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Re: Draft CAA 179B Guidance;
Docket ID No. EPA-HQ-OAR-2019-0668.

The Midwest Ozone Group (MOG)¹ is pleased to have the opportunity to offer comments² on the draft guidance entitled, "Guidance on the Preparation of Clean Air Act ("CAA") Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions" that was posted on January 6, 2020.

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. 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 ("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 affected by residual air quality concerns that could be addressed by assisting state, local, and tribal agencies that are developing a 179B demonstration for nonattainment areas affected by international transport of emissions. MOG seeks the development of technically and legally sound air pollution policy, rules and actions that may impact on their facilities, their employees, their contractors, and the consumers of their products.

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), ArcelorMittal, Associated Electric Cooperative, Big Rivers Electric Corp., Citizens Energy Group, Council of Industrial Boiler Owners (CIBO), Duke Energy, East Kentucky Power Cooperative, ExxonMobil, FirstEnergy, Indiana Energy Association, Indiana Utility Group, LGE / KU, Marathon Petroleum, National Lime Association, Ohio Utility Group, Olympus Power, and City Water, Light and Power (Springfield IL).

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

1. MOG supports the development of 179B Guidance.

MOG welcomes EPA's development of guidance for the preparation of 179B demonstrations for nonattainment areas affected by international transport of emissions. As air quality improvements continue to occur as the result of increasingly stringent ambient air quality standards and steadily reducing domestic emissions of ozone precursors, the role and relative importance of international transport becomes a matter of increasing urgency. International emissions, of course, play a significant role in contributing to the air quality of ozone monitors across the nation that continue to be problem monitors with respect to the nonattainment and maintenance requirements of the Clean Air Act with respect to the ozone NAAQS. International emissions also impact regional haze as acknowledged in EPA's September 20, 2019 "Technical Support Document for EPA's Updated 2028 Regional Haze Modeling." MOG appreciates EPA engaging in the implementation of 179B.

2. EPA's should also address the implication of international transport on Good Neighbor SIPs.

Historically, EPA has considered necessary flexibilities and regulatory relief when developing Good Neighbor SIPs. The Peter Tsirogotis memorandum dated March 27, 2018, entitled, "Information on the Interstate Transport State Implementation Plan submissions for the 2015 Ozone National Ambient Air Quality Standards under the Clean Air Act Section 110(a)(2)(D)(i)(I)" offers guidance on flexibilities available to upwind states in the development of Good Neighbor SIPs related to the 2015 ozone NAAQS. Attachment A of the Tsirogotis memorandum sets forth a preliminary list of potential flexibilities related to analytical approaches for developing a good neighbor SIP, including the following that reflects upon the opportunity for an upwind state to consider whether downwind areas have taken advantage of opportunities for regulatory relief:

Step 1 – ... Assess current and projected local emissions reductions and whether downwind areas have considered and/or used *available mechanisms* for regulatory relief. (Emphasis added).

MOG urges that the 179B guidance being developed by EPA should specifically discuss the implications of pursuing this avenue of regulatory relief (along with other approaches such as exceptional events) and how the failure to do so can be considered by upwind states as they develop their Good Neighbor SIP submissions. The guidance should make it clear that if consideration of international emissions under 179B results in a determination that the monitor involved would be in attainment but for international emissions, that monitor need not be further addressed by an upwind state in the development of its Good Neighbor SIP.

