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February 13, 2017

Catherine McCabe, Acting Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Docket No. EPA-HQ-OAR-2016-0202
Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements

Dear Acting Administrator McCabe:

Please find attached the comments of the Midwest Ozone Group in response to the November 17, 2016, United States Environmental Protection Agency proposal entitled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements (81 Fed. Reg. 81276, November 17, 2016).

The Midwest Ozone Group appreciates the opportunity to participate in this rulemaking process and urges your careful consideration of these comments.

Very truly yours,

David M. Flannery

David M. Flannery
Legal Counsel
Midwest Ozone Group

cc: United States Environmental Protection Agency
EPA Docket Center (EPA/DC)
Attention Docket ID No. EPA-HQ-OAR-2016-0202
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

COMMENTS OF THE MIDWEST OZONE GROUP

ON EPA'S PROPOSED

IMPLEMENTATION OF THE 2015 NATIONAL AMBIENT AIR QUALITY STANDARD

FOR OZONE: NONATTAINMENT AREA

CLASSIFICATIONS AND STATE IMPLEMENTATION REQUIREMENTS

Docket ID No. EPA–HQ–OAR–2016–0202,

(81 FEDERAL REGISTER 81276, NOVEMBER 17, 2016)

FEBRUARY 13, 2017

COMMENTS OF THE MIDWEST OZONE GROUP ON EPA'S PROPOSED IMPLEMENTATION OF THE 2015 NATIONAL AMBIENT AIR QUALITY STANDARD FOR OZONE: NONATTAINMENT AREA CLASSIFICATIONS AND STATE IMPLEMENTATION REQUIREMENTS.

On November 17, 2016, at 81 Federal Register 81276, EPA proposed and requested comment on air quality thresholds and attainment dates for each nonattainment area classification, which it will finalize upon or before promulgating final area designations and classifications for the 2015 ozone NAAQS. EPA proposes to retain the majority of existing implementation provisions for the 2008 ozone NAAQS without significant revision. MOG generally supports the proposal with the exceptions noted below.

1. The RACT deadlines should be integrated with the 2018 Good Neighbor SIP deadline to avoid over-control

EPA proposes to retain the existing approach to calculating deadlines for submitting nonattainment SIP elements, noting that Clean Air Act (CAA) Section 182 requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after enactment of the CAA Amendments of 1990 and that, for the 2008 ozone NAAQS, it adopted the approach that the SIP elements listed in the proposal are due based on the timeframes provided in CAA section 182 as measured from the effective date of designation, instead of the 1990 date. For the 2015 ozone NAAQS, this would result in continuing the 2008 deadlines for requiring RACT SIP revisions (2 years from nonattainment designation) and, for newly reclassified areas, submitting RACT SIPs 2 years after reclassification.

EPA's proposal, however, fails to address the fact that information regarding the air quality impacts of RACT and related rules are critical to the development of CAA Section 110(A)(2)(d) Good Neighbor SIP's which are due earlier. As the focus on attainment of the 2015 Ozone NAAQS continues, there must be a recognition that air quality will continue to improve between the 2018 due date for

Good Neighbor SIPs and the 2023 attainment deadline. It is particularly significant that these improvements in air quality will occur as a result of programs including Federal measures, federally mandated state requirements, nonattainment infrastructure SIPs, and Good Neighbor SIPs. Federal measures, state rules, and nonattainment infrastructure SIPs will all significantly improve air quality in nonattainment areas. The Ozone Transport Commission (OTC) is presently addressing a number of additional significant sources of ozone precursor emissions, including High Electric Demand Days (HEDD), aftermarket catalysts for on-road vehicles, lightering, and SmartWay. Because many of those programs will be implemented after the Good Neighbor SIPs are due, consideration must be given now to the question of how those later developing programs will be addressed in Good Neighbor SIP's to avoid over-control on upwind sources.

