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July 21, 2025

Ashley Keas
U.S. Environmental Protection Agency
Region 7 Office
Air and Radiation Division
11201 Renner Boulevard
Lenexa, Kansas 66219

Re: Finding of Failure To Attain for the Missouri Portion of the St. Louis Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standards; Docket EPA–R7–OAR–2025–0291.

Dear Ms Keas:

On June 20, 2025, EPA published (90 Fed. Reg. 26,240) a proposal to accept comments on a determination that the Missouri portion of the St. Louis, MO-IL bi-state nonattainment area failed to attain the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date. EPA noted in the proposal that "[t]he effect of failing to attain by the applicable attainment date is that the area is reclassified by operation of law to 'Serious' nonattainment for the 2015 ozone NAAQS." Comments are due July 21, 2025.

The Midwest Ozone Group ("MOG")[1] is pleased to offer these comments[2] supporting EPA's reconsideration of the finding and urging EPA to reassess the finding with the reassessment including data that EPA failed to consider in making its 2024 finding.

Background

On November 25, 2024, EPA published (89 Fed. Reg. 92,816) a final action which determined that the Missouri portion of the St. Louis, MO-IL nonattainment area failed to attain the 2015 ozone NAAQS by the Moderate area attainment date. That action reclassified the Missouri portion of the St. Louis, MO-IL nonattainment area to Serious by operation of law with an effective date of December 31, 2024. On December 17, 2024, EPA published (89 Fed. Reg. 101,901) a final action which determined that the Illinois portion of the St. Louis, MO-IL nonattainment area failed to attain the 2015 ozone NAAQS by the moderate area attainment date. That action reclassified the Illinois portion of the St. Louis, MO-IL nonattainment area to Serious by operation of law with an effective date of January 16, 2025.

On January 24, 2025, the EPA received a petition for reconsideration of that final action from the State of Missouri. On March 5, 2025, EPA Region 7 granted the petition for reconsideration and stated its intention to undergo a notice and comment rulemaking.

Missouri's petition for reconsideration cited EPAs failure to comply with Administrative Procedure Act ("APA") Section 553(b), which establishes the rules governing notice and public procedures allowing the State the opportunity to provide comment on EPA's action prior to finalization. Missouri also requested an

[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, Monongahela Power Company, Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Municipal Power Agency, Indiana Utility Group, Hoosier Energy REC, inc., LGE/ KU, Marathon Petroleum 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.

immediate stay of the final rule, and this proposal does not address the request for stay.

Missouri stated in its petition that "EPA precedence indicates that once the agency determines an area has attained by the attainment deadline, then subsequent violations of the standard in such area *do not* trigger a more stringent nonattainment reclassification under [Clean Air Act (CAA)] 181(b)(2)(A). Because EPA did not offer an opportunity for notice and comment before promulgating the Final Rule, Missouri was not able to provide these facts, and EPA was not able to consider them, or indeed, any comment by Missouri, prior to Final Rule issuance. As such, EPA's justification to find good cause to issue the Final Rule without public notice and comment is fatally flawed. Further, prior to the Final Rule, Missouri is unaware of any time in history when EPA finalized an involuntary reclassification for an ozone nonattainment area without first providing a public notice and comment period. This has always been EPA's practice for involuntary reclassification, and the agency is diverting from this standard practice for the first time in the Final Rule. EPA's action treating Missouri differently than any other similarly situated entity is arbitrary and capricious."

MOG agrees with Missouri's assertions regarding EPA's failure to comply with the APA and its failure to follow its own precedent with respect to reclassification of the Missouri portion of the St. Louis, MO-IL nonattainment area under CAA 181(b)(2)(A).[3] EPA made the same error with respect to reclassification of the Illinois portion of the St. Louis, MO-IL nonattainment area under CAA 181(b)(2)(A) by not taking comments and considering the input from stakeholders and the public. MOG urges EPA to re-propose the Finding of Failure to Attain for the Illinois portion of the St. Louis, MO-IL nonattainment area and take public comment. MOG also urges EPA to consider CAA flexibilities in assessing data with respect to exceptional events and international transport in its reconsideration.

CAA Section 107 (42 U.S.C. 7407) establishes the requirement that the EPA Administrator promulgate an attainment status designation of all air quality control regions, or portions thereof, as expeditiously as practicable, but in no case later than two years from the date of promulgation of a new or revised NAAQS. CAA 181 (42 U.S.C. 7511) establishes the dates by which attainment of a new or revised primary ozone NAAQS is required, ranging from 3 to 20 years after promulgation or revision of the NAAQS.

