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Subject Comment on the U.S. Environmental Protection Agency’s Proposed Response to the December 9, 2013 Clean Air Act §176A Petition from Connecticut, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (82 Fed. Reg. 6,509 (Jan. 19, 2017)).

The American Petroleum Institute (“API”) provides these comments on the U.S. Environmental Protection Agency’s (“EPA’s”) or “the Agency’s”) Proposed Response to the December 9, 2013 Clean Air Act (“CAA” or “the Act”) §176A Petition from Connecticut, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (“2013 Petition”).¹ The 2013 Petition requested that EPA expand the Ozone Transport Region (“OTR”) to include nine additional states.² API members operate multiple refining and petrochemical manufacturing facilities located in these states, and support the Agency’s proposed denial of this petition.

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

¹ 82 Fed. Reg. 6,509 (Jan. 19, 2017).

² Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia, and Virginia.

First, it is important to highlight the dramatic improvement in air quality that continues as the previous air quality controls are implemented. For example ground level ozone in the U.S. declined by 17 percent between 2000 and 2015, according to EPA data. In the Fact Sheet released with the 2015 Ozone NAAQS Rule, EPA stated that Agency analyses show the vast majority of U.S. counties will meet the standards by 2025 just with federal and state rules and programs in place or underway prior to the 2015 NAAQS. Clearly the states, tribes and businesses are successfully implementing the ozone standards and API supports the protection of public health. Of course, the NAAQS process should be further streamlined to reduce burdens on states and businesses, but those comments are for a different venue.

Second, API supports EPA's proposed denial of the subject 2013 Clean Air Act Section 176A Petition. API agrees with EPA that it is not necessary to expand the Ozone Transport Region ("OTR") by adding nine additional states. API members would be impacted as they operate multiple refining and petrochemical manufacturing facilities in this proposed expansion area. The additional requirements that would be imposed through the petitioned expansion are not necessary for downwind states' attainment with the 2008 Ozone National Ambient Air Quality Standard or ("NAAQS"), and could only serve to increase compliance costs for states, citizens, and businesses, including API members operating in these states.

API agrees with EPA that other Clean Air Act provisions can provide better alternatives for states and the EPA to develop targeted remedies to address interstate ozone. API further agrees with the Agency that states and the EPA have historically addressed ozone issues and the interstate transport of ozone pollution using these other CAA authorities to implement those emissions reductions the regulators deemed necessary. API supports EPA assertion that applying these past practices will be able to successfully address interstate transport of ozone with respect to the 2008 ozone NAAQS.

EPA has promulgated several rules that reduce the transport of ozone/ozone precursors and help address any remaining OTR nonattainment issues with the 2008 Ozone NAAQS. These actions include the NOx SIP Call, the Cross States Air Pollution Rule and its October 26, 2016 Update, the 2015 Ozone NAAQS and numerous other emissions standards and rules.

API appreciates EPA's careful consideration and determination that these other tools are adequate. EPA's proposed action will prevent additional administrative burden for the nine targeted states and unnecessary controls on sources in those states. API requests EPA to continue to first utilize the historically effective tools to address interstate transport and avoid expanding the OTR.

I. API SUPPORTS EPA'S PROPOSED DENIAL OF THE 2013 PETITION

As detailed in these comments, API supports EPA's proposed denial of the 2013 Petition. While the petitioning states are correct that the CAA confers EPA with limited authority to expand the OTR, it is not presently necessary or appropriate to do so. The CAA provides EPA and the states numerous other mechanisms for addressing interstate transport under the NAAQS program. These mechanisms have been utilized by EPA and the states and demonstrated to be effective. In fact, the petitioning states' concern over upwind state contribution to nonattainment with the 2008 Ozone NAAQS is already being addressed through the use of these exact mechanisms. As such, the 2013 Petition provides EPA no rational basis for mandating an extreme and unprecedented expansion of the OTR.

Unlike other tools that EPA and states can utilize with some degree of precision to address upwind contributions to downwind nonattainment, expanding the OTR imposes on those newly included states rigid regulatory and control requirements. Once a state is included in the OTR, neither EPA nor the state retain any material discretion to alter the control requirements imposed on the state or sources therein. By eliminating state and/or EPA discretion to more precisely tailor upwind controls to address downwind nonattainment, unnecessary expansion of the OTR risk over-controlling emissions from newly included upwind states.

