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February 26, 2022

US. Environmental Protection Agency
Docket No. EPA-R02-OAR-2021-0571

Re: Proposed Rule, Approval and Promulgation of Implementation Plans; New York; Ozone and Particulate Matter Controls Strategies, 87 Fed. Reg. 4530 (January 28, 2022).

Dear Docket Clerk:

Attached are comments filed on behalf of the Midwest Ozone Group to the above referenced proposal.

Very truly yours,

/s/ Kathy G. Beckett

Kathy G. Beckett
Counsel
Midwest Ozone Group

Attachment

MIDWEST OZONE GROUP COMMENTS ON PROPOSED APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS; NEW YORK; OZONE AND PARTICULATE MATTER CONTROLS STRATEGIES

Docket ID No. EPA-R02-OAR-2021-0572

(87 Federal Register 4530, January 28, 2022)

FEBRUARY 26, 2022

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EXHIBITS

Exhibit A:

Analysis of Ozone Trends in the East in Relation to Interstate Transport Norm Possiel, EPA/OAQPS, May 14, 2018; http://midwestozonegroup.com/files/2018-05-14_EPA_OAQPS_-_Analysis_of_O3_Trends_in_the_East_in_Relation_to_Interstate_Transport.pdf

Exhibit B:

Stationary and Area Sources Committee; OTC / MANE-VU Joint Committees' Meeting September 21, 2018; http://www.midwestozonegroup.com/files/MOG_OTC_SAS_Public_09212018.pdf

MIDWEST OZONE GROUP COMMENTS ON PROPOSED APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS; OZONE AND PARTICULATE MATTER CONTROLS STRATEGIES

February 28, 2022

I. Introduction.

The Midwest Ozone Group (MOG) is pleased to have the opportunity to comment on the "Proposed Approval and Promulgation of Implementation Plans; New York; Ozone and Particulate Matter Controls Strategies" pursuant to the Proposed Rule issued by the U.S. Environmental Protection Agency (EPA). (87 Federal Register 4530, January 28, 2022).[1]

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.[2] MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. 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, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act ("CAA" or "Act"), NAAQS implementation guidance, the development of Good Neighbor state implementation plans (SIPs) and related regional haze and climate change issues. MOG Members and Participants own and operate numerous sources that would be adversely affected by implementation of Good Neighbor Provisions of the Clean Air Act ("CAA") as they may be applied to address the residual nonattainment of the ozone NAAQS in the New York Metropolitan Area ("NYMA") that would be allowed to continue beyond the legally mandated attainment date if this SIP were to be approved as proposed. MOG seeks the development of technically and legally sound air pollution rules and actions that may impact on their facilities, communities, employees, contractors, and consumers of their products.

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[1] These comments were prepared with the technical assistance of Alpine Geophysics, LLC. Comments or questions about his document should be directed to David M. Flannery, Kathy G. Beckett or Edward L. (Skipp) Kropp, Legal Counsel, Midwest Ozone Group, Steptoe & Johnson PLLC, 707 Virginia Street East, Charleston, West Virginia 25301; 304-353-8000; dave.flannery@steptoe-johnson.com; kathy.beckett@steptoe-johnson.com; or skipp.kropp@steptoe-johnson.com, respectively.

[2] The members of and participants in the Midwest Ozone Group include: American Electric Power, American Forest & Paper Association, American Wood Council, Ameren, Alcoa, Appalachian Region Independent Power Producers Association (ARIPPA), Associated Electric Cooperative, Big Rivers Electric Corp., Buckeye Power, Inc., Citizens Energy Group, Cleveland-Cliffs Inc., Council of Industrial Boiler Owners (CIBO), Duke Energy Corp., East Kentucky Power Cooperative, ExxonMobil, FirstEnergy Corp., Indiana Energy Association, Indiana-Kentucky Electric Corp., Indiana Utility Group, LGE/KU, Marathon Petroleum Company, National Lime Association, Ohio Utility Group, Ohio Valley Electric Corp., Olympus Power, and City Water, Light and Power (Springfield IL).

These comments will address the following points, among others, and express MOG's concern with respect to the compliance deadline portion of EPA's proposed SIP approval.

- As will be shown in these comments, Distributed Generation ("DG") units in New York are causing the nonattainment of ozone NAAQS standards in the NYMA and at Connecticut monitors within the NYMA.

