissioner
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-2794 | F: (518) 402-9016
www.dec.ny.gov

SEP 25 2018

Mr. Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

Dear Regional Administrator Lopez:

The New York State Department of Environmental Conservation (DEC) is hereby submitting two State Implementation Plan (SIP) revisions for your approval. The first SIP revision fulfills the infrastructure requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS) pursuant to Clean Air Act (CAA) sections 110(a)(1) and 110(a)(2). The second SIP revision is a supplement to the infrastructure SIP for the 2008 ozone NAAQS submitted to EPA on April 4, 2013 specifically regarding the transport obligations pursuant to CAA section 110(a)(2)(D)(i)(I) (the "good neighbor" provision).

DEC finds that it has adequate resources providing for the implementation, maintenance, and enforcement of the 2015 ozone NAAQS, therefore satisfying the section 110(a)(1) and 110(a)(2) requirements. DEC has also determined that it is satisfying the good neighbor requirements for the 2008 and 2015 ozone NAAQS through the upcoming adoption of additional control measures for nitrogen oxides and volatile organic compounds.

The proposed SIP revisions underwent a public review process. A 30-day public comment period was provided through a notice in DEC's Environmental Notice Bulletin on August 8, 2018. Three comment letters were received, which did not result in any changes to the proposed SIP revisions.

Enclosed with this letter are the following:

- "Proposed New York State Implementation Plan Revision: Infrastructure Assessment for the 2015 Ozone National Ambient Air Quality Standards" dated September 2018;
- "Proposed New York State Implementation Plan Revision: Transport Supplement for the 2008 Ozone National Ambient Air Quality Standards" dated September 2018;
- Public Notice including the opportunity to request a public hearing, as published in the Environmental Notice Bulletin on August 8, 2018; and,
- Assessment of public comments received on the proposed SIP revisions.

Please contact Mr. Michael Sheehan at (518) 402-8396 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Jared Snyder", with a long horizontal flourish extending to the right.

J. Jared Snyder
Deputy Commissioner
Air Resources, Climate Change and Energy

Enclosures

c: Richard Ruvo, EPA Region 2



Department of
Environmental
Conservation

PROPOSED NEW YORK STATE IMPLEMENTATION PLAN REVISION: INFRASTRUCTURE ASSESSMENT FOR THE 2015 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS

September 2018

DIVISION OF AIR RESOURCES
Bureau of Air Quality Planning

Albany, NY 12233-3251
P: (518) 402-8396 | F: (518) 402-9035 | dar.sips@dec.ny.gov

www.dec.ny.gov

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List of Commonly Used Acronyms and Abbreviations

AQI	Air Quality Index
AQS	Air Quality System
CAA	Clean Air Act
CFR	Code of Federal Regulations
CSAPR	Cross-State Air Pollution Rule
DAR	Division of Air Resources
DEC	New York State Department of Environmental Conservation
ECL	Environmental Conservation Law
EGU	Electric Generating Unit
EPA	United States Environmental Protection Agency
FIP	Federal Implementation Plan
FLM	Federal Land Manager
MANE-VU	Mid-Atlantic/Northeast Visibility Union
NAAQS	National Ambient Air Quality Standards
NO _x	Oxides of Nitrogen
NSR	New Source Review
NYCRR	New York Codes, Rules, and Regulations
NYMA	New York Metropolitan Area
PAMS	Photochemical Assessment Monitoring Stations
POL	Public Officer's Law
ppm	Parts per million
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
SCR	Selective Catalytic Reduction
SIP	State Implementation Plan
SLAMS	State and Local Air Monitoring Stations
VOC	Volatile Organic Compounds

Introduction

On October 1, 2015, the U.S. Environmental Protection Agency (EPA) announced a revision to the National Ambient Air Quality Standards (NAAQS) for ground-level ozone. The primary and secondary standards were revised to levels of 0.070 parts per million (ppm), averaged over eight hours.

Pursuant to Clean Air Act (CAA) sections 110(a)(1) and (2), each state must meet basic State Implementation Plan (SIP) requirements related to the attainment of a new or revised NAAQS. This type of submission is commonly referred to as an “infrastructure SIP.” Section 110(a)(1) requires “a plan which provides for implementation, maintenance, and enforcement” of primary and secondary NAAQS, while section 110(a)(2) lists the specific required elements. SIPs meeting the requirements of CAA sections 110(a)(1) and (2) must be submitted within three years after promulgation of a new or revised standard – in this case, by October 1, 2018. With this submission, the New York State Department of Environmental Conservation (DEC) is fulfilling its obligation under the CAA.

DEC utilized available EPA guidance in completing this SIP revision.¹ This submission addresses each of the required infrastructure elements of CAA section 110(a)(2), and affirms that New York’s SIP meets the requirements of CAA sections 110(a)(1) and (2). The required elements are described in the following sections of the CAA:

Element	CAA Section	Title
Element A	110(a)(2)(A)	Emission Limits and Other Control Measures
Element B	110(a)(2)(B)	Ambient Air Quality Monitoring/Data System
Element C	110(a)(2)(C)	Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
Element D	110(a)(2)(D)	Interstate Pollution Transport, Abatement, and International Air Pollution
Element E	110(a)(2)(E)	Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
Element F	110(a)(2)(F)	Stationary Source Monitoring and Reporting
Element G	110(a)(2)(G)	Emergency Powers
Element H	110(a)(2)(H)	SIP Revisions
Element I	110(a)(2)(I)	Plan Revisions for Nonattainment Areas
Element J	110(a)(2)(J)	Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
Element K	110(a)(2)(K)	Air Quality Modeling and Submission of Modeling Data
Element L	110(a)(2)(L)	Permitting Fees
Element M	110(a)(2)(M)	Consultation and Participation by Affected Local Entities

¹ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” from Stephen D. Page, Director, EPA OAQPS, to Regional Air Directors. September 13, 2013.

Element A – Section 110(a)(2)(A): Emission Limits and Other Control Measures

“Each such plan shall [. . .] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.”

DEC has a long history of promulgating control measures that limit ozone precursor emissions – i.e., nitrogen oxides (NO_x) and volatile organic compounds (VOCs) – as it has pursued attainment of the increasingly stringent iterations of the ozone NAAQS. Regulations have been adopted under Title 6 of the New York Codes, Rules, and Regulations (6 NYCRR) to limit emissions of NO_x and VOCs for purposes of attaining the 1990 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS, with additional regulations for the 2015 NAAQS in various stages of the rulemaking process.

Regulations approved by EPA into the SIP are listed in a table under 40 CFR 52.1670(c), titled “EPA-Approved New York State Regulations and Laws.” DEC’s November 10, 2017 SIP submission for the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (New York metropolitan area, or NYMA) for the 2008 ozone NAAQS identified the permanent and enforceable regulations that primarily yielded reductions of NO_x and VOC emissions.²

Note that this infrastructure SIP does not account for additional NO_x and VOC control measures needed to attain the 2015 ozone NAAQS. The NYMA was designated on June 4, 2018 (effective August 3, 2018) as a moderate nonattainment area for the 2015 NAAQS.³ Additional NO_x and VOC regulations will be discussed in the NYMA’s attainment SIP, due August 3, 2021.