[3] See 87 Fed Reg 21,842 proposed reclassification of both the MO and IL portions of the St. Louis, MO-IL from marginal to moderate. Also see 87 Fed Reg 60,926 final rule reclassifying both the MO and IL portions of the St. Louis, MO-IL and responding to comments from stakeholders and the general public.

SECTION 319(b)

Since 1990, Congress has added two sections to the CAA to provide states preparing SIPs with flexibility in dealing with pollution over which a state has no control: Sections179B and 319(b). Section 179B was added to the Act in 1990 and operates to provide states with flexibility to address air pollution in nonattainment areas that are significantly impacted by emissions originating from outside the United States and over which a state has no control. Section 179B applies only to areas that are already designated as nonattainment areas with a NAAQS.

When amending the Clean Air Act in 2005, Congress intended to provide regulatory relief for NAAQS nonattainment resulting from exceptional events negatively affecting air quality that were outside of a state's control. That concern led to enactment of provisions specifically establishing the process by which USEPA could exclude air quality monitoring data directly related to an exceptional event. *See* 42 U.S.C. 7619(b)[4]. In 2016, USEPA promulgated regulations establishing the mechanism for implementation of 42 U.S.C. 7619(b) at 40 C.F.R. 50.14. Under the exceptional events rule, USEPA excludes "any data of concentration of a pollutant

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[4] 7619. Air quality monitoring
(1) Definition of exceptional event
In this section:
(A) In general
The term "exceptional event" means an event that—
(i) affects air quality;
(ii) is not reasonably controllable or preventable;
(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and
(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(3) Principles and Requirements

…

(B) Requirements

Regulations promulgated under this section shall, at a minimum, provide that—
(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;
(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;
(iii) there is a public process for determining whether an event is exceptional; and
(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

above the NAAQS (exceedances) if the air quality was influenced by exceptional events." *Bahr v. Regan,* 6 F.4th 1059, 1066 (9th Cir. 2021) (cleaned up).

A state requesting data exclusion under the exceptional events rule must demonstrate "to the Administrator's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location." 40 C.F.R. § 50.14(a)(1)(ii). That demonstration must include certain information required under the regulation:

(A) A narrative conceptual model that described the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitor(s);

(B) A demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation;

(C) Analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times to support the requirement at paragraph (c)(3)(iv)(B) of this section. The Administrator shall not require a State to prove a specific percentile point in the distribution of data;

(D) A demonstration that the event was both not reasonably controllable and not reasonably preventable; and

(E) A demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event 40 C.F.R. § 50.14(c)(3)(iv).

A state must also comply with pre-request requirements, which include notifying USEPA of the intent to request exclusion, flagging data to be excluded, engaging in public comments, and implementing mitigation measures. *See* 40 C.F.R. § 50.14(c)(2)(i); 40 C.F.R. § 50.14(c)(3)(v); 40 C.F.R. § 51.930. In short, there are three core statutory elements: (1) a clear causal relationship; (2) a showing that the event was not controllable, and (3) a showing that the event was human activity unlikely to recur a particular location or was a natural event.

A state may request that the flexibilities established under Section 319(b) and its implementing regulations at 40 C.F.R. 50.14 be applied to an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations…to be an exceptional event

Thus, an event may be determined to be an exceptional event in an air quality control region that is not a designated nonattainment area, although the exceptional events regulations require that, to qualify as an exceptional event, the event must have caused an exceedance or violation of a NAAQS. (*See* 40 C.F.R. 50.14(c)(3)(iv)(A))

Subsequent to promulgation of Section 319(b) and its implementing regulations at 40 C.F.R. 50.14, many states prepared and submitted exceptional events demonstrations. EPA has concurred on a few but has not taken action on a great many demonstrations to date. A review of many of the exceptional events demonstrations submitted shows that the monitors and episode days that are addressed are far from the only ones that have influenced air quality during those time frames. Many monitors in the same area also observed ozone concentrations at significantly elevated levels on the same exclusion dates, as well as on days around these dates.

In the summer of 2023, Canada experienced its most severe wildfire season on record. Smoke from these fires was transported across the Upper Midwest region of the United States, leading to widespread increases in surface-level ozone concentrations, as observed by the U.S. AQS monitoring network. These events were particularly significant because they occurred early in the fire season (May 15–June 30) and resulted in the highest regional-scale surface ozone levels ever recorded across the northern U.S.[5]

The figure below shows statistics extracted from the Canadian National Fire Database[6], and shows the extreme acres burned in Canada in 2023 compared to the past five decades.