- While the DG NOx emission reductions being advanced by New York are critical to achieving attainment of the ozone NAAQS in the NYMA, the deadlines for the imposition of those emissions reductions extend beyond the legally mandated attainment dates for both the 2008 and 2015 ozone NAAQS and should not be approved by EPA as submitted. The deadlines in the New York rule must be accelerated and coordinated to align the emission reductions with the legally mandated attainment dates for the NYMA.

- Because the DG NOx emission reductions being advanced by New York do not take effect until after the mandatory attainment date for the ozone NAAQS, upwind states are being subjected to additional emissions control requirements that are not authorized by the CAA. Harmonization of the schedule for implementing these emissions reductions for the New York DG units with the CAA-required attainment deadlines would show that additional upwind controls are not required for the NYMA to achieve attainment.

MOG calls upon EPA to assure that the ozone season NOx controls for DG being advanced by New York are implemented no later than 2023 and in advance of the ozone NAAQS attainment date applicable to the NYMA.

II. Comments.

1. EPA has recognized the critical need to regulate NOx emissions from Distributed Generation units.

EPA noted in the 2021 proposed approval of the New York interstate transport requirements for the 2008 ozone NAAQS the concern for delay in implementation of DG controls after 2021.[3] EPA provides the following description of the purpose and circumstance for the operation of DG sources, as follows:

> distributed generation (DG) sources are engines used by host sites to supply electricity outside that supplied by distribution utilities. This on-site generation of electricity by DG sources is used by a wide-range of commercial, institutional, and industrial facilities. DG applications range from supplying electricity during blackouts to all of a facility's electricity demand year-round. New York's DG rule applies to sources enrolled in demand response programs sponsored by the New York Independent System Operator or transmission utilities

[3] 86 Fed. Reg. 60602, 60607 (November 3, 2021).

as well as sources used during times when the cost of electricity supplied by utilities is high (i.e., price-responsive generation sources.[4]

As described, DG sources are operated to manage the economics of power generation rather than to address emergency demand or other reliability concerns that could trigger the need to manage impacts on public health. The conscious decision by New York to allow the operation of DG NOx emissions in a nonattainment area based on the market conditions is a direct offense to the Clean Air Act. EPA notes in the February 13, 2020 proposed rule concerning the New York 2008 ozone SIP that it "strongly encourages New York to adopt new regulations for controlling NOx emissions at least as stringent as those adopted in the States of Connecticut and New Jersey for municipal waste combustors, simple cycle combustion turbines ("peakers") operating during high electric demand days (HEDD), and *distributed generators*. Adoption of such regulations would provide additional NOx reductions that will help attain the 2008 ozone standard in the NYMA." [5] (emphasis added). NESCAUM has engaged in assessment of the air quality impacts of these DG units often operated on high electricity demand days (HEDD) and has concluded operation of these uncontrolled units should be modified otherwise attainment and or maintenance of attainment of the NAAQS is compromised. NESCAUM, "Air Quality, Electricity, and Back-up Stationary Diesel Engines in the Northeast, January 2, 2014.

EPA acknowledges the significance of New York's contribution to the Connecticut monitors in its designation of the NYMA as nonattainment. EPA guidance provides that designated nonattainment areas will include not only the area where the violation occurs but also nearby areas that contribute to that violation. EPA, Area Designations for the 2015 Ozone National Ambient Air Quality Standards, at Att. 3, EPA-HQ-OAR-2018-0170-0107; 42 U.S.C. § 7407(d)(1)(A)(i). As EPA has explained, *New York's own contribution* to Connecticut's air quality problems *caused* New York to be included in that nonattainment area. S*ee* EPA, Responses to Comments at 32, EPA-HQ-OAR-2018-0170-0128. ("Portions of New York were included in the [New York Metropolitan Area] nonattainment area because the EPA determined that those portions were themselves contributing to the air quality problems in Connecticut.").

2. EPA's proposed approval of the New York SIP submittal related to Distributed Generation units either fails to recognize the impact of its decisions on upwind states and the Good Neighbor Provisions of the Clean Air Act or intentionally uses the decision regarding delayed regulation to inappropriately force unnecessary controls upon other upwind electric generating units.

