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VIA ELECTRONIC SUBMISSION

COMMENTS OF THE NAAQS IMPLEMENTATION COALITION ON THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S "CROSS-STATE AIR POLLUTION RULE UPDATE FOR THE 2008 OZONE NAAQS: PROPOSED RULE"

**80 FED. REG. 75,706 (DEC. 3, 2015)
DOCKET NO. EPA-HQ-OAR-2015-0500**

The National Ambient Air Quality Standards ("NAAQS") Implementation Coalition¹ submits these comments on the proposed rule of the Environmental Protection Agency ("EPA") entitled the "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" ("Ozone Transport Proposal").

We previously submitted comments on EPA's Notice of Data Availability updating the modeling data used in the Ozone Transport Proposal ("NODA Comments").² Those comments reminded EPA that, in reviewing the original Cross-State Air Pollution Rule, the Supreme Court and lower courts on remand cautioned EPA against requiring states to unnecessarily over-control emissions.³ As such, our NODA Comments encouraged EPA to adjust any modeling that, when utilized to regulate interstate ozone transport, could result in the over-control of an upwind state. Specifically, we called on EPA to (1) ensure that any emission reduction requirements it proposes are based on a monitored-plus-modeled approach that is consistent with real-world air quality data, and (2) not propose to require emission

¹ We are comprised of trade associations, companies, and other entities who confront challenges in permitting and operating facilities under increasingly stringent NAAQS.

² NAAQS IMPLEMENTATION COAL., COMMENTS ON "NOTICE OF DATA AVAILABILITY OF THE ENVIRONMENTAL PROTECTION AGENCY'S UPDATED OZONE TRANSPORT MODELING DATA FOR THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARD, Docket No. EPA-HQ-OAR-2015-0500-0041, Oct 23, 2015.

³ *Id.* at 4 (quoting *EME Homer City Generation v EPA*, 795 F.3d 118, 131 (D.C. Cir. 2015) (quoting *EPA v. EME Homer City Generation*, 134 S.Ct. 1584, 1608 (2014) ("[i]f EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked, the Agency will have overstepped its authority.") (emphasis in original))).

Docket No. EPA–HQ–OAR–2015–0500

February 1, 2016

Page 2

reductions to offset contributions to ozone concentrations in downwind states coming from non-U.S. emissions.

The Ozone Transport Proposal only quantifies interstate emissions reductions for electric generating facilities (“EGUs”), declining to similarly quantify non-EGU reductions because of “greater uncertainty” in non-EGU emission inventory estimates and the lack of non-EGU reductions that could be accomplished by the beginning of the 2017 ozone season.⁴ We agree with EPA’s decision to not apply the Ozone Transport Proposal to non-EGU sources. However, EPA further states that it “intend[s] to continue to collect information and undertake analysis for potential future emissions reductions at non-EGUs that may be necessary to fully quantify states’ significant contributions in a future action.”⁵ Because EPA suggests the possibility of broader cross-sector ozone transport regulations, we encourage the Agency to address the Ozone Transport Proposal’s methodological issues, particularly those outlined in our NODA Comments, early in this rulemaking process in order to avoid modeling that eventually directs over-control of emissions from both EGU and non-EGU sources.

Our NODA Comments noted that the monitored-plus-modeled approach used modeling to predict whether *areas currently monitoring nonattainment* air quality would continue to have nonattainment air quality in a relevant future year, taking into account projected changes in emissions.⁶ The Ozone Transport Proposal claims to return to the monitored-plus-modeled approach.⁷ However, we believe that the Ozone Transport Proposal’s inclusion of *areas currently monitoring attainment* but projected by modeling to violate the 2008 ozone NAAQS as “maintenance-only” receptors⁸ is not an appropriate monitored-plus-modeled approach. EPA analyses should instead cap modeled air quality concentration levels at current-monitored concentrations.

⁴ 80 Fed. Reg. 75,706, 75,715 (Dec. 3, 2015). We note that other regulations such as Boiler MACT will continue to reduce ozone precursor emissions as a result of fuel switching and energy efficiency improvements. Thus, emissions for non-EGU sources will likely prove even lower than reported in the emissions inventories.

⁵ *Id.*

⁶ NODA Comments at 2 (citing 63 Fed. Reg. 57,356, 57,375 (Oct. 27, 1998)).

⁷ 80 Fed. Reg. at 75,724.

⁸ *Id.*

Docket No. EPA-HQ-OAR-2015-0500

February 1, 2016

Page 3

Modeling from the Midwest Ozone Group (“MOG”) using more recent air quality data further underscores the need for a monitored-plus-modeled approach utilizing updated data. While EPA modeling suggests areas currently attaining the 2008 ozone NAAQS will violate the standard in 2017, MOG’s comments note that further air quality improvements reflective of more current conditions suggest a modeled design value above 75 ppb by 2017 in only one area in the modeled region, Fairfield, CT,⁹ an area currently monitoring nonattainment. These results demonstrate that EPA’s modeling should use design values from the most recent 5-year period ending in 2015 and not stop with the period ending in 2013.

Furthermore, EPA fails to consider when justifying the Ozone Transport Proposal that the latest on-the-books emission estimates by EPA show roughly 93,000 less tons of NO_x just from EGUs, calling into question the rationale for an ozone transport rule. EPA should instead defer to states implementing existing control programs to address any remaining isolated non-attainment issues.

Our NODA comments also pointed out that EPA’s data reveal that emissions from non-U.S. sources had a substantial effect on the number of receptors identified as downwind nonattainment or maintenance receptors.¹⁰ We find that the Ozone Transport Proposal does not adequately account for such internationally-transported ozone. EPA should eliminate these contributions from its analyses and must not require upwind states to achieve emission reductions to offset non-U.S. emissions.

Finally, we call on EPA to provide the public an opportunity to review and comment on all modeling data on which EPA proposes to rely, and for EPA to take the public’s comments into account before finalizing the Ozone Transport Proposal. Doing so will allow EPA to benefit from states’ and stakeholders’ technical expertise and help mitigate modeling resulting in the over-control of emissions.

⁹ Even for Fairfield, CT, it is clear that EPA has not yet accounted for several other emission reduction programs that will improve ozone air quality in that remaining area. These additional and unaccounted programs include: the Pennsylvania NO_x RACT controls, mandated additional Connecticut RACT controls, a series of OTC measures that will reduce both VOC and NO_x, and the reductions in HEDD emissions from New York, New Jersey, and Connecticut that Connecticut has identified as being necessary to attain the 75 ppb NAAQS.

¹⁰ NODA Comments at 6.



Docket No. EPA-HQ-OAR-2015-0500

February 1, 2016

Page 4

We appreciate the opportunity to comment on the Ozone Transport Proposal, and hope that these comments will foster a better dialogue as the regulated community continues to face challenges under increasingly stringent NAAQS. We encourage EPA to be mindful of implications on the larger regulated community as it moves towards finalizing the Ozone Transport Proposal. We remain ready to work with EPA to identify solutions that accomplish efficient NAAQS implementation while mitigating against unnecessary regulatory burden.

Sincerely,
A handwritten signature in black ink, appearing to read "Joseph Stanko, Jr." with a stylized flourish at the end.

Joseph C. Stanko, Jr.

Counsel for the

NAAQS Implementation Coalition