



Statement of the U.S. Chamber of Commerce

FOR: Statement for the Record on the U.S. Environmental Protection Agency's proposed Response to Clean Air Act Section 126(b) Petition from New York

TO: U.S. Environmental Protection Agency

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The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

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Dan Byers, Vice President, Policy
Global Energy Institute, U.S. Chamber of Commerce

My name is Dan Byers, and I am Vice President for Policy at the Global Energy Institute, an affiliate of the U.S. Chamber of Commerce (“Chamber”). The Chamber is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector and region. The mission of the Global Energy Institute is to unify policymakers, regulators, business leaders, and the American public behind a common sense energy strategy to help keep America secure, prosperous, and clean. The Chamber appreciates the opportunity to testify today in support of the Environmental Protection Agency’s (“EPA”) proposal to deny New York’s Section 126 petition of March 2018, as it pertains to interstate transport of ozone.

The authorities granted to EPA by Congress under Sections 110 and 126 of the Clean Air Act to address interstate transport of emissions are important and appropriate, as is the agency’s corresponding implementation framework that has developed and evolved over the subsequent years. Put simply, ozone transported across state (and international) boundaries can comprise a significant component of ambient air concentrations in downwind areas, and the federal government and regulated industry have a responsibility to take action if and when upwind sources contribute significantly to downwind states’ inability to meet applicable air quality standards. However, as I will summarize today and we will detail in written comments for the record, we agree with EPA’s determination that New York’s petition fails to meet the agency’s well-established four-part test for evaluating so-called “good neighbor” petitions.

New York alleges that emissions from 357 sources across nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia) significantly contribute to downwind air quality problems within New York. Its petition requests that EPA impose permanent and enforceable nitrogen oxides (NOx) emissions limits on these upwind facilities.

Step one of this test requires New York to demonstrate that there will be a downwind air quality problem to begin with. In all but one instance, EPA’s modeling shows that the locations alleged by New York to be harmed by upwind sources will not actually face an air quality problem with respect to ozone (i.e., both Chautauqua County

and the New York Metropolitan Area (NYMA) for the 2008 standard, and Chautauqua for the 2015 standard). Thus, EPA appropriately has concluded that the petition fails to meet its burden at Step 1 of the framework for these areas and standards.

While EPA does project that the NYMA will exceed the 2015 ozone standard, it has rightly determined that New York fails to meet Step 3 of the framework for this location—identification of cost-effective controls. As EPA notes, New York “has not conducted any sort of multifactor analysis to determine whether effective cost-controls are available at the named sources and has not provided any alternative analysis that would support a conclusion at step 3 that the named sources will significantly contribute to nonattainment or interfere with maintenance of the NAAQS.” Instead, the petition “simply names facilities that appear to have larger emissions than other facilities without supporting why the named facilities should make certain reductions.”

This absence of specificity then extends to New York’s proposed remedy, where, in lieu of customary analyses evaluating potential controls at named sources to prohibit “significant contributions to nonattainment,” the petition simply requests that upwind sources be subject to limits consistent with Reasonably Available Control Technology (RACT) as defined by New York, which assumes a control cost of \$5,000 per ton of NO_x reduced. As the proposed rejection explains, EPA has never used RACT to set upwind control obligations. Such a harsh and crudely defined remedy fails to meet the petitioner obligations under step 3 of EPA’s framework, and thus provides additional grounds for rejection of the petition.

Beyond the direct problems associated with New York’s failure to pass EPA’s four-part test, the Chamber encourages EPA to reject New York’s assertion that several hundred diverse and geographically dispersed sources constitute a “group” under Section 126. We have prepared a map of the identified facilities that helps to illustrate their geographic and sectoral diversity (attachment 1). Not surprisingly, power plants and refineries are major targets, but so are countless other facility types. From a municipal waste renewable energy facility in nearby Pennsylvania to a box factory in rural Virginia to steel plants in Michigan, there is no apparent basis or connection through which New York has “grouped” these extremely diverse facilities. Even university facilities at Purdue, Notre Dame, and Michigan State are targeted. Moreover, most of these facilities are hundreds of miles away from New York. For example, Purdue University is more than 400 miles away from New York’s westernmost border and 750 miles away from New York City, yet its small campus utility plant is being blamed for being a “bad neighbor.”

In summary, the petition amounts to a 9-state, 357-source sledgehammer remedy that fails to justify the need for even a scalpel. New York’s attempt to impose costly controls or even threaten facilities with permanent closure is not only inadequate, it defies the intent of the Clean Air Act’s “good neighbor” provisions as well as the standard practices for implementing those provisions under Section 126. As such, EPA should finalize its proposal to reject the petition. Thank you for the opportunity to testify today.

Attachment 1: Map of targeted facilities.

NEW YORK'S OZONE OVERREACH

KEY

100 MILES

- ELECTRIC
- MANUFACTURING & OTHER
- OIL & GAS

