

Response to Comments

Ozone Transport Region Restructuring

Comment: Several Commenters requested that a public hearing be held so that people could voice their concerns in a public forum. (Commenters 1 through 67)

Response: The Department granted requests for a public hearing and one was held on September 10, 2013. The Department also extended the comment period to September 20, 2013 to allow additional time for people to comment following the public hearing.

Comment: Several Commenters expressed opposition and provided comments in opposition to the Maine Department of Environmental Protection's (Maine DEP's or the Department's) request to the Environmental Protection Agency (EPA) to restructure Maine's State Implementation Plan (SIP) allowing the State of Maine to opt out of Ozone Transport Region (OTR) provisions associated with nonattainment new source review (NSR) requirements for major new sources and major modifications of volatile organic compound (VOC) emissions. Several of the Commenters also provided comments in opposition to the Department's request to EPA to provide a waiver for the State of Maine in accordance with Section 182(f) of the Clean Air Act Amendments (CAAA) from nonattainment NSR requirements for major new sources and major modifications of nitrogen oxide (NO_x) emissions. These comments addressed various concerns that the Commenters had, but in summary were concerns related to the protection of human health, particularly the health of those with respiratory diseases such as asthma and other related health issues, and the protection of the environment. The Commenters expressed concern with lowering or relaxing environmental standards. (Commenters 1 through 67)

Response: The Department's primary concern and mission is with the protection of human health and the environment and this responsibility is taken very seriously. Ground level ozone is a pollutant that has been addressed in a multi-faceted manner over the last twenty years with a great deal of success. Under the individual state and regional programs that have been implemented throughout the region over the years, emissions of the primary pollutants involved in the formation of ozone have continued to decrease as have ozone levels throughout Maine and the region.

As presented in the Department's request to EPA and as presented in similar requests made and approved in the past, Maine is in attainment with the ozone NAAQS and emissions from Maine sources do not significantly contribute to ozone nonattainment areas. In short, emissions of VOCs and NO_x from sources located in the state do not impact the ability of the State of Maine or the ability of states or regions bordering the State of Maine to achieve attainment with ozone standards. Maine's ozone levels are overwhelmingly driven by out of state VOC and NO_x emissions and the ozone formation that happens before an air mass arrives at Maine's borders.

The Department stands by the technical and policy related arguments presented in the requests to EPA as well as the expert testimony provided at the September 10, 2013 public hearing in obtaining approval of these requests from EPA.

Comment: This proposal will make air quality worse. This proposal is a step in the wrong direction for public health and stands in stark contrast to the DEP's long standing history of ensuring a healthy environment for Mainers. (Commenter 64)

Response: Information provided in the Department's request to EPA as well as Department testimony provided at the public hearing demonstrates that Maine's ozone levels have continued to improve despite having had a NO_x waiver in Maine since 1995 and the Department expects that this trend will continue even with the approval of this latest request. Requirements for Best Practical Treatment (BPT), Best Available Control Technology (BACT), Reasonably Available Control Technology (RACT), Best Available Retrofit Technology (BART), Mercury Air Toxics Standards (MATS) and Maximum Achievable Control Technology (MACT) will remain in place and will continue to drive emissions of VOC and NO_x down in the State of Maine as well as in the rest of the OTR.

Comment: Several Commenters expressed concern that although areas in Maine may be in attainment with the current ozone standards, some ozone monitors in the state are showing levels of ozone very close to the standard and EPA is scheduled to review and possibly lower the ozone standard in the near future. (Commenter 8, 64)

Response: If in the future a monitoring location exceeds a quality assured design value greater than the standard, Maine will initiate a redesignation of that area to nonattainment and sources that are located in those areas will be subject to applicable nonattainment provisions under the CAAA.

Comment: Commenter requests that DEP reexamine its public notice and hearing process to ensure reasonable notice is provided by prominent advertisement in accordance with requirements contained in the CAA, particularly 40 CFR Part 51, Subpart F. (Commenter 49)

Response: The Department provided and granted the opportunity for a public hearing as set forth in 40 CFR §51.102(a).