6 NYCRR Subdivision 201-1.4(a) regulates malfunctions and start-up/shutdown activities, and requires permitted emission sources to comply with regulatory emission standards at all times. Emissions from all three occurrences must be accounted for, and facility owners or operators must fully explain malfunctions within two working days. DEC does not authorize any “director’s variance” or “director’s discretion” to allow revisions to or exemptions from SIP emission limitations with limited public process or without requiring further approval by EPA.

² <http://www.dec.ny.gov/chemical/110727.html> – see Section 2, “Previous Regulatory Commitments”

³ “Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards,” Final Rule. Published June 4, 2018. 83 FR 25776.

Element B – Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

“Each such plan shall [. . .] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”

Statutory Requirements

Ambient air monitoring and data reporting are carried out in New York State by DEC’s Bureau of Air Quality Surveillance pursuant to the following federal requirements:

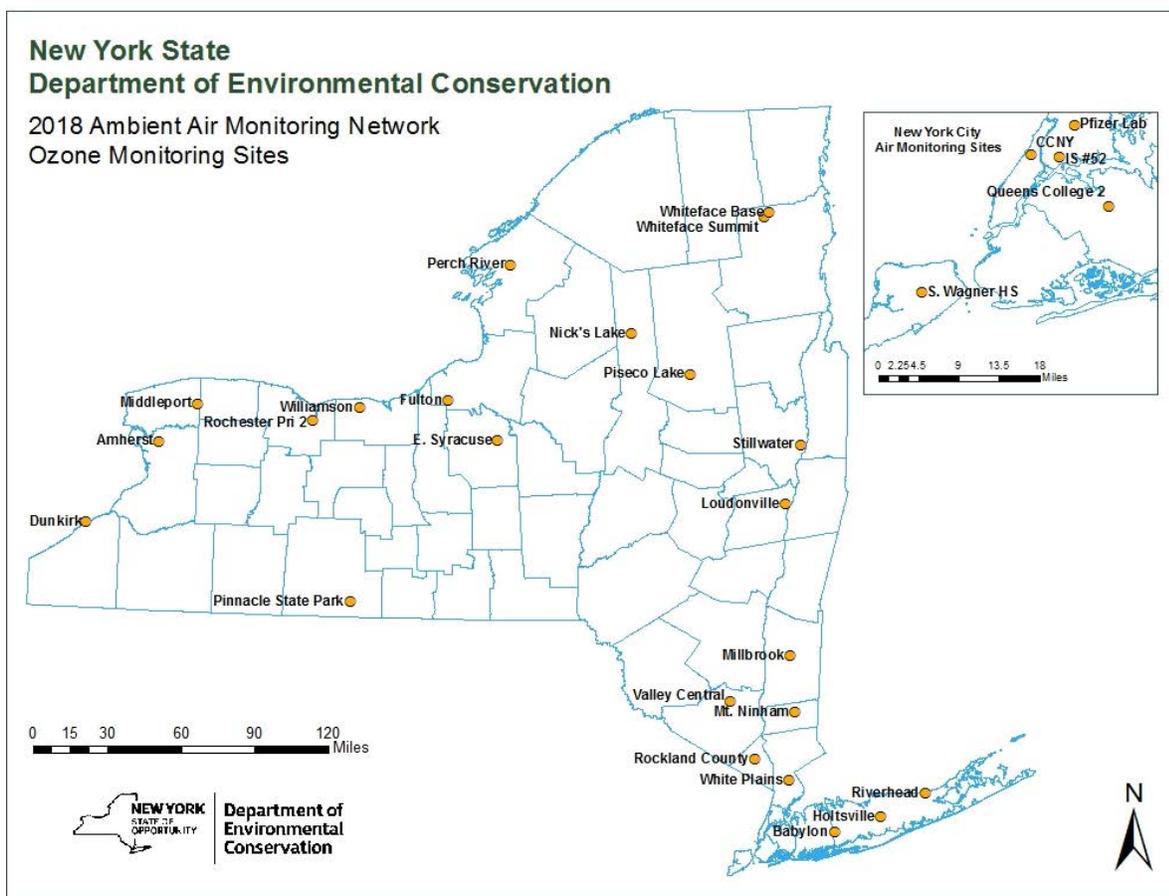
- 40 CFR Part 53, “Ambient Air Monitoring Reference and Equivalent Methods” and 40 CFR Part 58, “Ambient Air Quality Surveillance” require states to monitor air quality for the relevant NAAQS pollutant at appropriate locations in accordance with EPA’s ambient air quality monitoring network requirements;
- 40 CFR 58.16, “Data submittal and archiving requirements,” contains guidelines for submitting data to EPA’s Air Quality System (AQS) in a timely manner;
- 40 CFR 58.10, “Annual monitoring network plan and periodic network assessment,” requires states to provide the applicable EPA Regional Office with information regarding air quality monitoring activities, including a description of how the air agency has complied with monitoring requirements, and an explanation of any proposed changes to the network, such as through the submission of an annual monitoring network plan; and
- 40 CFR 58.14, “System modification,” requires states to obtain EPA’s approval of any planned changes to monitoring sites or to the state’s network plan.

While DEC does not have regulations that specifically authorize monitoring activities, certain sections of New York’s Environmental Conservation Law (ECL) grant general authorization, such as through the following citations:

- Section 1-0101, “Declaration of Policy” declares it to be the policy of New York State “to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being;”
- Section 3-0301, “General functions, powers and duties of the department and the commissioner” grants the DEC Commissioner the power to, among other things, “[m]onitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions;” and
- Section 19-0103, “Declaration of policy” declares it to be the policy of New York State “to maintain a reasonable degree of purity of the air resources of the state...and to that end to require the use of all available practical and reasonable methods to prevent and control air pollution in the state of New York.”

Monitoring Network

DEC operates API T400 ozone monitors at 28 sites across the state. The following figure presents ozone monitoring sites that are part of the federally-mandated National Core Sites (NCore) network and the State and Local Air Monitoring Stations (SLAMS) network. DEC also operates the Photochemical Assessment Monitoring Stations (PAMS) network as part of the EPA-supported national networks. The purpose of the PAMS program is to provide an air quality database that will assist in evaluating and modifying control strategies for attaining the ozone NAAQS. PAMS data is also used to better characterize the nature and extent of the ozone problem, track NO_x and VOC emission inventory reductions, assess air quality trends, and determine whether areas of New York remain in nonattainment of the ozone NAAQS. Additional VOC monitoring is conducted through EPA's National Ambient Toxics Trends Stations (NATTS) network.



EPA's promulgation of the 2015 ozone NAAQS altered the network design of the PAMS program, with the new rule requiring PAMS stations at NCore sites in urban areas with populations greater than one million, regardless of attainment status. This results in one PAM site each at the NCore site in Queens County and the NCore site in Rochester (Monroe County). EPA approved DEC requests to relocate the Queens PAMS monitor to the existing PAMS station in the Bronx, and the Rochester PAMS monitor to a new location in Suffolk County. The monitor is located at the Flax Pond Marine Laboratory

on the northern shore of Long Island, north of Stony Brook. There, unlike in Rochester, ozone concentrations are exceeding the NAAQS. The location should provide greater knowledge of the atmospheric conditions and meteorological patterns that result in a high ozone gradient across Long Island Sound.