[5] https://doi.org/10.1029/2024GL111481
[6] https://cwfis.cfs.nrcan.gc.ca/ha/nfdb

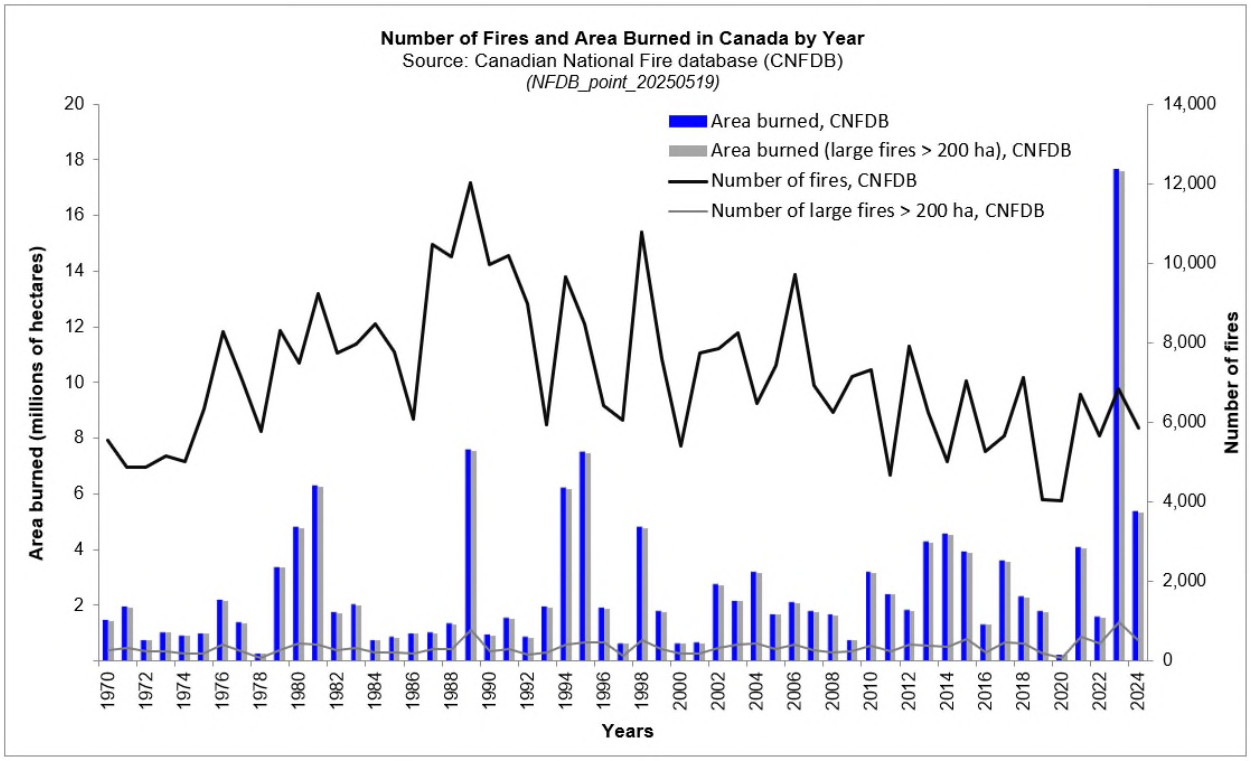


Figure 1. Number of fires and area burned in Canada by year, 1970-2024.

During the latter weeks of May and most of June 2023, the St. Louis nonattainment area was impacted by smoke from these Canadian wildfires, oftentimes with ozone (created during transport of the VOCs and NOx emitted during the wildfire) concentrations exceeding the 99th percentile of the area's five-year distribution of observations.

This 99th percentile calculation is a key factor for a Tier 2 clear causal analysis and considers the characteristics of the event-related concentration versus non-event ozone concentration distribution at the monitor. When observations are found to exceed this 99th percentile threshold, especially during a month and year when concentrations are normally lower than observed averages, this is a good indication that external influence (e.g., exceptional events) enhanced ozone concentrations at ground level monitors.

Figure 2 presents maximum daily 8-hour (MDA8) ozone concentrations at the West Alton (29-183-1002) monitor in St. Louis, Missouri for the May through September period of 2023. In addition to the daily concentrations (blue line), it presents a five-year 99th percentile calculation of observations at the monitor between 2020 and 2024 (red dotted line) and dates where the NOAA Hazardous Mapping System

(HMS) plots indicate smoke was present over the monitor location (grey columns). During the months of May and June, observations exceeded the five-year calculated 99th percentile six times and all during episodes when smoke was indicated to be present.

