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October 4, 2021

Susan Stahle
Air and Radiation Law Office (MC-2344A)
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Submitted to Docket ID No. EPA-HQ-OGC-2021-0583
and via email: stahle.susan@epa.gov

Re: Notice of Proposed Settlement Agreement;
In The Matter of USEPA Region 2;
Docket ID No. EPA-HQ-OGC-2021-0583.

Dear Ms. Stahle:

These comments are offered on behalf of the Midwest Ozone Group (“MOG”) in response to the Notice of Proposed Settlement Agreement in the administrative enforcement action brought by the State of New Jersey, Department of Environmental Protection, Division of Air Enforcement (New Jersey), against the Edison facility owned and operated by the Environmental Protection Agency (EPA) Region 2. The comment period deadline on this notice is October 4, 2021.

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.¹ MOG's primary efforts are to work with policy makers in evaluating air quality

¹ 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, Council of Industrial Boiler Owners (CIBO), Duke Energy Corp., East Kentucky Power Cooperative, ExxonMobil, FirstEnergy Corp., Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Utility Group, LGE / KU, Marathon Petroleum Company, National Lime Association, Ohio Utility Group, Ohio Valley Electric Corporation, Olympus Power, and City Water, Light & Power (Springfield IL).

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 assessment of exceptional events, the development of transport rules, NAAQS standards, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act (“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 stationary sources that are potentially affected by the regulatory actions that are the subject of the proposed consent decree. MOG seeks the development of technically and legally sound air pollution rules and actions that may impact its Members’ and Participants’ facilities, their employees, their contractors, and the consumers of their products.

MOG finds it significant that this enforcement action centers around the finding by the State of New Jersey that EPA operated certain boilers and emergency generators at its facility located in Edison, New Jersey in violation of state law including operation of an emergency generator on days which were forecasted to be unhealthy air days. Edison, New Jersey is, of course, located within the New York-New Jersey-Connecticut Nonattainment Area for purposes of the 2008 ozone NAAQS. Specifically included among the days of this noncompliance were May 26, 2016, and July 6, 2016.

In addition to being forecasted “unhealthy air quality days” as described in the proposed settlement agreement, May 26, 2016, and July 6, 2016 are among the top ten days that are associated with the three air quality monitors (also located in the New York-New Jersey-Connecticut Nonattainment Area) that are the sole basis for the development of the Revised CSAPR Update Rule² that relates to the application of the 2008 ozone NAAQS Good Neighbor Provisions of the Clean Air Act to the upwind states of Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

Set out below is data taken from the data files of EPA’s Final Revised CSAPR Update Rule (“Rule”)³ that were used by EPA to determine at Step 1 whether there were downwind nonattainment or maintenance monitors to be addressed in the Rule and at Step 2 whether there were upwind states that significantly contributed to the nonattainment or maintenance status of the monitors identified at Step 1. In each case you will notice that the May 26, 2016, and July 6, 2016, noncompliance dates were high among the top 10 dates that were the basis for EPA’s Revised CSAPR Update.

² 86 Fed. Reg. 23,054 (April 30, 2021).

³ EPA-HQ-OAR-2020-072-0064_attachment_2.

Name	Monitor	Rank	Step 1 - RRF/DVf Calculation 3x3 "No Water" Base Year			Step 2 - Significant Contribution Future Year Modeled (APCA)	
			Date	Ozone (ppb)		Date	Ozone (ppb)
Stratford	090013007	1	20160725	94.43		20230725	82.70
		2	20160526	87.23		20230526	80.61
		3	20160706	87.19		20230718	77.42
		4	20160718	85.46		20230706	75.49
		5	20160722	81.02		20230722	72.68
		6	20160831	80.24		20230831	72.50
		7	20160528	79.96		20230528	72.00
		8	20160717	79.66		20230717	68.07
		9	20160824	77.89		20230824	66.71
		10	20160721	77.34		20230923	65.10

Table 1. Top 10 modeled dates and ozone concentrations at Stratford, CT monitor (090013007) as used in Revised CSAPR Update rule for nonattainment designation (Step 1) and significant contribution (Step 2) calculations.

Name	Monitor	Rank	Step 1 - RRF/DVf Calculation 3x3 "No Water" Base Year			Step 2 - Significant Contribution Future Year Modeled (APCA)	
			Date	Ozone (ppb)		Date	Ozone (ppb)
Westport	090019003	1	20160725	94.43		20230725	84.43
		2	20160706	93.83		20230526	82.75
		3	20160526	87.23		20230706	78.73
		4	20160718	83.82		20230718	77.82
		5	20160728	83.07		20230831	76.84
		6	20160721	80.99		20230528	73.58
		7	20160717	80.97		20230722	72.27
		8	20160824	80.70		20230824	71.08
		9	20160722	80.68		20230717	69.39
		10	20160831	80.24		20230525	67.51

Table 2. Top 10 modeled dates and ozone concentrations at Westport, CT monitor (090019003) as used in Revised CSAPR Update rule for nonattainment designation (Step 1) and significant contribution (Step 2) calculations.

**Step 1 - RRF/DVf Calculation
3x3 "No Water" Base Year**

**Step 2 - Significant Contribution
Future Year Modeled (APCA)**

Name	Monitor	Rank	Date	Ozone (ppb)	Date	Ozone (ppb)
Madison	090099002	1	20160725	88.56	20230718	76.54
		2	20160718	85.89	20230914	75.61
		3	20160526	84.17	20230526	75.13
		4	20160722	82.75	20230722	71.28
		5	20160706	79.44	20230525	69.91
		6	20160525	77.21	20230706	68.46
		7	20160914	76.98	20230717	67.91
		8	20160717	76.54	20230607	67.33
		9	20160607	75.82	20230831	67.11
		10	20160831	75.51	20230824	64.76

Table 3. Top 10 modeled dates and ozone concentrations at Madison, CT monitor (090099002) as used in Revised CSAPR Update rule for nonattainment designation (Step 1) and significant contribution (Step 2) calculations.

The fact that EPA’s noncompliance in 2016 occurred on the same days as these three monitors in the same nonattainment area recorded top 10 ozone concentrations cannot be ignored. MOG urges that the settlement agreement be revised to require that EPA timely assess the air quality impact of the emissions related to EPA’s noncompliance on May 16, 2016 and July 6, 2016 and to assess the implications of that assessment on the Revised CSAPR Update Rule.

For these reasons, the Midwest Ozone Group opposes the settlement agreement as proposed.

Very truly yours,

Kathy G. Beckett
Legal Counsel
Midwest Ozone Group