Indeed, it is difficult to conceive of a better example of an improper use of EPA's §176A authority than that what is requested in the 2013 Petition. The petitioning states are seeking a restructuring of the OTR and the imposition of stringent controls across nine states to help them meet a standard the petitioning states *are already attaining or are on a path to attaining through existing measures*. As such, the inevitable result of embarking on this inflexible path is the over-control of emissions from upwind states – a result which the U.S. Supreme Court has already determined to be impermissible under the CAA.³ EPA's proposed denial of the 2013 Petition is therefore rational and necessary.

a. **CAA §176A Grants EPA Discretion to Expand the OTR Only When Necessary to Address Significant Contribution to Downwind Nonattainment and Only When Expansion Will Not Lead to Over-Control**

EPA's proposal to deny the 2013 Petition is consistent with the CAA, EPA's regulations and practice, and applicable case law. API therefore supports the Agency's proposed denial of the 2013 Petition and urges EPA to promptly finalize this decision.

To be sure, §176A does not provide a strict formula of factors that determine whether the OTR should be expanded or not. EPA has some discretion to make a determination on expansion, but

³ EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584 (2014).

that discretion can only be exercised within specified boundaries. EPA cannot, for instance, agree to expand the OTR to include states that do not significantly contribute to downwind nonattainment, and EPA cannot use the controls that are required through expansion of the OTR to over-control emissions from upwind states. Yet, this is exactly what the 2013 Petition requests. EPA’s proposed denial of the 2013 Petition is therefore the only legally defensible response the Agency is permitted to make.

1. EPA’s Limited Discretion under §176A

CAA §176A states, *inter alia*, that:

The Administrator, on the Administrator’s own motion or upon petition from the Governor of any State . . . , may . . . add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region . .

API agrees with EPA’s conclusion that Congress’s use of the word “may” in §176A indicates that the Agency retains discretion in determining whether to add new states to the OTR.⁴ While we agree with EPA’s conclusion that the Agency retains discretion under §176A, we note that this discretion is limited in several very important ways.

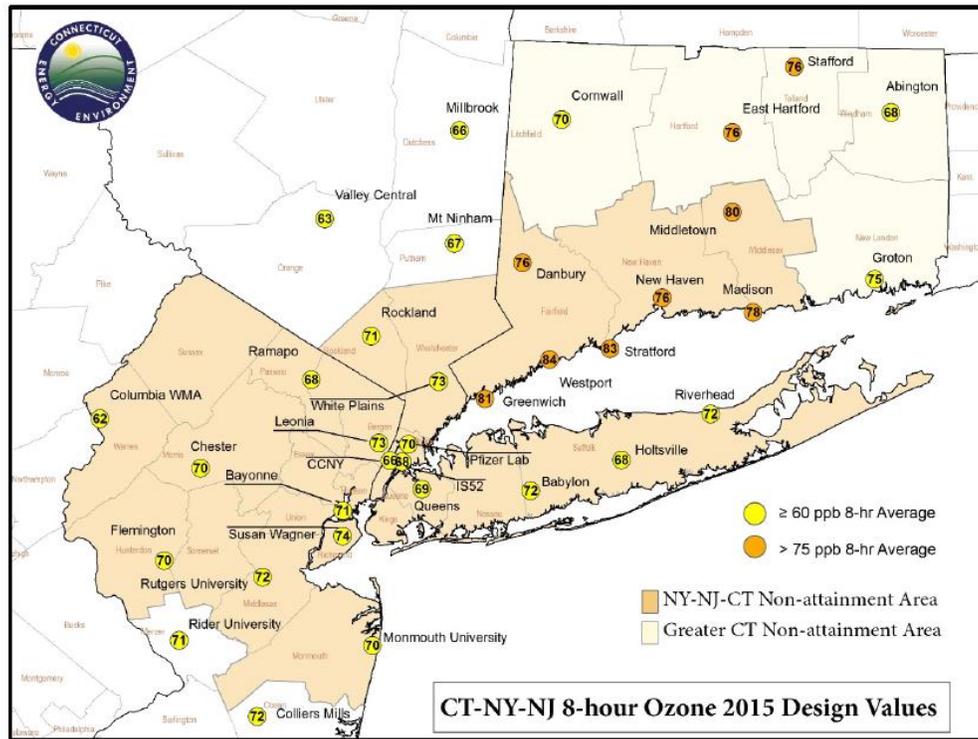
First, as explicitly stated in §176A, in order for the Administrator to exercise this discretion, one or more downwind areas must be in nonattainment with the relevant standard. As courts have held in similar circumstances, EPA can only require a reduction in an upwind state’s emissions to the extent necessary to reduce that state’s contribution to downwind nonattainment.⁵