Even though EPA's 2022 proposed rule of approval acknowledges that the DG NOx emission reductions will help attain the 2008 and 2015 ozone NAAQS in the NYMA,[6] ***the proposal fails to address the disconnect that exists between the deadline for the DG emission reductions and the attainment deadlines applicable to implementation of the ozone NAAQS in the NYMA*.**

This is an extremely significant point to MOG, because the ozone concentrations greater than

[4] 86 Fed. Reg. 60607, ftn. 18.
[5] 85 Fed. Reg. 8233, 8237-8. (February 13, 2020).
[6] 87 Fed. Reg. at 4534.

70 ppb observed for 13 ozone monitors in Connecticut, New Jersey, and New York are all located in the NYMA. The design value monitor for the New York/New Jersey/Connecticut nonattainment area is located in Westport, Connecticut. This monitor, along with observations at the Rockland County, NY monitor and the 13 referenced above, are the starting point for consideration by EPA of the application of the Good Neighbor provisions of the CAA to upwind states. In the case of EPA's Revised CSAPR Update Rule, it is solely the monitors in the Connecticut portion of the NYMA that are relied upon by EPA as the basis for imposing new controls on sources located in the upwind states of:

- Illinois
- Indiana
- Kentucky
- Maryland
- Michigan
- New Jersey
- New York
- Ohio
- Pennsylvania
- Virginia and
- West Virginia[7]

MOG has raised in both administrative comments and federal appellate litigation[8] the significant implementation dilemma over the Revised CSAPR Update rule where inaction by a downwind state has led to a rule designed to impose emissions reductions on the upwind states listed above. ***This improper agency action is an attempt to make up for the absence of implemented emissions reductions by the downwind state sources. EPA's analysis of the three Connecticut monitors (upon which the Revised CSAPR Update Rule is based with respect to eleven of the subject upwind states) failed to recognize that these monitors would have been in attainment with the 2008 ozone NAAQS, had certain emission sources within the New York portion of the Connecticut nonattainment area been required to achieve mandated emission reduction requirements by the 2021 nonattainment deadline.*** This oversight unlawfully triggers enhanced control strategies for eleven of the twelve states. At issue is the obligation for EPA to actively harmonize upwind and downwind states' CAA deadlines and obligations. ***It is apparent EPA was aware of the potential for emissions reductions but failed to act upon that information. New York's own Regulatory Impact Statement ("RIS") in support of the rule links the ozone benefit of DG emissions reduction to the Connecticut air quality monitors. The RIS makes clear that reducing these emissions is a critical measure needed to achieve attainment with the 2008 NAAQS. EPA acknowledges the existence of local downwind nonattainment area control requirements related to the 2008 ozone NAAQS but took no regulatory action to ensure timely implementation of the New York DG control measures. These DG measures were designed to be "phased-in" during the 2023-2025 period even though the nonattainment deadline is 2021. It is***

[7] https://www.epa.gov/sites/production/files/2021-03/documents/final_revised_csapr_update_-_prepublication_version_with_disclaimer.pdf at page 116.

[8] Midwest Ozone Group v. U.S. Environmental Protection Agency, Case No. 21-1146, U.S. District Court of Appeals for the District of Columbia.

not enough for EPA to only assess upwind control strategies to achieve attainment. The Clean Air Act requires attention to be given to downwind state nonattainment and maintenance requirements. The action by New York and EPA in delaying implementation of nonattainment controls beyond the statutory attainment date cannot, and should not, be used as the basis for shifting the responsibility of imposing needed controls to upwind states under the Good Neighbor provisions.

Inasmuch as EPA's authority to impose controls on upwind states is limited to imposing only such emission reductions as would be necessary to achieve attainment at downwind monitors,[9] any decision by EPA to allow New York to delay imposition of its source emission reductions for DG illegally shifts the burden of emission reduction responsibility to upwind states further away from the non-attainment areas.

EPA's failure to align these upwind and downwind state emission reduction responsibilities is a failure to recognize the mandate of the D.C. Circuit in *Wisconsin v. EPA.*[10] As the Court stated in *Wisconsin*:

> . . . it is the statutorily designed relationship between the Good Neighbor's Provision's obligations for upwind states and the statutory attainment deadlines for downwind areas that generally calls for parallel timeframes.