Comment: The OTR was designed to impose uniform requirements across the region to improve air quality in accord with the CAA. If Maine is allowed to opt out of these uniform requirements, similar petitions could follow and the benefits of the OTR will be minimized. (Commenter 49)

Response: The OTR was created recognizing ozone is a regional issue and would be addressed on a regional basis. For any proposed changes to occur EPA will need to consider the continued protection of the ozone standard in the region similar to what Maine has done to justify this request.

Comment: Several Commenters expressed support and provided comments in support of the Department's requests to EPA. These comments can be summarized as being in support of the arguments that the Department made to EPA supporting the basis for the requests in that the entire State of Maine is in attainment of the national ambient air quality standard (NAAQS) for ozone and that emissions generated within the State of Maine do not significantly contribute to any ozone nonattainment area. (Commenters 68 through 79)

Response: The Department agrees with the comments expressed in support of the requests.

Comment: Commenters expressed concern that the costs of offsets and LAER could add significant additional costs to a project that could affect the project economics and put a facility at a competitive disadvantage when trying to attract capital investments and selling products without addressing ozone problems where they exist in the OTR. (Commenters 68, 69, 70, 71, 72, 73, 74, 75, 76 & 77)

Response: The Department shares this concern as well which is one of the reasons for submitting the requests to EPA.

Comment: Commenter states that Section 182(f) of the CAA specifically provides the US EPA with authority to "waive" the nonattainment new source review requirements for NO_x provided a state demonstrates that additional NO_x reductions are not necessary to achieve attainment of the ozone standard in the OTR. EPA granted the requests from the state for a NO_x waiver in 1995 and again in 2006 and the records for those approvals contain ample evidence that NO_x reductions from Maine sources are not required to help achieve attainment with the ozone standard in the OTR. Despite these NO_x waivers being in place, ozone levels in Maine and throughout the OTR have continued to improve over the years. (Commenter 76)

Response: The Department shares this concern as well which is one of the reasons for submitting the requests to EPA.

Comment: Offsets and LAER requirements are very restrictive and can add substantial cost and technical challenges to a project to such a magnitude that the project becomes unfeasible. These restrictive requirements are designated to improve air quality in regions that are not attaining ambient standards. Maine is attaining the ozone standards and therefore these more restrictive requirements are unnecessary. If this proposal is adopted, major sources in Maine will still be required to employ BACT and meet ambient air quality standards. (Commenter 77)

Response: The Department shares this concern as well which is one of the reasons for submitting the requests to EPA.

Comment: The proposal is welcome news to companies that are working hard to sustain operations and searching for new opportunities. The possibility of not having to purchase expensive VOC offsets couples with the requirements to install LAER control technology immediately brightens the prospects for new projects in the State of Maine. (Commenter 69)

Response: Response: The Department agrees with the comment which is one of the reasons for submitting the requests to EPA. The Department's experience is that new projects can actually result in reductions in actual emissions in many cases as opposed to increases in actual emissions.

Comment: Even if not subject to LAER, new and modified projects for NO_x and VOCs will still be subject to Best Available Control Technology (BACT) requirements and applicable EPA New Source Performance Standards under 40 CFR Part 60 and applicable Maximum Achievable Control Technology (MACT) requirements under 40 CFR Part 63. LAER requires the best control regardless of cost, whereas BACT considers cost effectiveness. It makes no sense to require the best control regardless of cost where there is no environmental benefit as a result. (Commenter 76).

Response: The Department shares this concern as well which is one of the reasons for submitting the requests to EPA.

Comment: DEP's request to terminate the application of the new source review requirements for any major new or modified stationary source of ozone precursors has far reaching implications for public health and environmental quality. (Commenter 50)

Response: The Department is not terminating new source review requirements for major new or modified stationary sources. In fact, the Department's evaluation of emissions and ambient air quality data within the state as well as experience with a NO_x waiver being applicable since 1995 supports the argument that these requests will not cause increases in ozone levels and so are not likely to have far reaching implications for public health and environmental quality as the commenter suggests.

