



Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
304-353-8000
Fax: 304-353-8180
www.stepToe-johnson.com

Writer's Contact Information
dave.flannery@stepToe-johnson.com
304-353-8171

March 29, 2021

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(via email: regan.michael@epa.gov)

RE: Proposed Approval and Promulgation of Implementation
Plans: Ozone Season NOx Controls for Simple Cycle and
Regenerative Combustion Turbines.
Docket ID No. EPA-R02-OAR-2020-0324.

Dear Administrator Regan

The following comments are provided in response to the Proposed Approval and Promulgation of Implementation Plans: Ozone Season NOx Controls for Simple Cycle and Regenerative Combustion Turbines, Docket ID No. EPA-R02-OAR-2020-0324_ (86 Federal Register 11688, February 26, 2021) on behalf of the Midwest Ozone Group ("MOG").

MOG is an affiliation of companies and associations that draws upon its collective resources to seek solutions to the development of legally and technically sound air quality programs.¹ MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG has been actively engaged in a variety of issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules, NAAQS standards, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act ("CAA" or "Act"), NAAQS implementation guidance, the development of Good Neighbor state implementation plans (SIPs) and related regional haze and climate change issues. MOG Members and Participants own and operate numerous sources that would be adversely affected by implementation of Good Neighbor

¹ The members of and participants in the Midwest Ozone Group include: American Electric Power, American Forest & Paper Association, American Wood Council, Ameren, Alcoa, Appalachian Region Independent Power Producers Association (ARIPPA), Associated Electric Cooperative, Big Rivers Electric Corp., Citizens Energy Group, Cleveland Cliffs, Council of Industrial Boiler Owners (CIBO), Duke Energy, East Kentucky Power Cooperative, ExxonMobil, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE/KU, Marathon Petroleum, National Lime Association, Ohio Utility Group, Olympus Power, and City Water, Light and Power (Springfield IL).

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Provisions of the Clean Air Act (“CAA”) as they may be applied to address the residual nonattainment of the ozone NAAQS in the New York Metropolitan Area (“NYMA”) that would be allowed to continue beyond the legally mandated attainment date if this SIP were to be approved as proposed. MOG seeks the development of technically and legally sound air pollution rules and actions that may impact on their facilities, their employees, their contractors, and the consumers of their products.

These comments will address the following points, among others, and express the concern of MOG with respect to the compliance deadline portion of EPA’s proposed SIP approval.

- As will be shown in these comments, SCCTs in New York are causing the nonattainment of ozone NAAQS standards in the NYMA and at Connecticut monitors within the NYMA.
- While the SCCT NO_x emission reductions being advanced by New York are critical to achieving attainment of the ozone NAAQS in the NYMA, the deadlines for the imposition of those emissions reductions extend beyond the legally mandated attainment dates for both the 2008 and 2015 ozone NAAQS and should not be approved by EPA as submitted. The deadlines in the New York rule must be accelerated and coordinated to align the emission reductions with the legally mandated attainment dates for the NYMA.
- Because the SCCT NO_x emission reductions being advanced by New York do not take effect until after the mandatory attainment date for the ozone NAAQS, upwind states are being subjected to additional emissions control requirements that are not authorized by the CAA because the reductions from upwind states will not be necessary after the emissions reductions for the New York SCCTs are achieved.

MOG calls upon EPA to assure that the ozone season NO_x controls for Simple Cycle and Regenerative Combustion Turbines (“SCCTs”) controls being advanced by New York are implemented in advance of the ozone NAAQS attainment date applicable to the NYMA.

Very truly yours,

/s/ David M. Flannery

David M. Flannery
Legal Counsel
Midwest Ozone Group

cc: Submitted to Docket ID No. EPA-R02-OAR-2020-0324.

Honorable Michael Regan

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Fausto Taveras

Environmental Protection Agency

290 Broadway

New York, New York 10007-1866

Email: Taveras.Fausto@epa.gov

**MIDWEST OZONE GROUP COMMENTS ON
PROPOSED APPROVAL AND PROMULGATION OF
IMPLEMENTATION PLANS: OZONE SEASON NOX
CONTROLS FOR SIMPLE CYCLE AND
REGENERATIVE COMBUSTION TURBINES**

Docket ID No. EPA-R02-OAR-2020-0324

(86 Federal Register 11688, February 26, 2021)

MARCH 29, 2021

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EXHIBITS

Exhibit A:

Midwest Ozone Group Comments on Proposed Revised Cross State Air Pollution Rule Update for the 2008 Ozone, December 14, 2020, [HTTP://WWW.MIDWESTOZONEGROUP.COM/FILES/MOG_COMMENTS_ON_PROPOSED_REVISSED_CSAPR_UPDATE_12.14.20.PDF](http://www.midwestozonegroup.com/files/MOG_COMMENTS_ON_PROPOSED_REVISSED_CSAPR_UPDATE_12.14.20.PDF)

Exhibit B:

Analysis of Ozone Trends in the East in Relation to Interstate Transport Norm Possiel, EPA/OAQPS, May 14, 2018; http://midwestozonegroup.com/files/2018-05-14_EPA_OAQPS_-_Analysis_of_O3_Trends_in_the_East_in_Relation_to_Interstate_Transport.pdf

Exhibit C:

Stationary and Area Sources Committee; OTC / MANE-VU Joint Committees’ Meeting September 21, 2018; http://www.midwestozonegroup.com/files/MOG_OTC_SAS_Public_09212018.pdf

MIDWEST OZONE GROUP COMMENTS ON PROPOSED APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS: OZONE SEASON NOX CONTROLS FOR SIMPLE CYCLE AND REGENERATIVE COMBUSTION TURBINES

March 29, 2021

I. Introduction.

The Midwest Ozone Group (MOG) is pleased to have the opportunity to comment on the “Proposed Approval and Promulgation of Implementation Plans: Ozone Season NO_x Controls for Simple Cycle and Regenerative Combustion Turbines” pursuant to the Proposed Rule issued by the U.S. Environmental Protection Agency (EPA). (86 Federal Register 11688, February 26, 2021).¹

MOG is an affiliation of companies and associations that draws upon its collective resources to seek solutions to the development of legally and technically sound air quality programs.² MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG has been actively engaged in a variety of issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules, NAAQS standards, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act (“CAA” or “Act”), NAAQS implementation guidance, the development of Good Neighbor state implementation plans (SIPs) and related regional haze and climate change issues. MOG Members and Participants own and operate numerous sources that would be adversely affected by implementation of Good Neighbor Provisions of the Clean Air Act (“CAA”) as they may be applied to address the residual nonattainment of the ozone NAAQS in the New York Metropolitan Area (“NYMA”) that would be allowed to continue beyond the legally mandated attainment date if this SIP were to be approved as proposed. MOG seeks the development of technically and legally sound air pollution rules and actions that may impact on their facilities, their employees, their contractors, and the consumers of their products.