EPA also permitted a relocation of the Susan Wagner High School (Richmond County) monitor. During two years of construction activity the monitor will be relocated at the nearby Fresh Kills West site, which also currently monitors for PM_{2.5}, toxics, and carbonyls, before moving back to Susan Wagner.

Annual Monitoring Network Plan

Each state agency is required by 40 CFR 58.10 to “adopt and submit to the Regional Administrator an annual monitoring network plan which shall provide for the establishment and maintenance of an air quality surveillance system that consists of a network of SLAMS monitoring stations including FRM, FEM, and ARM monitors that are part of SLAMS, NCore stations, CSN stations, state speciation stations, SPM stations, and/or, in serious, severe and extreme ozone nonattainment areas, PAMS stations, and SPM monitoring stations.” DEC prepares an Annual Monitoring Network Plan as part of the fulfillment of these requirements. The 2018 iteration has concluded its public comment period and is being prepared for submission to EPA. Should any changes be planned for the state’s monitoring sites or the network plan, DEC will provide notification to appropriate staff at EPA’s Region 2 office. DEC assures that New York State will meet any changes in monitoring requirements related to the revised 2015 ozone NAAQS.

Element C – Section 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

“Each such plan shall [. . .] include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter.”

There are three sub-elements to address within section 110(a)(2)(C): enforcement; the statewide regulation of new and modified sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA Title I Part C (i.e., the major source Prevention of Significant Deterioration (PSD) program).

Enforcement: ECL section 19-0305 authorizes the DEC commissioner to enforce the codes, rules and regulations of the DEC established in accordance with article 19. The SIP is a compilation of rules and regulations that have been duly promulgated (and are occasionally revised) by DEC in accordance with its statutory authority and consistent with the State Administrative Procedures Act. DEC therefore has the authority to enforce all SIP measures. Enforcement of emission limits and control measures is further provided for in Title 21 of ECL article 71, “Enforcement of Article 19 and Air Pollution Emergency Rules and Regulations.”

6 NYCRR Part 201, “Permits and Registrations,” also includes enforcement provisions. Specifically, section 201-1.13, “Access to regulated facilities,” grants access to DEC representatives for the purpose of determining compliance with various state and federal air pollution control requirements, regulations, or laws.

Regulation of minor sources and minor modifications:

DEC permits minor sources of air pollution through 6 NYCRR Subpart 201-4, “Minor Facility Registration,” 6 NYCRR Subpart 201-5, “State Facility Permits,” and further regulates such sources through applicable federal and state regulations to control emissions of NO_x and VOCs.

Preconstruction PSD permitting of major sources and major modifications:

DEC has the authority under 6 NYCRR Part 231, “New Source Review for New and Modified Facilities,” to implement a comprehensive PSD permit program under CAA Title I Part C for all PSD-subject sources located in areas designated attainment or unclassifiable for the 2015 ozone NAAQS. Part 231 underwent a major revision in 2009 to conform to recent federal guidelines. With this revision, New York took back the administration of the PSD program for attainment pollutants (i.e., all pollutants subject to a NAAQS, regulated under a New Source Performance Standard, or regulated under the CAA except HAPs in section 112), which had been under EPA’s purview since 2004. Part 231 also accounts for the regulation of greenhouse gases. The revised rule

incorporates provisions to ensure enforceability of the rule and effective monitoring, recordkeeping, and reporting. EPA approved the majority of the revised regulation into the New York SIP.⁴

New York ensures that all applicable federal PSD requirements that are included in PSD permits are incorporated into Title V operating permits, and that all federally-enforceable requirements are applied and enforced. New York therefore affirms that the current New Source Review (NSR) and PSD permitting programs remain in effect and continue to apply to the state's major stationary sources, and that the requirements of these programs are federally enforceable.

⁴ "Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements," Final Rule. Published December 27, 2016; effective January 26, 2017. 81 FR 95047-95050.

Elements D(i)(I) and (II) – Section 110(a)(2)(D)(i): Interstate Pollution Transport

Each such plan shall [...] contain:

(i): adequate provisions prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will – (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such primary or secondary [NAAQS], or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality to protect visibility.

Prongs 1 and 2 – significant contribution to attainment and interference with maintenance:

EPA has provided guidance for prongs 1 and 2 of the “good neighbor” provision in a March 27, 2018 memorandum titled “Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I).” DEC does not agree with the assessment contained in this guidance, which projects air quality modeling to 2023 based on flawed, unenforceable inventory assumptions and modeling methodology. EPA relies on dozens of examples of unenforceable NO_x control assumptions for units expected to install state-of-the-art controls or operate already-installed selective catalytic reduction (SCR) units. These assumptions surely result in lower projected 2023 design values and state contributions that differ from the expected reality.

DEC has shown major discrepancies in projected ozone levels when comparing the CMAQ modeling platform to the CAMx model employed by EPA. Projected design values were up to 9.2 ppb higher (effectively 10 ppb when truncated) for northeastern region monitors when comparing the two models utilizing the MARAMA 2023 gamma2 emissions inventory. An Excel spreadsheet summarizing these data is included as Appendix A. Based on CMAQ (another EPA-approved modeling platform), current design values, and the increasing difficulty of achieving additional NO_x and VOC reductions, DEC considers EPA’s 2023 projections to be overly optimistic.

Nonetheless, EPA’s 2023 projection modeling establishes the extent to which New York State is a significant contributor for the 2015 ozone NAAQS. New York significantly impacts multiple nonattainment and maintenance sites in southwestern Connecticut – specifically, the Stratford (09-001-3007) and Westport (09-001-9003) monitors, which are projected to be in nonattainment in 2023, as well as the Greenwich (09-001-0017) and New Haven (09-009-9002) monitors, which are projected to be in maintenance status. These monitors are all located within the New York-Northern New Jersey-Long Island, NY-NJ-CT area that was designated moderate nonattainment for the 2015 ozone NAAQS effective August 3, 2018. The following table provides New York State contribution data derived from 2023 projection modeling, with emission inputs prepared by New York and New Jersey and with CAMx modeling conducted by the University of Maryland.

Site Name	Site ID	2023 top 10 days avg (ppb)*	NYS contribution (ppb)
Stratford	09-001-3007	74.7	13.0
Westport	09-001-9003	77.9	13.3
Greenwich	09-001-0017	85.2	16.5
New Haven	09-009-9002	74.3	13.8

*Used concentration and contribution data on the top 10 model-predicted 8-hour ozone concentration days per EPA guidance

Additional contribution data from this modeling are provided in an Excel spreadsheet included as Appendix B. DEC asserts that it has met its good neighbor obligations for the 2015 ozone NAAQS through the implementation and enforcement of stringent NOx and VOC control measures that go well beyond the EPA presumptive cost threshold in the Cross-State Air Pollution Rule (CSAPR) Update for highly cost-effective emissions reductions, and the ongoing adoption of new control measures, and strengthening of current control measures, to further ensure the reduction of ozone in both New York State and downwind areas.