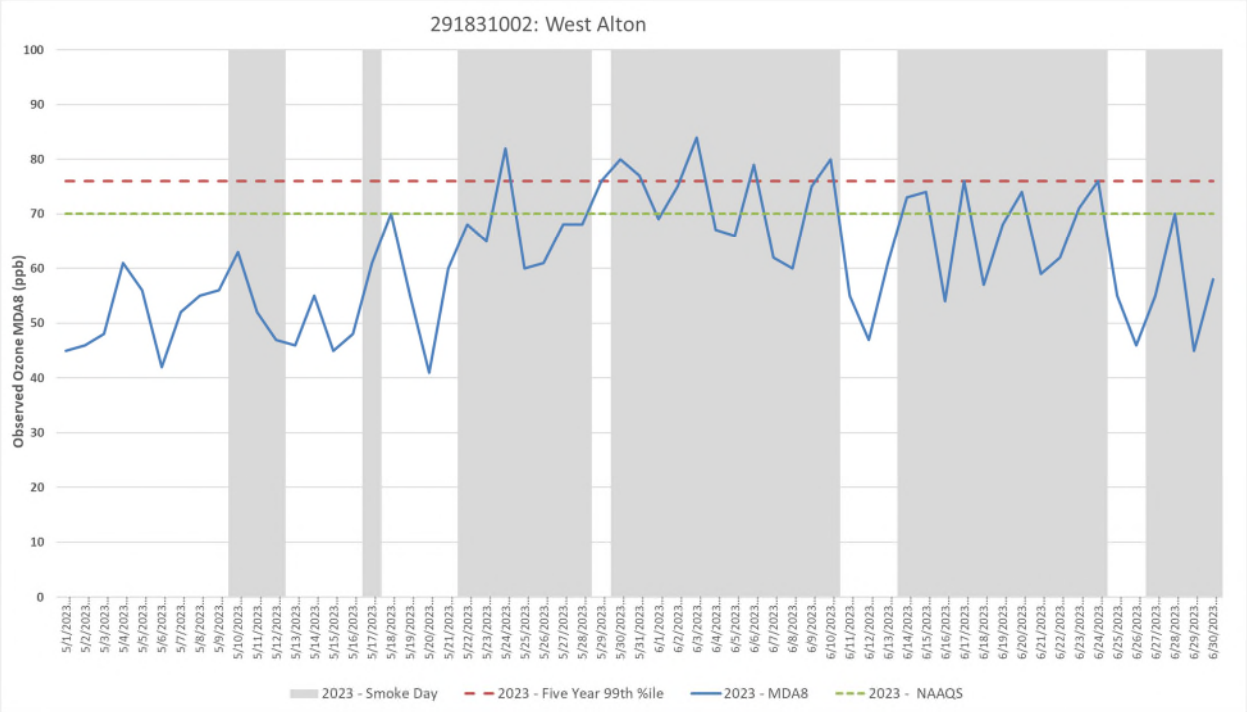


Figure 2. Maximum daily 8-hour (MDA8) observations compared to the five-year 99th percentile observations at the St. Louis West Alton (29-183-1002) monitor.

Figure 3 demonstrates that June 2023 MDA8 observations were unusually high in the St. Louis region. At the Maryland Heights monitor (29-189-0014), ozone concentrations on June 6, 2023, were observed as high as 33.8 ppb higher (red bar) than the five-year June 2020-2024 average MDA8 concentration at this location and more than two and a half times the standard deviation (±13.52 ppb) over this period. Values like these are consistently seen across multiple monitors in the St. Louis nonattainment area and at background monitors in Missouri and Illinois indicating the regional widespread nature of the event(s).

The U.S. Air Quality Index (AQI) is EPA's tool for communicating about outdoor air quality and health. The AQI includes six color-coded categories, each corresponding to a range of index values. The higher the AQI values, the greater the level of air pollution and the greater the health concern. For each pollutant an AQI value of 100 generally corresponds to an ambient air concentration that equals the

level of the short-term national ambient air quality standard for protection of public health. For ozone, this represents MDA8 concentrations greater than 70 ppb.

