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October 4, 2011

Via U.S. Mail
The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Via U.S. Mail & Electronic Submission at:
http://www.regulations.gov
U.S. Environmental Protection Agency
EPA Docket Center
Attention Docket ID No. EPA-HQ-OAR-2009-0491
Air and Radiation Docket, Mail Code 28221T
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Petition for Reconsideration and Request for Stay by the Midwest Ozone Group of U.S. EPA's Final Rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States," 76 Fed. Reg. 48,208 (August 8, 2011)
Docket No. EPA-HQ-OAR-2009-0491

Dear Administrator Jackson:

Pursuant to 5 U.S.C. § 705 and 42 U.S.C. § 7607(d)(7)(B), the Midwest Ozone Group (MOG) petitions the U.S. Environmental Protection Agency (U.S. EPA) to reconsider its final rule titled "Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone in 27 States," 76 Fed. Reg. 48,208 (August 8, 2011), commonly called the Cross-State Air Pollution Rule or CSAPR. MOG also requests that U.S. EPA stay the rule during the reconsideration process. MOG is an *ad hoc* coalition of companies and organizations that are vitally interested in U.S. EPA's CSAPR. MOG members own and operate numerous fossil fuel-fired steam electric units throughout the Midwest and Southeast that are capable of generating in excess of 95,000 MW of fossil-fueled electricity.

The Clean Air Act directs that the Administrator "shall convene a proceeding for reconsideration" if the objection is "of central relevance to the outcome of the rule," and arose after the public comment period (but within the time specified for judicial review) or could not be raised due to impracticality. 42 U.S.C. § 7607(d)(7)(B). The Administrator has the discretion to stay the effective date of CSAPR pending reconsideration for a period not to exceed three months. *Id.* MOG's objections, which are set forth below, are "of central relevance to the outcome of the rule" and meet the other requirements of the rule. Significantly, these comments will demonstrate that had U.S. EPA properly examined the most recently available air quality

data, it would have found that virtually all nonattainment and maintenance areas relied upon as the basis for CSAPR have now been eliminated. In addition, projected emission reduction related to the implementation of controls other than CSAPR, are more than sufficient to address the need for any additional emission reductions. MOG therefore respectfully requests that U.S. EPA grant its petition for reconsideration and request for stay.

I. U.S. EPA is obligated to exclude from CSAPR those areas where monitoring ("certain") data available to it at the time of the promulgation of CSAPR showed areas to have attained the NAAQS.

U.S. EPA's statutory authority for CSAPR is the "good neighbor" provision that is found at Section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA). 42 U.S.C. § 7410(a)(2)(D)(i)(I). Generally, that section requires that states have in place plans containing adequate provisions to prohibit emissions from sources within their borders that "will significantly contribute" to nonattainment or interfere with the maintenance of national ambient air quality standards (NAAQS) in areas in neighboring, downwind states. The NAAQS targeted in CSAPR are the 1997 8-hour ozone, the 1997 annual fine particulate matter (PM2.5), and the 2006 24-hour fine PM2.5 standards. 76 Fed. Reg. at 48,218.

Section 110(a)(2)(D)(i)(I) reads as follows:

> (2) Each implementation plan submitted by a State under [the CAA] shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—
>
> ....
>
> (D) contain adequate provisions—
>
> (i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—
>
> (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, ...

Before the above-quoted prohibition on upwind emissions applies, the following preliminary questions must be answered: (1) whether there are downwind areas in nonattainment with the NAAQS, *i.e.*, nonattainment areas, or (2) whether there are downwind areas in attainment with the NAAQS that might become nonattainment in the future, *i.e.*, maintenance areas. See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir.), *as modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008).

To determine if a downwind area has a nonattainment problem to which an upwind area may be a significant contributor, U.S. EPA uses a two-part methodology, which was upheld by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), and *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir.), *as modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). U.S. EPA's two-part methodology for measuring such nonattainment requires that: (1) the area currently has a nonattainment problem as determined by monitored data at the time the rule was promulgated and (2) the area is projected to continue to have a nonattainment problem on the date that the rule is to be implemented. In the words of the D.C. Circuit, U.S. EPA's approach "indicate[s] sources that presently *and* at some point in the future 'will' contribute to nonattainment." *North Carolina v. EPA*, 531 F.3d at 913 (emphasis added). U.S. EPA used the same approach for nonattainment and maintenance areas except U.S. EPA looked to the *average* design value for nonattainment areas and the *maximum* design value for attainment (maintenance) areas based on data from the relevant period. See 76 Fed. Reg. 48,208, 28,227-28 & 48,232.