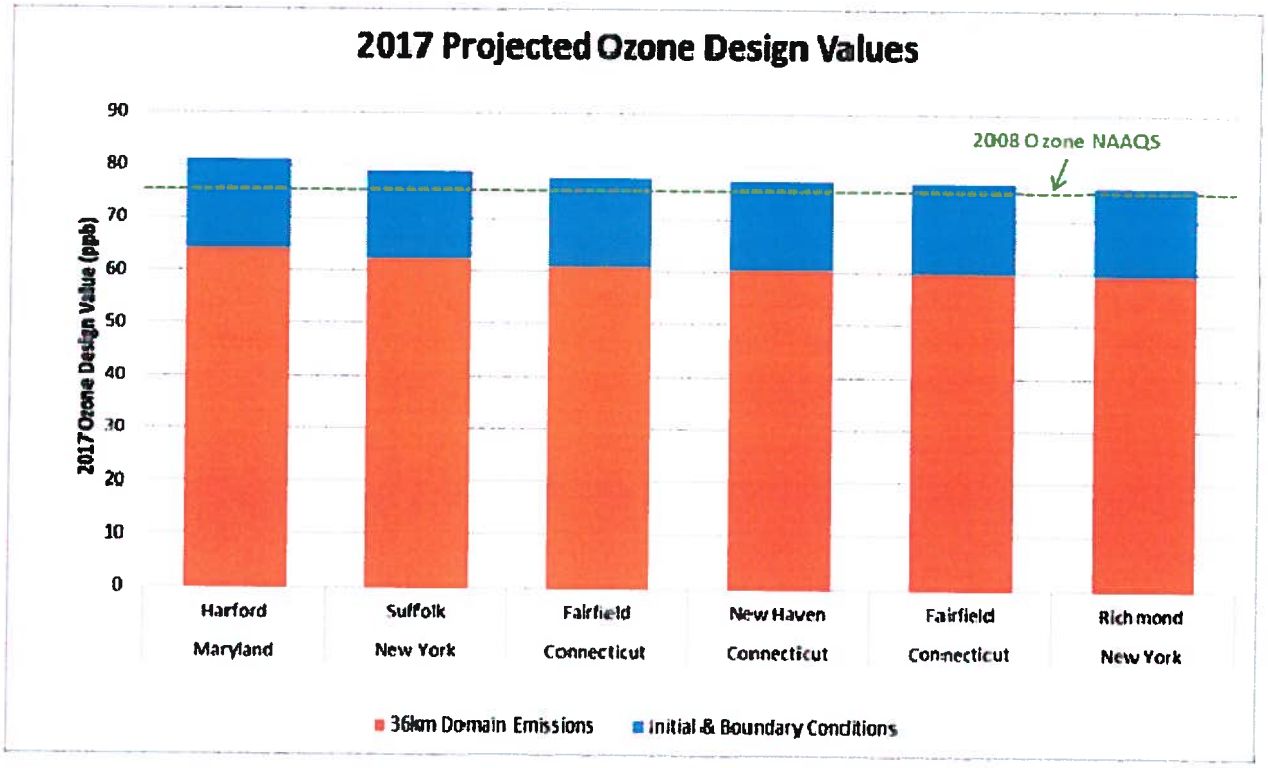
Failure to include the benefits of programs that will result in air quality improvement by the attainment date of the 2015 NAAQS is likely to result in over-control of sources in upwind states, which is clearly prohibited as affirmed by the Supreme Court in its decision in EPA v. EME Homer City Generation. In that case the Supreme Court_held that EPA cannot require an upwind state to reduce its output of pollution by more than necessary to achieve attainment in every downwind state. Recognizing that the Good Neighbor SIP is a "down payment" on attainment and not a stand-alone attainment program, EPA must address how these improvements in air quality are to be considered in the development of the 2018 Good Neighbor SIP's. Accordingly, the Good Neighbor SIPs that are due in 2018 necessarily must take into account the impact of legally mandated controls on air quality by the attainment date to avoid violating the prohibition against over-control.

2. The CAA Section 179B "but for" test related to international emissions should be applied to Good Neighbor SIPs.

EPA is proposing and seeking comment regarding whether it should develop technical guidance for the ''but for'' analysis in a section 179B. Clearly, EPA must assess the impact of natural and manmade international emissions as a matter of CAA law and policy. In doing so, EPA has the opportunity and duty to develop a reasonable and reasoned approach to the issue of international emissions so that so-

called "upwind states" are not subject to the illegal over-control of emissions as a result of CAA 110(a)(2)(D) Good Neighbor SIPs.

The graph and chart below depict some of the Northeastern States' projected 2017 ozone design values (ppb) at monitors based on EPA's NAAQS NODA modeling (EPA-HQ-OAR-2015-0500-0007). These monitor locations are shown to be in nonattainment of the 75ppb NAAQS in terms of the U.S. domain emissions and the initial & boundary conditions (which are comprised of anthropogenic and natural sources of ozone and precursors emanating from outside the 36km modeling domain, e.g., international transported anthropogenic and biogenic emissions, and some fraction of U.S. emissions which exit the regional model domain but get re-imported into the domain via synoptic-scale recirculation).