¹ These comments were prepared with the technical assistance of Alpine Geophysics, LLC. Comments or questions about this document should be directed to David M. Flannery, Kathy G. Beckett or Edward L. (Skip) Kropp, Legal Counsel, Midwest Ozone Group, Steptoe & Johnson PLLC, 707 Virginia Street East, Charleston, West Virginia 25301; 304-353-8000; dave.flannery@steptoe-johnson.com; kathy.beckett@steptoe-johnson.com; or skipp.kropp@steptoe-johnson.com, respectively.

² The members of and participants in the Midwest Ozone Group include: American Electric Power, American Forest & Paper Association, American Wood Council, Ameren, Alcoa, Appalachian Region Independent Power Producers Association (ARIPPA), Associated Electric Cooperative, Big Rivers Electric Corp., Citizens Energy Group, Cleveland Cliffs, Council of Industrial Boiler Owners (CIBO), Duke Energy, East Kentucky Power Cooperative, ExxonMobil, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE/KU, Marathon Petroleum, National Lime Association, Ohio Utility Group, Olympus Power, and City Water, Light and Power (Springfield IL).

These comments will address the following points, among others, and express the concern of MOG with respect to the compliance deadline portion of EPA's proposed SIP approval.

- As will be shown in these comments, SCCTs in New York are causing the nonattainment of ozone NAAQS standards in the NYMA and at Connecticut monitors within the NYMA.
- While the SCCT NOx emission reductions being advanced by New York are critical to achieving attainment of the ozone NAAQS in the NYMA, the deadlines for the imposition of those emissions reductions extend beyond the legally mandated attainment dates for both the 2008 and 2015 ozone NAAQS and should not be approved by EPA as submitted. The deadlines in the New York rule must be accelerated and coordinated to align the emission reductions with the legally mandated attainment dates for the NYMA.
- Because the SCCT NOx emission reductions being advanced by New York do not take effect until after the mandatory attainment date for the ozone NAAQS, upwind states are being subjected to additional emissions control requirements that are not authorized by the CAA because the reductions from upwind states will not be necessary after the emissions reductions for the New York SCCTs are achieved.

MOG calls upon EPA to assure that the ozone season NOx controls for Simple Cycle and Regenerative Combustion Turbines ("SCCTs") controls being advanced by New York are implemented in advance of the ozone NAAQS attainment date applicable to the NYMA.

II. Comments.

1. EPA's proposed approval of the New York SIP submittal related to SCCT units fails to recognize the impact of its decisions on upwind states and the Good Neighbor Provisions of the Clean Air Act.

Even though EPA's proposed rule reportedly acknowledges that the SCCT NOx emission reductions will help attain the 2008 and 2015 ozone NAAQS in the NYMA,³ the proposal fails to address the disconnect that exists between the deadline for the SCCT emission reductions and the attainment deadlines applicable to implementation of the ozone NAAQS in the NYMA.

This is an extremely significant point to MOG, because the non-attainment status of the Connecticut monitors located in the NYMA is the starting point for consideration by EPA of the application of the Good Neighbor provisions of the CAA to upwind states. In the case of EPA's Revised CSAPR Update Rule, it is solely the monitors in the Connecticut portion of the NYMA that are relied upon by EPA as the basis for imposing new controls on sources located in the upwind states of:

³ 86 Fed. Reg. at 11689.

- Illinois
- Indiana
- Kentucky
- Maryland
- Michigan
- New Jersey
- New York
- Ohio
- Pennsylvania
- Virginia and
- West Virginia⁴

While the Revised CSAPR Update Rule addresses the 2008 ozone NAAQS with an attainment deadline of 2021, the attainment deadline for the 2015 ozone NAAQS in the NYMA moderate nonattainment is 2024.⁵ – which means that SCCT controls would need to be implemented during the ozone season of 2023 to be consistent with the applicable attainment date.

MOG’s comments⁶ on the need to include controls on New York’s SCCT (and Municipal Solid Waste units) urged that EPA require that emission reductions on SCCT units be imposed by the 2023 ozone season to be consistent with the 2015 ozone NAAQS attainment deadline for the NYMA.

In the final Revised CSAPR Update Technical Support Document entitled “EGU NOx Mitigation Strategies Final Rule TSD” dated March 2021 (Mitigation TSD), EPA offered the following assessment of the impact of SCCT units on air quality:

In previous rules, stakeholders have commented that emissions on the days that are conducive to ozone matter the most for attainment of the NAAQS. The seasonal trading programs have been highly effective, ensuring that large units install and operate efficient post-combustion controls. However, the days that are conducive to ozone in the summer tend to have high temperatures, and as a result, are associated with substantial additional electricity demand from air conditioning (among other reasons). To meet this incremental demand, particularly in some areas where there are noted transmission constraints, small units that have relatively high emission rates initiate operation. These units are often simple cycle combustion turbines or oil-fired boilers. They are usually small and only operate a few hours out of the summer. The generation they provide is likely critical to ensuring grid stability during these high-demand times. Having sufficient generation available to meet demand is essential for health and safety. At the same time, emissions from these sources can

⁴ https://www.epa.gov/sites/production/files/2021-03/documents/final_revised_csapr_update_-_prepublication_version_with_disclaimer.pdf at page 116.

⁵ *New York v EPA*, 964 F. 3d 1214, 1219 (D.C. Cir. 2020)

⁶ MOG’s comments on the Revised CSAPR Update are attached and identified as Exhibit A.

help cause or exacerbate exceedances of the NAAQS.⁷

In the preamble to the final Revised CSAPR Update Rule⁸, EPA offered the following response to comment related to the New York SCCT rule:

EPA notes the New York rule referenced above was finalized in early 2020, but its control measures will phase in during the 2023-2025 period. Therefore, EPA is not finalizing any additional reductions from new control measures at these sources in this final rule, but, pending further analysis, doing so may be appropriate in a future context (e.g., under a different NAAQS).