U.S. EPA explained its approach to measuring nonattainment in the NOx SIP Call, 63 Fed. Reg. 57,356 (Oct. 27, 1998), which in U.S. EPA's words the D.C. Circuit "largely upheld" in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), as follows:

> In determining whether a downwind area has a nonattainment problem under the 1-hour standard to which an upwind area may be determined to be a significant contributor, EPA determined whether the downwind area currently has a nonattainment problem, *and* whether that area would continue to have a nonattainment problem as of the year 2007 assuming that in that area, all controls specifically required under the CAA were implemented, and all required or otherwise expected Federal measures were implemented. If, following implementation of such required CAA controls and Federal measures, the downwind area would remain in nonattainment, then EPA considered that area as having a nonattainment problem to which upwind areas may be determined to be significant contributors.

North Carolina v. EPA, 531 F.3d at 914 (*quoting* the preamble to the NOx SIP Call, 63 Fed. Reg. at 57,377) (emphasis added).

U.S. EPA took the "identical" approach in the Clean Air Interstate Rule (CAIR) as in the NOx SIP Call. *Id.* North Carolina challenged U.S. EPA's approach and interpretation of the word "will" in the statutory phrase "will contribute significantly" in Section 110(a)(2)(D)(i)(I) in *North Carolina v. EPA*. *Id.* North Carolina contended that U.S. EPA only "considered upwind states that contributed to monitored nonattainment at the time it was promulgating the NOx SIP Call to be subject to the rule even if those states did not contribute to projected nonattainment in 2007, the year the rule went into effect." The D.C. Circuit did not assert as it did on other issues that it had not considered U.S. EPA's approach to measuring nonattainment in its earlier decision on the NOx SIP Call. Instead, the D.C. Circuit described monitored nonattainment as "certain" nonattainment and found that U.S. EPA did "consider upwind states for consideration in CAIR that contributed to *monitored (or "certain") nonattainment* in North Carolina counties at the

time EPA promulgated CAIR; EPA only included upwind states that contributed to projected nonattainment in 2010." *Id.* at 913 (emphasis added). "[B]ecause 'will' can mean either certainty or indicate the future tense," the D.C. Circuit denied North Carolina's challenge, concluding that: "it was reasonable for EPA to choose to give effect to *both* interpretations of the word." *Id.* at 914 (emphasis added).

Thus, under *North Carolina*, U.S. EPA must consider both current monitored or "certain" nonattainment and projected nonattainment to determine if a downwind area meets the criteria for a nonattainment area or a maintenance area. However, as explained below, U.S. EPA departed from this approach in the final rule in that U.S. EPA did not consider existing, monitored or "certain" air quality data to determine if a downwind area currently has a nonattainment problem.

II. U.S. EPA should reconsider CSAPR because it was promulgated without considering current air quality.

Although air quality data through at least 2009 was available to U.S. EPA and stakeholders, CSAPR analysis uses air quality data from 2005 as a base. U.S. EPA decided in the final rule to disregard more recent air quality data in part because the Agency asserts that the data was impacted by controls installed in response to CAIR. 76 Fed. Reg. at 48,230 & 48,232. Other reasons provided by U.S. EPA for discarding existing air quality after 2005 include meteorology and the 2008 "recession". As will be noted in this petition, EPA's decision to disregard air quality data after 2005 is misguided.

First, U.S. EPA's decision ignores the "certainty" of measured air quality data. But the certainty of measured air quality data cannot be ignored because, as discussed above, the D.C. Circuit upheld U.S. EPA's two-part methodology for determining whether a downwind area has a nonattainment problem on the basis that the D.C. Circuit equated the Agency's use of monitored nonattainment with "certain" nonattainment.

Second, there exists a multiplicity of regulatory requirements that U.S. EPA itself has intentionally designed to encourage the installation of air pollution controls on power plants. In the preamble to CSAPR, EPA acknowledges this fact: "This Transport Rule is one of a series of regulatory actions to reduce the adverse health and environmental impacts of the power sector." 76 Fed. Reg. at 48,216. This "series of regulatory actions" driving the installation of air emissions controls by the power sector include: (1) U.S. EPA's regional haze program and best available retrofit technology; (2) U.S. EPA's proposed Mercury and Air Toxics Standards or Utility MACT; (3) U.S. EPA's proposed New Source Performance Standards for fossil fuel-fired electric generating units (EGUs); and (4) U.S. EPA's on-the-way greenhouse gas emissions performance standards for steam EGUs. *Id.* U.S. EPA represents it "will coordinate utility-related air pollution rules with each other and with other actions affecting the power sector." U.S. EPA states that: "Use of a small number of air pollution control technologies, widely deployed, can assist with compliance for multiple rules." *Id.* U.S. EPA also promises to "pursue energy efficiency improvements in the use of electricity." In addition, although U.S. EPA has

withdrawn the Reconsidered Ozone NAAQS, U.S. EPA has announced plans to proceed with implementation of the 2008 Ozone NAAQS.