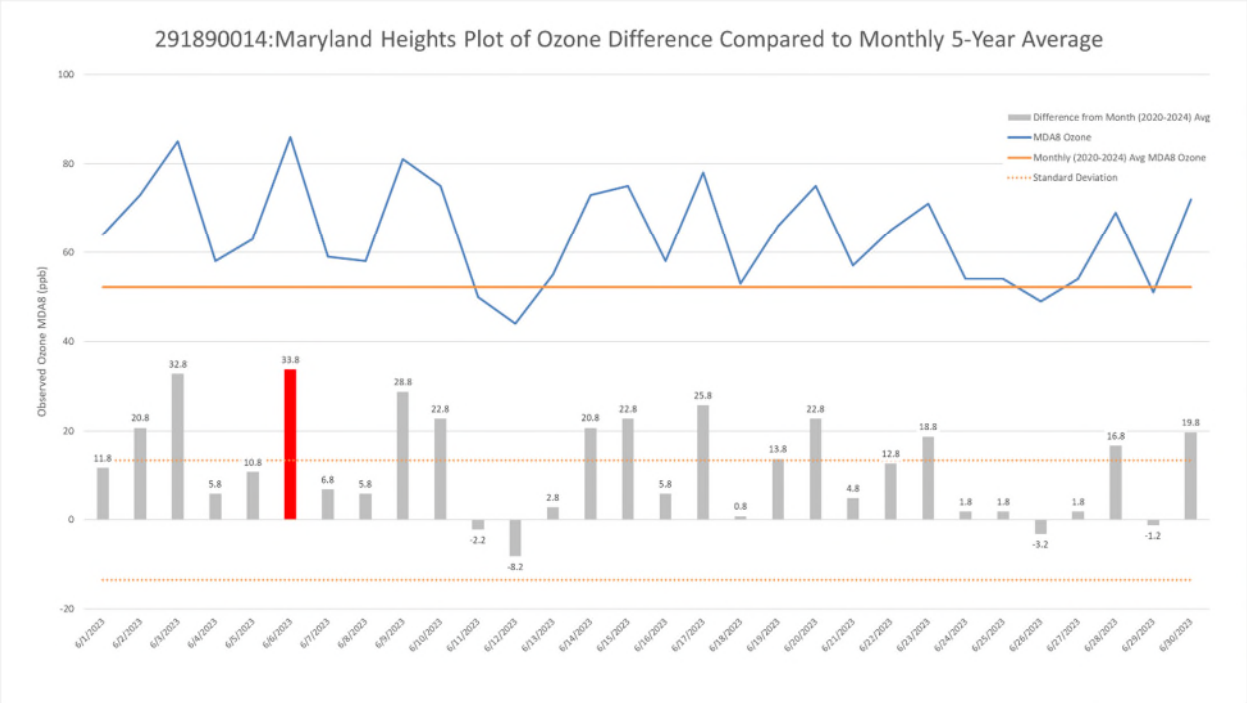


Figure 3. June 2023 MDA8 observations at Maryland Heights monitor (29-189-0014) compared to average June (2020-2024) observations.

In 2023, St. Louis monitors observed AQI values of 100 or greater on 20 days between late May and then end of June, again corresponding to dates when smoke from Canadian wildfires was present in the region. Figure 4 represents maximum monitor values in the St. Louis CBSA with 20 of the 21 dates with AQI values of 100 or greater observed in the late May to end of June episode.

