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**Written Testimony Submitted to the Subcommittee on Environment of the  
Energy and Commerce Committee**

***Comments on “H.R. 806, Ozone Standards Implementation Act of 2017”***

This proposed regulation provides for improved fulfillment and facilitation of the regulatory process by EPA and therefore more effective use of regulations to protect air quality in the U.S. Historically, the EPA has neither promulgated updated ambient air quality standards within the five-year timeframe currently required by federal law, nor has the agency provided implementation regulations and guidance in a timely fashion so that states, tribes, and local agencies could implement the regulations and realize measured benefits in air quality. Components of H.R. 806 address and rectify both of these shortcomings within the current regulatory process.

The cycle of reviewing a standard every five years creates a perpetual status of uncertainty with States and the regulated community. The States and the regulated community deserve certainty to implement and then evaluate the effects of their efforts before the target standard for compliance is redefined. The existing sequence of requirements makes that unachievable. The changes included in this bill would allow the EPA more time for strategies to be more thoughtfully developed, would help provide greater certainty within a more realistic timeframe for

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implementation of a new standard, and would allow for assessment of the effectiveness of control measures that have been put in place.

### **Issues Regarding Implementation of the Ozone Standard**

In 2008, EPA promulgated an ozone standard to replace the 1997 ozone standard. The EPA did not issue the implementation regulation for the 2008 standard until 2015, seven years after promulgation of the standard. Then, a few months later in 2015, the agency promulgated a new ozone standard to replace the standard for which implementation guidance had only recently been provided. Even then, EPA staff and states in the Ozone Transport Region recognized that the implementation regulation was not a plan that would achieve attainment of the standard in the Ozone Transport Region. The Ozone Transport Region is composed of northern Virginia, Washington, D.C., Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine. The reality is that when a standard is set, EPA needs to defend the standard and promptly develop an implementation strategy for the standard. H.R. 806 requires any newly promulgated NAAQS to be accompanied by concurrently promulgated implementation guidance.

Under existing process and timeframes, before EPA could defend and develop a strategy for implementation of the ozone standard promulgated in 2008, the Agency was already due to re-evaluate the standard according to the five-year NAAQS review frequency in current law. This situation is not ideal. EPA has yet to develop strategies that allow all states to reach the 1997 ozone standard. We have seen reductions of ozone levels in the country, but there are some areas,

including some within the Ozone Transport Region, that are not yet monitoring below the 1997 standard, let alone the 2008 or 2015 standards. The continuing nonattainment with ozone standards and EPA's failure to facilitate discussions on pollution transport issues resulted in a number of states petitioning EPA to bring other states into the Ozone Transport Region. This adversarial situation could have been avoided if EPA had put resources into facilitating a science-based collaborative mechanism to achieve attainment instead of re-evaluating the existing ozone standard and then promulgating an updated standard.

The EPA has developed the Cross State Air Pollution Rule (CSAPR), which is a start for the development of an ozone transport solution, but the CSAPR has fallen short of the intended outcomes and needs to be more robust to solve nonattainment issues. EPA needs more time and needs to put resources into solving the pollution transport issue to achieve attainment of the ozone standard within the Ozone Transport Region.

Maine has experienced frustration with this latest ozone review cycle which created an atmosphere of uncertainty for our state. Maine is rural state and part of the Ozone Transport Region which requires the state be treated as a moderate non-attainment area for ozone even though the state has attained the ozone standard. Over the last 25 years, Maine has requested and been granted regulatory relief in the form of Section 182(f) waivers for nitrogen oxide (NO<sub>x</sub>) requirements for each ozone standard. The state demonstrated that controlling NO<sub>x</sub> further would not contribute to attaining the ozone standard in Maine and would not impact existing nonattainment areas in the OTR. In fact, Maine has monitored attainment with the ozone standard since 2004, which includes

the 2008 and 2015 standards. In 2013, the state requested regulatory relief from the more stringent, nonattainment-level requirements for volatile organic compounds (VOC) emissions, which would make the VOC emissions requirements similar to those applicable to ozone attainment areas. This request was delayed, and then the EPA informed the state that this request would not be acted upon due to the next ozone standard being proposed. At the time, the state had already received construction permit applications for facility changes at forest products businesses that were relying on the regulatory relief being granted for economic and practical feasibility of the projects. Since that time, one facility has gone through bankruptcy, and the other has ceased operation. In a state where the manufacturing industry is still a significant part of our economy, every bit of regulatory certainty can be critical when competing in the global economy.

### **Issues Regarding the Latest Sulfur Dioxide Standard**

The most recent sulfur dioxide (SO<sub>2</sub>) standard was promulgated in 2010, and the previous standard was promulgated in 1996, for a span of 14 years between standards. The primary standard became a standard on a one-hour basis, where previously the standard had an annual and a 24-hour averaging period. The 2010 standard provided a new level of complexity to implement, and EPA's action was met with legal challenges. Thus, EPA took significant time to develop implementation requirements, which became available in 2015. The implementation requirements obliged states to provide plans to demonstrate compliance with the standard around or near certain SO<sub>2</sub> sources by means of either atmospheric dispersion modeling or by setting up a monitoring network around sources which emit greater than 2,000 tons per year of SO<sub>2</sub> or other sources EPA identified to be included. The results of atmospheric dispersion modeling were required to be submitted in 2017.