Given this "series of regulatory actions" driving the installation of air emissions controls by the power sector, it is impossible for U.S. EPA to conclude why a company may have installed a scrubber or other air emissions control at a particular plant. U.S. EPA itself acknowledges this fact in the newly published final rule to redesignate the Evansville PM2.5 nonattainment area to attainment for the annual 1997 PM2.5 standard, stating that "the motivations for power plant emission reductions are difficult to discern." 76 Fed. Reg. 59,527, 59,530 (Sept. 27, 2011).

Furthermore, very practical reasons exist for power plants to continue to operate controls that were installed in 2005 and later years. U.S. EPA also acknowledges this fact in its final rule to redesignate Evansville to attainment as follows:

> [A]ny utility that has already spent the hundreds of millions of dollars to install scrubbers will clearly find continued effective operation of these scrubbers to be far more cost-effective than disregarding this investment and either spending more hundreds of millions of dollars installing replacement scrubbers elsewhere or purchasing credits at a price equivalent to spending those hundreds of millions of dollars. In short, any utility in a state covered by CSAPR provisions related to PM2.5 that has installed scrubbers is almost certain under CSAPR to retain the scrubbers and operate them effectively. Second, any action by a utility that increases its emissions, requiring the purchase of allowances, thereby necessitates a corresponding emission reduction by the utility that sells the allowances.

Id. at 59,529.

Because CAIR is not the sole driver for the installation of air pollution controls, and because power plants have very practical reasons for continuing to operate controls that were installed in 2005 and later years, U.S. EPA's decision to disregard recent air quality data on the basis that CSAPR supersedes CAIR is misguided.

Third, 2005, which is the base year that U.S. EPA used for CSAPR, is not a representative year from a meteorological standpoint. The year 2008, which is the year that MOG used in its modeling, is representative of normal meteorology. The Emission and Air Quality Trends Review dated February 2010 and prepared by Alpine Geophysics for MOG that was submitted as part of MOG's comments on the proposed Reconsidered Ozone NAAQS (EPA-HQ-OAR-2005-0172-12127 & -12204) address the qualitative comparison of temperature and precipitation from year to year. In particular, slides 56 and 57 of the Emission and Air Quality Trends Review illustrate the qualitative comparison of temperature and precipitation from year to year. The 2008 summertime temperatures (lower right of slide 56) shows most of the eastern U.S. in "near normal" conditions (represented by white background). The 2005 summertime temperatures (lower left of slide 56) show many eastern states above or much above normal (warmer orange colors on lower left of slide). Slide 57 shows precipitation from year to

year. While the state-specific ranking for the eastern half of the U.S. varies between 2005 and 2008, both the 2005 and 2008 summertime precipitation shows the eastern half of the U.S. ranging from near normal to wettest.

Fourth, the year 2008, which is the base year used in MOG's air quality analysis, is also representative of electric power generation. Publically available data on the website of the U.S. Energy Information Administration (EIA) belies U.S. EPA's assertion that the "sharp recession" caused a significant reduction in EGU output in 2008. 76 Fed. Reg. 48,208, 48,232. Information available on EIA's website establishes that coal-fired electricity net generation was 2,012,873 million kilowatt hours in 2005, 1,990,511 million kilowatt hours in 2006, and 1,985,801 million kilowatt hours in 2008 – a reduction in generation of only 27,072 million kilowatt hours or approximately 1% from 2005 to 2008, and an actual increase in generation from 2006 to 2008. See Table 7.2a Electricity Net Generation: Total (All Sectors) available at: http://38.96.246.204/totalenergy/data/monthly/pdf/sec7_5.pdf. Further, the future year projections by MOG incorporate load growth as projected by the EGU sector rather than an IPM theoretical load growth projection used by U.S. EPA. As a result, the MOG future year projections are more accurate than the U.S. EPA projections used to support CSAPR.

Fifth, and most important, U.S. EPA's decision ignores the central point of the D.C. Circuit's decision in North Carolina – the failure of U.S. EPA to have demonstrated that CAIR satisfied the requirements of Section 110(a)(2)(D)(i)(I). As MOG's data demonstrate, the use of air quality data alone establishes that many areas of concern in CSAPR are actually in attainment, thus effectively rendering moot the question about the applicability of Section 110(a)(2)(D)(i)(I) to these areas.

