



Huntington Center, Suite 2200
41 South High Street
Columbus, Ohio 43215
Phone: 614-221-5100 Fax: 614-221-0952
www.steptoe-johnson.com

Writer's Contact Information
317-946-9882
skipp.kropp@steptoe-johnson.com

June 1, 2026

Abby Fulton
Air and Radiation Division
EPA Region 8, Mailcode 8ARD-AQ-R
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Utah; Northern Wasatch Front; 2015 8-Hour Ozone National Ambient Air Quality Standards; Reconsideration and Repeal of Finding of Failure To Attain and Reclassification to a Serious Nonattainment Area; Determination of Attainment by the Moderate Attainment Date But for International Emissions, Docket ID EPA-R08- OAR-2024-0552

Dear Ms. Fulton:

The Midwest Ozone Group¹ ("MOG") is pleased to offer these comments² regarding a proposed rule by the U.S. Environmental Protection Agency ("EPA") entitled "Utah; Northern Wasatch Front; 2015 8-Hour Ozone National Ambient Air Quality Standards; Reconsideration and Repeal of Finding of Failure To Attain and Reclassification to a Serious Nonattainment Area; Determination of Attainment by the Moderate Attainment Date But for International Emissions" ("Proposed Rule") published at 91 Fed. Reg. 23209 on April 30, 2026, with a comment deadline of June 1, 2026. These comments will address MOG's support of the Proposed Rule as well as 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,

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, 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.

Abby Fulton

June 1, 2026

Page 2

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.

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, 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 interstate transport 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. 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, Including Its Reliance on Weight of Evidence And Atypical Events In Support Of Its Action

The Proposed Rule offered by EPA for comment is a finding that but for the international emissions, the Northern Wasatch Front (NWF) area would have attained the 2015 Ozone NAAQS by the August 3, 2024, moderate attainment deadline. Finalization of this rule would mean that the NWF 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 NWF 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 of all information and analyses provided by the air agency 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* 91 Fed. Reg. at 23216.

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 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 factors such as "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 satisfaction of the Administrator" provides inherent flexibility to EPA to apply a weight of evidence approach that provides states the flexibility necessary for a determination that is contingent on site-specific factors. 91 Fed. Reg. at 23214. 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" adding that "[e]very demonstration should include fact-specific analyses tailored to the [NAA] in question." *Id.*

The application of a weight of evidence approach means EPA will take a holistic approach in assessing supporting documentation that is case specific and cognizant of the need to offer states flexibility in how to articulate their needs related to clarifying air quality monitoring data. This is an analytical method that courts have approved. This weight of evidence approach 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 unique technical factors and meteorological conditions that affect international transport of air pollution. MOG supports EPA's decision to rely 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 Proposed Rule is its reliance on atypical events data that was not included in the demonstration as exceptional events. 91 Fed. Reg. at 23213. The Proposed Rule notes that, "[b]ecause Utah identified unrepresentative wildfire smoke influenced air quality data as part of its modeling calculations to predict future ozone concentrations, for the purposes of estimating ozone contributions to the NWF ozone NAA from international anthropogenic emissions, it is appropriate to exclude that data due to influence by atypical events for the reasons outlined in the preamble to the final 2016 Exceptional Events Rule, the Clarification Memo on Data Modification, the Guideline on Air Quality Models, and the 2018 Modeling Guidance." 91 Fed. Reg. at 23219.

MOG supports the EPA conclusion that "it is appropriate to exclude atypical events due to wildfire smoke in the modeling supporting the determination that the NWF ozone NAA would have attained the NAAQS by the attainment date but for international emissions." 91 Fed. Reg. at 23214.

III. MOG Urges EPA to Develop 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

The Proposed Rule states that "...in this rulemaking, the EPA is applying interpretations and policies that differ in certain respects from those set forth in the rescinded 179B Guidance and previous actions under CAA section 179B(b), consistent with the discretion provided to the EPA

under the CAA and relevant case law concerning agencies' authority to reconsider prior decisions." 91 Fed. Reg. 23213. MOG supports this action by EPA. That said, it is clear that EPA would find that non-anthropogenic emissions would add yet further weight to the impact foreign emissions had on the NWF area'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 that states continue to provide demonstrations addressing their ability to attain the NAAQS standards but for international emissions.

Given the importance of this determination to the NWF area, the fact that EPA has already dealt with a similar application in the Phoenix-Mesa Nonattainment Area rulemaking³, and 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 urging the agency to provide revised guidance specific to 179B, we support EPA's conclusion in the Proposed Rule that 179B demonstrations should not only take account of data that is excludable as exceptional events, but should also exclude data impacted by atypical events. 91 Fed. Reg. at 23219.

We further urge EPA to allow (and to confirm for future cases) the 179B atypical data offered by states to be considered as equivalent to an exceptional events demonstration. EPA is urged 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 by 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 in the fact that atypical events are being considered as a part of a 179B demonstration which is of great regulatory significance to the NWF area. Exclusion of data from exceptional events and atypical events days is an important part of a demonstration seeking to satisfy the requirements of 179B of the Clean Air Act. Accordingly, we urge EPA to confirm that data impacted by atypical events are a matter of regulatory significance in future 179B demonstrations or, in the alternative, that regulatory significance is not a specific requirement of Section 319 of the Clean Air Act that must be demonstrated for approval as an exceptional event.

IV. Conclusion

For the reasons set forth above, the Midwest Ozone Group urges the EPA to finalize the proposed repeal of the December 9, 2024, final rule in which the Agency determined that the NWF nonattainment area in Utah failed to attain the Clean Air Act 2015 ozone NAAQS by the August

³ See "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," 91 Fed. Reg. 13777, March 23, 2026

Abby Fulton
June 1, 2026
Page 6

3, 2024, Moderate area attainment date. MOG supports EPA's determination that the NWF ozone NAA would have attained the 2015 ozone NAAQS by the Moderate area attainment date but for emissions emanating from outside the United States, and the confirmation that the NWF ozone nonattainment area will no longer be subject to the CAA requirements pertaining to reclassification to Serious nonattainment upon failure to attain and will remain classified as Moderate for the 2015 ozone NAAQS.

Respectfully submitted,

A handwritten signature in blue ink that reads "Edward L Kropp". The signature is written in a cursive style with a large, stylized "E" and "K".

Edward "Skipp" Kropp
Counsel for Midwest Ozone Group