Currently, there are only two areas in the OTR that have yet to attain the 2008 Ozone NAAQS – the Greater Connecticut Air Quality Control Region (“Greater Connecticut AQCR”) and the New York, New Jersey, and Connecticut AQCR (“NY-NJ-CT AQCR”).⁶

⁴ 82 Fed. Reg. at 6,513.

⁵ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014); *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015); *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000).

⁶ <https://www.epa.gov/air-trends/air-quality-design-values#report> (accessed Feb. 6, 2017).



The Greater Connecticut AQCR is currently 1 ppb above the 2008 Ozone Standard.⁸ According to the Connecticut Department of Energy and Environmental Protection,

all four monitors in the Greater Connecticut moderate nonattainment area are projected . . . to reach attainment of the 75 ppb 9-hour ozone NAAQS by 2017. . . . Even the maximum predicted design values, commonly only evaluated for determining maintenance status, are compliant with the NAAQS.⁹

In the NY-NJ-CT AQCR, all monitors outside of Connecticut had design values lower than the 75 ppb level through 2015.¹⁰ As such, what the 2013 Petition characterizes as a regional attainment dilemma that cannot be solved without the unprecedented expansion of the OTR is, in reality, an attainment issue at a handful of monitors in Southern Connecticut.

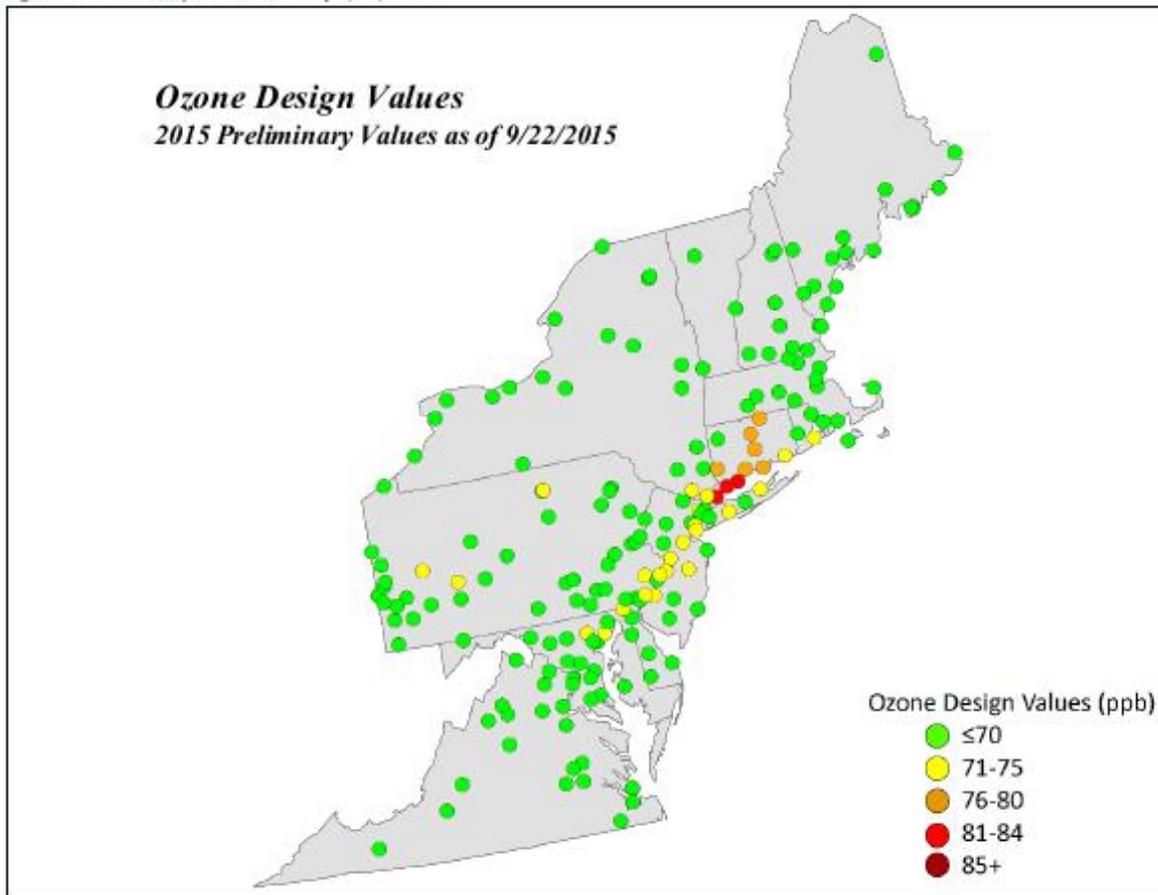
⁷ 8-Hour Ozone Attainment Demonstration for the Greater Connecticut Nonattainment Area Technical Support Document, Enclosure A, p 23 (DEEP, January 2017).