If monitoring is to be performed to show compliance with the standard, the source has to collect three years of data to demonstrate compliance. So, the final implementation of the 2010 sulfur dioxide standard will not occur until approximately 10 years after the standard was established.

As it pertains to clarity and certainty in implementing this standard, Maine had no facilities emitting greater than 2,000 tons per year of sulfur dioxide; however, EPA Region 1 made the determination that a particular oil-fired power plant in Maine should be subject to these requirements and included in this analysis. The experience of Maine DEP staff provided great confidence that the facility's operation was not violating the ambient standard based on monitoring of another plant and experience with atmospheric dispersion modeling. The atmospheric analysis suggests the facility's contributions result in ambient air levels significantly under the standard. The ambiguity of this implementation requirement has created work that has little value or impact on the ambient air quality in Maine or the U.S. Future implementation rules need clear and concise lines of applicability, not foggy gray lines. Thus, the 10-year timeframe along with clarity in issuing implementation guidance in H.R. 806 seems a practical response to reality.

**Issues Regarding Implementation of the Particulate Matter Less than 2.5 Microns (PM<sub>2.5</sub>) Standard**

The implementation of the PM<sub>2.5</sub> ambient standard has also been a complicated process. In 1997, EPA promulgated the first PM<sub>2.5</sub> standard. The implementation has been a very confusing and uncertain process as demonstrated with the following list of actions:

(initial PM<sub>2.5</sub> NAAQS) 7/18/1997 - EPA promulgated primary and secondary PM<sub>2.5</sub> NAAQS

(five years later) 3/2002 - D.C. circuit court upholds the NAAQS

(7.5 years later) 1/5/2005 - EPA promulgates designations for the PM<sub>2.5</sub> NAAQS,  
effective April 2005.

(9 years later) 10/26/2006 - EPA promulgates revision to primary 24-hour PM<sub>2.5</sub> NAAQS

(10 years later) 4/25/2007 - EPA issued Implementation Rule for PM<sub>2.5</sub> NAAQS

(11 years later) 5/16/2008 - EPA issued PM<sub>2.5</sub> New Source Review (NSR) Rule  
(requiring Prevention of Significant Deterioration (PSD)  
permits issued after 1/1/2011 to address PM<sub>2.5</sub>)

(15 years later) 3/2/2012 - EPA issued guidance document to aid states in preparing  
PM<sub>2.5</sub> State Implementation Plan (SIP) submittals

(15 years later) 6/29/2012 - EPA proposed revisions to primary and secondary PM<sub>2.5</sub>  
NAAQS

(15.5 years later) 12/14/2012 - EPA revised primary annual PM<sub>2.5</sub> NAAQS

(15.5 years later) 1/4/2013 - D.C. Circuit Court decision on challenge to 2007

Implementation and 2008 NSR rules means EPA's 3/2/2012

guidance is no longer appropriate. The Court remanded both rules to EPA.

(19 years later)            8/24/2016 - EPA promulgated new rule re: SIP submittals to implement PM<sub>2.5</sub> NAAQS (addresses PSD permitting of PM<sub>2.5</sub> and precursor issues).

As demonstrated by the list of actions above, there have been technical and legal challenges to implementing this standard that made a five-year standards re-evaluation timeline impossible to meet.

For Maine, there needed to be an ambient monitoring network for which there was none. Maine had to purchase and locate monitors which started collecting data in 1999. Maine monitoring has demonstrated attainment with the PM<sub>2.5</sub> air quality standard although there are continued challenges with monitoring for this pollutant.

However, PM<sub>2.5</sub> permitting requirements have been uncertain since the standard was promulgated. EPA needed over 11 years to develop regulations that were unable to stand up to legal challenges. Testing methods for sources took years to develop, and today there is not an approved source emission testing method for PM<sub>2.5</sub> for a unit using a wet scrubber to control emissions. Sadly, the science needed to implement the 1997 standard has yet to be fully developed nearly 20 years after the standard was promulgated. This standard has created and fostered uncertainty for states and the regulated community since its inception. A 10-year timeframe for some standards may still not be enough for EPA to overcome the potential technical and legal challenges of a standard.

In conclusion, a standard without an implementation strategy will not protect citizens. Implementation of the last two ozone national ambient air quality standards (1997 and 2008) and implementation of the 2010 sulfur dioxide standard has taken periods of time significantly longer than five years. The implementation challenge of the 1997 PM<sub>2.5</sub> standard continues 20 years after its promulgation. The changes as proposed in H.R. 806 to delay final designations under the 2015 standard until 2025 and to extend the timeframe for NAAQS reviews from every five years to every 10 years including concurrently published, clearly defined implementing regulations and guidance would allow for a more appropriate time period in which to complete due process. The timeframe would allow EPA to utilize available data and developments in scientific understanding in collaborating with states and the regulated community to develop plans for the successful implementation of the standard. This would more effectively and efficiently utilize federal, state, and individual facility resources to establish a standard, implement a standard, and create a level of certainty and expectation of work for the improvement of air quality and ultimately better environmental protection for the people of our nation.