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Lee Zeldin, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Proposed rule entitled "Determination of Attainment by the Attainment Date but for International Emissions for the 2015 Ozone National Ambient Air Quality Standards; Phoenix-Mesa Nonattainment Area, Arizona"
Docket No. EPA-R09-OAR-2025-2833

Administrator Zeldin:

The Midwest Ozone Group¹ ("MOG") is pleased to offer these comments² regarding a proposed rule by the U.S. Environmental Protection Agency ("EPA") entitled "Determination of Attainment by the Attainment Date but for International Emissions for the 2015 Ozone National Ambient Air Quality Standards; Phoenix-Mesa Nonattainment Area, Arizona" ("Proposed Rule") published at 90 Fed. Reg. 52019 on November 19, 2025 with a comment deadline of December 19, 2025. These comments will address the Phoenix-Mesa Determination, the guidance EPA relied on therein, and MOG's support of the codification of 179B guidance to assist states with future 179B demonstrations.

MOG is an affiliation of companies and associations that draws upon its collective resources to seek solutions to the development of legally and technically sound air quality programs that may impact on their facilities, their employees, their communities, their contractors, and the consumers of their products. MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science.

¹ The members of the Midwest Ozone Group include: Ameren, American Electric Power, American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Appalachian Region Independent Power Producers Association, Associated Electric Cooperative, Berkshire Hathaway Energy, Big Rivers Electric Corp., Citizens Energy Group, City Water, Light & Power (Springfield IL), Cleveland Cliffs Inc., Council of Industrial Boiler Owners, Duke Energy Corp., East Kentucky Power Cooperative, ExxonMobil, Hoosier Energy REC, Inc., Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Municipal Power Agency, LGE/ KU, Marathon Petroleum Company, Monongahela Power Company, National Lime Association, North American Stainless, Nucor Corporation, Ohio Utility Group, Ohio Valley Electric Corporation, Olympus Power, Steel Manufacturers Association, and Wabash Valley Power Alliance.

² These comments were prepared with the technical assistance of Alpine Geophysics, LLC.

MOG has been actively engaged in a variety of issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules, NAAQS standards, exceptional events and 179B demonstrations, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act, NAAQS implementation guidance, the development of state and federal Good Neighbor Plans, regional haze, and climate change issues.

I. Background

Clean Air Act Section 179B provides that where a state demonstrates “to the satisfaction of the Administrator” that a nonattainment area would have been able to attain the ozone NAAQS by the appropriate deadline but for the impact from international emissions, that area will avoid being moved up into a higher classification. *See* 42 U.S.C. 7509a. The Clean Air Act does not provide any details or requirements regarding how a state should demonstrate impacts of international emissions.

EPA provided initial 179B guidance in the 2015 Ozone NAAQS Rule. *See* 80 Fed. Reg. 65292. Specifically, the 2015 Ozone NAAQS guidance noted that monitoring data influenced by international transport may not be excluded from regulatory determinations; however, such data could qualify for exclusion as an exceptional event. *Id.* at 65444.

An EPA memorandum dated April 4, 2019, from EPA Air Quality Assessment Division Director Richard Wayland to the Regional Air Division Directors provided nonbinding guidance that could be used for states to submit requests for EPA to consider modifications to air quality data associated with certain regulatory situations aside from Exceptional Events. *See* Richard Wayland, Director Air Quality Assessment Division, U.S. Environmental Protection Agency, Memorandum: “*Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events*” (April 4, 2019) (“Clarification Memo on Data Modification”). The Clarification Memo on Data Modification specifically acknowledges “atypical, extreme, or unrepresentative events” that could impact air quality monitoring data in such a manner as to be eligible for exclusion as an exceptional event if the data influenced the exceptional events regulatory determination. *Id.* at 2-3. Further, the Clarification Memo on Data Modification specifically notes that the Clean Air Act 179B aims at addressing international emissions and the EPA’s intention to release guidance on how such demonstrations should be put together. *See Id.* at 3 n. 3.