⁸ <https://www.epa.gov/air-trends/air-quality-design-values#report> (accessed Feb. 6, 2017).

⁹ 8-Hour Ozone Attainment Demonstration for the Greater Connecticut Nonattainment Area Technical Support Document, Enclosure A, p 91 (DEEP, January 2017).

¹⁰ Recent data suggest that the 2016 4th Max values for Riverhead (78 ppb), Susan Wagner (77 ppb) and White Plains (75 ppb) met or exceeded the 75 ppb 2008 ozone standard¹⁰ – with all other stations below this value, the 3-year averages (2014-2016) for these stations exceeded the 75 ppb value only at the Susan Wagner station, at 76 ppb. See <http://www.dec.ny.gov/chemical/38377.html> (accessed Feb. 6, 2017). This is only 0.1 ppb above what is necessary to show attainment, and does not undermine the overall downward trend in ozone levels at the monitor.

Figure 2. Preliminary 2015 DVs as of 9/22/2015



Second, even the state petitioners could show that the nonattainment monitors in Southern Connecticut were projected to remain in nonattainment, the Administrator has no discretion to expand the transport region unless and until EPA determines that the state to be added significantly contributes to the violation.¹² The CAA’s already clear directive here is made even more crystalline by the courts that have reviewed disputes over upwind contribution – the EPA has no authority to command reductions from states “wholly innocent of material contributions” and only confers such authority where a state makes a “measurable contribution” to downwind nonattainment.¹³ In order to require upwind reductions, “EPA must first establish that there is a measurable contribution. Interstate contributions cannot be assumed out of thin air.”¹⁴

¹¹ September 28, 2015 Letter from Anne R. Gobin (Chief Bureau of Air Management, DEEP) to Janet McCabe (USEPA).

¹² CAA §176A.

¹³ See *Michigan v. EPA*, 213 F. 3d. 663 (D.C. Cir. 2000); See also *Appalachian Power Co. v. EPA*, 249 3d. 1032 (D.C. Cir 2001).

¹⁴ *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000).

Both the 2013 Petition and EPA’s proposed response use the Cross State Air Pollution Rule’s (“CSAPR’s”) “one percent” threshold for significant contribution. While API does not necessarily agree that use of the 1% threshold is appropriate in this context, we need not dispute it here because the 2013 Petition provides no evidence that any of the nine states it identified for inclusion in the OTR contribute 1% or more to any nonattaining monitors.

The Connecticut DEEP has itself concluded that the only upwind states significantly contributing to the violations at the Fairfield monitors are three other states in the OTC (New York, New Jersey and Pennsylvania).¹⁵ Notably, the Connecticut DEEP’s recently submitted nonattainment demonstration does not even suggest that any of the nine states petitioned for inclusion in the OTR contributed more than 1% to any of Connecticut’s nonattaining monitors. Instead, the demonstration suggests that four of the states contribute between 0.8 ppb and 1.8 ppb all of the monitors combined.¹⁶

The 2013 Petition assertions are even more generalized and unpersuasive. The petitioning states base their petition on data that indicates that transport *from all of the nine states combined* significantly contribute to the OTR nonattainment areas. That is not the test that §176A requires. CAA §176A allows EPA the discretion to include “such State” that “significantly contributes to a violation of the standard.” No state identified in the petition meets this standard. In fact, the only monitor that the 2013 Petition identifies as having a contribution of 1% or more from a single state of the nine requested to be added to the OTR is in Vermont – and that monitor is in attainment.¹⁷ EPA does not have discretion to expand the OTC to address an upwind state’s contribution – significant or otherwise – to an area that is not in violation with the 2008 Standard. Nor can EPA simply tally up enough states’ insignificant linkages to a nonattaining monitor in order to reach a “significant contribution” determination. Interpreting §176A to allow for such a “cumulative contribution” standard would effectively eliminate the CAA’s standard for adding states to a transport region – the Agency could expand a region whenever it wanted by simply adding more and more upwind states to the proposed expansion until the total emissions contribute 1% or more to a local nonattainment monitor.