In addition to revising the draft 179B guidance to address the inter-relationship with Good neighbor SIPs, independent guidance on international transport should be developed for

application to Good Neighbor SIPs. The need for the development of this Good Neighbor SIP guidance is illustrated by the following statements appearing on pages 9 and 10 of the 179B draft guidance:

Section 179B relief is limited to nonattainment area requirements, and only speaks to relief from (1) the attainment demonstration requirement and (2) the requirement that EPA determine whether an area failed to attain by the attainment date (and reclassify as appropriate). It does not specifically address EPA authority to do any of the following:

- Exclude monitoring data influenced by international transport from regulatory determinations related to an area's designation as attainment or nonattainment (however, if an exceedance or violation is event-related, it may be able to qualify as an exceptional event, as described in Section 3.2 of this guidance).
- Classify an area with a lower classification than indicated by actual air quality;
- Relax any mandatory control measures associated with the area's classification;
- Redesignate a nonattainment area to attainment without meeting the other attainment plan requirements of CAA section 107(d)(3); or
- *Address interstate transport SIP obligations under CAA section 110(a)(2)(D)(i), the "good neighbor" provision.*

Where section 179B is not the most appropriate mechanism, *air agencies should consider the regulatory mechanisms* discussed below.

3.1. Extension of Attainment Date ...

3.2. Exceptional Events ...

3.3. Section 110(a)(2)(D) – Interstate Transport

CAA sections 110(a)(1) and 110(a)(2)(D)(i)(I) require all states, within 3 years of promulgation of a new or revised NAAQS, to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to that NAAQS. Section 179B does not relieve a state of its obligations to prohibit significant contribution under CAA section 110(a)(2)(D)(i) (aka the "good neighbor" provision). Thus, *this guidance does not address any policy governing whether an air agency can take into account emissions emanating from outside the U.S. in developing a plan to meet its interstate transport obligation for any NAAQS. Emphasis added.*

There is, of course, independent need to develop guidance for how states should handle international transport in the context of Good Neighbor plans. The significance of addressing international transport in the context of Good Neighbor SIPs was recognized in Peter Tsirigotis' Memorandum of March 27, 2018 discussed above. That memorandum includes among a preliminary list of potential flexibilities the following discussion of the role of international transport in the context of Good Neighbor SIP development:

Step 3 – Identify air quality . . .emissions that significantly interfere with maintenance of the NAAQS downwind, if any . . .*Consideration of international emissions, in a manner consistent with EPA's Ozone Cooperative Compliance Task Force efforts to fully understand the role of background ozone levels and appropriately account for international transport. . .consider whether the air quality, cost, or emission reduction factors should be weighted differently in areas where international contributions are relatively high.* (Emphasis added).

The Tsirigotis Memorandum stands for the proposition that international emissions are a valid concern when assessing NAAQS impacts. EPA should take the occasion of the development of guidance under 179B to also develop guidance for use in Good Neighbor SIP planning.

The need for the development of guidance addressing international emissions in the context of Good Neighbor SIPs is related in large part to the limitation which the Courts have placed on EPA to avoid over-control on sources in upwind states - a point that is brought into sharp focus where international transport is concerned. This limitation related to over-control was addressed by the U.S. Supreme Court in an opinion written by Justice Ginsburg where the Court stated:

EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set. If EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked, the Agency will have overstepped its authority, under the Good Neighbor Provision, to eliminate those "amounts [that] contribute . . . to nonattainment." Nor can EPA demand reductions that would drive an upwind State's contribution to every downwind State to which it is linked below one percent of the relevant NAAQS. Doing so would be counter to step one of the Agency's interpretation of the Good Neighbor Provision. *EME Homer II*, 572 U.S. at 521.

In addition, the D.C. Circuit has commented that ". . . the good neighbor provision requires upwind States to bear responsibility for their fair share of the mess in downwind States." In addressing CAA §110(a)(2)(D)(i)(I) the D.C. Circuit ruled this section "gives EPA no authority to force an upwind state to share the burden of reducing other upwind states' emissions."³

³ *North Carolina v. E.P.A.*, 531 F 3d 896, 921 (D.C. Cir. 2008), on reh'g in part, 550 F. 3d 1176 (D.C. Cir. 2008).

3. EPA should provide adequate technical data and tools from its modeling platforms to assist states in preparing 179B SIP revisions.