Had U.S. EPA examined 2008 air quality data, it would have found many fewer nonattainment and maintenance areas than were assumed to exist in CSAPR. As noted in MOG's comments on the proposed rule, certain air quality monitoring ("certain") data demonstrate that 80% of the sites U.S. EPA predicted to be in nonattainment of the ozone and PM2.5 NAAQS in 2012 are already in attainment as of 2008. See Alpine Geophysics Report dated September 28, 2010 and titled "Attainment Modeling and Design Value Analyses for 8-hr Ozone and PM2.5 Attainment Demonstrations in the Midwestern and Northeastern United States" at Table 3, attached to MOG's Comments on CSAPR, Docket ID No. EPA-HQ-OAR-2009-0491-2809. Existing air quality data also establish that over 80% of the sites that EPA predicted to be PM2.5 maintenance areas in 2012 are no longer maintenance areas in 2008 and 33% of the sites that EPA predicted to be ozone maintenance areas in 2012 are no longer maintenance areas in 2008. *Id.* at Table 4. Total counts of nonattainment and maintenance monitoring sites based on EPA's 2012 projections in the Proposed Transport Rule versus nonattainment and maintenance sites determined from 2006-2009 data are provided in Table 2.

Actual monitored air quality data (2009 DV) that arose after the public comment period further confirms that virtually all counties identified in CSAPR as nonattainment or maintenance sites are in fact currently in compliance with the ozone and/or PM2.5 standards. The final rule air quality modeling technical support document lists the nonattainment/maintenance monitors

identified in CSAPR in Tables IV-1 through IV-6 and is available on the CSAPR technical data website at: http://www.epa.gov/airtransport/pdfs/AQModeling.pdf. The recent actual monitored air quality data for these monitors are presented in Tables A-1 through A-6 that are attached hereto and marked Attachment "A".

Tables A-1 and A-2 of Attachment "A" present 8-hour ozone nonattainment and maintenance areas in the eastern U.S. as identified in U.S. EPA's CSAPR air quality modeling technical support document and the associated observed and modeled design value data for monitors meeting these designation criteria. Table A-1 presents data for those monitors U.S. EPA has designated as nonattainment (modeled 2012 base case average design value exceeds NAAQS), *i.e.*, projected nonattainment sites, and Table A-2 presents data for those monitors where the maximum value of the 2012 modeled base case exceeds the NAAQS, *i.e.*, projected maintenance-only sites. Both tables provide the following data for the monitors U.S. EPA identified in CSAPR: average and maximum 2003-2007 ambient values, average 2007-2009 and 2008-2010 ambient values, and average and maximum 2012 base case 8-hour ozone design values in parts per billion. In addition, Table A-2 (maintenance-only sites) provides 2007-2009 and 2008-2010 maximum ambient values for the monitors. U.S. EPA identifies seven (7) monitors that meet nonattainment thresholds and an additional nine (9) monitors that meet maintenance thresholds. Of these sixteen monitors, none demonstrates any residual nonattainment although six monitors are shown to be maintenance areas based on maximum ambient ozone values for 2007-2009. (Table A-2).

Tables A-3 and A-4 of Attachment "A" present annual PM2.5 nonattainment and maintenance areas in the eastern U.S. as identified in U.S. EPA's CSAPR air quality modeling technical support document and the associated observed and modeled design value data for monitors meeting these designation criteria. Table A-3 presents data for those monitors U.S. EPA has designated as nonattainment (modeled 2012 base case average design value exceeds NAAQS), *i.e.*, projected nonattainment sites, and Table A-4 presents data for those monitors where the maximum value of the 2012 modeled base case exceeds the NAAQS, *i.e.*, projected maintenance-only sites. Both tables provide the following data for the monitors U.S. EPA identified in CSAPR: average and maximum 2003-2007 ambient values, average 2007-2009 and 2008-2010 ambient values, and average and maximum 2012 base case annual PM2.5 design values in micrograms per cubic meter. In addition, Table A-4 (maintenance-only sites) provides 2007-2009 and 2008-2010 maximum ambient values for the monitors. U.S. EPA identifies twelve (12) monitors that meet nonattainment thresholds and an additional four (4) monitors that meet maintenance thresholds. Of these sixteen (16) monitors, only two (2) monitors (one in Jefferson County, AL and one in Allegheny County, PA) are shown to exceed the annual PM2.5 NAAQS using observational design value calculations from 2007-2009 (Table A-3). Three (3) other monitors also have design values calculated below the NAAQS, but are noted as having incomplete data to confirm either attainment or nonattainment status (Table A-3). Using 2008-2010 design value calculations, we see that only the Allegheny County, PA monitor is exceeding the annual PM2.5 NAAQS. While four (4) monitors in three (3) counties are shown to be maintenance areas based on maximum ambient PM2.5 annual values for 2007-2009, there are no

maintenance areas for annual PM2.5 using 2008-2010 data. Again, three monitors are noted to have incomplete data to confirm either attainment or nonattainment status.