Reasonably Available Control Technology (RACT) has been required on major sources of NOx throughout the state since 1995. These regulations have been periodically updated (in 1999, 2004 and 2010) to keep up with advances in control technology. Presumptive emission limits and facility-specific emission limits are based on an inflation-adjusted control cost currently valued at \$5,500 per ton of NOx reduced. (This \$5,500 per ton control cost is consistent with typical costs to install new SCR units, the most stringent add-on NOx control technology. EPA’s \$1,400 per ton control threshold for the CSAPR Update, on the other hand, was selected to reflect the cost of turning on already-existing SCR control units, which has failed to happen in many cases due to the lack of enforceability.) New York’s electric generating unit (EGU) NOx emission rates are among the lowest in the country, as reflected in a CSAPR Update ozone season emissions budget lower than all states other than New Jersey and Maryland.⁵

The \$5,500 per ton NOx RACT control cost also applies to non-EGUs. The Ozone Transport Commission has provided a valuable platform for the collaborative development of numerous non-EGU stationary source and area source model rules, which are periodically updated to assess new control technologies.

DEC is in various stages of the rulemaking process for additional measures that will control VOC and NOx emissions from EGU, non-EGU, area, and mobile sources. DEC will further control area-source VOC emissions through updates to the following regulations:

- Part 203, “Oil and Gas Sector,”
- Part 205, “Architectural and Industrial Maintenance (AIM) Coatings,”

⁵ “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS,” Final Rule. Published October 26, 2016; effective December 27, 2016. 81 FR 74504-74650.

- Part 226, “Solvent Metal Cleaning Processes,”
- Subpart 228-1, “Motor Vehicle and Mobile Equipment Refinishing and Recoating Operations,”
- Part 230, “Gasoline Dispensing Sites and Transport Vehicles,” and
- Part 235, “Consumer Products.”

Additional NOx reductions will be realized through the following regulatory actions:

- Part 219, “Incinerators” – new subpart 219-10 will apply NOx RACT requirements to municipal waste combustion units;
- Subpart 227-2, “Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NOx)” – new NOx limits for simple cycle combustion turbines (or “peaking units”), which will particularly benefit the NYMA on the hot summer days most conducive to ozone formation (known as “high electric demand days”);
- Part 222, “Distributed Generation Sources” – replacement of the currently stayed version, which will establish NOx emission limits for certain minor sources in the NYMA not subject to NOx RACT limits through subpart 227-2;
- Part 218, “Emission Standards for Motor Vehicles and Motor Vehicle Engines” – new installation, recordkeeping and reporting requirements for aftermarket catalytic converters; and,
- Part 243, “Transport Rule NOx Ozone Season Trading Program” – the adoption of the CSAPR Update trading program

Emissions from New York’s mobile onroad sector itself significantly impact downwind monitors, with 2023 contributions as high as 4.640 ppb at the Greenwich, CT monitor based on the University of Maryland modeling. The onroad modeling results are included as Appendix C. Diesel emissions typically account for a slight majority of the total modeled impact as compared to non-diesel emissions. New York controls its onroad sector through inspection/maintenance and anti-idling standards pursuant to Part 217, “Motor Vehicle Emissions,” and the implementation of the California Low-Emission Vehicle standards under Part 218, “Emission Standards for Motor Vehicles and Motor Vehicle Engines.”

DEC has repeatedly called upon EPA to further control the mobile emission sector, such as through more stringent greenhouse gas emission controls and heavy-duty diesel vehicle standards.⁶ DEC has also submitted comments against EPA’s proposed repeal of emission standards for “glider” vehicles, engines, and kits, which circumvent emission standards that apply to new vehicles.⁷ Recently, the Trump administration proposed to

⁶ June 6, 2017 “Statement of the Ozone Transport Commission Requesting that the United States Environmental Protection Agency Assist the States by Implementing Emission Reduction Programs to Reduce NOx Emissions from High Priority Mobile Sources.”

⁷ January 5, 2018 comment letter from Basil Seggos, Commissioner, New York State Department of Environmental Conservation to E. Scott Pruitt, Administrator, U.S. Environmental Protection Agency, regarding “Reconsideration of the Application of the Final Rule entitled ‘Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy Duty Engines and Vehicles – Phase 2 Final Rule.’”

roll back clean car standards,⁸ which would result in a fuel consumption increase of 206 billion gasoline gallon equivalents for calendar years 2020-2050, and an increase in NOx emissions of approximately 2.1 percent by 2050.⁹ This action, if finalized, would further contribute to elevated ozone concentrations in the NYMA.

Prong 3 – interference with PSD: Under section 110(a)(2)(D)(i)(II), SIPs must contain provisions prohibiting emissions that would interfere with measures required to be in any other agency’s SIP under CAA Part C to prevent the significant deterioration of air quality. DEC confirms that new major sources and major modifications are subject to a comprehensive EPA-approved PSD permitting program that applies to all regulated NSR pollutants and that satisfies EPA’s PSD requirements. New York’s PSD/NSR program is implemented through 6 NYCRR Part 231, “New Source Review for New and Modified Facilities.” This program is further discussed in Element C.

Prong 4 – visibility transport: Under section 110(a)(2)(D)(i)(II), SIPs must contain provisions adequately addressing any contribution of that state’s sources to impacts on visibility program requirements in other states.

New York’s obligations under 40 CFR 51.308, “Regional haze program requirements,” have been met through the coordination with regional Class I area states within the framework of the Mid-Atlantic/Northeast Visibility Union (MANE-VU), and a series of SIP submissions. DEC submitted its initial regional haze SIP for the 2018 planning period on March 15, 2010, which was partially approved by EPA on August 8, 2012.¹⁰ The partial disapproval related to two Federal Implementation Plans (FIPs) issued by EPA to address source-specific Best Available Retrofit Technology determinations for the Danskammer and Roseton Generating Stations; those FIPs were later replaced by SIP provisions for each facility.¹¹ DEC also submitted its five-year progress report SIP on June 16, 2015 to demonstrate that New York was meeting its obligations to reduce visibility-impairing pollutants, which was approved by EPA.¹² DEC is currently developing its regional haze SIP for the 2028 planning period, for a projected submission later in 2018.

⁸ “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks,” Notice of Proposed Rulemaking. Published August 4, 2018. 83 FR 42986-43500.

⁹ “SAFE” Rule Draft Environmental Impact Statement Summary. U.S. Department of Transportation and National Highway Traffic Safety Administration. July 2018. Table S-2 and page S-8, respectively.

¹⁰ “Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan,” Final Rule. Published August 28, 2012, effective September 27, 2012. 77 FR 51915.

¹¹ “Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan” [Danskammer], Final Rule. Published December 4, 2017, effective January 3, 2018. 82 FR 57126; and, “Approval and Promulgation of Air Quality Implementation Plans; State of New York; Regional Haze State Implementation Plan and Federal Implementation Plan” [Roseton], Final Rule. Published February 16, 2018, effective March 19, 2018. 83 FR 6970.