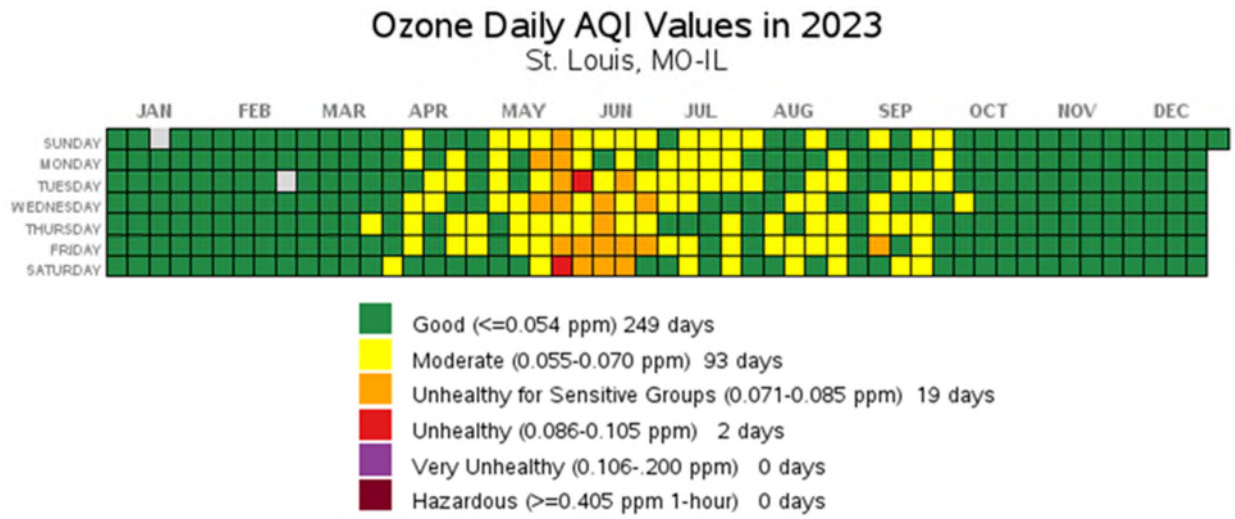
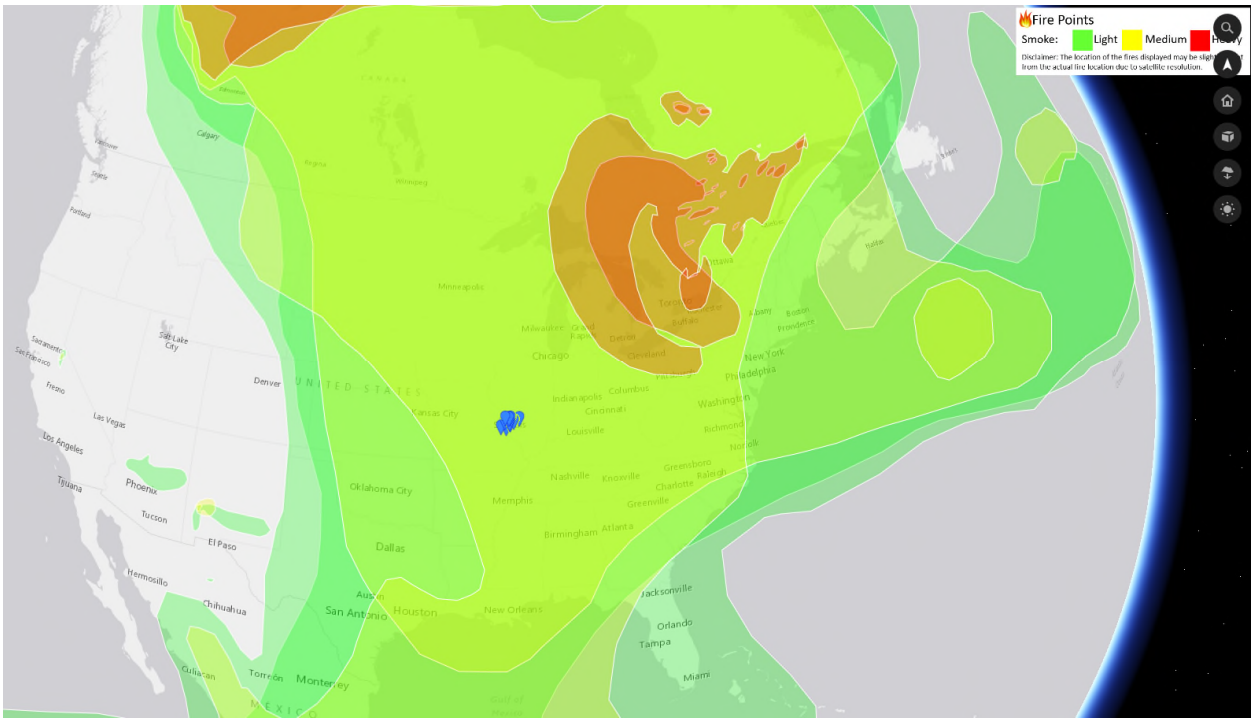


Figure 4. Daily ozone AQI from 2023 across all monitors in St. Louis CBSA.

Date-matched NOAA HMS and EPA Air Quality Index plots corroborate high ozone observation dates for these exceptional episodes. Figure 5 presents an HMS smoke plot (top) with same date ozone AQI plot (bottom) for June 3, 2023. Throughout the early dates in June, moderate to heavy smoke is present in the St. Louis region consistent with high ozone observations on those same dates.