Tables A-5 and A-6 of Attachment "A" present 24-hour PM2.5 nonattainment and maintenance areas in the eastern United States as identified in U.S. EPA's CSAPR air quality modeling technical support document and the associated observed and modeled design value data for monitors meeting these designation criteria. Table A-5 presents data for those monitors U.S. EPA has designated as nonattainment (modeled 2012 base case average design value exceeds NAAQS), *i.e.*, projected nonattainment sites, and Table A-6 presents data for those monitors where the maximum value of the 2012 modeled base case exceeds the NAAQS, *i.e.*, projected maintenance-only sites. Both tables provide the following data for the monitors U.S. EPA identified in CSAPR: average and maximum 2003-2007 ambient values, average 2007-2009 and 2008-2010 ambient values, and average and maximum 2012 base case 24-hour PM2.5 design values in micrograms per cubic meter. In addition, Table A-6 (maintenance-only sites) provides 2007-2009 and 2008-2010 maximum ambient values for the monitors. U.S. EPA has identifies twenty (20) monitors that meet nonattainment thresholds and an additional twenty-one (21) monitors that meet maintenance thresholds. Of these forty-one (41) monitors, only three (3) nonattainment monitors and seventeen (17) maintenance monitors are shown to exceed the 24-hour PM2.5 NAAQS using observational design value calculations from 2007-2009 (Tables A-5 and A-6) and nine (9) monitors with design values calculated below the NAAQS, but noted as having incomplete data to confirm either attainment or nonattainment status (Tables A-5 and A-6). Using 2008-2010 design value calculations, we see that only one (1) nonattainment monitor (Allegheny County, PA) and three (3) of the maintenance monitors in two (2) counties are exceeding the 24-hour PM2.5 NAAQS with nine (9) monitors noted as having incomplete data to confirm either attainment or nonattainment status.

As we pointed out in our October 1, 2010, comments on the proposed transport rule, it has been well-documented by U.S. EPA that the residual PM2.5 issues in Allegheny County, PA (nonattainment and maintenance) are related to emissions from local sources. 75 Fed. REg. 45,281/3.

There being no nonattainment areas upon which CSAPR can be based, we note that the only residual maintenance areas that exist given the most recent monitored ambient data are:

Fairfield, CT	(ozone)
Harford, MD	(ozone)
Harris, TX	(ozone)
Milwaukee, WI	(24-hour PM2.5

We submit that the CSAPR cannot be supported on the basis of such an isolated group of maintenance areas located as they are in urban areas, particularly in the absence of U.S. EPA having considered whether nonattainment at these monitors is being caused by local sources.

Instead of pretending that CAIR never existed, U.S. EPA should consider what controls, if any, are necessary to achieve the goals of Section 110(a)(2)(D)(i)(I) in light of the air quality improvements that have been achieved and will be achieved up until the time when CSAPR replaces CAIR. Monitoring or "certain" data for 2010 is now available and monitoring data for 2011 will soon be available. U.S. EPA should grant MOG's petition for reconsideration and include the monitored or "certain" data that is available in the reconsidered rule.

III. U.S. EPA utilization of more recent air quality design values would have resulted in fewer nonattainment areas in 2012 and 2014 when CSAPR will be implemented.

U.S. EPA's two-part methodology requires the Agency to exclude from the rule not only those areas that were measured to be in attainment as of the time of the promulgation of the rule, but also those areas that are projected to be in attainment by the date that the rule would be implemented. U.S. EPA made future year projections by applying two factors: (1) the measured ("certain") data for areas in nonattainment and (2) a relative reduction factor (RRF) that is determined by comparing modeling in a past year with modeling in a future year. Because air quality in 2008 improved since 2005, the use of 2008 design values as opposed to the 2005 design values used by U.S. EPA would result in fewer nonattainment areas that were assumed by U.S. EPA. Clearly, MOG's objections are "of central relevance to the outcome of the rule". Because MOG's objections are "of central relevance to the outcome of the rule," U.S. EPA should grant MOG's petition for reconsideration.

IV. The level of emission reduction mandated by CSAPR is greater than is necessary or appropriate to eliminate residual nonattainment and certainly greater than would be needed to eliminate the objectionable component of upwind states' contribution to downwind nonattainment.

In *North Carolina*, because CAIR was designed as a complete remedy to Section 110(a)(2)((D)(i)(I) goals, the D.C. Circuit's analysis focused on whether CAIR "actually required the elimination of emissions from sources that contribute significantly and interfere with maintenance in downwind nonattainment areas." *North Carolina v. EPA*, 531 F.3d at 908. The D.C. Circuit explained that the rule "must measure each state's 'significant contribution' to downwind nonattainment" and found that because the rule did not do so, the rule did not "effectuat[e] the statutory mandate of prohibiting emissions moving from one state to another" and U.S. EPA was without "statutory authority for its action." *Id.*