The D.C. Circuit describes its *North Carolina v. EPA*[11] ruling in *Wisconsin* as follows:

> We explained that EPA needed to "harmonize" the "Phase Two deadline for upwind contributors to eliminate their significant contribution with the attainment deadlines for downwind areas." *Id*. at 912 (emphasis added). Otherwise, downwind areas would need to attain the NAAQS "without the elimination of upwind states' significant contribution." *Id.*

Id. at 314. (Emphasis added).

The *Wisconsin* opinion explained "In sum, under our decision in *North Carolina*, the Good Neighbor Provision calls for elimination of upwind States' significant contributions on par with the relevant downwind attainment deadlines." *Id.*

Accordingly, the New York DG controls must be fully implemented during the ozone season of 2023 to satisfy the legal mandates of the CAA and the Courts.

3. In 2023, the only remaining ozone NAAQS nonattainment monitors in the Northeast are located in the Connecticut portion of the New York Metropolitan Nonattainment Area (NYMA).

As noted above, the Revised CSAPR Update Rule determined that in 2021, the only 2008

[9] *EPA v. EME Homer City*, 572 U.S. 489 (2014)
[10] *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019)
[11] *North Carolina v. EPA, 531 F.3d 896* (D.C. Cir. 2008)

ozone NAAQS nonattainment areas in the East were located in the Connecticut portion of the NYMA.

According to EPA's latest 2023 source apportionment modeling[12], the only 2015 ozone NAAQS nonattainment monitors in the Northeast are in Connecticut. The following table identifies these monitors and demonstrates that New York is by far the largest contributor to ozone concentrations to these Connecticut monitors when all sources are considered.

			Ozone Concentration (ppb)									
					Total Anthropogenic Source Ozone Contribution							
AQS Site ID	**State**	**County**	**2016-Centered Average DV**	**2023 Average DV**	**CT**	**DE**	**MD**	**MA**	**NJ**	**NY**	**PA**	**VA**
90010017	CT	Fairfield	79.3	73.0	9.53	0.27	0.63	0.05	6.90	16.81	5.44	0.50
90013007	CT	Fairfield	82.0	74.2	4.33	0.41	1.10	0.30	7.43	13.56	6.37	1.19
90019003	CT	Fairfield	82.7	76.1	2.95	0.43	1.13	0.30	8.85	14.36	6.90	1.19
90099002	CT	New Haven	79.7	71.8	4.05	0.53	1.29	0.15	5.67	11.54	4.74	1.77

Table 1. 2023 ozone nonattainment monitors.

Alpine Geophysics previously assessed[13] the impact on downwind air quality of specific source sectors within the upwind states. Since that time, the modeling effort was updated using EPA's 2016v2 modeling platform projections to 2023 and those data are presented below.

12 https://www.epa.gov/air-emissions-modeling/2016v2-platform

13 http://midwestozonegroup.com/files/IndependentSector-SpecificSourceApportionmentModelingofthe2017CrossStateAirPollutionRuleModelingPlatform.pdf

4. It has been well-established that residual nonattainment in Connecticut and the NYMA is being caused by sources to include Distributed Generation units in New York.

The March 2020 New York Summary of Revised Regulatory Impact Statement ("RIS Summary") that accompanied the October 15, 2020 New York SIP summarizes the rule as "a critical component in the state's strategy to meet the federal 2008 and 2015 ozone NAAQS in the NYMA" and "continued use of uncontrolled diesel-fired generators used in demand response programs has made it increasingly difficult for the state to attain the 2008 and 2015 ozone NAAQS." The RIS Summary expounds upon the expected important emissions reductions from DG sources as follows,

> These provisions are expected to result in a NOx emission reductions of more than 3.5 tons for a typical 6-hour demand response event. NOx emissions reductions during DR events will come from sources currently enrolled in the NYISO programs. Potential NOx emissions from price-responsive generation sources will be reduced to 11.87 tons per hour effective May 1, 2021.

Additional phase-in reductions are also noted by NY for other DG sources effective May 1, 2025.

In the proposed denial, EPA concludes that once the phase-in controls requirements are implemented by the May 1, 2025 compliance date, *actual* NOx emissions in the State will be reduced by 5 tons per day.[14] MOG raises a question about the meaning of the term "actual" NOx emissions reductions by the compliance date of May 1, 2025 in light of the two-year extension provisions of the DG rule. In the Revised Job Impact Statement, the agency comments "In 2025, very few DR sources will be able to meet the Part 222 limits." Of specific concern Part 222, "Distributed Generation Sources" Section 222.4 allows owners and operators of impacted sources to request an extension of the compliance date for the 2025 NOx control requirements in Part 222.[15] Such requests may not exceed 2 years beyond the 2025 compliance date which would be 2027. The obvious dilemma is the moderate nonattainment attainment deadline for the 2015 ozone NAAQS is 2024 and the serious nonattainment deadline for 2008 ozone NAAQS was 2021, both of which apply to the designations for the NYMA.