Further, EPA must also base its determinations on the “best available air quality monitoring and modeling.”¹⁸ As noted above, however, the 2013 Petition does not reflect the best available air quality monitoring and modeling data. It reflects 2005 monitoring data and emissions and control projections that are known to be outdated. As such, EPA’s proposed response

¹⁵ 8-Hour Ozone Attainment Demonstration for the Greater Connecticut Nonattainment Area Technical Support Document, Enclosure A, p 11-12 (DEEP, January 2017).

¹⁶ 8-Hour Ozone Attainment Demonstration for the Greater Connecticut Nonattainment Area Technical Support Document, Enclosure A, p 11-12 (DEEP, January 2017).

¹⁷ 2013 Petition at 13.

¹⁸ CAA §184(d).

appropriately declined to rely on those data and is instead based on more recent and representative air quality monitoring and modeling data.

2. EPA Should Not Expand the OTR if Expansion Will Result in Over-Control of Emissions from the Newly Added States

As explained above, the 2013 Petition does not provide evidence that any of the nine states petitioned for inclusion in the OTR are significantly contributing to an OTR area's nonattainment with the 2008 Ozone Standard. Where a single state of the nine petitioned for inclusion was identified as contributing more than 1% of monitored ozone levels, the monitor and AQCR were in attainment with the 2008 Ozone Standard. For the few monitors within the existing OTR that are in violation of the 2008 Ozone NAAQS, there is no evidence that any state among the nine petitioned for addition contributes 1% or more of the monitored ozone levels. The 2013 Petition portrays a pervasive nonattainment issue caused by dozens of sources in nine states outside the OTR where, in reality, localized nonattainment is largely caused by local emissions.

A. *EPA Cannot Require Over-Control of Emissions from Upwind States*

The CAA provides EPA both an authorization for and a limitation upon the Agency's ability to require controls for upwind emission sources. As noted above, EPA can only expand the OTR to include a state that significantly contributes to a nonattainment area in the OTR and only when that linkage is demonstrated through the best available air quality monitoring and modeling data. In addition to those constraints on the Agency's discretion, the CAA also prohibits EPA from imposing on upwind states controls or restrictions which exceed what the best available air quality monitoring and modeling data indicate is necessary to bring downwind nonattainment areas into attainment.

As opposed to the consideration of downwind nonattainment and the significance of upwind contributions, which are prerequisites to EPA's discretion to use CAA authority, this limitation (deemed "over-control" by the Supreme Court and D.C. Court of Appeals) restricts the scope and extent of the controls EPA can require in an upwind state. As both the Supreme Court and the D.C. Circuit have held in directly analogous circumstances, the CAA prohibits EPA from requiring "an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked."¹⁹ Stated differently, EPA may "require the elimination of only those 'amounts' of pollutants that contribute to the

¹⁹ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014); *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

nonattainment of NAAQS in downwind States.”²⁰ EPA has exceeded its authority under the CAA “when those downwind locations would achieve attainment even if less stringent controls were imposed on the upwind States linked to those locations.”²¹

Expanding the OTR to include one or more additional states is effectively an emission reduction mandate on the newly added states. If that were not the case, the petitioning states would not have bothered to submit the 2013 Petition. Unlike other measures that the CAA allows EPA and states to use to address upwind contribution to downwind nonattainment, however, the controls that are automatically implicated through OTR expansion cannot be calibrated to “require the elimination of only those ‘amounts’ of pollutants that contribute to the nonattainment of NAAQS in downwind States.”