CASPR is also designed as a complete remedy to Section 110(a)(2)((D)(i)(I) nonattainment of the 1997 ozone and 1997 and 2006 PM2.5 NAAQS. Although the D.C. Circuit initially "vacate[d] CAIR because very little will 'survive[ ] remand in anything approaching recognizable form,'" the D.C. Circuit also said that: "[i]t is possible that after rebuilding a somewhat similar CAIR may emerge." *North Carolina v. EPA*, 531 F.3d at 928-30 (*quoting NRDC v. EPA*, 489 F.3d 1250, 1261 (D.C. Cir. 2007)). What the D.C. Circuit did not anticipate when it left CAIR in effect on remand is the possibility that new controls installed in response to various U.S. EPA initiatives in conjunction with overall improvements in air quality would be

enough to eliminate virtually all residual nonattainment. Because much of the D.C. Circuit's criticism of CAIR related to the failure of CAIR to protect downwind nonattainment areas, it seems logical that the Court would find it significant that more recent data show that virtually all residual nonattainment is eliminated when these new controls and updated air quality data are considered.

Beginning in 2012, CSAPR requires additional emission reductions beyond those originally required by CAIR from power plants. The SO2 and NOx budgets in the CSAPR are substantially more stringent than those in the proposed Transport Rule. Nationally, SO2 projected emissions in 2014 went from 3.8 million tons per year (tpy) under the proposed rule to 3.2 million tpy in the final rule. Projected NOx emissions in 2014 went from 2 million tpy in the proposed rule to 1.8 million tpy in the final rule. See http://www.epa.gov/airmarkets/progsregs/epa-ipm/proposedTR.html (Select: TR_SB_Limited Trading) (proposed rule) and http://www.epa.gov/airmarkets/progsregs/epa-ipm/transport.html (Select TR Remedy Final) (final rule). According to U.S. EPA, the tightening of the budgets in the final rule was the result of updated modeling and cost curves. 76 Fed. Reg. at 48,248-49 & 48,260-61. U.S. EPA did not provide any notice or meaningful opportunity to comment on the modeling changes that caused such substantial changes to the state budgets in CSAPR.

The results of MOG's modeling show that using U.S. EPA attainment test software and algorithms with the output from MOG's Business As Usual air quality model simulations for 2008, 2014 and 2018, the ozone objectives of CSAPR can be achieved throughout the Midwest and East with no new controls beyond Business As Usual no later than 2014.

MOG also concluded that the annual PM2.5 objectives of CSAPR can be achieved throughout the Midwest and eastern U.S. with no new controls beyond Business As Usual no later than 2014 with the possible exception of additional local controls at the Allegheny County, PA location. Additionally, MOG concluded that the 24-hour PM2.5 objectives of CSAPR can be achieved throughout the Midwest and eastern U.S. with no new controls beyond Business As Usual no later than 2014 with the possible exception of additional local controls at the Allegheny County, PA and Brooke County, WV locations.

Moreover, MOG's modeling demonstrates that virtually all residual nonattainment is eliminated even though MOG's modeling projected EGU emissions much higher than U.S. EPA determined to be appropriate to address only the interstate transport component of nonattainment in 2014. In particular, MOG's 2014 Business As Usual case projected national SO2 emissions of 4.2 million tpy versus 3.2 million tpy in CSAPR and projected national NOx emissions of 2.0 million tpy versus 1.8 million tpy in CSAPR. Clearly, the CSAPR control levels are more stringent than necessary to eliminate the Section 110(a)(2)(D)(i)(I) nonattainment problem.

Because U.S. EPA did not provide an opportunity to comment on the more stringent CSAPR SO2 and NOx budgets and because the CSAPR control levels are more stringent than necessary to eliminate the Section 110(a)(2)(D)(i)(I) nonattainment problem, EPA should grant

MOG's petition for reconsideration and reconsider the control levels necessary to achieve the air quality objectives of the Clean Air Act.

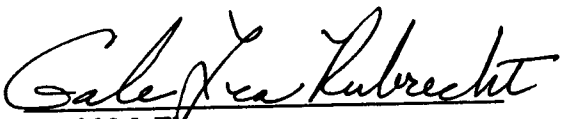
V. Conclusion

For all of the foregoing reasons, MOG respectfully requests that U.S. EPA grant this petition for reconsideration of CSAPR and immediately stay the compliance deadline and effective date of CSAPR.

MOG appreciates the opportunity to comment on this extremely important regulatory rule. Should you have any questions concerning MOG's petition for reconsideration and request for a stay, please contact me at 304-340-1017

Respectfully submitted,

MIDWEST OZONE GROUP
By Counsel



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Attachment

Table A-1. Average and maximum 2003-2007, average 2007-2009 and 2008-2010 and 2012 base case 8-hour ozone design values (ppb) at projected nonattainment sites.