EPA later issued a standalone guidance document for 179B demonstrations. U.S. Environmental Protection Agency, “*Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions*” (December 18, 2020). This guidance included specific information about air quality modeling and data that should be provided to EPA to sufficiently prove there has been significant international contribution to local air quality. Earlier this year, EPA rescinded the 2020 guidance with a message

that it intends to work collaboratively with air agencies to grant appropriate relief under 179B by eliminating excessive burdens associated with these demonstrations. *See* U.S. Environmental Protection Agency, Press Release: “*Administrator Zeldin Moves Forward with Ensuring U.S. States Are Not Punished for Foreign Air*” (April 7, 2025).

II. MOG Supports EPA’s Proposed Attainment Finding, But Finds There Are Other Considerations EPA Should Have Explicitly Incorporated In Support Of Its Action

The proposed rule offered by EPA for comment is a finding that but for the international emissions, the Phoenix-Mesa area would have attained the 2015 NAAQS by the August 3, 2024, moderate attainment deadline. Finalization of this rule would mean that the Phoenix-Mesa area would no longer be subject to reclassification requirements related to failure to attain and therefore remain classified as a moderate nonattainment area. MOG agrees that but for international emissions the Phoenix-Mesa area would have attained the 2015 ozone NAAQS by the attainment deadline. MOG therefore supports finalization of the attainment finding.

A. Removal Of Criteria In Favor Of Case By-Case Analysis

MOG supports EPA’s decision to rely on a weight of evidence approach as the basis for 179B determinations as it is consistent with the statutory text, the purpose of the CAA language which necessarily involves site-specific considerations, and court decisions. *See* 90 Fed. Reg. at 52029.

Courts favor EPA’s usage of a weight of evidence test in its implementation of rules and assessment of submissions under the Clean Air Act. *Environmental Defense v. United States Environmental Protection Agency*, 369 F.3d 193 (2d Cir. 2004) (EPA’s application of a weight of evidence analysis to approve a state’s attainment demonstration was proper); *BCCA Appeal Group v. EPA*, 355 F.3d 817 (5th Cir. 2003) (EPA’s application of a weight of evidence analysis to approve state attainment demonstrations is consistent with the Clean Air Act, reasonable, and otherwise entitled to deference).

EPA’s interpretation of CAA section 179B to allow for Agency flexibility in determining sufficient analyses is the best reading of the statute. *See Loper Bright Enterprises v. Raimondo*, 609 U.S.369, 395 (2024) (recognizing terms in some statutes require agencies to regulate with flexibility and constitutional limits in mind). This interpretation is consistent with the plain meaning of the term “to the satisfaction of the Administrator” and consistent with the fact that there are no other enumerated requirements as exist elsewhere in the CAA for how Agency discretion is to be applied. For example, Section 107(d)(4)(A)(v) states that “whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such a finding, with respect to that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor’s request to exclude such portion from the nonattainment area.” But this discretion is

cabined with criteria that must be considered including “population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.” No similar proviso to the Administrator’s authority exists in Section 179B.

EPA’s interpretation of “to the best satisfaction of the Administrator” allows EPA to apply a weight of evidence approach that provides states the flexibility necessary for a determination that is contingent on site-specific factors. 90 Fed. Reg. 52023. EPA says that it “considers and qualitatively weighs all evidence based on its relevance to CAA section 179B and the nature of international contributions as described in the demonstration’s conceptual model.” *Id.* EPA points to two 2022 determinations of attainment final rules that each utilized the weight of evidence approach. *See* 87 Fed. Reg. 60897 (October 7, 2022); 87 Fed. Reg. 50030 (August 15, 2022). The application of a weight of evidence approach means EPA will take a holistic approach in assessing supporting documentation is case specific and will vary on a case-by-case basis, an analytical method that courts have approved of and one that is cognizant of the need to offer state’s flexibility in how to articulate their needs related to clarifying air quality monitoring data. This would mean that states should include fact specific demonstrations suited to their own circumstances, rather than complying with a one-size-fits-all approach. MOG supports EPA’s conclusion that a fact-specific analysis is more appropriate given the extensive number of specific technical factors and meteorological conditions that can affect international transport of air pollution.