Inasmuch as EPA's authority to impose controls on upwind states is limited to imposing only such emission reductions as would be necessary to achieve attainment at downwind monitors,⁹ any decision by EPA to allow New York to delay imposition of its SCCT emission reductions illegally shifts the burden of emission reduction responsibility to upwind states further away from the non-attainment areas.

EPA's failure to align these upwind and downwind state emission reduction responsibilities is a failure to recognize the mandate of the D.C. Circuit in *Wisconsin v. EPA*.¹⁰ As the Court stated in *Wisconsin*:

. . . it is the statutorily designed relationship between the Good Neighbor's Provision's obligations for upwind states and the statutory attainment deadlines for downwind areas that generally calls for parallel timeframes.

Accordingly, the New York SCCT controls must be fully implemented during the ozone season of 2023 to satisfy the legal mandates of the CAA and the Courts.

2. In 2023, the only remaining ozone nonattainment monitors in the Northeast are located in the Connecticut portion of the New York Metropolitan Nonattainment Area (NYMA).

As noted above, the Revised CSAPR Update Rule determined that in 2021, the only 2008 ozone NAAQS nonattainment areas in the East were located in the Connecticut portion of the NYMA.

According to EPA's latest 2023 source apportionment modeling¹¹, the only 2015 ozone

⁷ Mitigation TSD, https://www.epa.gov/sites/production/files/2021-03/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf at page 21 of 28.

⁸ https://www.epa.gov/sites/production/files/2021-03/documents/final_revised_csapr_update_-_prepublication_version_with_disclaimer.pdf, prepublication Federal Register at page 154.

⁹ *EPA v. EME Homer City*, 572 U.S. 489 (2014)

¹⁰ 938 F.3d 303 (D.C. Circuit 2019)

¹¹ https://www.epa.gov/sites/production/files/2020-10/ozone_design_values_contributions_proposed_revised_csapr_update.xlsx

NAAQS nonattainment monitors in the Northeast are in Connecticut. The following table identifies these monitors and demonstrates that New York is by far the largest contributor to ozone concentrations to these Connecticut monitors when all sources are considered.

AQS Site ID	State	County	Ozone Concentration (ppb)									
			2016-Centered Average DV	2023 Average DV	Total Anthropogenic Source Ozone Contribution							
					CT	DE	MD	MA	NJ	NY	PA	VA
90010017	CT	Fairfield	79.3	73.4	6.17	0.30	0.67	0.07	7.59	18.20	5.88	0.59
90013007	CT	Fairfield	82.0	74.3	4.04	0.42	1.18	0.34	7.48	14.01	6.53	1.25
90019003	CT	Fairfield	82.7	76.9	2.68	0.42	1.18	0.07	8.44	14.14	6.72	1.27
90099002	CT	New Haven	79.7	71.7	3.84	0.52	1.51	0.15	5.53	12.15	5.47	1.63

Table 1. 2023 ozone nonattainment monitors.

Furthermore, from the figures set out below, it is easily seen that contributions from New York’s EGUs have significant impact on ozone formation at these monitors. Alpine Geophysics previously assessed¹² the impact on downwind air quality of specific source sectors within the upwind states. Since that time, the modeling effort was updated using EPA’s 2023en modeling platform and those data were used to present results in comments to EPA rulemakings¹³.

¹² <http://midwestozonegroup.com/files/IndependentSector-SpecificSourceApportionmentModelingofthe2017CrossStateAirPollutionRuleModelingPlatform.pdf>

¹³ EPA-HQ-OAR-2018-0225.

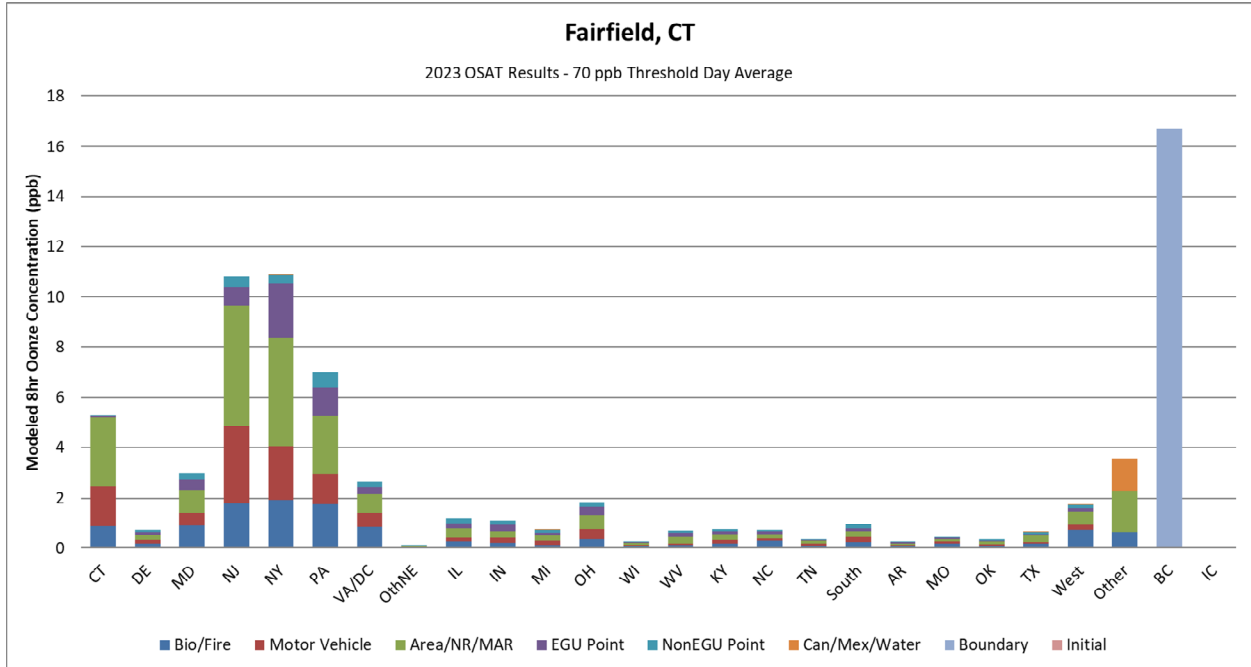


Figure 1. State-sector source apportionment results of 2023 for Fairfield, CT monitor 90019003.

