

## **Final Action on Petition: Response to Clean Air Act Section 126(b) Petition from New York**

### **Fact Sheet**

#### **Action:**

- On September 20, 2019, the U.S. Environmental Protection Agency (EPA) denied New York's petition under section 126 of the Clean Air Act.
- Under Clean Air Act section 126(b), downwind states can submit a petition requesting the EPA to determine whether sources in an upwind state emit, or would emit, pollutants in amounts that violate the "good neighbor" provision of the Act (found in section 110(a)(2)(D)(i)(I)), thus impacting air quality problems in the petitioning downwind state.
- New York's petition asked EPA to determine that approximately 350 identified sources in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia emit air pollutants that significantly contribute to problems with New York's ability to attain and maintain the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in Chautauqua County, New York and the New York City Metropolitan Area.
- The Agency has concluded that New York has not met its burden to demonstrate that the named sources emit or would emit ozone-forming pollutants at levels that violate the Clean Air Act's good neighbor provision for the 2008 and 2015 ozone standards. For all but the 2015 standards in New York City area, the petition did not identify (nor did EPA independently identify) relevant air quality problems. In addition, the petition did not adequately identify additional available controls that could be cost-effectively applied at the identified sources.
- The action notes the D.C. Circuit's September 13, 2019, decision remanding the Cross-State Air Pollution Rule Update. EPA's denial of New York's petition based on failure to meet its burden is independent and severable from any portion of the denial based on EPA's discretionary evaluation of downwind air quality in New York using the Agency's 2023 modeling data.

#### **Background:**

- Section 126(b) of the Clean Air Act allows any state or political subdivision to petition EPA to find that a major source or group of stationary sources emits or would emit any air pollutant at amounts that violate the good neighbor provision of the Act.
- If the Administrator finds that emissions from the named major source or group of sources violate the good neighbor provision of the Act, section 126(c) contains a default remedy that the named source or sources shut down within three months of the finding. Continued

operation under section 126(c) can be permitted only if the source(s) complies with any emission limits and compliance schedules set by the Administrator to ensure emissions reductions as soon as possible, but no later than 3 years from the date of the finding.

- The good neighbor provisions of the Clean Air Act require states as part of their state implementation plans to address their air emissions that will significantly contribute to nonattainment and interfere with maintenance of the NAAQS in other states.
- In March 2008, EPA strengthened the NAAQS for ground-level ozone setting it at 75 parts per billion (ppb). In October 2015, EPA further strengthened the ozone standards to 70 ppb. Breathing ozone can trigger a variety of health problems, particularly for children, the elderly, and people of all ages who have lung diseases such as asthma. Ground-level ozone can also have harmful effects on sensitive vegetation and ecosystems.
- To address the good neighbor provision for the 2008 ozone standards, EPA issued the Cross-State Air Pollution Rule Update (CSAPR Update Rule) in October 2016. The final rule limited emissions of oxides of nitrogen from power plants during the ozone season in certain states. In the rule, EPA assessed whether there are cost-effective reductions that can be applied to power plants in those states and established corresponding emissions budgets. On December 6, 2018, EPA finalized a determination that the CSAPR Update fully addressed interstate ozone transport obligations for 20 states in the eastern U.S., including those states named in the New York petition, with respect to the 2008 ozone standards.
- EPA is actively working with states and reviewing submitted implementation plans addressing the good neighbor provision for the 2015 ozone standards.

**Additional Information:**

- EPA has established a docket for this rulemaking under Docket ID number EPA-HQ-OAR-2018-0170.
- Interested parties can download the rulemaking documents from EPA's web site on the Internet under recent actions at the following address: <https://www.epa.gov/ozone-pollution/ozone-national-ambient-air-quality-standards-naaqs-section-126-petitions>
- Today's action and other background information are also available either electronically at <http://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
  - The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. daylight savings time, Monday through Friday, excluding Federal holidays.

- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
  - Materials for this action can be accessed using EPA–HQ–OAR–2018-0170.
- For additional information on this action, please contact Beth W. Palma at [palma.elizabeth@epa.gov](mailto:palma.elizabeth@epa.gov) or 919-541-5432.