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May 15, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Evaluation of Existing Regulations;
Docket ID No. EPA-HQ-OA-2017-0190.

Dear Administrator Pruitt:

This letter is provided on behalf of the Midwest Ozone Group ("MOG") in response to the U.S. Environmental Protection Agency request for comment in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda". EO 13777 established a federal policy "to alleviate unnecessary regulatory burdens" on the American people. 82 Fed. Reg. 17793 (April 13, 2017). We particularly welcome the opportunity to bring to EPA's attention, several rules and related policies that create unnecessary regulatory burdens for the electric power industry as well as a significant portion the entire economy of the nation. Moreover, we are mindful of the fact that Executive Order 13777 seeks to identify regulations that, among other things:

1. eliminate jobs, or inhibit job creation;
2. are outdated, unnecessary or ineffective; or
3. create serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

MOG is an affiliation of companies, trade organizations, and associations that has drawn upon its collective resources to seek solutions to the development of legally and technically sound national ambient air quality management program.¹ MOG's primary effort is to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG

¹ The members of and participants in the Midwest Ozone Group include: American Coalition for Clean Coal Electricity, American Electric Power, American Forest & Paper Association, Ameren, Alcoa, ARIPPA, Associated Electric Cooperative, Citizens Energy Group, Council of Industrial Boiler Owners, Duke Energy, East Kentucky Power Cooperative, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE / KU, Ohio Utility Group, Olympus Power, and Springfield (IL) City Water P&L.

has been actively engaged in a variety of EPA issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules, NAAQS standards, petitions under 176A and 126 of the Clean Air Act, and state developed alternatives to EPA transport rules and the proposed Clean Power Plan. MOG members and participants operate more than 85,000 MW of coal-fired and coal-refuse fired generation in more than ten states. They are concerned about the development of technically unsubstantiated interstate air pollution rules and the impacts on their facilities, their employees, their contractors, and the consumers of their electric power.

We bring the following specific regulations to your attention as rules that should be modified, and in some cases repealed or replaced or modified to reduce the regulatory burdens on the electric power industry in general and specifically the members of MOG.

1. CSAPR Update Rule – On September 7, 2016, EPA finalized the CSAPR Update Rule for the 2008 ozone National Ambient Air Quality Standards (“NAAQS”) which imposed new restrictive NOx emissions limitation budgets beginning with May 1, 2017. On December 21, 2016, MOG submitted a petition for administrative reconsideration of that rule (see: <http://midwestozonegroup.com/files/MOGPetitionforAdministrativeReviewofCSAPRUpdateRuleDecember232016.pdf> and attached as Exhibit A). In this petition MOG urges that the CSAPR Update Rule be modified for a variety of reasons, including the following:

- failure to give consideration to all emission reduction programs legally mandated to be in effect in 2017;
- failure to impose controls first on sources located in a non-attainment area before seeking emission reductions from sources in upwind states;
- failure to address air quality “maintenance” areas in a manner consistent with the Clean Air Act;
- failure to appropriately determine whether an upwind state is a significant contributor to downwind air quality;
- failure to conduct a performance evaluation for the model used by EPA for the days selected to evaluate critical monitors at a land/water interface; and
- failure to account for the impact of international emissions on air quality in the 2008 ozone NAAQS attainment year of 2017.

2. 2015 Ozone NAAQS – In 2015, EPA completed its most recent review of the national ambient air quality standard (“NAAQS”) for ozone and lowered the primary and secondary standard from 75 to 70 ppb. 80 Fed. Reg. 65,292 (October 26, 2015). In the litigation before the D.C. Circuit challenging that change in the ozone NAAQS, EPA filed a motion on April 7, 2017 advising the Court that the new Administration is “closely reviewing the 2015 Rule to determine whether the Agency should reconsider the rule or some part of it.” On April 11, 2017, the Court granted EPA’s motion and has ordered that the litigation related to the 2015 ozone NAAQS be held in abeyance pending EPA review of the rule.