The NYMA design value monitor for the nonattainment area for 2017 is 0.083 ppm and preliminary design value monitors are reporting ozone concentrations of 0.082 ppm, well above the (2015 ozone NAAQS) standard. The NY RIS describes DG units impacting NOx emissions as follows:

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[14] Id. at 4534.

[15] In response to comments, NY added an extension provision allowing two years beyond 2025 for those owners and operators that can provide evidence, such as a contract for installation of controls or new engines or turbines, to demonstrate that they intend to meet the emission limits as expeditiously as possible, but not later than April 30, 2027.

> There are approximately 10,960 buildings in New York City greater than 75 feet in height. . . Since 2001, the NYISO and distribution utilities in New York have called upon owners of uncontrolled, primarily diesel-fired engines to generate electricity for host facilities on high demand days in order to reduce demand on the electric grid, thus preserving the reliability of the grid. **Sources enrolled in these programs. . . are generally called upon to operate on hot summer days when ozone levels are typically high. The use of uncontrolled DG sources in demand response programs has correspondingly led to increased emissions from sources previous used to make money.**

New York's Revised RIS[16] itself offers an expanded discussion of these points as follows:

> "The current design value monitor for the NYMA is located in Westport, Connecticut which is part of the shared multi-state nonattainment area. The 2017 design value for that monitor is 0.083 ppm and the design value for 2018 is 0.082 ppm. This trend clearly demonstrates that DEC's current efforts to comply with the ozone NAAQS are not sufficient and more emission reductions are necessary.
>
> …
>
> Section 110(a)(2) of the CAA states that SIPs must contain adequate provisions to prohibit emissions from sources within a state that will contribute significantly to nonattainment in another state. … New York significantly contributes to nonattainment monitors in the Connecticut portion of this nonattainment area. Currently, attainment was to have been reached by June 20, 2021 for the 2008 ozone NAAQS and August 3, 2024 for the 2015 ozone NAAQS. *Emphasis added.*

New York also notes concerns about the DG source adverse air quality impact on adjacent communities, "Since DG sources have short stacks, the exhaust plumes are not dispersed as effectively as plumes from central station power plants, which are required to have much taller stacks to adequately dispense emissions into the ambient air. Therefore, emissions from DG sources can have a greater public health impact on populations living and working in the vicinity of the sources." And yet, New York provides a statement that it is clear emission reductions are necessary in order to meet its "good neighbor" obligations pursuant to CAA Section 110(a)(2)(D)(i)(I), which require states to include adequate measures in their SIPs prohibiting emissions of air pollutants "in amounts which will. . .contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS.

EPA has already recognized that the cause of remaining air quality concerns in the Northeast is local sources. EPA's analysis is reflected in a presentation by Norm Possiel of USEPA OAQPS dated May 14, 2018, which is attached and identified as Exhibit B.

[16] While the Revised Regulatory Impact Statement no longer appears on the NYDEC web site a copy of it can be found here: http://midwestozonegroup.com/files/Adopted_Subpart_227-3_Revised_Regulatory.pdf .

Principal among the conclusions reached in EPA's analysis are the following:

(1) From an Eastern U.S. perspective, the current ozone levels appear to be more of a "local" problem (i.e., home state and adjacent neighboring states) compared to the larger regional ozone problem for (sic) that was evident back in 2010-2012;17

(2) The magnitude of net ozone available for transport into the NE Corridor and the Lake Michigan area from more distant upwind states appears to have declined by 5 to 10 ppb based on 2010-2012 vs 2015-2017 average ranked ozone values;

(3) Ozone levels have also declined substantially at the traditionally high ozone sites in the southern and central portions of the NE Corridor and at the traditionally high ozone sites along Lake Michigan.