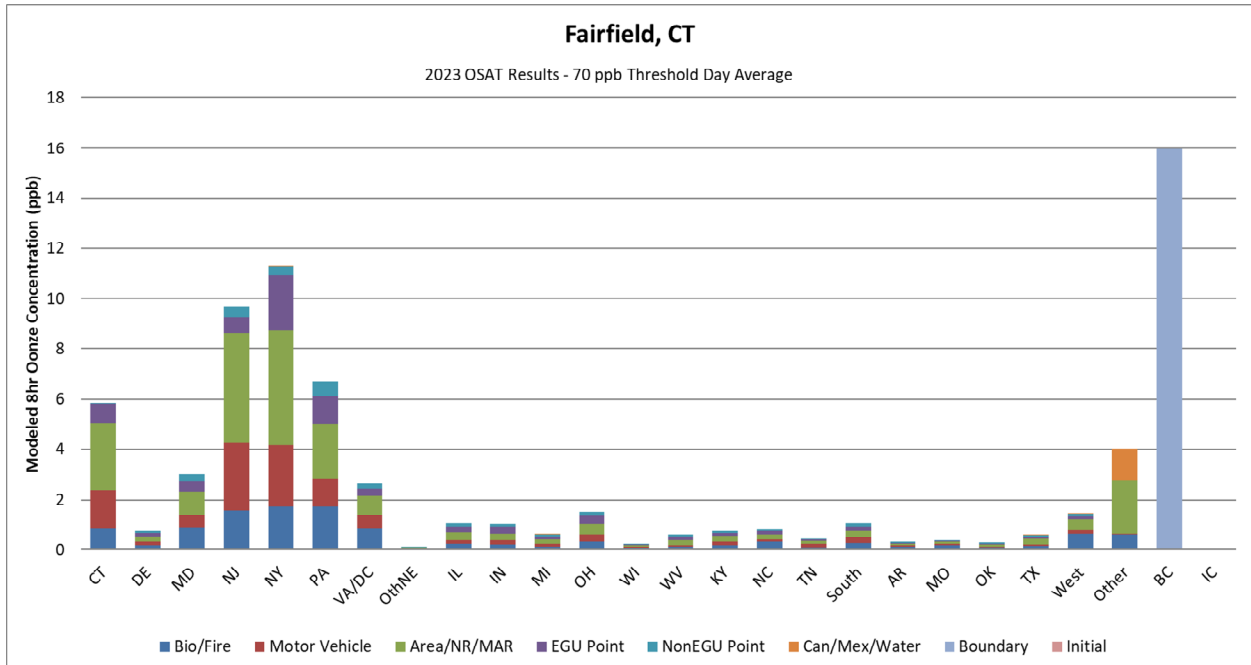


Figure 2. State-sector source apportionment results of 2023 for Fairfield, CT monitor 90013007.

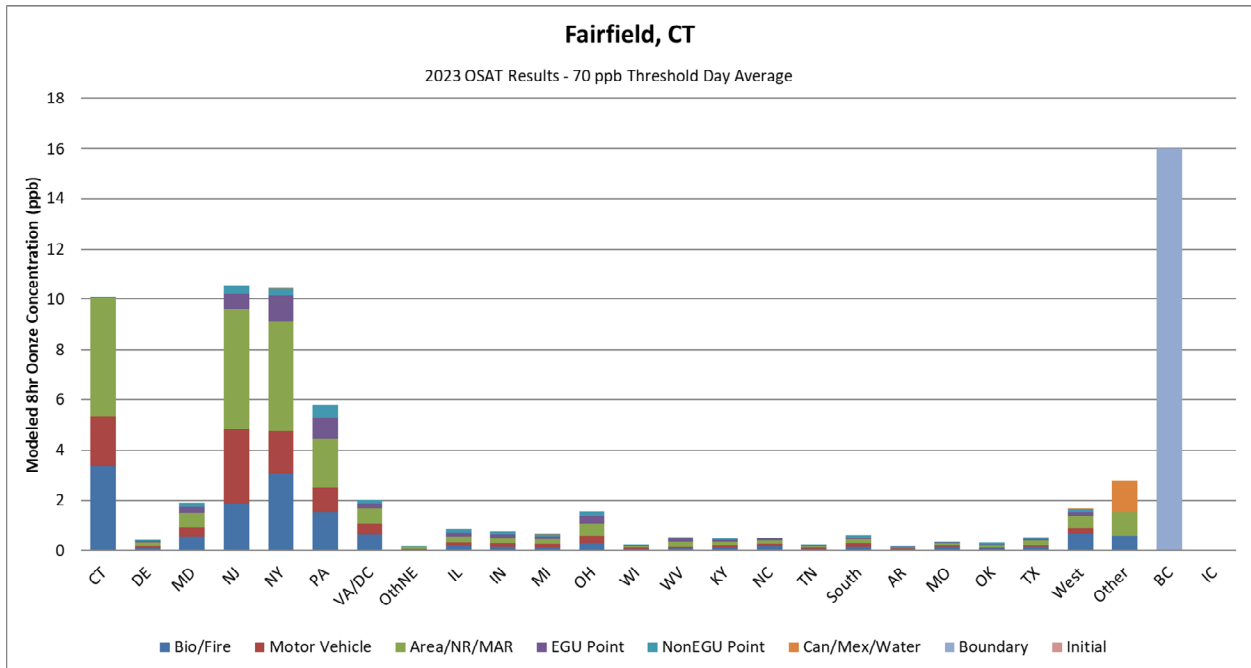


Figure 3. State-sector source apportionment results of 2023 for Fairfield, CT monitor 90010017.