MOG strongly supports EPA's review of the rule and urges that a rule-making process be initiated to consider the appropriateness of the 70 ppb ozone NAAQS. As can be seen from a review of the most recent ozone design values (see: http://www.midwestozongroup.com/files/Maximum_Daily_8hr_4th_highest_and_3yr_average_design_values_ppb_2014-2015.pdf and attached as Exhibit B) any relaxation of the standard would have the immediate effect of bringing significant portions of the country into compliance with the ozone NAAQS, thus eliminating the chilling impact of nonattainment on economic development and job growth.

In further support of the need to revise this rule, we are providing MOG's March 17, 2015 comments on the proposed 2015 ozone NAAQS identifying numerous other concerns about the rule (see http://midwestozongroup.com/files/MOG_OZONE_NAAQS_COMMENTS.pdf and attached as Exhibit C).

3. Ozone NAAQS Implementation – Independent of the NAAQS standard itself, there are significant issues with the manner in which the agency has historically implemented the ozone NAAQS. MOG's detailed statement of these concerns is set forth in the February 13, 2017 comments filed on EPA's proposed 2015 ozone NAAQS implementation rule (see <http://midwestozongroup.com/files/2015OzoneNAAQSImplementationRuleLetterandComments.PDF> and attached as Exhibit D) and the April 6, 2017 comments filed pursuant to EPA's NODA related to modeling data for the 2015 ozone NAAQS (see <http://midwestozongroup.com/files/2015OzoneNAAQSImplementationRuleLetterandComments.PDF> and attached as Exhibit E). While we commend all of these comments to the Agency's review, the following comments highlight the significance of the issues involved:

a. EPA's modeling data is not appropriate to support regulatory action.

As pointed out in our comments on the 2015 ozone NAAQS NODA (Exhibit E), EPA modeling is fatally flawed. Not only does the modeling assume implementation of the CPP, the modeling fails to consider numerous other regulatory programs that may well bring into attainment with the 2015 ozone NAAQS enough of the remainder of the country to effectively resolve issues related to Good Neighbor SIPs. When these errors in model inputs are added to other defects such as failure to use an updated 2014 base case, failure to address model performance at the land/water interface and failure to determine the use of a source apportionment technique to determine "significant contribution" based only on man-made emission, it is obvious that a completely new set of modeling data must be developed.

- b. EPA must allow the states time to develop their Good Neighbor SIP submittals in reliance on appropriate modeling data.

EPA will necessarily need to refine and redo its modeling related to implementation of the 2015 ozone NAAQS or any revision to that standard. Because the development of this alternative modeling is likely to take months to complete, EPA must allow states adequate time to receive the results of revised modeling in advance of their obligation to submit Good Neighbor SIPs as required by the Clean Air Act. This cannot be accomplished by the current deadline of October 2018 without forcing the states to use modeling data that is completely inappropriate.