CAA §184(b) establishes certain control requirements that each state in the OTR is required to implement within the state and which require certain controls on sources of NO_x and VOCs statewide. These include the following:

- CAA §184(b)(1)(A) requires OTR states to include in their state implementation plans (“SIPs”) enhanced vehicle inspection and maintenance (“I/M”) programs;
- CAA §184 (b)(2) requires SIPs to subject major sources of VOCs in ozone transport regions to the same requirements that apply to major sources in designated ozone nonattainment areas classified as moderate, regardless of whether the source is located in a nonattainment area. Thus, newly added states must adopt rules to apply the nonattainment new source review (“NNSR”) provisions,²² and reasonably available control technology (“RACT”) provisions²³ for major VOC sources statewide;
- CAA §184(b)(2) further provides that, for purposes of implementing these requirements, a major stationary source shall be defined as any source that emits or has the potential to emit at least 50 tons per year of VOCs;
- CAA §184(b)(2) requires states to implement Stage II vapor recovery programs, incremental to Onboard Refueling Vapor Recovery achievements, or measures that achieve comparable emissions reductions for both attainment and nonattainment areas.²⁴ These programs are

²⁰ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014); *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

²¹ *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014); *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

²² CAA §173.

²³ CAA §182(b)(2).

²⁴ 78 Fed. Reg. 28,772 (May 16, 2012).

required to be implemented statewide in any state included within the OTR, not just in areas designated as nonattainment;

- CAA §182(f) requires states to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOCs. Thus, the same NNSR and RACT requirements that apply to major stationary sources of VOC in the OTR also apply to major stationary sources of NO_x.

Importantly, each of the control requirements described above are automatically mandated once a state is added to the OTR. EPA has no authority or discretion to tailor these requirements or more narrowly apply these requirement to “require the elimination of only those ‘amounts’ of pollutants that contribute to the nonattainment of NAAQS in downwind States.”

As such, EPA’s proposal correctly proposed to refrain from using CAA §176A’s broad and inflexible requirements to address a narrow and localized nonattainment issue. There are only two areas in the OTR in nonattainment with the 2008 Ozone NAAQS - one of those areas is projected to come into attainment in 2017 based on reductions that are “on-the-books” and “on-the-way,” and the other is overwhelmingly caused by emissions within Connecticut, New York, New Jersey and from neighboring OTC states.

Further, New York, New Jersey, and Connecticut are currently undertaking new efforts such as High Electricity Demand Day (“HEDD”), RACT, consumer product and industrial coating VOC restrictions, NO_x emission reductions from waste combustors, adoption of California Low Emission Vehicle III program, and public transportation projects.²⁵ Moreover, it appears that significant additional NO_x reductions will occur in Connecticut itself when the only coal fired power plant still in the state, the Bridgeport Harbor plant, shuts down in 2021²⁶ and is then replaced by a natural gas plant with far fewer NO_x emissions. As such, *any* new control requirements in upwind states – much less the aggressive reductions required through OTR expansion – would result in over-control. The CAA does not allow this result.

B. Numerous Additional Measures Make it Clear that the 2013 Petition Seeks Over-Control Rather than Relief from Significant Contributions to Downwind Nonattainment

The prospect of over-control is manifest in petitioning states’ request for widespread and stringent upwind reductions through OTR expansion to address a spatially and temporally

²⁵ See 8-Hour Ozone Attainment Demonstration for the Greater Connecticut Nonattainment Area Technical Support Document, Enclosure A, (DEEP, January 2017); See also

http://www.otcair.org/upload/Documents/Meeting%20Materials/Kropp_MOG.pdf (accessed Feb. 6, 2017).

²⁶ <http://www.courant.com/community/bridgeport/hc-last-ct-coal-plant-20160211-story.html>

limited nonattainment issue that is overwhelmingly caused by localized sources and being addressed through existing measures to control those local sources. The certainty that OTR expansion would result in over-control, however, is unmistakable and incontestable upon consideration of the numerous additional ozone mitigation measures in place, but largely unaccounted for in the 2013 Petition. These programs include EPA's rulemakings under the CAA's Good Neighbor provision, EPA and the National Highway and Transportation Safety Administration's ("NHTSA's") emission standards for mobile sources, and recently-finalized area and stationary source rules under CAA §112.²⁷

The CAA's Good Neighbor provision requires upwind states to develop state implementation plans ("SIPs") that prohibit emissions of pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance of, a NAAQS in another state. For its part, EPA can require the mitigation of specific sources that contribute to interstate pollution by either approving SIPs or promulgating federal implementation plans ("FIPs") to satisfy the requirements of the CAA §110(a)(2)(D)(i)(I). Moreover, states may petition EPA under CAA §126 for a finding that a source or group of sources in a particular state is in violation of the