Comment: Ozone is a widespread air pollutant in Maine that can lead to serious health effects. Here in Maine, more than 21,000 children and 127,000 adults have asthma, putting them at particular risk if ozone controls are weakened. (Commenter 50)

Response: The Department's evaluation of emissions and ambient air quality data within the state as well as experience with a NO_x waiver being applicable since 1995 supports the argument that these requests will not cause increases in ozone levels.

Comment: Some areas in Maine are just barely in compliance with the existing ozone standard. Yes, we know that at the federal levels, EPA's own Scientific Advisory Board has recommended that current standards be strengthened to more adequately protect public health. The Maine DEP should not be limiting its ability to use all the tools available to ensure Maine's air will get cleaner, not more polluted, or risk being out of compliance with existing or strengthening federal standards. For the above reasons, the Maine DEP should withdraw this proposal until all unintended consequences are considered. Powerful scientific evidence shows that ozone at levels we currently breathe in Maine is unhealthy. Ozone levels need to be lowered, not allowed to increase. (Commenter 50)

Response: The Department's evaluation of emissions and ambient air quality data within the state demonstrate that Maine's emissions do not have a significant impact on any ozone nonattainment area. The Department's experience has been that new investments at existing facilities results in lower emissions and by removing the offset and LAER requirements investments at Maine facilities will be more attractive. The Department believes that these requests will not cause increases in ozone levels and will provide the Department with more flexibility to address emissions of ozone precursors as well as other air pollutants.

Comment: The current OTR standards have played an important role in improving Maine's air quality in recent years. We need to maintain the current policy to protect public health and to ensure that Maine is in position to meet the anticipated stronger federal ozone standards. (Commenter 50)

Response: The Department agrees that the current OTR actions have played an important role in improving Maine's air quality in recent years, one reason why the entire State of Maine is currently in attainment with the ozone standards. The State of Maine will address any changes to regulations once the federal ozone standards are revised.

Comment: The American Lung Association recently gave four Maine counties, including Cumberland, Hancock, Knox and York grades of C and D for their high levels of smog pollution. (Note that smog levels were not monitored in five Maine counties in 2013). We clearly have more progress to make to reducing smog pollution, including from sources within Maine. (Commenter 51)

Response: The entire state is in attainment of the federal ozone standard and as stated previously emissions from stationary sources in Maine do not contribute or adversely affect non-attainment ozone levels in Maine. The current regulatory provisions actually do not allow the Department to thoroughly evaluate control options for a source. For example, LAER can force a source to install air

pollution control equipment that results in increased emissions of pollutants other than the targeted pollutant (i.e. requiring the installation of a thermal incinerator to achieve LAER for VOC emissions resulting in increased NO_x emissions as well as other pollutants). Thus, rules allowing a more flexible and holistic approach may result in better environmental protection. The Department's position is that if these proposals are approved it will promote investments that will result in more efficient and lower pollutant emitting facilities in Maine.

Commenter: Exempting major stationary sources from these ground-level ozone rules would create a giant loophole in Maine's clean air rules. (Commenter 51)

Response: The proposed changes do not create a giant loophole in Maine's rules. Sources will still be subject to Best Available Control Technology (BACT) level emission limits which will still require state of the art controls on facilities in Maine. The CAAA are designed and allows for the type of flexibility that the Department is requesting from EPA to deal with areas that are brought into attainment with ambient air quality standards, but remain part of the OTR.

