

U.S. Environmental Protection Agency Hearing on
EPA Docket ID: EPA-HQ-OAR-2018-0170
EPA's Proposed Responses to Section 126b Petition from New York

Testimony of **Laura Kate Bender**
National Director, Advocacy, Healthy Air Campaign
American Lung Association

Thank you for the opportunity to present comments today. My name is Laura Kate Bender and I am the National Director of Advocacy for the Healthy Air Campaign at the American Lung Association. Our mission is to save lives by improving lung health and preventing lung disease.

I speak today to oppose EPA's proposed denial of the 126b petition from the State of New York. We at the Lung Association again request that EPA take actions in support of the States, like New York, that suffer from transported air pollution.

For 115 years, the American Lung Association has fought some of the nation's biggest threats to public health. For more than fifty years, that has included the fight against harmful air pollution. We advocate on behalf of the 35.7 million Americans with chronic lung diseases who are especially vulnerable.

In the Clean Air Act, Congress recognized that air pollution fails to respect state boundaries. Emissions from smokestacks and tailpipes in one state all too frequently blow across state lines, adding pollution to the air inhaled by those living downwind. And these are dangerous air pollutants. Nitrogen dioxide is harmful in and of itself, but it also reacts in the atmosphere to create ozone and particulate matter, both of which trigger asthma attacks and cause premature deaths.

The list of populations who risk demonstrated harm from ozone pollution includes millions of people in New York. Children, people with asthma and other lung diseases, seniors, outdoor workers and people with low socioeconomic status have long been shown to be vulnerable to ozone. Newer evidence shows that some otherwise healthy adults are especially sensitive to ozone exposure.

In 2018, under Section 126 of the Clean Air Act, the State of New York petitioned EPA to require that major sources, including power plants, in nine states take reasonably available actions to reduce emissions coming into New York that interfere with attainment or maintenance of the 2008 and 2015 ozone standards.

We have several concerns with EPA's proposed denial of this petition. First, we continue to object to EPA's use of projections to the year 2023 in these proposed denials. EPA argues that all areas in New York except the New York City Metro Area will meet or maintain both the 2008 and the 2015 standards by 2023, and that there is therefore no need to require additional emission reductions from upwind sources. However, EPA acknowledges that the attainment date for the "serious" nonattainment area designations is 2021. EPA argues that it is "unlikely" that the steps to require these additional measures to reduce emissions could put in place before then, based in part on estimates of the timeframe of implementing SCR requirements at specific sources. However, New York noted in its petition that plants with pollution controls do not always run them. Surely requiring plants to run existing controls would not take the same amount of time as installing new controls. Millions of New Yorkers with asthma could breathe additional years of levels of pollution that put their health at risk.

We are also concerned about the possibility of the use of alternative thresholds to determine whether a source contributes significantly to air quality problems downwind. We understand that EPA's

proposed denial did not hinge on any one threshold, but we are concerned that this proposal raised the possibility of less stringent thresholds of 1 or 2 ppb, compared to the 1 percent that EPA has historically used. A less stringent threshold could ultimately mean that necessary pollution reductions are not taken because those emissions are spread too far across a series of sources. There must always remain a pathway for a state like New York to protect its citizens from harmful air pollution from across state lines.

Further, the Lung Association continues to be concerned by documented reports of polluting sources turning off their existing emissions controls. EPA's response in the proposal to New York's concerns about this falls short. This well-documented problem is occurring now and impacting air quality downwind. It's not a hypothetical concern and needs to be accounted for in the modeling.

Further, EPA argues that New York's recommendation that contributing sources implement Reasonably Available Control Technology is not appropriate. We disagree. EPA has defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." RACT requires the use of economically feasible technology to get the lowest emissions possible – in other words, the most benefits available for a reasonable cost. This is the essence of cost-effectiveness.

Finally, EPA argues that the burden falls on the state to demonstrate that action is needed to clean up out-of-state sources. New York provided detailed estimates of emissions by state and facility that likely contribute to its air quality problem. We see New York's extensive analysis as sufficient evidence that supports its petition.

Again, we urge EPA to take necessary action to protect New Yorkers against dangerous pollution that crosses state lines. Those most at-risk of health impacts, including children, depend on it.