As documented in the 179B draft guidance document⁴, five technical weight-of-evidence examples are provided for states to consider for inclusion in SIP revisions. Some of these examples involve significant modeling (e.g., source apportionment) that is beyond the capability or budgets of many state agencies. It is recommended that EPA provide the data and tools (including EPA modeling platform results) of 179B contribution calculations for ozone and particulate matter (PM). This should include the relative contribution calculation (ozone and PM) from international anthropogenic sources as currently defined in EPA's latest modeling platform and projections.

Section 6.2 of the draft guidance document provides a list of five potential analyses that states could consider in weight-of-evidence demonstrations when recognizing international transport in their good neighbor SIP submissions. While the agency states that there are no formal set of rules that identify which analyses may demonstrate the influence of international anthropogenic emissions on local concentrations, many of these offered analyses have shown promise in assisting states in their efforts to comply with the CAA and associated NAAQS requirements.

One of the most promising options offered by the agency is the use of photochemical transport modeling to quantify the impact of international anthropogenic emissions on local air quality concentrations. Historically, data refined enough to discern the specific impact of international anthropogenic emissions has not been available to the agency or the states. Recently, however EPA has released a modeling platform⁵ that contains updated CAMx source apportionment capabilities that can track multiple boundary conditions components to allow separate accounting of the international anthropogenic and natural emissions coming into the regional modeling domain.

Through a combination of hemispheric CMAQ zero-out modeling and CAMx source apportionment modeling, EPA estimated the total visibility impairment contribution from international anthropogenic emissions sources to IMPROVE monitoring sites on the 20 percent most anthropogenically impaired days. Although this modeling did not include ozone concentration simulations, it is recognized that these same files, performed using ozone source apportionment, could be used to determine similar contributions from international anthropogenic emission sources to ozone concentrations in the US modeling domain.

EPA notes that using air pollution modeling techniques – such as chemical transport models or dispersion models - can be a viable way to estimate the contribution of international emissions to monitors exceeding the NAAQS. The modeling required to generate these contribution values, however, still remains beyond the capabilities and budgets of most state agencies. As a result, EPA

⁴ https://www.epa.gov/sites/production/files/2020-01/documents/draft_179b_guidance-final_draft_for_posting.pdf

⁵ https://www.epa.gov/sites/production/files/2019-10/documents/updated_2028_regional_haze_modeling-tsd-2019_0.pdf

should develop, for both ozone and PM precursor emissions, the source apportionment derived contribution concentrations on each future year design value for which the agency has a modeling platform projection (currently 2023 and 2028). Because most states have tended to use EPA's modeling results to support recent SIP submissions, this would allow states to again use these data in weight-of-evidence demonstrations which include 179B in their good neighbor SIP revisions.

4. EPA should develop and implement an expedited process for reviewing and approving 179B relevant SIP demonstrations.

In September 1994, the Texas Natural Resource Conservation Commission, a predecessor to the Texas Commission on Environmental Quality, adopted a §818 demonstration for the El Paso area for the 1997 one-hour ozone standard. Section 818 of the 1990 CAA amendments included a new 179B demonstration, containing special provisions for nonattainment areas affected by emissions from outside the United States. Under 179B, the EPA could approve a SIP revision for the El Paso area if the plan would achieve timely attainment of the NAAQS but for emissions from Mexico. However, it was not until April 15, 2004, close to ten years later, that the EPA designated El Paso County attainment for the 1997 eight-hour ozone NAAQS for this SIP containing the 179B provision. While EPA has not yet approved other ozone SIPs that have contained 179B demonstrations, it is recommended that EPA develop and implement an expedited process to encourage states to include this option in future SIP revisions.

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Conclusion

International transport is becoming an increasingly important part of air quality planning, particularly as the impact of emissions from other sources continues to reduce and as we approach eliminating nonattainment or maintenance concerns in the East. The Midwest Ozone Group encourages EPA to continue with its efforts to develop guidance under 179B and to expand that guidance to address a very similar situation that arises in the context of Good Neighbor SIP planning.

Very truly yours,



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