Comment: Two commenters asked that historical data be placed into the record including the last 2 years of data. Specifically they asked that gas chromatographic (PAMS) data, Appledore Island research data, Phippsburg ozone data and Pownal ozone data be included. (Commenters 64 and 78)

Response: Historical Maine monitoring data are publically available on Maine DEP, several EPA and research websites. Every 5-years Maine DEP comprehensively reviews the monitoring network and the latest report is available at: <http://www.maine.gov/dep/air/publications/docs/fiveyrnetworkplan.pdf>. EPA has several websites to view historical data and trends. The following EPA AIRDATA website contains all (including the past 2-years) historical pollutant data (including PAMS VOC and NO_x) for any area in the United States: <http://www.epa.gov/airdata/>. The following EPA website is where you can find historical design values and trends: <http://www.epa.gov/airtrends/values.html>. Historical data used for comparison with the 2008 Ozone standard shows that Maine is currently attaining the 2008 75ppb ozone standard even when 2012 and preliminary 2013 data are included in design value calculations.

University of New Hampshire research data (2002-2012) for the Appledore Island research site is available at: <http://www.eos.unh.edu/observatories/data.shtml>. The site was shut down in March 2012 so the latest three years available to analyze for the ozone season are 2009-11. An analysis of that data shows the 4th highest daily maximum concentrations for each year were 75 ppb, 68 ppb and 70 ppb resulting in a design value of 71 ppb which is below the ozone standard.

The inland Pownal ozone monitoring site was in operation only during the 1980-83 ozone seasons. The 4th high maximum daily 8-hour ozone concentration in 1983 was 88 ppb at the Pownal site and 107 ppb and 117 ppb at the coastal Kennebunkport and Cape Elizabeth sites. This shows that as the ozone plume goes inland ozone sinks quickly reduce ozone concentrations so the coastal regions are where the monitoring focus should be.

The Phippsburg monitoring site was in operation only during the 1994-2000 ozone seasons. During that time the 4th high maximum daily 8-hour ozone concentration along the coast was highest at the Phippsburg site only during the 1996 ozone season. The highest during other years was at the Kennebunkport site in 1994 and 1995, at the Cape Elizabeth site in 1997 and at the Cadillac Mountain Summit site 1998-2000. Depending on the transport pattern the peak ozone concentration can be anywhere along Maine's southwest and mid coast regions. As noted in the annual air monitoring plan for 2014 that is on the Department's website (<http://www.maine.gov/dep/air/monitoring/docs/Air%20Monitoring%20Plan.pdf>), the Department will be looking to move the Bowdoinham site monitor to a location nearer to the Phippsburg site.

Comment: One commenter asked why 2011 or 2012 data were not used for the Cape Elizabeth site VOC-limited/NO_x-limited analysis. (Commenter 78)

Response: The Cape Elizabeth PAMS site was not in operation during 2011 ozone events at that site and 2012 QA'd data was not available at the time the VOC-limited/NO_x-limited analysis was performed.

Comment: One commenter asked if modeling was done on the ozone already being produced within Maine. (Commenter 78)

Response: The Department did not directly perform ozone modeling, however modeling analyses were performed by EPA and Massachusetts DEP and are summarized in Section IV Subsection C of the "OTR" Restructure" Technical Analysis document which demonstrates that Maine does not contribute to non-attainment in Massachusetts or Connecticut.

Comment: Two commenters noted that if EPA were to grant the SIP revision that the Department's use and determination of BACT will replace LAER in New Source Review licenses and this will worsen air quality in the State. (Commenter 49 and 64)

Response: The Department has made BACT findings as stringent as LAER determinations in the past and would continue to evaluate control technology requirements similarly. As stated previously, a BACT analysis allows the Department to evaluate the entire environmental impact of a source or project rather than just the non-attainment pollutant which may result in a superior environmental result. In addition, the Department is basing its request to EPA on a technical demonstration that VOC and NO_x emissions in the State do not contribute significantly to nonattainment of current ozone NAAQS in any area of the region and NSR and LAER in Maine do not contribute significantly to attainment of the 2008 ozone standard in any area of the OTR. Therefore, air quality will remain below existing standards that are set forth by EPA to protect human health and the environment.

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