¹² “Approval and Promulgation of Implementation Plans; New York; Regional Haze Five-Year Progress Report State Implementation Plan,” Final Rule. Published September 29, 2017, effective October 30, 2017. 82 FR 45499.

Element D(ii) – Section 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution

Each such plan shall [...] contain:

(ii): adequate provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement)."

Element D(ii) is satisfied when an infrastructure SIP ensures compliance with the applicable requirements of CAA sections 126(a), 126(b) and (c), and 115.

CAA section 126(a): Section 126(a) requires SIPs to notify neighboring air agencies of potential impacts from a new or modified major source subject to PSD. This has been addressed through 6 NYCRR Paragraph 201-6.3(b)(1), which states: "The department shall give notice of each draft permit to any affected state on or before the time that the department provides this notice to the public under the requirements of this Part or Part 621 of this Title."

CAA sections 126(b) and (c): Section 126(b) allows states to petition the EPA Administrator for a finding that a source or group of sources interferes with its ability to attain or maintain the NAAQS in violation with section 110(a)(2)(D)(i), while section 126(c) discusses the remedy for such a finding. DEC affirms that no source(s) within New York State are the subject of an active finding under CAA section 126 of the CAA with respect to the 2015 ozone NAAQS.

CAA section 115: Section 115, "International Air Pollution," requires states to revise SIPs under certain conditions to alleviate international transport into another country. There are no final findings under CAA section 115 against New York State with respect to the 2015 ozone NAAQS.

Element E – Section 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies

“Each such plan shall [. . .] provide:

(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof),

(ii) requirements that the state comply with the requirements respecting state boards under section 128,

(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.”

Sub-element (i):

DEC’s Division of Air Resources (DAR) has 200 positions. It receives both operating and capital funding through the federal and state government budget processes. Operating funds are allocated to DAR annually and are used for daily administrative expenses, including salaries, fringe benefits, and indirect as well as non-personnel services such as travel, supplies, contracts, and equipment costs. DAR is allocated operating funds from the following funding sources: General Fund, Co-operative Agreements (i.e., EPA sections 103 and 105 federal air pollution control grants), and the Clean Air Fund, which is comprised of the Title V and Mobile Source accounts.

Capital funds may also be allocated to DAR through the state government budget process. They may be used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR may be allocated capital funds from three sources: General Fund, Mobile Source Account, and Rehabilitation and Improvement.

In accordance with 40 CFR Part 51 Subpart O, “Miscellaneous Plan Content Requirements,” DEC receives state and federal funding on a yearly basis. State funding is part of the state government budget process. Federal funding comes in the form of grants from EPA. Resources will be acquired at the one-, three- and five-year intervals from the same operating and capital funding sources detailed above.

At the time of proposal of this infrastructure SIP, DAR’s operating budget is \$33.3 million dollars annually. The resources considered necessary for the next five years depend on negotiated labor union contracts, inflation, indirect costs, and fringe benefit rates determined by the NYS Office of the State Comptroller, but will be no less than

\$33.4 million dollars annually. The projections regarding acquiring necessary resources depend on NYS and federal budget processes, especially for allocation of available grant funds.

Sub-element (ii):

New York State has no board or body authorized to approve permits or enforcement orders under the CAA. The requirements of CAA section 128 are therefore not relevant to this SIP submission.

Sub-element (iii):

ECL sections 19-0305, 71-2103, and 71-2105 authorize the Commissioner to enforce the codes, rules and regulations of DEC established in accordance with Article 19 (Air Pollution Control) and Article 71 (Enforcement). DEC therefore has the authority to enforce all approved SIP measures, which are a compilation of the rules and regulations that are promulgated to achieve or maintain compliance with a NAAQS.

Currently, DEC has the sole responsibility for the implementation of the SIP, but in the event that it relies on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, it affirms that New York State has the responsibility for ensuring adequate implementation of such plan provision.

New York submitted to EPA on May 23, 2013 a copy of POL section 73–a, “Financial disclosure,” and 19 NYCRR Part 937, “Access to Publicly Available Records.” EPA approved New York’s submissions for the 1997 8-hour ozone and 1997 and 2006 PM_{2.5} NAAQS for sub-elements 110(a)(2)(E)(ii) and (iii); EPA also approved POL sections 73–a(2)(a)(i) and (ii) and 19 NYCRR Subpart 937.1(a) into the New York SIP for the limited purpose of satisfying CAA section 128(a)(2).¹³

¹³ “Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter Standards,” Final Rule. Published June 20, 2013; effective July 22, 2013. 78 FR 37122-37124.

Element F – Section 110(a)(2)(F): Stationary Source Monitoring and Reporting

“Each such plan shall [. . .] require, as may be prescribed by the Administrator:
(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,
(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source,
(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.”

Sub-element (i):

40 CFR 51.212, “Testing, inspection, enforcement, and compliance,” contains requirements for SIPs to provide for a program of periodic testing and inspection of stationary sources, to provide for the identification of allowable test methods, and to exclude any provision that would prevent the use of any credible evidence of noncompliance.

DEC meets this requirement for stationary source testing through ECL section 19-0305(2), which provides DEC with the authority to investigate complaints, inspect properties, and conduct sampling, while 6 NYCRR Subpart 201-1.13 gives DEC access to regulated facilities. DEC uses enforceable test methods as contained in 51 CFR Appendix M, “Recommended Test Methods for State Implementation Plans.”

Requirements for owners of air contamination sources are contained in 6 NYCRR Subpart 202-1, “Emissions Testing, Sampling and Analytical Determinations,” which requires facility owners to conduct emissions tests of the sources according to acceptable procedures, and to notify DEC of the time and date of the test 30 days prior to the test. It also allows DEC to conduct separate emissions tests. Pursuant to 40 CFR 51.212(c), DEC certifies that it does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

Sub-element (ii):

Requirements for the periodic reporting on the nature and amounts of emissions and emissions-related data are provided through the following: 40 CFR 51.211, “Emissions reports and recordkeeping”; 40 CFR 51.321 through 51.323, “Source Emissions and State Action Reporting”; and EPA’s Air Emissions Reporting Rule, 40 CFR part 51, subpart A, “Air Emissions Reporting Requirements.” Some emissions reporting requirements under section 51.321 have been superseded by electronic reporting pursuant to 40 CFR 51.45(b).

Authority for these provisions is provided under ECL section 19-0311, "Operating permit program for sources subject to the federal Clean Air Act." Specifically, subsection 3 states that operating permits issued pursuant to this section shall include, among other things, "provisions for detailed monitoring, recordkeeping and reporting, including requirements that records be kept for five years, and that monitoring records be submitted to [DEC] at least every six months..." These requirements are mirrored in 6 NYCRR Subpart 201-6.2(d), which requires all Title V facility permit applications to provide for, among other things, the monitoring, recordkeeping, and reporting of emissions. Major facility owners must report annual emissions to DEC pursuant to 6 NYCRR Subpart 202-2, "Emission Statements."