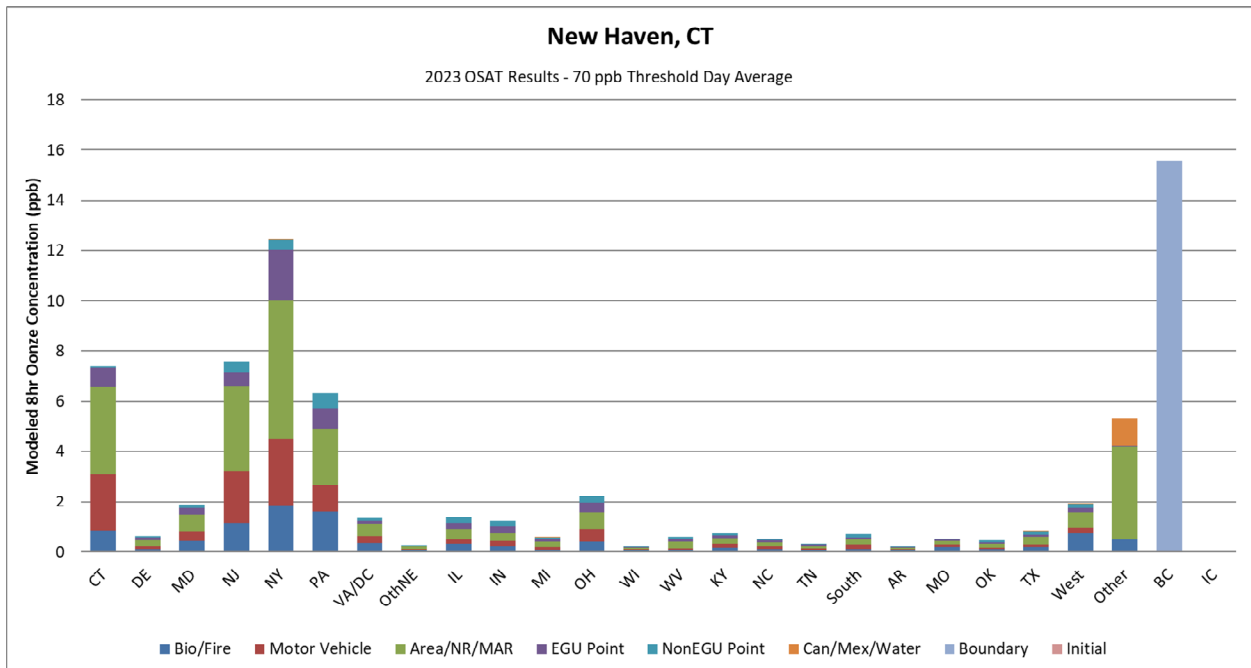


Figure 4. State-sector source apportionment results of 2023 for New Haven, CT monitor 90099002.

3. It has been well-established that residual nonattainment in Connecticut and the NYMA is being caused by SCCT units in New York.

It should be noted that the Summary of Revised Regulatory Impact Statement that accompanied the May 2020 New York SIP submittal states that “NYMA monitors are currently reporting ozone concentrations of 0.082 ppm, well above the (2015 ozone NAAQS) standard.” NYDEC’s Summary of the Revised Regulatory Impact Statement goes on to explain its concerns regarding emissions from SCCTs and New York’s obligations under the good neighbor provisions of the CAA in the following:

Simple cycle and regenerative combustion turbines (SCCTs) sometimes referred to as peaking units, run to meet electric load during periods of peak electricity demand. They typically run on hot summer days when there is a strong likelihood of high ozone readings. Many peaking units in New York have high NOx emission rates, are inefficient and are approaching 50 years of age. It is difficult to install aftermarket controls on most of these units because of their age and site limitations. *Emphasis added.*

New York’s Revised Regulatory Impact Statement¹⁴ itself offers an expanded discussion of these points as follows:

The current design value for the NYMA ozone nonattainment area is 0.082 ppm based on monitors in Westport and Stratford, Connecticut which are located in the shared multi-state nonattainment area.”

...

Older SCCTs have adverse impacts on NYMA air quality and make it difficult, if not impossible, for New York to meet air quality goals and CAA requirements when coupled with ozone transport. SCCTs are generally located in communities of low to moderate income that are populated predominantly by people of color. The emissions generated by SCCTs can have both regional (ozone) and local nitrogen dioxide impacts. These older sources emit significantly more NOx than new, efficient modern SCCTs. The emissions from these units typically occur during high ozone days and are concentrated in the NYMA which, as described above, does not attain the 2008 or 2015 ozone NAAQS.

This rulemaking proposes to lower allowable emission rates for SCCTs during the ozone season with the intention to lower NOx emissions from these sources, especially on high ozone days. To better understand the impact of SCCTs on the ambient air quality, DEC used the Community Multiscale Air Quality Modeling (CMAQ) system to model one high ozone day. The high ozone day modeled was

¹⁴ While the Revised Regulatory Impact Statement no longer appears on the NYDEC web site a copy of it can be found here: http://midwestozonegroup.com/files/Adopted_Subpart_227-3_Revised_Regulatory.pdf .

July 23, 2011 and the results demonstrated that old SCCTs located in New York State contributed 0.0048 ppm to downwind monitors that currently show nonattainment. With a protective ozone NAAQS, set at a level of 0.070 ppm, it is clear that these sources alone have the ability and potential to significantly impact attainment of the ozone NAAQS.

Section 110(a)(2) of the CAA states that SIPs must contain adequate provisions to prohibit emissions from sources within a state that will contribute significantly to nonattainment in another state. ... New York significantly contributes to nonattainment monitors in the Connecticut portion of this nonattainment area. Currently, attainment must be reached by June 20, 2021 for the 2008 ozone NAAQS and August 3, 2024 for the 2015 ozone NAAQS. *Emphasis added.*

EPA itself has already recognized that the cause of remaining air quality concerns in the Northeast is local sources. EPA's analysis is reflected in a presentation by Norm Possiel of USEPA OAQPS dated May 14, 2018, which is attached and identified as Exhibit B.

Principal among the conclusions reached in EPA's analysis are the following:

(1) From an Eastern U.S. perspective, the current ozone levels appear to be more of a "local" problem (i.e., home state and adjacent neighboring states) compared to the larger regional ozone problem for (sic) that was evident back in 2010-2012;

(2) The magnitude of net ozone available for transport into the NE Corridor and the Lake Michigan area from more distant upwind states appears to have declined by 5 to 10 ppb based on 2010-2012 vs 2015-2017 average ranked ozone values;

(3) Ozone levels have also declined substantially at the traditionally high ozone sites in the southern and central portions of the NE Corridor and at the traditionally high ozone sites along Lake Michigan.

In addressing possible causes for continued high ozone at Connecticut coastal sites in the Northeast despite a reduction of ozone transport of 5-10 ppb, the EPA analysis identified specific source sectors within the Northeast Corridor believed to have a significant impact on nonattainment including the following:

- The NYC area has higher mobile source emissions than other parts of the OTR, (onroad and non-road sources).
- A unique mix of local (Tri-State area) contributions from other sources such as EGU, non-EGU point, nonpoint, and commercial marine.
- "Behind the meter" generation (diesel generators that are not controlled and not in the emissions inventory that operate on hot summer days).
- Peaking units (HEDD) within the OTR that may operate on mostly high ozone days.