In addressing possible causes for continued high ozone at Connecticut coastal sites in the Northeast despite a reduction of ozone transport of 5-10 ppb, the EPA analysis identified specific source sectors within the Northeast Corridor believed to have a significant impact on nonattainment including the following:

- The NYC area has higher mobile source emissions than other parts of the OTR, (onroad and non-road sources).
- A unique mix of local (Tri-State area) contributions from other sources such as EGU, non-EGU point, nonpoint, and commercial marine.
- "Behind the meter" generation (diesel generators that are not controlled and not in the emissions inventory that operate on hot summer days).
- Peaking units (HEDD) within the OTR that may operate on mostly high ozone days.

The D.C. Circuit Court has specifically noted New York's contributions to the Connecticut monitors as being large. As the Court recognized in *Wisconsin*[18], of the 53.82 parts per billion of ozone in Fairfield County, Connecticut, that EPA modeling attributed to U.S. sources, "only 3.89 [parts per billion] of that 53.82" came from Connecticut; "[t]he rest … c[a]me from upwind contributions, with a significant share from one State alone (New York, which is projected to contribute 17.22 ppb)." *Wisconsin*, 938 F.3d at 316–17.

Recently, to investigate the evolving nature of ozone formation and transport in the New York City (NYC) region and downwind, NESCAUM launched the Long Island Sound Tropospheric Ozone Study (LISTOS)[19]. This study is helping to confirm that a unique feature of Connecticut's chronic ozone problem is pollution transported in a northeast direction out of NYC over Long Island Sound. Using satellite, aircraft, balloon (ozonesondes), marine, and ground-based data collection and

[17] EPA's analysis confirms that in spite of significant regional NOx emission reductions, local nonattainment persists directing the conclusion that local controls must be implemented.
[18] *Wisconsin v EPA*, 932 F 3d 303 (D.C, Cir. 2019)
[19] http://www.nescaum.org/documents/listos

analysis methods to probe the New York City pollution plume and its evolution over and around Long Island Sound, the project is demonstrating NYC metropolitan area's large concentration of emission sources, including cars and trucks, ships, industrial boilers, stationary diesel engines, consumer products, power plants, and vegetation are significantly impacting air quality along the Long Island Sound and into Connecticut, Rhode Island, Massachusetts, and beyond.

Figure 6 below is a map recently produced[20] of the ozone and $PM_{2.5}$ AQI levels that were monitored on July 20, 2020. Note the general southwest to northeast orientation of the orange (unhealthy for sensitive groups) and red (unhealthy for all groups) levels exceeding the standards, originating from the NYC area and stretching to Massachusetts.