Sub-element (iii):

Stationary source emission inventories are based on actual emissions data submitted by major regulated facilities through annual emission statements, and calculated emissions from minor stationary sources based on area source procedures established by EPA. EPA promulgated the Air Emissions Reporting Requirements in 2008, which consolidated and streamlined previous requirements of several older rules for state and local air pollution control agencies to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. These submissions, along with other data sources (primarily for air toxics), are used to build the National Emissions Inventory.

6 NYCRR Section 201-5.3 requires state facility permits to contain conditions to ensure compliance with state standards, identify applicable federal standards, include recordkeeping and reporting requirements, and ensure operation to prevent noncompliance with NAAQS. 6 NYCRR Section 201-6.4 requires Title V permits to include compliance assurance monitoring and to incorporate all applicable federal reporting requirements, including semi-annual compliance monitoring and the notification and reporting of permit deviations and incidences of non-compliance. In addition, Title V sources must certify compliance with permit terms and conditions, including emission limits, standards and work practices.

Furthermore, 6 NYCRR Subpart 202-2, "Emission Statements," outlines the emission reporting requirements for major sources and sources in ozone nonattainment areas emitting NO_x or VOCs equal to or greater than 25 tons per year.

Records will be made available for public review in accordance with 6 NYCRR Part 616, "Access to Records."

Element G – Section 110(a)(2)(G): Emergency Powers

“Each such plan shall [...] provide for authority comparable to that in section 303 of this title and adequate contingency plans to implement such authority.”

CAA section 303 provides authority to the EPA Administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare, or the environment.” EPA has interpreted section 110(a)(2)(G) as imposing two basic requirements for purposes of an infrastructure SIP submission. The first requirement is submitting the statutory or regulatory provisions that provide the air agency with authority comparable to that of the EPA Administrator under section 303 along with a narrative explanation of how they meet the requirements of this element.

Among other provisions, ECL Section 3-0301, entitled “General functions, powers and duties of the department and the commissioner,” authorizes DEC to prevent and control air pollution emergencies.¹⁴ In exercising such prevention and control, pursuant to section 3-0301(1)(y), DEC and its Commissioner may limit the consumption of fuels and use of vehicles, curtail or require the cessation of industrial processes, limit or require the cessation of incineration and open burning, and take any other action that may be deemed necessary to prevent and/or control air pollution emergencies.

The second requirement is to submit an adequate contingency plan to implement the air agency’s emergency episode authority. ECL articles 3 and 19 provide New York State with the authority to address air pollution emergencies and are included in the SIP. To prevent and control these emergency episodes, DEC adopted 6 NYCRR Part 207, “Control Measures for an Air Pollution Episode,” which implements ECL section 3-0301. Part 207 has been approved as part of the New York SIP.¹⁵

Part 207 is implemented through the “Air Pollution Episode Communication Handbook,” available on DEC’s website.¹⁶ The handbook incorporates the federal Air Quality Index (AQI) and associated Significant Harm Levels for the criteria pollutants as alert levels for pollution episodes. Additionally, the document contains a list of contacts and responsibilities in the event of an air pollution episode, including DEC central office and regional contacts, as well as State Emergency Management Office and local emergency contacts. Note that DEC is in the process of updating the AQI thresholds and related priority levels pursuant to the 2015 ozone NAAQS and other recent NAAQS revisions to reflect 40 CFR Part 58 Appendix G, Table 2, “Breakpoints for the AQI.” Contacts and other relevant information are also being updated.

¹⁴ ‘Air pollution emergency’ is defined under ECL section 1-0303(1) as “a combination of circumstances which requires immediate action to reduce the quantity of contaminants in the atmosphere due to danger to public health and welfare, injury to agricultural crops and livestock, damage to and deterioration of property, hazards to air and ground transportation or impairment of environmental quality.”

¹⁵ “Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan,” Final Rule. Published and effective November 12, 1981. 46 FR 55690-55693.

¹⁶ <https://www.dec.ny.gov/chemical/60440.html>

Element H – Section 110(a)(2)(H): SIP Revisions

*“Each such plan shall [. . .] provide for revision of such plan—
(i) from time to time as may be necessary to take account of revisions of such primary or secondary [NAAQS] or the availability of improved or more expeditious methods of attaining such standard, and
(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this chapter (CAA).”*

Revisions to the SIP are authorized by the following ECL sections:

- 3-0301, “General functions, powers and duties of the department and the commissioner;”
- 19-0103, “Declaration of policy;”
- 19-0301, “Powers and duties;”
- 19-0303, “Codes, rules and regulations;” and
- 19-0305, “Commissioner; enforcement power.”

Article 19 of the ECL was adopted to protect New York’s air resources from pollution and to effectuate the policy of the state to maintain a reasonable degree of purity of the air resources, consistent with public health and welfare and the industrial development of the state. To this end, the state legislature gave DEC specific powers and duties, including the power to promulgate and revise regulations for preventing, controlling, or prohibiting air pollution. DEC also has the specific authority to regulate motor vehicle exhaust, approve air contaminant control systems, and regulate fuels.

Section 71-2103, “Violations; civil liability,” provides general enforcement authority for the air regulations. Section 71-2105, “Criminal liability for violations,” provides criminal enforcement authority. Thus, New York has the authority to revise the SIP and provide for enforcement in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. This general statement of authority is included in the SIP.

Element I – Section 110(a)(2)(I): Plan Revisions for Nonattainment Areas

“Each such plan shall [. . .] in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).”

Pursuant to recent guidance, EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). SIP submissions for designated nonattainment areas, as required under CAA title I part D, are subject to a different submission schedule than those for section 110 infrastructure elements and will be reviewed and acted upon through a separate process.

Consequently, Element I is not being addressed in this infrastructure SIP. Part D requirements for the New York-Northern New Jersey-Long Island, NY-NJ-CT area that was designated nonattainment for the 2015 ozone NAAQS on June 4, 2018 (effective August 3, 2018) will be addressed at a later date.

Element J – Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection

“Each such plan shall [. . .] meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).”

Consultation with government officials:

CAA section 121 requires states to provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any Federal Land Manager (FLM) having authority over federal land to which the state plan applies.

On December 22, 2005, DEC established a SIP Coordinating Council consisting of senior policy representatives from 19 state agencies and authorities, and a SIP Task Force consisting of officials from 37 local governments and designated organizations of elected officials. The SIP Coordinating Council provides a means to keep state agencies and local governments informed of planned SIP activities and deadlines, and provides a forum for discussion of SIP requirements and implications, such as effects on transportation planning. The SIP Task Force provides a means of facilitating local involvement at the metropolitan planning organization and county levels. These groups are convened as needed, and contacts are updated periodically.

Though there are no federal lands within New York State to which the state plan applies, DEC has participated in the consultation process of the Regional Haze SIP (40 CFR 51.308) with the FLMs, states, and tribes of the MANE-VU region, and with other regional planning organizations where emissions from New York are reasonably anticipated to contribute to visibility impairment in Class I areas. DEC will also comply with the requirements of 40 CFR 51.308(i) regarding providing FLMs an opportunity for consultation early enough so that their recommendations can meaningfully inform the long-term strategy.