Additionally, OTC research of air quality impacts of emissions from local sources

emphasizes the need to focus upon nearby sources as part of implementation of the current ozone standards. The September 21, 2018, report of the OTC Stationary and Area Source Committee (attached and identified as Exhibit C) identified many emission units of concern in the Northeast that are in need of controls to reduce their impact on ozone air quality concentrations. Data taken from this report has been incorporated into the following Figure 5 demonstrating that states within the OTC, and specifically New York, have a significant reliance on the use of simple cycle combustion turbines with very high NOx emission rates.

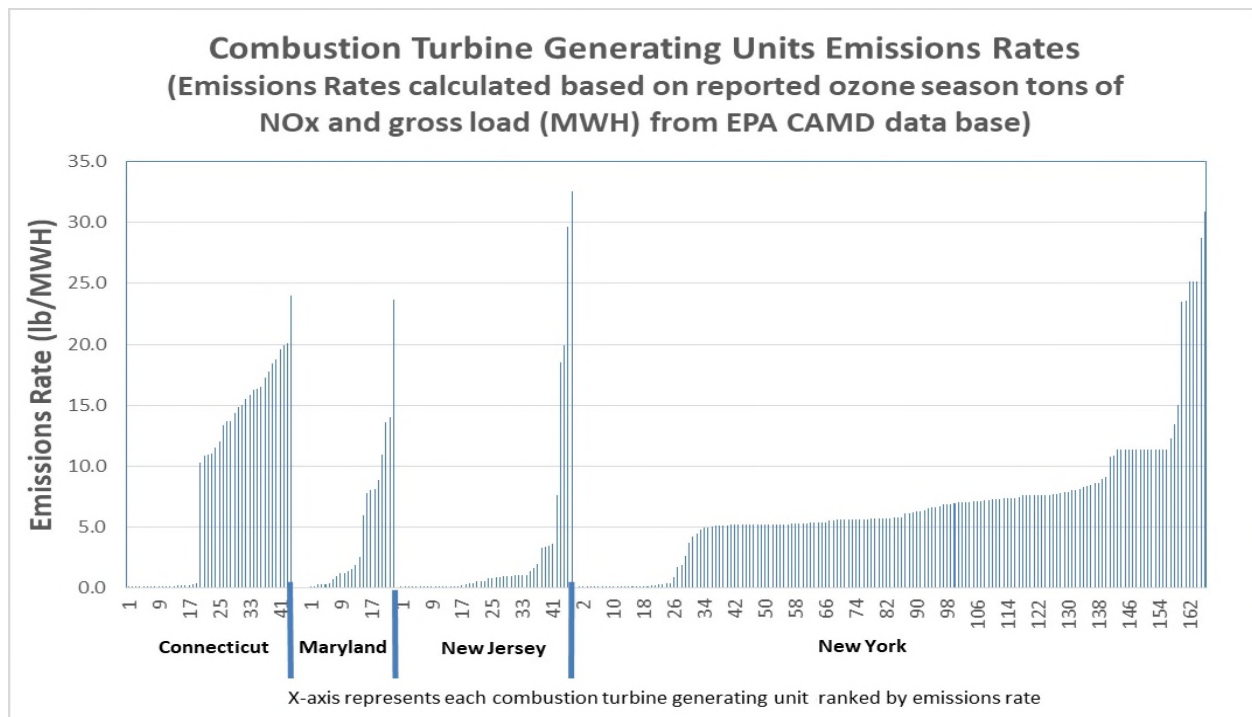


Figure 5. Combustion Turbine Generating Units in the Northeast.

Significantly, the September 18, 2018, OTC report reached the following conclusions:

- simple cycle turbines operate on high ozone days;
- control of NOx or replacement of old units is cost effective based on ozone day benefit;
- there are 200 simple cycle units in OTR with very high NOx emissions – approximately 10 times most boiler NOx rates and greater than 100 times most combined cycle NOx rates;
- simple cycle units significantly increase and can dominate EGU NOx emissions on high ozone days.

The D.C. Circuit Court itself has specifically noted New York’s contributions to the

Connecticut monitors as being large. As the Court recognized in *Wisconsin*¹⁵, of the 53.82 parts per billion of ozone in Fairfield County, Connecticut, that EPA modeling attributed to U.S. sources, “only 3.89 [parts per billion] of that 53.82” came from Connecticut; “[t]he rest ... c[a]me from upwind contributions, with a significant share from one State alone (New York, which is projected to contribute 17.22 ppb).” *Wisconsin*, 938 F.3d at 316–17.

EPA also recognized the significance of New York’s contribution to the Connecticut monitors in its designation of the NYMA as nonattainment. EPA guidance provides that designated nonattainment areas will include not only the area where the violation occurs but also nearby areas that contribute to that violation. EPA, Area Designations for the 2015 Ozone National Ambient Air Quality Standards, at Att. 3, EPA-HQ-OAR-2018-0170-0107; 42 U.S.C. § 7407(d)(1)(A)(i). As EPA has explained, *New York’s own contribution* to Connecticut’s air quality problems *caused* New York to be included in that nonattainment area. See EPA, Responses to Comments at 32, EPA-HQ-OAR-2018-0170-0128. (“Portions of New York were included in the [New York Metropolitan Area] nonattainment area because the EPA determined that those portions were themselves contributing to the air quality problems in Connecticut.”).

Recently, to investigate the evolving nature of ozone formation and transport in the New York City (NYC) region and downwind, NESCAUM launched the Long Island Sound Tropospheric Ozone Study (LISTOS)¹⁶. This study is helping to confirm that a unique feature of Connecticut’s chronic ozone problem is pollution transported in a northeast direction out of NYC over Long Island Sound. Using satellite, aircraft, balloon (ozonesondes), marine, and ground-based data collection and analysis methods to probe the New York City pollution plume and its evolution over and around Long Island Sound, the project is demonstrating NYC metropolitan area’s large concentration of emission sources, including cars and trucks, ships, industrial boilers, stationary diesel engines, consumer products, power plants, and vegetation are significantly impacting air quality along the Long Island Sound and into Connecticut, Rhode Island, Massachusetts, and beyond.

Figure 6 below is a map recently produced¹⁷ of the ozone and PM_{2.5} AQI levels that were monitored on July 20, 2020. Note the general southwest to northeast orientation of the orange (unhealthy for sensitive groups) and red (unhealthy for all groups) levels exceeding the standards, originating from the NYC area and stretching to Massachusetts.