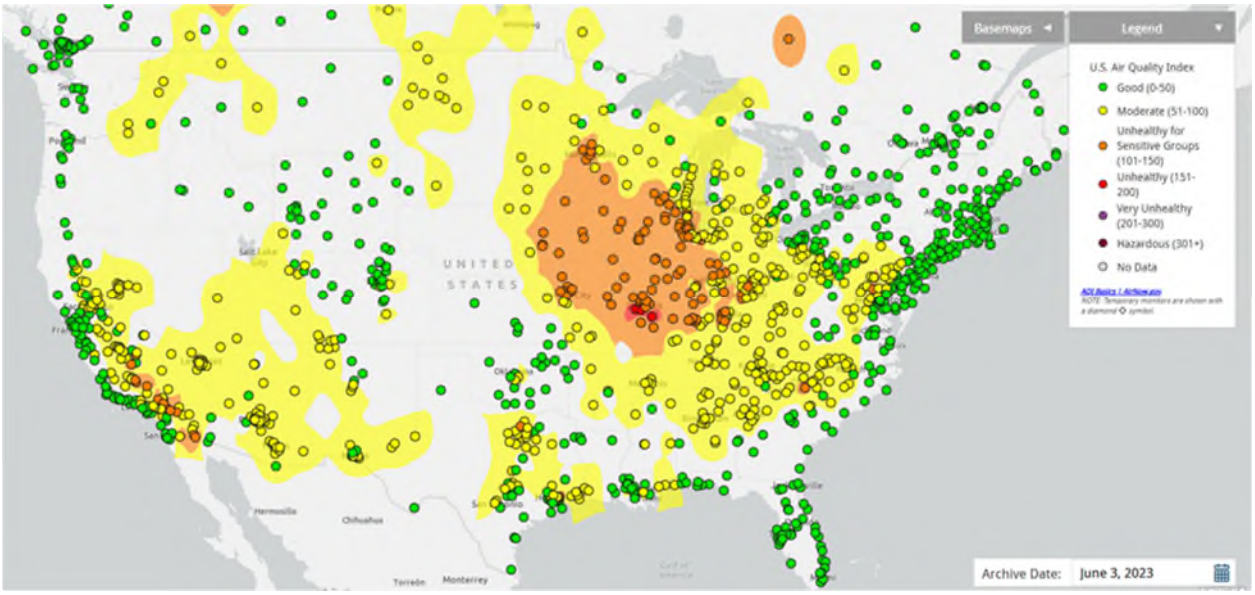


Figure 5. NOAA HMS and EPA ozone AQI plots of June 3, 2023.

EPA has failed to consider any of the multiple date ozone concentration exceedances associated with the Canadian wildfire episodes of 2023 that impacted air quality in Missouri in making its finding that the St. Louis area failed to attain the 2015 ozone NAAQS by the Moderate area attainment date. MOG urges EPA to include an analysis of exceptional events from spring and summer 2023 in its reconsideration under this proposed rule.

SECTION 179B

Section 179B[7] provides that "…an implementation plan or plan revision shall be approved by the administrator if…(a)(2) the submitting State establishes to the

[7] 42 U.S. Code 7509a - International border areas
(a) Implementation plans and revisions
Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the [1] chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

(b)Attainment of ozone levels
Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air

satisfaction of the Administrator that the implementation plan of such state would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States. (emphasis supplied) Further clarification is established in Section 179B(b), which state that "[n]otwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title. (42 U.S.C. 7509a) (emphasis supplied)

In December of 2020, EPA published a document titled "Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions."[8] The 2020 guidance states that its purpose is "…to assist air agencies that are considering the development of a demonstration, under section 179B of the CAA, that a nonattainment area would be able to attain and maintain, or would have attained, the relevant NAAQS but for emissions emanating from outside the U.S.," (*See* Guidance at 1) adding that, "[t]o help air agencies better understand how to satisfy the requirements of section 179B, the guidance describes and provides examples of the kinds of information and analyses that the U.S. EPA recommends air agencies consider including in a section 179B demonstration. The guidance also describes a weight-of evidence approach that EPA intends to use when evaluating section 179B demonstrations. This non-binding guidance is intended to assist air agencies in the preparation of demonstrations but does not limit the types of information and analysis that could be used to develop such demonstrations under the CAA." (*Id.*)

Subsequent to publication of the guidance, several states, including Utah, New Mexico and Texas, submitted Section 179B demonstrations. Based on its interpretation of the 2020 guidance, EPA disapproved the Texas and Utah demonstrations on October 7, 2022, (87 Fed Reg 60,897) and proposed to approve

quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

[8] EPA-457/P-20-001F December 2020

the El Paso-Las Cruces, Texas-New Mexico demonstration on March 7, 2023, (88 Fed Reg 14,095) but did not finalize the proposed approval.

Additional clarification regarding EPA interpretation of the 2020 guidelines is provided in EPA's March 7, 2023, proposed approval (88 Fed Reg 14,095) of the El Paso-Las Cruces, Texas-New Mexico demonstration, in which EPA states that "[b]ased on the Agency's review of the submissions described in section C, the EPA is proposing to find that Texas and New Mexico have successfully demonstrated that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone NAAQS but for emissions emanating from outside of the United States, consistent with CAA section 179B(b)." EPA notes that, "[t]aken together, the analyses do support conclusions drawn by NMED and TCEQ, that ozone values in the nonattainment area are impacted by emissions from Mexico. The EPA analyzed the results of the modeling studies and found that they do support the states' conclusions and our determination that the area would have attained the NAAQS but for international contributions." (88 Fed Reg 14,095 at 14,101)

Subsequent to these actions, on April 7, 2025, EPA announced a rescission of guidance related to section 179B of the Clean Air Act. EPA also announced on March 5, 2025, that it "agreed to reconsider its determination that the Northern Wasatch Front, Utah, area failed to attain the 2015 Ozone National Ambient Air Quality Standards in a timely manner and the resulting reclassification of the area from Moderate to Serious nonattainment," adding that "[t]his will include a review of Utah's demonstration of impacts from international air emissions. EPA will carefully reconsider its earlier decision and assess the impact of international emissions before completing its reconsideration."