Public notification:

CAA section 127 requires states' infrastructure SIPs to demonstrate that the air agency does the following:

- Regularly notifies the public of instances or areas in which the new or revised primary NAAQS was exceeded;
- Advises the public of the health hazards associated with such exceedances; and
- Enhances public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

DEC fulfills these requirements by disseminating useful information regarding ozone air quality to the public via its website.

- Ozone concentrations that have exceeded the 2015 ozone NAAQS at any monitor statewide are reported on the DEC website.¹⁷ Ozone AQI values are also reported/forecasted for eight regions of the state for the previous, current, and following day.¹⁸ DEC, in cooperation with the New York State Department of Health, posts warnings on the AQI website if dangerous conditions are expected to occur. These warnings are also aired through the media, and are available on DEC's toll-free Air Quality Hotline at (800) 535-1345. Real-time monitoring data are also available on an individual monitor basis on DEC's air monitoring website.¹⁹ Municipalities also have emergency response plans recommended by the New York State Office of Emergency Management and the Federal Emergency Management Agency that provide for public information and notification in the case of large-scale emergencies.
- The "About Ozone" webpage explains what ground-level ozone pollution is, as well as the related health effects of elevated ozone levels.²⁰
- Also included on the "About Ozone" webpage is a list of general measures the public can take to help reduce the formation of ozone. Furthermore, DEC's website features a webpage that provides tips for reducing ozone precursor emissions from lawn and garden equipment.²¹
- The public is afforded the opportunity to participate in regulatory efforts to improve air quality (e.g., a new or revised regulation limiting ozone precursor emissions from a particular source category), as described in the State Administrative Procedure Act.²² For each major SIP revision, 40 CFR 51.102 requires DEC to provide appropriate notice, provide the opportunity to submit written comments, and allow the public and local entities the opportunity to request a public hearing.

Prevention of Significant Deterioration:

New York has a SIP-approved PSD/NSR program that covers all criteria pollutants and greenhouse gases pursuant to 6 NYCRR Part 231, "New Source Review for New and Modified Facilities." This program was previously detailed under element C.

Visibility Protection:

Pursuant to the September 13, 2013 EPA Memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," EPA does not expect infrastructure SIP submissions to address the visibility protection component of section 110(a)(2)(J). Visibility protection and regional haze program requirements are contained in Part C of the CAA (under sections 169A and 169B) and are being met by DEC through separate efforts. These Part C requirements are not affected by revisions to a NAAQS, and as a result there are

¹⁷ "High Ozone Values During 2018," <http://www.dec.ny.gov/chemical/38377.html>

¹⁸ "Air Quality Index (AQI) Forecast and Current Observations for New York State," <http://www.dec.ny.gov/chemical/34985.html>

¹⁹ "Department of Environmental Conservation Air Monitoring Website," <http://www.nyaqinow.net/>

²⁰ "About Ozone," <http://www.dec.ny.gov/chemical/8400.html>

²¹ "Reducing Air Pollution from Lawn and Garden Equipment," <http://www.dec.ny.gov/chemical/8554.html>

²² "Rule Making in New York Manual; How to prepare SAPA notices for publication in the State Register," <https://www.dos.ny.gov/info/rulemakingmanual.html>

no new applicable visibility protection obligations resulting from the 2015 ozone NAAQS revision. Consequently, this component of Element J is not being addressed in this infrastructure SIP submission.

Element K – Section 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data

*“Each such plan shall [. . .] provide for—
(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS], and
(ii) the submission, upon request, of data related to such air quality modeling to the Administrator.”*

DEC’s regulations under 6 NYCRR Part 200.6, “Acceptable ambient air quality,” dictate that “no person shall allow or permit any air contamination source to emit air contaminants in quantities which alone or in combination with emissions from other air contamination sources would contravene any applicable ambient air quality standard and/or cause air pollution.” As such, when a new major source of emissions is coming online or an existing source is undertaking a modification that would lead to a significant increase in its potential to emit, DEC will use modeling as necessary to affirm that compliance with the ozone NAAQS will be maintained.

Furthermore, 6 NYCRR Subpart 231-12, “Ambient Air Quality Impact Analysis,” sets forth the procedures and requirements for the performance of an air quality impact analysis to determine whether a new or modified facility complies with quantified air quality levels, including air quality standards, PSD increments, monitoring de minimis levels, air quality related values, and significant impact levels. Appendix W to 40 CFR Part 51, “Guidance on Air Quality Models,” also provides information on the modeling of ozone and its precursors.

The DEC certifies that the air quality modeling and analysis used in New York’s SIPs complies with the latest EPA guidance on the use of models in attainment demonstrations,²³ and commits to continue to use air quality models in accordance with the EPA’s approved modeling guidance and to submit data to the Administrator if requested.

²³ “Draft Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze”; memorandum from Richard Wayland, Director, Division of Air Quality Assessment to Regional Air Division Directors. December 3, 2014.

Element L – Section 110(a)(2)(L): Permitting Fees

“Each such plan shall [...] require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under subchapter (title) V of this chapter.”

New York has an EPA-approved fee program under CAA Title V. The following ECL and regulatory citations provide for the collection of permitting fees under New York’s EPA-approved Title V permit program:

- ECL Section 72-0302, “State air quality control fees,” states that “[a]ll persons, except those required to pay a fee under section 72-0303 of this article, who are required to obtain a permit, certificate or approval pursuant to the state air quality control program shall submit to the department a per emission point fee in an amount established as follows...”
- ECL Section 72-0303, “Operating permit program fees,” states that “all sources of regulated air contaminants identified pursuant to [ECL section 19-0311(1)] shall submit to the department an annual base fee of two thousand five hundred dollars. This base fee shall be in addition to the fees listed below...”
- 6 NYCRR Subpart 482-2, “Operating Permit Program Fee,” establishes the annual fee to be submitted by air contamination sources subject to the operating permit program for emissions of regulated air contaminants. This subpart, with revisions effective on June 27, 2018, was adopted pursuant to the statutory authority granted to the DEC under ECL section 72-0303. Information about Subpart 482-2 is available on DEC’s website.²⁴
- 6 NYCRR Paragraph 201-6.4(a)(7) states “[t]he owner and/or operator of a stationary source shall pay fees to DEC consistent with the fee schedule authorized by Subpart 482-2 of this Title.”

²⁴ “Adopted Part 482-2 Operating Permit Program Fee,” <http://www.dec.ny.gov/regulations/66905.html>

Element M – Section 110(a)(2)(M): Consultation and Participation by Affected Local Entities

“Each such plan shall [. . .] provide for consultation and participation by local political subdivisions affected by the plan.”

Consultation and participation by local political subdivisions are provided through a SIP Task Force consisting of officials from 37 local governments and designated organizations of elected officials. DEC utilizes the SIP Task Force as necessary for consultation on plans.

Participation by affected local entities, as well as the public, is provided for through 6 NYCRR Part 617, “State Environmental Quality Review.” For each major SIP revision, Part 617 requires DEC to provide appropriate notice, provide the opportunity to submit written comments, and allow the public and local entities the opportunity to request a public hearing. Such notices are published in the Environmental Notice Bulletin, an official publication of DEC, produced since 1976 as required by ECL section 3-0306(4).