¹⁵ *Wisconsin v EPA*, 932 F.3d 303 (D.C., Cir. 2019)

¹⁶ <http://www.nescaum.org/documents/listos>

¹⁷ <https://gispub.epa.gov/airnow/index.html>

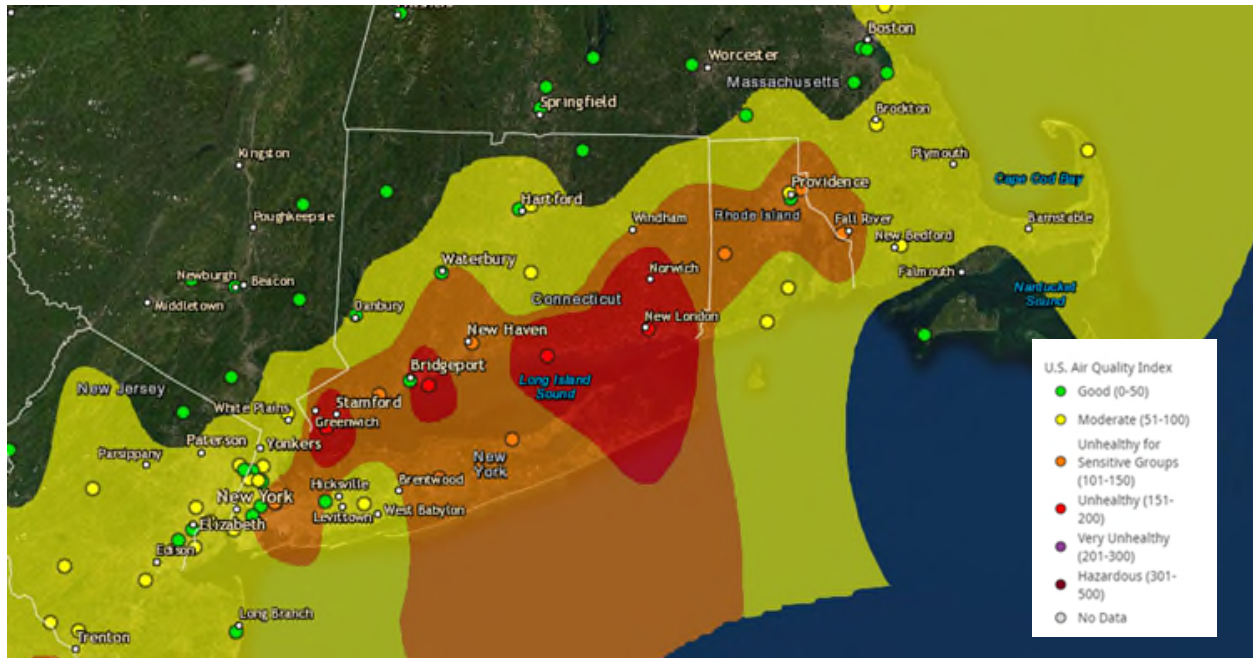


Figure 6. July 20, 2020 ozone and PM 2.5 AQI Index

In connection with the Mitigation TSD which accompanied EPA’s Revised CSAPR Update, EPA identified SCCT units as a source category where additional NO_x controls are necessary for attainment of ozone NAAQS in the NYMA. In its Mitigation TSD,¹⁸ EPA correctly notes that on the days conducive to high ozone in the summer, high temperatures also occur resulting in a substantial increase in electricity demand. As noted in the previous section of these comments, this increased demand in the OTC states of Connecticut, New York, New Jersey and Maryland is achieved by using peaking units that have relatively high NO_x emission rates. These units are often simple cycle combustion turbines that operate on high ozone days, are cost effective to be controlled or replaced, and can dominate EGU NO_x emissions on high ozone days – an analysis that is confirmed by EPA’s Mitigation TSD.

EPA’s independent analysis of SCCT units as set forth in the Mitigation TSD confirms the conclusions reached by both New York and Connecticut, that units of this kind which are operated for only a small number of hours on high energy demand days produce emissions “that cause, help cause or exacerbate exceedances of the NAAQS.”¹⁹ EPA’s analysis also concludes that:

- In the 12 states addressed in the CSAPR Update Revisions 102 SCCT units had capacity factors below 10% in 2019, but actually produced an average of 13% of their gross generation in high energy demand hours and for 18 of those units electric production in higher energy demand hours accounted for 20% of total generation of

¹⁸ Mitigation TSD at pages 22 of 28 through 25 of 28.

¹⁹ Mitigation TSD at p. 16 of 22.

those units in 2019.²⁰

- Emission rates of SCCT units can be 118 times their respective state averages.²¹
- In New York, these peaker units were found to be “highly emissions-intensive” but “provide relative minimal generation in peak hours.”²²

EPA also acknowledges in this proposed rule that the SCCT controls being advanced by New York will help attain both the 2008 and the 2015 ozone NAAQS. The following excerpts are taken from EPA’s proposed rule:²³

“The lower emissions from these sources will help address Clean Air Act (CAA) requirements, ozone non-attainment, and protect the health of New York state residents.”

“The EPA is proposing to approve New York’s May 2020 SIP submittal which applies to major sources of NOx as a SIP-strengthening measure for New York’s ozone SIP.”

“Many of the peakers impacted by New York’s rule are located in the New York portion of the NYMA. Due to peaker’s low-level NOx emission controls, peakers within the NYMA demonstrate very high NOx emissions which contribute to the formation of ground level ozone within the area.”

“The EPA agrees with New York’s evaluation that the newly-adopted regulation will lead to an estimated reduction of 18 tons of NOx per high ozone day . . . This reduction will result in NOx reductions throughout the NYMA, strengthen New York’s ozone SIP, and help the state reach attainment for the 2008 and 2015 ozone NAAQS.”

Accordingly, there can be no question about the need for new controls on SCCTs to achieve attainment with the 2008 and 2015 ozone NAAQS.

4. Even though the need for new SCCT controls is undisputed, EPA should not allow New York to delay the implementation of those controls beyond the moderate nonattainment date for the 2015 ozone NAAQS.

MOG notes with great interest that the NYDEC’s SIP revision submitted in May 2020 offers the following comments regarding the basis for its SCCT Rule.²⁴

²⁰ *Id.*

²¹ *Id.* at p. 22 of 28.

