

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Air Resources  
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DEC 14 2018

Mr. Brad Frost  
Illinois Environmental Protection Agency  
Office of Community Relations  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Dear Mr. Frost:

The New York State Department of Environmental Conservation (DEC) appreciates the opportunity to comment on the Illinois Environmental Protection Agency's (ILEPA) proposed infrastructure State Implementation Plan (SIP) revisions for the 2015 ozone national ambient air quality standards (NAAQS), dated October 2018, specifically the interstate pollution transport analysis conducted pursuant to Clean Air Act (CAA) section 110(a)(2)(D)(i)(I). This section, also known as the Good Neighbor provision, requires 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" states such as New York that are downwind of Illinois.<sup>1</sup>

DEC commends Illinois on the reductions in ozone precursor emissions to date, but believes that ILEPA must implement additional enforceable control measures to eliminate its current significant contributions to the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (NYMA) for the 2015 ozone NAAQS. For the reasons that follow, DEC believes that ILEPA's SIP must be significantly revised before it can be approved by the United States Environmental Protection Agency (USEPA) as complying with the requirements of the Good Neighbor provision.

### Projection Modeling

ILEPA uses 2023 CAMx projection modeling performed by the Lake Michigan Air Directors Consortium (LADCO) based on USEPA 2011 and forecasted 2023 emissions data in its Good Neighbor demonstration to address the requirements of CAA section 110(a)(2)(D)(i)(I). However, USEPA's 2023 projections were performed using unenforceable assumptions and countless inaccuracies that render the results unusable in a Good Neighbor SIP revision. DEC is also concerned with USEPA's inconsistent use of electric generating unit (EGU) projection methodologies when proposing rules. For example, USEPA used the Integrated Planning Model (IPM) for its August 21, 2018 Affordable Clean Energy (ACE) proposal, but used an "engineering analysis" to project 2023 emissions for EGUs for its Cross-State Air Pollution Rule "CSAPR" Closeout rule.

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<sup>1</sup> 42 U.S.C. § 7410(a)(2)(D)(i).

The IPM model for the ACE proposal projected higher future ozone precursor emissions in some states.

These modeling flaws<sup>2</sup> and inconsistencies result in the minimization of downwind nonattainment and maintenance concerns, and mask the true degree of ozone transport coming from upwind states, including Illinois, into New York. Enclosed are DEC's comments on USEPA's projection modeling associated with its CSAPR Close-Out proposal,<sup>3</sup> many of which also pertain to LADCO's projection modeling.

Since LADCO used the Eastern Regional Technical Advisory Committee Electric Generation Unit (ERTAC-EGU) inventory for EGUs in its projection modeling, ILEPA must ensure that all forecasted emission reductions and unit shutdowns in ERTAC-EGU are bound by enforceable conditions.

Regardless of projected design values and future emissions contributions, Illinois is obligated to eliminate its current significant contributions to the NYMA. The CAA specifically requires SIPs to "include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements."<sup>4</sup> Indeed, a SIP cannot be considered administratively complete unless it includes "[e]vidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels."<sup>4</sup> Without specific enforceable emissions limits and control measures, DEC believes that the SIP is incomplete and cannot be approved by USEPA as it does not meet the requirements of the CAA and implementing regulations.<sup>5</sup>

#### Significant Contribution Threshold

ILEPA used a 1 part per billion (ppb) contribution threshold in its analysis instead of the longstanding contribution threshold of 1% of the standard<sup>6</sup> (i.e., 0.70 ppb for the 2015 ozone NAAQS) for purposes of determining which states are "linked" to downwind receptors at step 2 of the CSAPR framework. As ILEPA is aware, USEPA provided modeling data to aid states in developing Good Neighbor SIP revisions for the 2015 ozone NAAQS in a January 2017 Notice of Data Availability (NODA).<sup>7</sup> The NODA used

<sup>2</sup> 83 FR 31,915 (Jul. 10, 2018).

<sup>3</sup> 40 U.S.C. §7410(a)(2)(A).

<sup>4</sup> 40 CFR Part 51, App. V, §2.2(g).

<sup>5</sup> 40 U.S.C. §7410(a)(2) and 40 CFR 60.24.