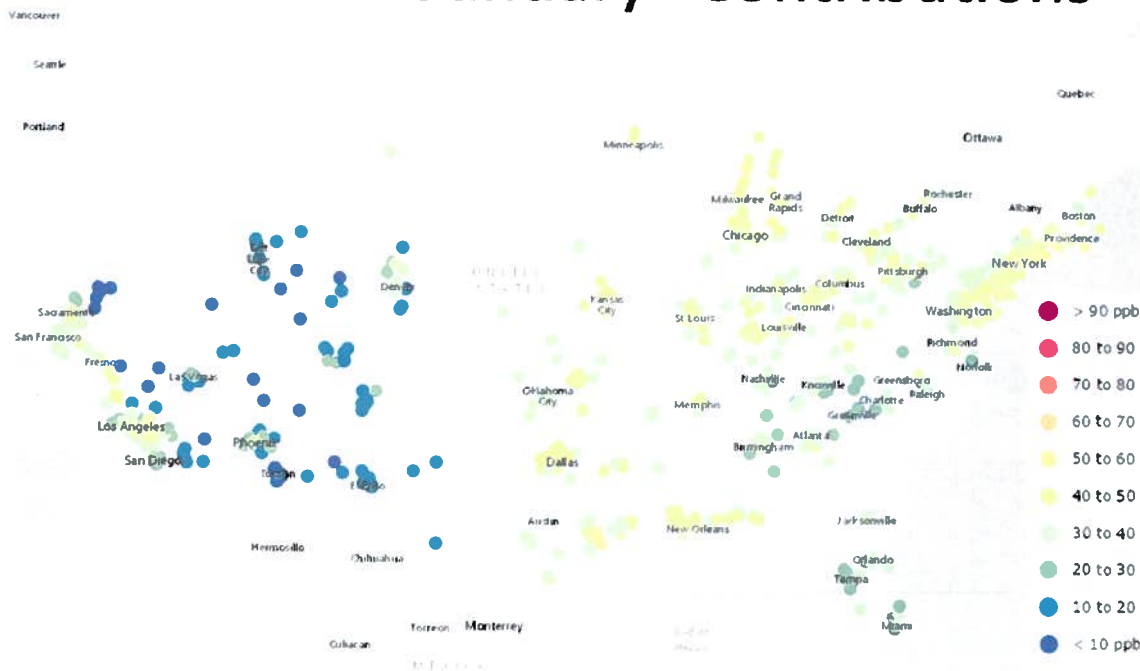
- c. EPA must reconcile the date for the submission of Good Neighbor SIP with the attainment date for the ozone NAAQS.

As noted in our comments, states with non-attainment areas are legally mandated to impose emission reduction programs such as RACT by the non-attainment date of 2023. However, states are obligated to submit their Good Neighbor SIPs in 2018 to address any significant contribution that an upwind state might make to a downwind non-attainment area. Since an upwind state may not be required to reduce its emission by more than necessary for a downwind state to achieve attainment, it is critical that upwind states understand (prior to submitting Good Neighbor SIPs currently required in 2018) the nature of the legally mandated controls that will be applied for downwind states by 2023. We urge EPA to address this issue to avoid imposing upon upwind states the unnecessary and unlawful over control of emissions on their economies that are not needed to achieve attainment in downwind states.

- d. International Emissions Impacts on Air Quality Must Be Addressed in EPA Policy.

EPA must assess the impact of international emissions as an integral part of the agency's implementation of the ozone NAAQS. 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 illegal mandates to over-control emissions as a result of CAA 110(a)(2)(D) Good Neighbor SIPs. An assessment of EPA's NODA projected 2023 8-hour ozone design values across the U.S. has been performed by Alpine Geophysics for MOG. A map of the data produced in this study set out below vividly illustrates that excluding the international/boundary emissions sector results in the conclusion that not a single monitor in the continental U.S. ends up with a design value exceeding 57 ppb.

2023 NODA MDA8 DVs (ppb) without "Boundary" Contributions



No monitor with dv greater than 57 ppb

Only 2 monitors with dv greater than 55 ppb / 33 with dv greater than 50 ppb

Data source: https://www.epa.gov/sites/production/files/2016-12/2015_o3_naaqs_preliminary_transport_assessment_design_values_contributions.xlsx

Modeling the U.S. emissions inventory projected to 2023 - but without the impact of unregulated emission categories - demonstrates that the Clean Air Act programs in the U.S. are performing as intended. Properly accounting for international emissions in the implementation of the ozone NAAQS would have a significant impact on economic development and job growth by resolving all ozone nonattainment in the nation.

Conclusion.

The Midwest Ozone Group greatly appreciates the opportunity to offer these suggested regulatory actions in the interest of the type of regulatory reform that is called for under Executive Order 13777.

Very truly yours,

David M. Flannery
Legal Counsel
Midwest Ozone Group