Department of
Environmental
Conservation

ENB - Statewide Notices 8/8/2018

Notice of Public Hearing

Revisions to the New York State Implementation Plan for the 2008 and 2015 Ozone National Ambient Air Quality Standards

Notice is hereby given that the New York State Department of Environmental Conservation (NYS DEC) plans to submit two State Implementation Plan (SIP) revisions to the United States Environmental Protection Agency (US EPA). These revisions are pursuant to Clean Air Act (CAA) sections 110(a)(1) and 110(a)(2), which require submissions commonly referred to as "infrastructure SIPs" whenever US EPA revises the National Ambient Air Quality Standards (NAAQS).

US EPA revised the ozone NAAQS on October 1, 2015, prompting the proposed determination that NYS DEC has adequate resources providing for the implementation, maintenance, and enforcement of the 2015 ozone NAAQS.

NYS DEC is also proposing to supplement the infrastructure SIP for the 2008 ozone NAAQS that was submitted to US EPA on April 4, 2013. CAA section 110(a)(2)(D)(i)(I), known as the "good neighbor" provision, requires states to prohibit pollutant emissions that significantly contribute to nonattainment or interfere with maintenance in downwind states. Effective September 26, 2016, US EPA disapproved the "good neighbor" provision for New York's 2008 ozone NAAQS infrastructure SIP. This NYS DEC proposal relies on updated air quality modeling and additional air pollution control measures to show that New York has now satisfied its good neighbor obligations for the 2008 ozone NAAQS.

NYS DEC is providing a 30 day period to comment on the proposed submissions or request a hearing. **Written comments should be submitted by 5:00 p.m. on September 7, 2018** to: Scott Wajda-Griffin, NYS DEC - Division of Air Resources, 625 Broadway, 11th Floor, Albany, NY 12233-3251, or by e-mail to: dar.sips@dec.ny.gov. Scott Wajda-Griffin can be reached at (518) 402-8396 with any questions regarding the proposed SIP revisions.

Contact: Scott Wajda-Griffin, NYS DEC - Division of Air Resources, 625 Broadway, 11th Floor, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: dar.sips@dec.ny.gov.

Assessment of Public Comments

New York State Implementation Plan Revisions for 2015 Ozone National Ambient Air Quality Standards Infrastructure Demonstration and 2008 Ozone National Ambient Air Quality Standards Transport Supplement

List of Commenters:

- Connecticut Department of Energy & Environmental Protection (CT)
- New Jersey Department of Environmental Protection (NJ)
- Environmental Energy Alliance of New York (EEANY)

Comment: Agreement with DEC that the U.S. Environmental Protection Agency's selection of a 2023 evaluation year is inappropriate for determining transport obligations pursuant to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). [CT, NJ]

Response: Thank you for your comment and support.

Comment: Good neighbor emissions reductions for the 2015 standard should be in place in time to benefit marginal nonattainment areas that are required to attain the 2015 standard by 2020. As such, Connecticut recommends New York also address its significant contribution to nonattainment of the 2015 standard in the Greater Connecticut marginal nonattainment area prior to 2020. [CT]

Response: Although DEC's transport analysis for the 2015 NAAQS did not specifically cite the Greater Connecticut area, DEC is expeditiously working toward adopting the additional nitrogen oxide (NO_x) and volatile organic compound (VOC) control measures so they are in effect as soon as possible. These new control measures, in addition to existing Reasonably Available Control Technology (RACT) standards and other federal, state, and local regulations, will result in New York satisfying its good neighbor obligations for the Greater Connecticut nonattainment area.

Comment: DEEP supports New York's commitment to revise Title 6 of New York Codes, Rules and Regulations (NYCRR) to obtain reductions in emissions of ozone precursor pollutants. These emission reductions are vital to regional attainment of the ozone standards, and once adopted can be used to fulfill New York's good neighbor obligations under CAA section 110. Though DEEP recognizes that New York pays \$5,500 per ton of emissions reduced under its RACT rules, far more than most upwind states, it does not match the cost of more than \$13,000 per ton that Connecticut business and industry pay. Given that New York emissions reductions will have the greatest effect on reducing ozone in our shared nonattainment area, DEEP urges DEC to revise and implement the NYCRR proposals to obtain the necessary emissions reductions without delay. In particular, NYSDEC's current effort to revise 6 NYCRR Subpart 227-2 and implement short-term limits on simple cycle turbines will provide emissions reductions during critical hours of high electric demand. Recognizing the special importance of this particular commitment, DEC should move forward with a proposed regulation without further delay. Any proposal should include limits and averaging times appropriate to addressing peak day emissions. [CT]

Response: DEC is expeditiously working toward adopting the additional NO_x and VOC control measures so they are in effect as soon as possible. DEC agrees that emission

reductions during peak ozone days will be critical for helping to address the ozone exceedances in the tri-state nonattainment area.

Comment: Agreement that federal rules reducing mobile source emissions are essential to providing the citizens of the states in and around the New York City metropolitan area with clean air and must not be weakened, mobile source emissions must be further reduced, and any emission reductions relied upon in future year assessments should be made enforceable and permanent. [CT]

Response: Thank you for your comment and support.

Comment: New Jersey appreciates New York's recent efforts in moving forward with rulemaking to reduce ozone precursor emissions. While tardy, these measures remain an important component of our nonattainment area's efforts to reach attainment. In particular, New Jersey has commented several times to New York on the need to adopt control measures that address peaking electric generating units, non-emergency use of stationary combustion engines for electricity generation, and Municipal Waste Combustors. New York recognized the value of these control measures early on since it listed them in its Attainment Demonstration State Implementation Plan for the 1997 ozone NAAQS dated February 2008. New Jersey encourages New York to expeditiously adopt these measures and expedite their implementation. [NJ]

Response: DEC is expeditiously working toward adopting the additional NOx and VOC control measures so they are in effect as soon as possible. DEC agrees that emission reductions from these source categories, particularly during peak ozone days, will be critical for helping to address the ozone exceedances in the tri-state nonattainment area.

Comment: DEC provides a compelling argument in asserting the state has fully met its own "good neighbor" obligations for the 2008 ozone NAAQS "through the implementation and enforcement of stringent NOx and VOC control measures that go well beyond the EPA presumptive cost threshold in the CSAPR Update rule for highly cost-effective emission reductions, and through the ongoing adoption and revision of additional control measures to further ensure the reduction of ozone in both New York State and downwind areas." For example, DEC's efforts to reduce emissions in the state over many years have resulted in power sector NOx emissions that are among the lowest in the nation. [EEANY]

Response: Thank you for your comment and support.

Comment: Alliance members support DEC in the argument that New York will fail to attain the standard in the New York Metropolitan Area absent additional reductions from upwind states, despite the emissions reductions forthcoming and already made by sources within New York. Alliance members also support DEC's request of EPA to address emissions from the mobile sector, such as through more stringent corporate average fuel economy, heavy-duty diesel vehicle standards and the retention of standards for "glider" vehicles. [EEANY]

Response: Thank you for your comment and support.