<sup>6</sup> See, e.g., Cross-State Air Pollution Rule (CSAPR), 76 FR 48208, 48236-38 (Aug. 8, 2011) (using 0.80 ppb as threshold, which is 1% of the 1997 ozone NAAQS); Cross-State Air Pollution Rule Update (CSAPR Update), 81 FR 74504, 74518 (Oct. 26, 2016) (using 0.75 ppb threshold, 1% of the 2008 ozone NAAQS: "much of the ozone nonattainment problem being addressed by this rule is still the result of the collective impacts of relatively small contributions from many upwind states.")

<sup>7</sup> 82 FR 1733 (Jan. 6, 2017).

a 1% contribution threshold.<sup>8</sup> However, in an August 31, 2018 memorandum,<sup>9</sup> USEPA purported to analyze alternative thresholds for determining linkages at CSAPR step 2 for the 2015 ozone NAAQS, and determined, with scant reasoning and numerous unaddressed consequences, that a 1 ppb contribution threshold "may be reasonable and appropriate for states to use." (emphasis added).

Despite USEPA's August 31, 2018 memorandum, DEC believes there is not a sound basis for use of such threshold. Instead, DEC believes that the continued use of the 1% threshold is necessary for consistency across all states and because the calculated threshold is directly tied to the level of the NAAQS, as reflected in the comments and USEPA's responses on this issue in the original CSAPR rulemaking.<sup>10</sup> If upwind states selectively use a higher contribution threshold while all states face a lower, more stringent NAAQS, it will have the inequitable effect of requiring downwind states to reduce their emissions even more and at greater cost to compensate for upwind states reducing their emissions even less and at lower costs. This is clearly not an equitable or cost-effective solution for ensuring that downwind states such as New York attain the 2015 ozone NAAQS as expeditiously as practicable, and could mean the difference between attainment and nonattainment. In addition, inconsistency among upwind states in applying a contribution threshold at CSAPR step 2 is inequitable for upwind states selecting a lower threshold and interferes with attainment planning by downwind states such as New York.

Even accepting for the sake of argument that an upwind state could consider a higher contribution threshold on the terms proposed in USEPA's August 31, 2018 memorandum, Illinois' SIP does not demonstrate that a 1 ppb threshold is appropriate in this case. Illinois has not shown that the amount of collective contribution captured using a 1 ppb threshold is comparable to the amount captured using a threshold equivalent to 1% of the NAAQS.

According to Table CC of ILEPA's draft SIP,<sup>11</sup> applying the historic 1% threshold to 2023 projections would link Illinois to three maintenance monitors and one nonattainment monitor in the northeast/mid-Atlantic region. All three maintenance monitors would be located within the NYMA: Richmond County, NY (Susan Wagner); Queens County, NY (Queens College); and Fairfield County, CT (Stratford). Even for the two significantly-impacted maintenance monitors in the Lake Michigan area, ILEPA provides no real solutions; instead, it discusses future improvements to projection modeling. DEC believes that ILEPA's draft SIP cannot be approved by USEPA until ILEPA commits to adopt and implement specific control measures that would resolve

<sup>8</sup> 82 FR 1733.

<sup>9</sup> "Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards." Memorandum from Peter Tsigotis, Director, EPA Office of Air Quality Planning and Standards to Regional Air Division Directors, Regions 1-10 (Aug. 31, 2018), available at [https://www.epa.gov/sites/production/files/2018-09/documents/contrib\\_thresholds\\_transport\\_sip\\_subm\\_2015\\_ozone\\_memo\\_08\\_31\\_18.pdf](https://www.epa.gov/sites/production/files/2018-09/documents/contrib_thresholds_transport_sip_subm_2015_ozone_memo_08_31_18.pdf)

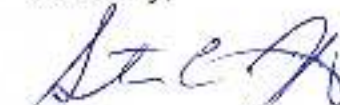
<sup>10</sup> See 76 FR at 48236-38.

<sup>11</sup> SIP, at 16.

Illinois' Good Neighbor obligations to all downwind nonattainment and maintenance areas.

In summary, we commend Illinois for reductions in ozone precursor emissions to date, but believe ILEPA's draft SIP requires significant revisions before it can be approved by USEPA and complies with the requirements of the CAA. If you have any questions in relation to this letter, please contact Mr. Michael Sheehan, Director of the Bureau of Air Quality Planning, at (518) 402-8396.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. E. Flint".

Steven E. Flint, PE  
Director, Division of Air Resources

Enclosure