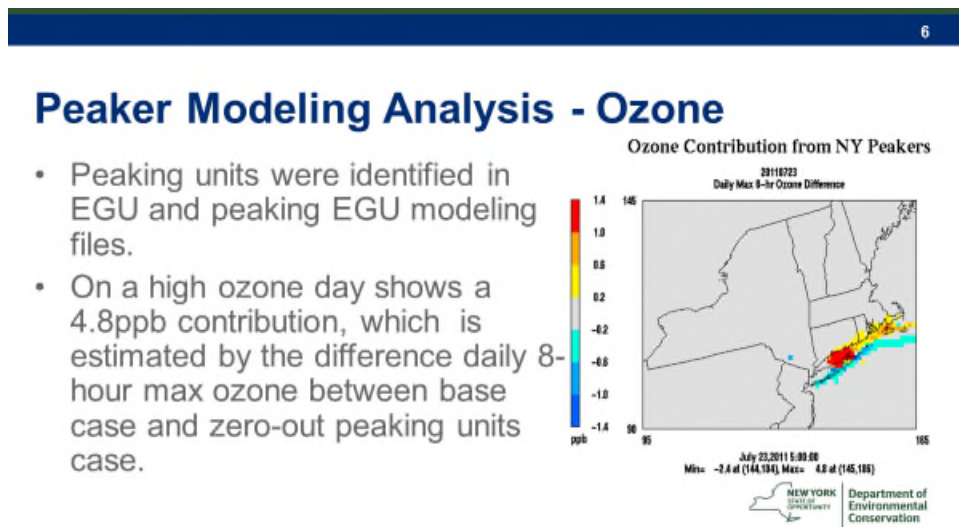
²² *Id.*

²³ 86 Fed. Reg. 11688 (February 26, 2021)

²⁴ https://www.dec.ny.gov/docs/air_pdf/siprevision2273.pdf

As stated in the RIS, the proposed regulation is a step towards attaining the ozone standards in the New York City metropolitan area. It is estimated that this regulation could reduce ozone levels at downwind monitors by as much as 4.8 parts per billion on high ozone days.²⁵

The following slide taken from a presentation of NYDEC²⁶ graphically displays the area predicted by its modeling to be impacted by emissions from these sources and confirms the NYDEC Regulatory Impact Statement that these peaking units cause in an increase in ozone concentrations at monitors in neighboring states by 4.8 ppb.



Even though NYDEC acknowledges that New York’s SCCT units are causing the nonattainment at the monitors in other states, New York has elected to defer the implementation of required controls beyond the attainment date mandated by the CAA. As EPA has noted in the proposed rule, the controls established by NYDEC call for subject units to meet a NO_x emission rate of 100 ppmvd by May 1, 2023 and a more stringent limit by May 1, 2025.

In its May 17, 2019 comments²⁷ on the New York SCCT rule, the State of Connecticut reinforced New York’s admission of responsibility for Connecticut’s ozone non-attainment and maintenance concerns as follows:

“Excessive and unnecessary levels of air pollution from these units contribute to unhealthy ozone levels in Connecticut, particularly on days most conducive to high ozone levels in the region . . .

“Connecticut cannot attain the ozone standards without further emission reductions

²⁵ *Id.* Assessment of Public Comment, page 47 of 50.

²⁶ http://www.midwestozonegroup.com/files/New_York_Peakers.pptx

²⁷ Tracy Babbidge, Chief, Bureau of Air Management, CTDEEP letter to Ona Papageorgiou, NYDEC dated October 7, 2019. <https://portal.ct.gov/DEEP/Air/Planning/Ozone/Ozone-Planning-Efforts>

occurring in the New York metropolitan area. Connecticut currently exceeds the 70 parts per billion (ppb) ozone standard with design values of 82 ppb at the Stratford and Westport monitors. *Emphasis added.*

It is also significant that beyond Connecticut's recognition that non-attainment at its Stratford and Westport monitors are being caused by emissions from these SCCT units, Connecticut's comments are critical of the New York SCCT rule as not assuring that these sources will be prevented from significantly contributing to non-attainment in downwind states. The Connecticut comments go on to state:

The proposed rule will not begin its first phase until May 2023 and allows for compliance extensions up to four years. Delaying requirements for emission reductions from some of the most inefficient and dirtiest units in the region only helps to assure extended non-attainment of the standards. The timeframe for the implementation of the rule should be condensed to be more consistent with attainment dates for the non-attainment area. *Emphasis added.*²⁸

When challenged by those commenting on its SCCT rule to condense the timeline for implementation to be more consistent with the attainment dates for nonattainment areas, NYDEC responded by stating that it deferred the compliances dates for other reasons not related to the applicable attainment date.²⁹

EPA took the occasion of its review of New York's RACT program to recognize the need for New York to take additional measures to properly address all three categories of sources in New York to address attainment of the 2008 ozone standard in the NYMA³⁰ as follows:

With respect to SACCT units, EPA has found that New York's limits for these units are less stringent than neighboring states. Specifically, in comparison to the new limit of 100 ppmvd, effective May 1, 2023, EPA found that Connecticut had adopted a more stringent NOx limit of 50-75 ppm with a compliance date of June 2018 and 40-50 ppm with a compliance date of June 2023. Anticipating that the New York SCCT rule would be submitted to EPA for approval as a SIP revision, EPA offered the following comment which recognizes the need for more stringent controls on these sources.

The EPA will fully assess New York's recently adopted Subpart 227-3 for approvability once the rule is submitted to EPA for inclusion into the New York SIP. Inclusion into the SIP of more stringent NOx emission limits for simple cycle turbines located throughout the State, and particularly in the New York portion of

²⁸ *Id.*

²⁹ 6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines, Assessment of Public Comment, Comments received from February 26, 2019 through 5:00 P.M., May 20, 2019, page 46 of 50. https://www.dec.ny.gov/docs/air_pdf/siprevision2273.pdf

³⁰ 85 Fed. Reg. 8238 (February 13, 2020)

NYMA, would provide additional NOx reductions to help attain the 2008 ozone NAAQS.

MOG urges that EPA require New York to impose all emissions controls on its SCCT units by 2023 to be consistent with the nonattainment obligations of the NYMA

III. Conclusion.

The Midwest Ozone Group appreciates the opportunity to offer comments on this proposal. Given the obvious impact that SCCTs are having on nonattainment in the NYMA, and given the impact that delayed SCCT compliance will have on the obligations of upwind states, EPA should not approve that portion of the New York SIP that relates to delaying any portion of the SCCT emission reductions beyond the ozone season of 2023 – the summer before the 2024 attainment date related to moderate nonattainment of the 2015 ozone NAAQS.