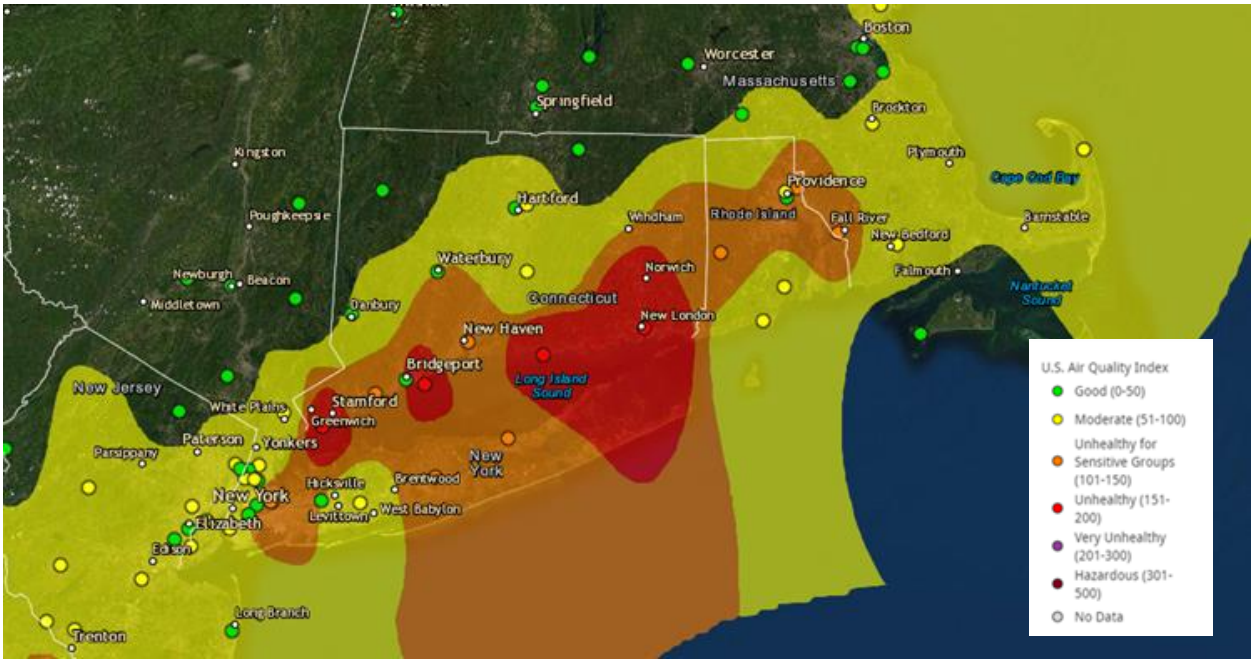

Figure 6. July 20, 2020 ozone and PM 2.5 AQI Index

EPA also acknowledges in this proposed rule that the DG controls being advanced by New York will help attain both the 2008 and the 2015 ozone NAAQS. The following excerpts are taken from EPA's proposed rule:[21]

> "The EPA believes that the new presumptive limits and other control requirements will result in additional NOx reductions throughout the State thereby strengthening New York's ozone SIP and will help the State reach attainment for the 2008 and 2015 ozone standards."

Accordingly, there can be no question about the need for new controls on DG units to address attainment with the 2008 and 2015 ozone NAAQS.

[20] https://gispub.epa.gov/airnow/index.html
[21] 87 Fed. Reg. 4530 (January 28, 2022).

5. Since the need for new Distributed Generation controls is undisputed, EPA should not allow New York to delay the implementation of those controls beyond the moderate nonattainment date for the 2015 ozone NAAQS.

MOG notes with great interest that the NYDEC's SIP revision submitted in October 15, 2020 offers the following comments regarding the basis for its DG Rule:

> Since DG sources have short stacks, the exhaust plumes are not dispersed as effectively as plumes from central station power plants, which are required to have much taller stacks to adequately disperse emissions into the ambient air. Therefore, emission from DG sources can have a greater public health impact on populations living and working in the vicinity of the sources.
>
> Taking into account that the design value of the NYMA nonattainment monitor is 0.008 ppm above the 2008 ozone NAAQS and 0.013 ppm above the 2015 NAAQS, it is clear that emissions reductions are necessary. In addition, New York must fulfill its "good neighbor" obligations pursuant to CAA Section 110(a)(2)(D)(i)(I), which require states to include adequate measures in their SIPs prohibiting emissions of air pollutants "in amounts which will…contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to" a NAAQS. These control programs will assist New York in meeting CAA obligations for the "good neighbor" SIP as well as the 2008 and 2015 ozone NAAQS, for which New York significantly contributes to nonattainment monitors in the Connecticut portion of this nonattainment area.

Even though NYDEC acknowledges that New York's DG units are causing the nonattainment at the monitors in other states, New York has elected to defer the implementation of required controls beyond the attainment date mandated by the CAA. As EPA has noted in the proposed rule, the controls established by NYDEC call for subject units may be delayed to 2027.

EPA took the occasion of its review of New York's Good Neighbor SIP with respect to the 2008 ozone NAAQS to disapprove the submittal based upon the recognition that New York did not demonstrate that it was adequately controlling its emission with New York itself conceding that its emissions were linked to Connecticut's non-attainment areas.[22] For example, EPA notes that New York's regulation of NOx emissions from simple cycle combustion turbines ("SCCTs") will not be phased in until the 2023-2025 period, even thought the applicable attainment date for these areas was July 20, 2021.[23]

MOG urges that EPA require New York to impose all emissions controls on its DG units by 2023 to be consistent with the nonattainment obligations of the NYMA

[22] 86 Fed. Reg. 60606 (November 3, 2021)
[23] Id. at 60607.

III. Conclusion.

The Midwest Ozone Group appreciates the opportunity to offer comments on this proposal. Given the obvious impact that DG units have on nonattainment in the NYMA, and given the impact that delayed compliance will have on the obligations of upwind states, EPA should not approve that portion of the New York SIP that relates to delaying any portion of the DG emission reductions beyond the ozone season of 2023 – the summer before the 2024 attainment date related to moderate nonattainment of the 2015 ozone NAAQS.