				8-Hour Ozone (ppb)					
Monitor ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2008-2010 Average Ambient Values*
220330003	Louisiana	East Baton Rouge	92.0	96.0	85.6	89.3	80	78
480391004	Texas	Brazoria	94.7	97.0	86.7	88.8	84	84
482010051	Texas	Harris	93.0	98.0	86.1	90.8	76	77
482010055	Texas	Harris	100.7	103.0	93.3	95.4	84	82
482010062	Texas	Harris	95.7	99.0	88.8	91.8	71	72
482010066	Texas	Harris	92.3	96.0	87.1	90.6	79	75
482011039	Texas	Harris	96.3	100.0	88.8	92.2	81	80

* Data source: http://www.epa.gov/airtrends/values.html

Table A-2. Average and maximum 2003-2007, 2007-2009 and 2008-2010 and 2012 base case 8-hour ozone design values (ppb) at projected maintenance-only sites.

				8-Hour Ozone (ppb)							
	Monitor ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2007-2009 Maximum Ambient Values*	2008-2010 Average Ambient Values*	2008-2010 Maximum Ambient Values*
	090011123	Connecticut	Fairfield	92.3	94.0	83.9	85.5	84	92	81	86
	090093002	Connecticut	New Haven	90.3	93.0	82.7	85.1	81	93	76	79
	240251001	Maryland	Harford	92.7	94.0	84.4	85.6	87	90	89	96
	260050003	Michigan	Allegan	90.0	93.0	82.4	85.1	81	94	74	76
	482010024	Texas	Harris	88.0	92.0	83.4	87.2	83	86	83	87
	482010029	Texas	Harris	91.7	93.0	84.2	85.4	84	90	81	86
	482011015	Texas	Harris	89.0	96.0	82.4	88.9	**	73	**	83
	482011035	Texas	Harris	86.3	95.0	79.9	88.0	74	78	76	79
	482011050	Texas	Harris	89.3	92.0	82.8	85.4	78	85	75	79

* Data source: http://www.epa.gov/airtrends/values.html

** denotes incomplete information available to make attainment determination

Table A-3. Average and maximum 2003-2007, average 2007-2009 and 2008-2010 and 2012 base case annual PM2.5 design values (µg/m3) at projected nonattainment sites.

			Annual PM2.5 Design Values ($\mu g/m^3$)					
Site ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2008-2010 Average Ambient Values*
010730023	Alabama	Jefferson	18.57	18.94	16.15	16.46	15.1	13.7
010732003	Alabama	Jefferson	17.15	17.69	15.16	15.64	14.0	12.7
131210039	Georgia	Fulton	17.43	17.47	15.07	15.10	9.8**	11.4**
171191007	Illinois	Madison	16.72	17.01	15.46	15.73	14.1	13.8
261630033	Michigan	Wayne	17.50	18.16	15.73	16.32	14.1	12.3
390350038	Ohio	Cuyahoga	17.37	18.10	15.99	16.66	14.4	13.6
390350045	Ohio	Cuyahoga	16.47	16.98	15.14	15.61	13.6	12.9
390350060	Ohio	Cuyahoga	17.11	17.66	15.67	16.18	14.1**	13.4**
390610014	Ohio	Hamilton	17.29	17.53	15.76	15.98	15.0	14.4
390610042	Ohio	Hamilton	16.85	17.25	15.40	15.77	14.7	14.2
390618001	Ohio	Hamilton	17.54	17.90	16.01	16.33	14.6**	15.1**
420030064	Pennsylvania	Allegheny	20.31	20.75	17.94	18.33	17.0	16.0

* Data source: http://www.epa.gov/airtrends/values.html

** denotes incomplete information available to make attainment determination

Table A-4. Average and maximum 2003-2007, 2007-2009 and 2008-2010 and 2012 base case annual PM2.5 design values (µg/m3) at projected maintenance-only sites.

				Annual PM2.5 Design Values ($\mu g/m^3$)							
	Site ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2007-2009 Maximum Ambient Values*	2008-2010 Average Ambient Values*	2008-2010 Maximum Ambient Values*
	180970081	Indiana	Marion	16.05	16.36	14.86	15.16	14.3	16.1	13.6	14.0
	180970083	Indiana	Marion	15.90	16.27	14.71	15.06	13.8	15.9	13.2	13.9
	390350065	Ohio	Cuyahoga	15.97	16.44	14.67	15.10	14.3	15.8	13.4	14.6
	390617001	Ohio	Hamilton	16.17	16.56	14.74	15.10	13.9	15.1	13.6	14.1

* Data source: http://www.epa.gov/airtrends/values.html

Table A-5. Average and maximum 2003-2007, average 2007-2009 and 2008-2010 and 2012 base case 24-hour PM2.5 design values (µg/m3) at projected nonattainment sites.