MOG believes that Missouri has also been impacted by international emissions. In a recent source apportionment analysis of ozone[9], modeled ozone concentrations as high as 17 ppb (30% of total modeled ozone) were associated with boundary conditions, a category largely associated with international transported emissions. Figure 6 presents information on the relative contribution of major categories to the Pacific monitor (29-189-0005) in St. Louis County, Missouri.

[9] https://www.midwestozonegroup.com/_files/ugd/e299ac_e50abcbd0cb04c10b1a9d0bfd618e5c6.pdf

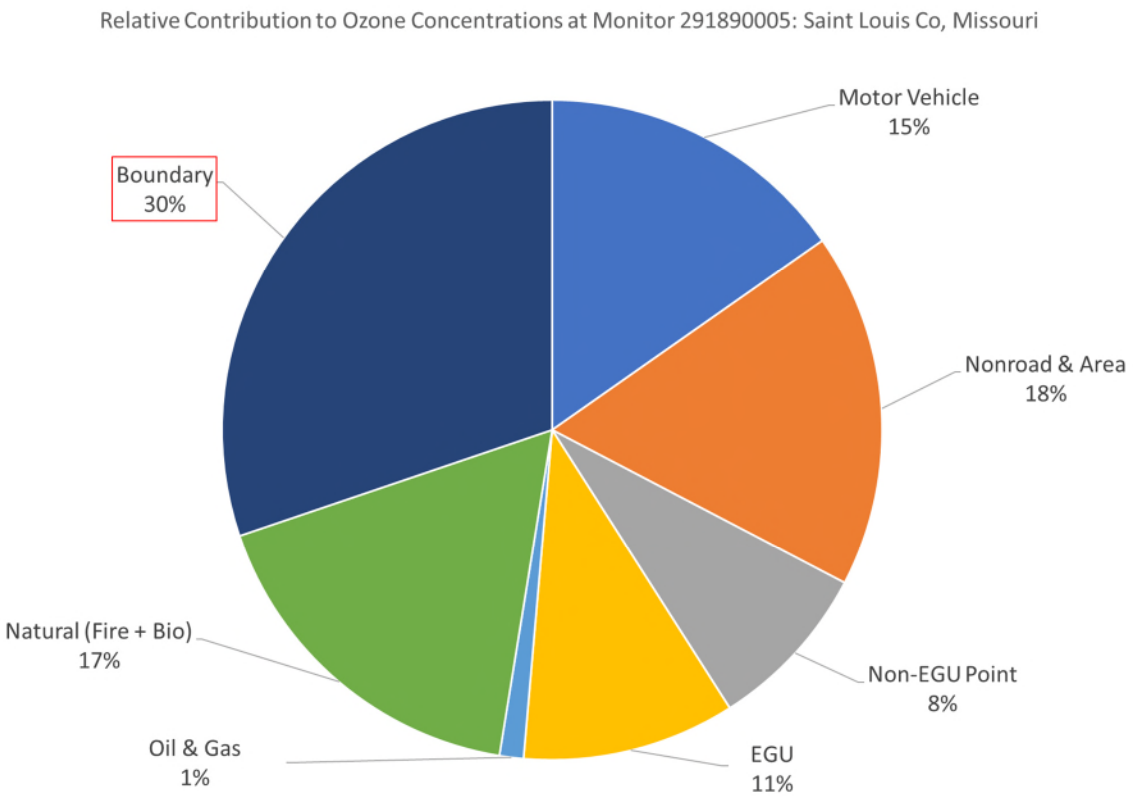


Figure 6. 2023 source apportionment results for St. Louis monitor 29-189-0005 using top 10 future year modeled days.

Using results from studies like these, it could be demonstrated that "but for" emissions emanating from outside of the United States, this monitor, and others in the St. Louis ozone nonattainment area, would have attained the 2015 ozone NAAQS, consistent with CAA section 179B(b).

For the reasons articulated above, MOG supports the reconsideration of the finding of failure to attain the 2015 ozone NAAQS by the Moderate area attainment date and urges EPA to carefully consider the impact of both exceptional events and international transport in its reconsideration.

Very truly yours,

Edward L. Kropp

Edward "Skipp" Kropp
Counsel for the Midwest Ozone Group