State	County	2017 Projected Average Design Value	Initial & Boundary (International)	2017 Projected Average DV "but for" International
Maryland	Harford	81.3	16.63	64.4
New York	Suffolk	79.2	16.51	62.4
Connecticut	Fairfield	78.0	16.73	61.0
Connecticut	New Haven	77.2	16.52	60.5
Connecticut	Fairfield	77.1	16.90	59.9
New York	Richmond	76.3	16.47	59.5

The modeling data show that "but for" these boundary conditions and their international component, these critical monitors in the Northeast would be in attainment of both the 2008 and 2015 ozone NAAQS.

As EPA recognizes in its proposal, the Clean Air Act addresses international emissions directly. Section 179(B) subsection (a) states that:

> "Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if the submitting State establishes . . .that the implementation plan of such . . would be adequate to attain and maintain the relevant [NAAQS] . . ., **but for** emissions emanating from outside of the United States. (Emphasis added).

If a state is able to demonstrate attainment "but for" international transport after adopting all reasonably available control measures, CAA Section 179(B) requires that EPA approve the CAA-required state implementation plan.

Addressing international emissions is important not only to downwind states such as the ones shown in this graph and chart but also upwind states that are often

the subject of transport rules and are required to submit CAA 110(a)(2)(D) Good Neighbor SIPs. As the U.S. Supreme Court has stated, it is essential that Good Neighbor states be required to eliminate "only those 'amounts' of pollutants that contribute to the nonattainment of NAAQS in downwind States..." EPA v. EME Homer City Generation, 572 U.S. ____ at 27. "EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State. . . " 572 U.S. ____ at 29.

In addition, the D.C. Circuit has commented that ". . . the good neighbor provision requires upwind States to bear responsibility for their fair share of the mess in downwind States." Slip op at 11 (2012). However, this "mess" seems to be related to international emissions for which upwind states have no responsibility.

For the aforementioned reasons, we urge that EPA investigate international emissions and develop a reasonable and reasoned technical guidance regarding the issue of implementing CAA Section 179(B) that will allow states to account for the impact of international emissions in Good Neighbor SIP submittals. In doing so, we believe that both downwind states and upwind states will be spared the burden of taking addition emission reductions in an effort to compensate for air quality impacts that are beyond their control.

3. The impact of RACT controls must be addressed in developing Good Neighbor SIPs because RACT controls must be promulgated prior to a demonstration regarding meeting the "but for" test.

EPA proposes that all demonstrations under CAA section 179B(b), regardless of an area's classification (including nonattainment areas classified as Marginal), must include a showing that the air agency adopted all RACM, including RACT, for the area in accordance with CAA section 172(c)(1), 42 U.S.C. 7502(c)(1). EPA states that, "under this interpretation, if the air agency did not adopt reasonable control measures before making a section 179B(b) demonstration, it will be missing a critical component of the demonstration that the area would have attained the ozone NAAQS by the attainment date ''but for'' international impacts..." Specifically any such demonstration would need to show that the area could otherwise attain NAAQS compliance by application of

reasonable controls on sources of emissions that are within the state's jurisdiction in the absence of the impact of international emissions.

Given the significant impact on local air quality of legally mandated control programs, including but not limited to RACT, and given the obligation to impose those controls even in the face of a "but for" demonstration related to international emissions, we urge that nonattainment states be required to assess the impact of these requirements on local air quality in time to allow those impacts to be assessed in the development of Good Neighbor SIPs.