				24-Hour PM2.5 Design Values (µg/m^3)					
Site ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2008-2010 Average Ambient Values*
010730023	Alabama	Jefferson	44.0	44.2	36.9	37.3	34	29
170311016	Illinois	Cook	43.0	46.3	37.5	40.4	34	33
171191007	Illinois	Madison	39.1	40.1	36.5	36.8	31	29
180970043	Indiana	Marion	38.4	39.9	35.7	37.1	32	30
180970066	Indiana	Marion	38.3	39.6	35.7	36.9	33**	30**
180970081	Indiana	Marion	38.2	39.2	35.8	36.9	32	30
261470005	Michigan	St Clair	39.6	40.6	36.2	37.1	32	28
261630015	Michigan	Wayne	40.1	40.6	35.5	36.0	33	31
261630016	Michigan	Wayne	42.9	45.4	38.9	41.2	32	30
261630019	Michigan	Wayne	40.9	41.4	37.3	37.8	31	30
261630033	Michigan	Wayne	43.8	44.2	39.4	39.8	35	32
390350038	Ohio	Cuyahoga	44.2	47.0	39.4	41.8	36	33
390350060	Ohio	Cuyahoga	42.1	45.7	37.7	40.8	35**	32**
420030064	Pennsylvania	Allegheny	64.2	68.2	56.7	59.9	50	48
420030093	Pennsylvania	Allegheny	45.6	51.5	39.1	44.3	28**	25**
420030116	Pennsylvania	Allegheny	42.5	42.5	35.5	35.5	**	**
420070014	Pennsylvania	Beaver	43.4	44.6	36.2	37.4	33	30
420710007	Pennsylvania	Lancaster	40.8	44.0	35.9	38.3	35	33
540090011	West Virginia	Brooke	43.9	44.9	37.5	38.3	37	31
550790043	Wisconsin	Milwaukee	39.9	40.8	36.2	37.1	36**	35**

* Data source: http://www.epa.gov/airtrends/values.html

** denotes incomplete information available to make attainment determination

Table A-6. Average and maximum 2003-2007, 2007-2009 and 2008-2010 and 2012 base case 24-hour PM2.5 design values (µg/m3) at projected maintenance-only sites.

				24-Hour PM2.5 Design Values ($\mu g/m^3$)							
	Site ID	State	County	2003-2007 Average Ambient Values	2003-2007 Maximum Ambient Values	2012 Base Case Average Values	2012 Base Case Maximum Values	2007-2009 Average Ambient Values*	2007-2009 Maximum Ambient Values*	2008-2010 Average Ambient Values*	2008-2010 Maximum Ambient Values*
	010732003	Alabama	Jefferson	40.3	40.8	35.3	35.9	32	37.7	28	33.5
	170310052	Illinois	Cook	40.2	41.4	34.9	36.0	33	39.4	31	33.8
	170312001	Illinois	Cook	37.7	40.6	33.6	36.1	31	35.1	28	29.5
	170313301	Illinois	Cook	40.2	43.3	34.9	37.6	32	36.7	32	35.0
	170316005	Illinois	Cook	39.1	41.8	34.1	36.4	33**	36.9	30**	34.1
	171190023	Illinois	Madison	37.3	38.1	35.1	35.8	**	-	**	-
	180890022	Indiana	Lake	38.9	44.0	34.9	39.5	31	35.2	31	33.6
	180890026	Indiana	Lake	38.4	41.3	34.0	37.0	34	35.0	33	33.8
	261610008	Michigan	Washtenaw	39.4	40.8	35.0	36.3	30	34.5	27	28.2
	390170003	Ohio	Butler	39.2	41.1	34.4	36.5	30	36.8	29	31.7
	390350045	Ohio	Cuyahoga	38.5	41.5	34.7	38.1	31	35.3	31	35.3
	390350065	Ohio	Cuyahoga	38.6	41.0	34.9	37.6	33	37.5	30	33.8
	390618001	Ohio	Hamilton	40.6	40.9	35.2	35.8	32**	35.4	31**	33.3
	390811001	Ohio	Jefferson	41.9	45.5	34.5	37.8	31	35.4	28	35.0
	391130032	Ohio	Montgomery	37.8	40.0	33.6	35.6	31	36.9	29	30.4
	420031008	Pennsylvania	Allegheny	41.3	42.8	35.0	36.3	33**	39.8	31**	30.3
	420031301	Pennsylvania	Allegheny	40.3	42.4	33.9	35.6	37	43.7	35	37.2
	420033007	Pennsylvania	Allegheny	37.5	43.1	32.3	37.3	32	35.0	30	34.6
	421330008	Pennsylvania	York	38.2	40.7	33.3	36.0	32	37.0	30	32.3
	550790010	Wisconsin	Milwaukee	38.6	40.0	35.4	36.7	36	40.6	32	39.1
	550790026	Wisconsin	Milwaukee	37.3	41.3	33.6	37.2	35	39.8	33	39.0

* Data source: http://www.epa.gov/airtrends/values.html

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