MOG supports EPA’s decision to remove the specific factors set forth in the 2016 guidance and to rely instead on weight of evidence as the basis for support of the Administrator’s decision.

B. EPA Reliance On Atypical Events

An important component of the proposal being offered by EPA is its reliance on atypical events data that was not included in the demonstration as exceptional events. 90 Fed. Reg. at 52029. The 179B demonstration provides clear causal relationship evidence that ozone concentrations were atypical exceedances on several days during 2021, 2022, and 2023 and that those exceedances were influenced by smoke from local wildfires and smoke transported from regional wildfires.

EPA had the opportunity in this determination related to Phoenix-Mesa to make it clear not only that it is appropriate to rely on any exceptional event data that may have been submitted but also that it is appropriate to rely on atypical events data when assessing international transport and should do so in future actions.

III. MOG Supports New Guidance That Reflects the Flexibility Of The Weight Of Evidence Test While Also Providing Clarifications That Align With Other Sections Of The Clean Air Act And Otherwise Would Be Appropriate Under *Loper Bright*

A. EPA Should Have Considered International Non-Anthropogenic Emissions Alongside International Anthropogenic Emissions

Phoenix-Mesa's primary 179B line of evidence was photochemical source apportionment modeling as provided by Maricopa Association of Governments. This modeling indicated an international anthropogenic contribution of 14 ppb to the 2021–2023 DV of 80 ppb in the Phoenix-Mesa area which, when subtracted, would be an attaining value. It is clear that EPA would find that non-anthropogenic emissions would add yet further weight to the impact foreign emissions had on Phoenix-Mesa's ability to demonstrate attainment. Under a *Loper Bright* standard of statutory interpretation, impacts of natural and man-made emissions should be equally considered under 179B. Codification of new EPA guidance is warranted given states continue to plan to provide demonstrations addressing on their ability to attain the NAAQS standards but for international emissions.

Given the importance of this determination to Phoenix-Mesa and given the likelihood that similar applications will arise in the future in other areas including nearby states, we urge that EPA clarify its stance on the incorporation of additional data and analyses for the benefit of future demonstrations.

B. Consideration of Atypical Events as Exceptional Events

Beyond addressing the agency's revised guidance specific to 179B, we support EPA's conclusion in the proposed rule any such 179B demonstration should not only take account of data that is excludable as exceptional events, but also data that should be excluded as atypical events – data related to days when a monitor is impacted by activities that are not typical or not expected to occur in the future. 90 Fed. Reg. at 52024. We support EPA's conclusion that atypical events should be excluded from modeling even if they may not have the same regulatory significance as exceptional events days. *Technical Support Document for Review of Atypical Events in 2015 8-Hour Phoenix-Mesa, AZ Nonattainment Area for the 179B(b) Demonstration* at 4; see also, Clarification Memo on Data Modification.

We further urge EPA to allow (and to confirm for future cases) the 179B atypical data offered by the state to be considered as equivalent to an exceptional events demonstration and to remove the dates from design value determination in EPA's Air Quality System as both the air quality modeling and design value determination could be considered regulatorily significant in the eyes of EPA and the Administrator. Indeed, as the Clarification Memo on Data Modification points out, the only difference between exceptional events and atypical events is that atypical events may not be regulatorily significant. Here, however, there is regulatory significance to the fact that atypical events are being considered as a part of a 179B demonstration which is of great

significance to the Phoenix-Mesa area. The exclusion of data from exceptional events and atypical events days are an important part of a demonstration seeking to satisfy the requirements of 179B of the Clean Air Act. Accordingly, we urge EPA to confirm the applicability of atypical events as being a matter of regulatory significance in future 179B demonstrations.

IV. Conclusion

For the reasons set forth above, the Midwest Ozone Group urges the U.S. Environmental Protection Agency to finalize the proposed attainment determination for the Phoenix-Mesa Nonattainment Area, promulgate standalone 179B guidance that is both legally and technically sound, and codify the guidance offered here to allow for consistent application and regulatory certainty with respect to PM10, carbon monoxide, and ozone moving forward.

Respectfully submitted,



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