²⁷ E.g., NOx SIP Call (63 Fed. Reg. 57,356 (Oct. 27, 1998)); Cross-State Air Pollution Rule (CSAPR) and CSAPR update (76 Fed. Reg. 48,208 (July 6, 2011); 81 Fed. Reg. 74,504 (Oct. 26, 2016)); 2015 Ozone NAAQS (80 Fed. Reg. 65,292 (Oct. 1, 2015)); Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, 81 FR 23414, (Apr. 28, 2014); Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emission Standards and Gasoline Requirements, 65 FR 6698, (Feb. 10, 2000); Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 66 FR 5002, (Jan. 18, 2001); Model Year 2017 and Later Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 FR 62624, (Oct. 15, 2012); Model Year 2012-2016 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 FR 25324, (May 7, 2010); Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles—Phase 2, 81 FR 73478, (Oct. 25, 2016); Phase 1 Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles, 76 FR 57106, (Sept. 15, 2011); and Control of Hazardous Air Pollutants from Mobile Sources, 72 FR 8428, (Feb. 26, 2007); Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, 69 FR 38958, (Jun. 29, 2004); Republication for Control of Emissions of Air Pollution from Locomotive Engines and Marine Compression-Ignition Engines Less Than 30 Liters per Cylinder, 73 FR 37096, (Jun. 30, 2008); Control of Emissions of Air Pollution from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder, 75 FR 22896, (Apr. 30, 2010); the International Maritime Organization's Emissions Control Area to Reduce Emissions from Ships in the U.S. Caribbean; Control of Air Pollution From Aircraft and Aircraft Engines, 77 FR 36342, (Jun. 18, 2012); Emissions Standards and Test Procedures; Control of Emissions from Nonroad Large Spark-Ignition Engines (Marine and Land-Based), 67 FR 68242, (Nov. 8, 2002); and Control of Emissions from Nonroad Spark-Ignition Engines and Equipment, 73 FR 59034, (Oct. 8, 2008); Mercury Air Toxics Standards, 77 Fed. Reg. 9304 (Feb. 16, 2012); National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 76 FR 15608, (Mar. 21, 2011); Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units, 76 FR 15704, (Mar. 21, 2011). The notice of final action on reconsideration is at 78 FR 9112, (Feb. 7, 2013); National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines, 75 FR 51570, (Aug. 20, 2010), *amended at* 78 FR 6674, (Jan. 30, 2013). These programs are in addition to reductions attributable to market-based changes in electric power generation. Over the past several years, the utility industry has undergone widespread changes as many older, higher-emitting units have been retired or replaced with more efficient and better controlled EGUs.

Good Neighbor provision.²⁸ Pursuant to its authority under the Good Neighbor provision and other CAA authority, EPA has promulgated several rules that reduce the transport of ozone/ozone precursors and help address any remaining OTR nonattainment issues with the 2008 Ozone NAAQS.

The net effect of these existing rules and programs, as well as other state programs, has produced a decline in ozone levels across the nation and the OTR. Indeed, in the nine OTR states and the nine upwind states named in the §176A petition, EPA projects the total NO_x emissions over the upcoming 7-year period (2017 to 2025) will decline by nearly 20 percent on average, while VOC emissions are expected to decline by more than 10 percent on average over the same period.

Although API agrees that the programs above may potentially result in significant reductions of ozone and ozone precursors, we do not agree with EPA's suggestion that these are efficient or cost-effective means of addressing downwind attainment. These are incredibly costly programs that have adversely impacted, and will continue to adversely impact, the profitability and competitiveness of domestic manufacturers, and the private sector's ability to create jobs.

II. CONCLUSION

Air quality progress continues and EPA has rightly concluded that expanding the OTR is not necessary.

API appreciates the opportunity to provide these comments. We look forward to working with the Agency in continuing to seek way to address NAAQS attainment. If you have any questions, please contact me at (202) 682-8568 or steichent@api.org.

Sincerely,

/s/

Ted Steichen

²⁸ We note that several states within the OTR have filed §126 Petitions requesting NO_x and SO₂ reductions from EGUs in several of the nine states petitioned for inclusion in the OTR. While API has not reviewed, and therefore takes no position on, the substance of those petitions, we note that these petitions reflect a much more targeted approach to transport issues than expanding the OTR and triggering its stringent and inflexible control requirements.