OFFICE OF THE COMMISSIONER

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August 16, 2016

Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
USEPA Headquarters – Mail Code 1101A
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Administrator McCarthy:

New York is deeply committed to ensuring that all New Yorkers, especially residents of environmental justice communities, have healthful air to breathe. The state has pioneered many advances in air regulation and monitoring to safeguard air quality throughout state. However, many environmental justice communities across New York State and beyond, from the South End of Albany to our Nation's capitol, are burdened on a daily basis by emissions from passenger cars and heavy duty trucks. As the United States Environmental Protection Agency (USEPA) sets national ambient air quality standards and has primary authority over regulation of motor vehicle emissions and fuel composition, I urge you to develop stronger national emission and fuel standards that are protective of public health.

New York State has one of the largest air monitoring networks in the country, working to ensure air quality meets USEPA standards. Those standards are designed to be protective of public health, but the public does not believe that USEPA standards are achieving that goal. For example, the public remains concerned about the air they breathe in Albany's South End despite an extensive New York State air monitoring network that shows levels below USEPA standards. The public looks to the state to improve their air quality, which we are accomplishing through programs like the Regional Greenhouse Gas Initiative, the Clean Energy Standard and myriad regulations limiting pollution from sources ranging from power plants to consumer products. Since I took office at DEC last November, we have done 63 truck pull-over events, including two in Albany's South End, specifically to look for harmful pollutants from these vehicles. In addition, Department staff test trucks during routine patrols around the state. These events show that we still have progress to make on emissions. Although the state's environmental programs have dramatically reduced emissions from stationary sources and improved our overall air quality, our actions will not fully satisfy public health concerns unless the USEPA meets its obligation to adequately address other major contributors to ambient air pollution, namely motor vehicles and petroleum fuels.

Emissions from mobile sources, such as cars and trucks, include several pollutants of concern, especially benzene, a hazardous air pollutant and a known carcinogen, and nitrogen oxides (NOx), which contribute to formation of ozone and fine particulate matter, which are respiratory irritants that are associated with increased incidence of asthma. New York is using its authority to address pollution from motor vehicles by investing substantial public resources to support the transition to non-emitting electric vehicles. New York's own air quality monitoring, however, has shown elevated levels of benzene and toxic pollutants from cars and trucks across the state, and unhealthy levels of ozone downstate. This monitoring illustrates once again the need for a stronger federal response to the concerns of residents of South Albany and other communities located near busy highways or adjacent to industrial zones about levels of ozone, particulate matter and benzene in the air they breathe.

EPA's most recent National Air Toxic Assessment, released in 2015, demonstrates that emissions of benzene, primarily from motor vehicle fuels, are contributing to elevated cancer risk across New York State, particularly in New York City and other large urban areas. Yet, USEPA has not reviewed benzene in fuel since its two rulemakings in 2007 and 2008 that set current standards. A comprehensive assessment of these outdated fuel standards is urgently needed.

In addition, New York State has, on February 2, 2008, October 1, 2010, June 20, 2012, December 10, 2013, March 13, 2015, March 17, 2015, February 1, 2016, April 6, 2016, July 18, 2016 and July 25, 2016 requested USEPA to use its authority to reduce NOx emissions, including from motor vehicles (enclosed). Strengthening the NOx standards for diesel vehicles is critical to improving air quality, particularly in urban areas, as emissions from on-road diesel vehicles are responsible for an increasing portion of NOx emissions. Last month, New York State joined a multistate petition requesting EPA to undertake a rulemaking to revise the on-road heavy-duty engine exhaust emission standards for NOx.

New York State has also requested EPA use its authority to require NOx emission reductions from power plants and other large emission sources located outside New York that impact our state's air quality. In 2013, New York, along with other states, petitioned USEPA to use its authority under the Clean Air Act (section 176A) to expand the ozone transport region and require reduction of NOx emissions transported from upwind states. To date, USEPA has taken no action, despite clear Clean Air Act deadlines and clear evidence that these states contributed to New York's non-attainment area. Unfortunately, we have not yet received a response to this petition.

EPA Region 2's Notice of Violation dated July 29, 2016, directed at the Global facility (the "NOV"), does not substitute for these important efforts that EPA should take to protect air quality. EPA Region 2 appears to base that NOV on a stack test that DEC required in 2013 to ensure that Global's vapor recovery unit is meeting the permit's specified emission rate.

The test showed that the unit was performing much better than required, in fact emitting at approximately one one-hundredth of permitted levels. EPA Region 2 has not shared the basis for their calculation with New York State, but Region 2 appears to be using the stack test for another purpose, i.e. to question the EPA-designated emission factor that Global used in its application for the 2012 modification to its Title V permit. I ask EPA to support our effort to protect air quality in the Port of Albany area by providing clear direction to the states for stack tests, rather than relying on states to develop their own requirements. In the absence of any such federal direction, we request EPA to refrain from using stack tests required solely by state law for purposes for which they were not designed.

USEPA has the responsibility to use its authority to protect public health, particularly in environmental justice areas, and I urge you to exercise that authority expeditiously before the end of President Obama's term. Specifically, I respectfully request that USEPA undertake a thorough, scientifically based examination of the need for further regulatory reductions of ambient air quality standard levels and of benzene and NOx emissions from motor vehicles and fuels. Following that examination, I request that USEPA expeditiously promulgate regulations to reduce these pollutants, and improve air quality for all Americans. Additionally, I request that you provide clear guidance on the use of stack tests as improving air quality is a national concern.

Sincerely,

Basil Seggos
Commissioner

Enclosures

c: Judith Enck