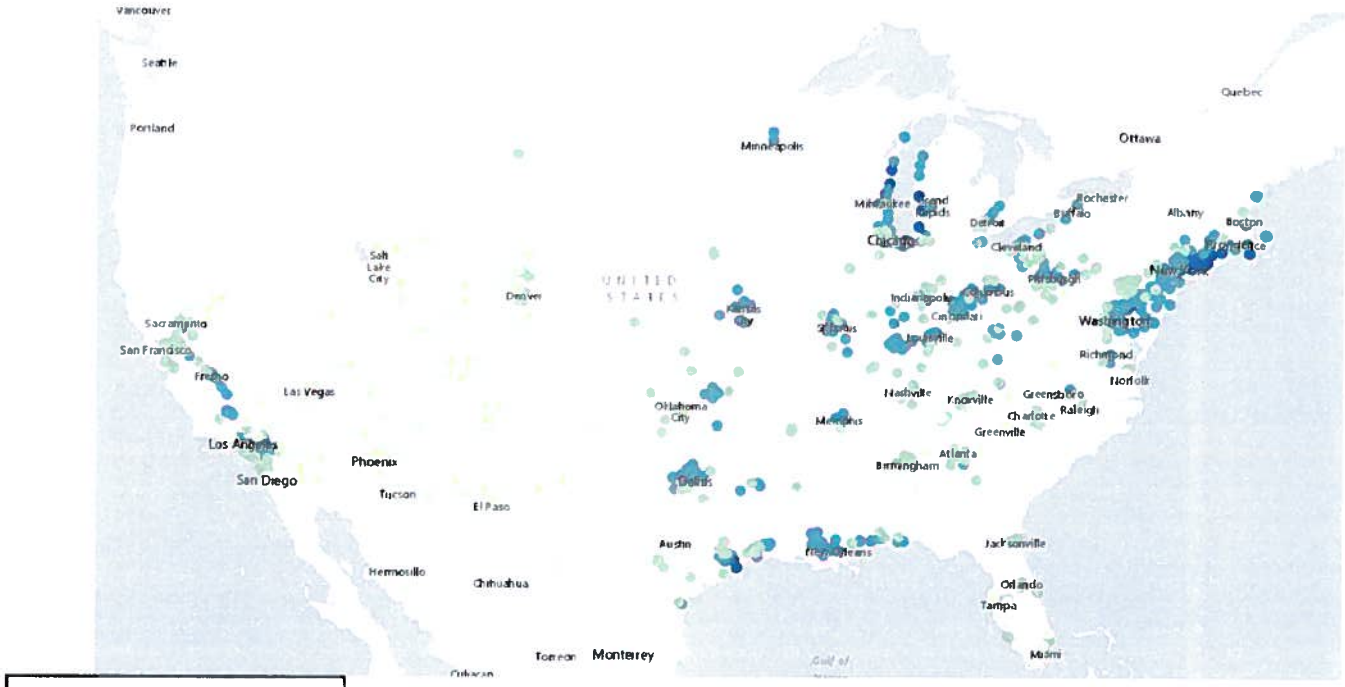
4. CAA 179B demonstrations should not be limited to border areas and EPA must reevaluate the way it accounts for background ozone.

EPA's proposal discusses both international emissions and US background (USB), asking for comment on whether the opportunity for a CAA 179B demonstration should be limited to nonattainment areas adjoining international borders. EPA also mentions that many nonattainment areas are affected by USB. Attendees at a recent workshop cited by EPA it its proposal raised a "concern that the EPA is underestimating the magnitude and effects of USB, and that available policy solutions do not provide meaningful relief from nonattainment designations in affected areas."

Clearly the combination of the impact of international emissions and the underestimation of USB results in a narrow margin of controllable ozone precursor emissions that states can impact in developing SIPs to attain and maintain the new ozone NAAQS. The lack of ability to control what have become the largest sectors of monitored ozone essentially neuters state air programs.

The graph below was prepared by Alpine Geophysics for MOG and depicts projected 2023 8 hour ozone Design Values across the US *excluding* the international emissions sector regardless of whether the emissions are from international border areas or beyond. Note that this projection shows not a single monitor in the continental US with a design value exceeding 57 ppb when international emissions are excluded. In other words, modeling the US emissions inventory projected to 2023 but without the impact of uncontrollable international

emissions demonstrates that the CAA programs in the US are performing as intended.



This graph doesn't show the impacts of excluding USB so excluding background would make the results all the more dramatic.

MOG believes that both fairness to state regulators and a proper interpretation of the CAA dictate that EPA develop implementation rules that account for the impacts of both USB and international emissions. As this graphic vividly illustrates, the impact of international emissions is not limited to border areas. Rather, it is overwhelmingly obvious that international emissions impact

every monitor in the nation. It is also obvious that but for these international emissions all monitors would be in attainment of the 2015 ozone NAAQS.

5. Conclusion.

MOG appreciates the opportunity to submit these comments on the proposed 2015 ozone implementation rule..