



October 23, 2023

Honorable Michael S. Regan
United States Environmental Protection Agency
Air and Radiation Docket
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2021-0668

RE: Comments on EPA's interim final rulemaking entitled Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards; Response to Additional Judicial Stays of SIP Disapproval Action for Certain States." 88 Fed. Reg. 49,295 (July 31, 2023).

Dear Administrator Regan:

The Pennsylvania Department of Environmental Protection (Department) opposes the above-captioned Interim Final Rulemaking (IFR) for the stays in additional states. The IFR would unlawfully allow some upwind states to backslide to NO_x emissions levels achieved under a previous federal implementation plan (FIP) for the 2008 National Ambient Air Quality Standard (NAAQS). This will negatively impact the ability of downwind states, including Pennsylvania, to attain the 2015 Ozone NAAQS. It will jeopardize the health of Pennsylvania's residents.

In the IFR, the EPA explains its authority for the IFR in Section III, under "Rulemaking Procedures and Findings of Good Cause" at 88 FR 67104. This Section states:

As noted in section I.C of this document, the EPA's authority for the rulemaking procedures followed in this action is provided by APA section 553.¹⁶ In general, an agency issuing a rule under the procedures in APA section 553 must provide prior notice and an opportunity for public comment, but APA section 553(b)(B) includes an exemption from notice and comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This action is being issued as an interim final rule without prior notice or opportunity for public comment because the EPA finds that the APA "good cause" exemption from notice-and-comment requirements applies here.

The EPA's action allows some upwind states to continue to significantly contribute and interfere with the maintenance of the 2015 Ozone NAAQS in downwind states. As such, there are public interest issues that the EPA has not addressed, and a good cause exemption should not be used as stated in the IFR.

Additionally, through this IFR, the EPA is altering the existing regulation for the Cross-State Air Pollution Rule (Update) (CSAPR Update) for the 2008 NAAQS (86 FR 23054; April 30, 2021) by issuing allowances that do not exist under the rule. Trading of new expanded group 2 allowances between states who receive stays may cause increased emissions in certain upwind states that directly impact downwind nonattainment areas. It is worrisome, that the EPA is applying modifications to the program which were never modeled or analyzed. The EPA has neither modeled nor analyzed the impact of using “expanded” Group 2 NO_x allowances to confirm the following statement:

To ensure the continued implementation of previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS, the First Interim Final Rule also required EGUs in these States to participate in the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season “Group 2” Trading Program while the Good Neighbor Plan’s requirements for these EGUs to participate in the CSAPR NO_x Ozone Season “Group 3” Trading Program are stayed.”

As such, there is no demonstrated assurance that the EPA’s action ensures the included states in the IFR continue to meet the requirements to mitigate interstate air pollution with respect to the previous 2008 Ozone NAAQS.

The EPA has published this IFR in response to judicial stays of the Good Neighbor FIP resulting from the EPA’s Good Neighbor state implementation plan (SIP) disapprovals for an additional six states. In this second IFR, the EPA takes action to stay the effectiveness of its final Good Neighbor Plan for the 2015 8-hour ozone standard for emission sources in Alabama, Minnesota, Nevada, Oklahoma, Utah, and West Virginia. As part of the IFR action, the EPA again revised other regulations and alleges these revisions ensure that sources in the additional six states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to earlier ozone NAAQS.

Section 110 of the Clean Air Act (CAA) requires states and the EPA to do more than established requirements to mitigate interstate air pollution with respect to an earlier ozone NAAQS, the EPA and other states need to address interstate air pollution with respect to the “current” 2015 NAAQS. Under the previous Good Neighbor plan, which was finalized for the 2008 ozone standard, many states still significantly contributed to and interfered with maintenance in downwind nonattainment areas for the 2015 ozone standard. This means they contributed to ozone concentrations in another state at greater than 1% of the 2015 NAAQS. If a state has submitted a Good Neighbor SIP which does not adequately address significant contribution and interference with maintenance, then that state continues to impact a downwind state’s ability to attain the ozone standard; and such a Good Neighbor SIP is not approvable. Section 110 of the CCA or 42 U.S.C. § 7410 (c) obligates the EPA to issue a FIP if a state fails to correct the deficiencies it finds in a SIP submitted by a state and impacts a downwind nonattainment area. The EPA is required to promulgate a FIP anytime within two years after the Administrator determines a state’s SIP is deficient. In the case of the Good Neighbor Plan, the EPA has acted to eliminate the significant contribution and interference with maintenance caused by transported pollution which was not adequately addressed by upwind states to protect the health of residents living in downwind nonattainment areas. Without the Good Neighbor Plan reductions

addressing transported emissions as required by the CAA, downwind states will not be able to meet the CAA's statutory attainment deadline for the 2015 NAAQS for moderate nonattainment areas in August of 2024, and for serious nonattainment areas in August of 2026.

The EPA's IFR, rather than modifying the previous 2008 NAAQS CSAPR Update Rule, should require upwind states that received Court stays to take action to further demonstrate that the existing SIP submissions that the EPA disapproved would achieve the same level of emission reductions or contribution reductions required by the 2015 NAAQS Good Neighbor Plan. If the states were unable to make such a demonstration, updated, revised or new SIPs should have been required to be submitted in a timeframe that allowed downwind states to meet attainment with the 2015 ozone NAAQS. The ability for states to submit new or revised SIPs is also consistent with the existing Good Neighbor Plan Rule and with all previous Good Neighbor rules issued under previous Good Neighbor FIPs issued by the EPA. The Good Neighbor plan provides for states to submit SIPs to replace the EPA's FIP.

The Good Neighbor rule states the following at 88 FR 36853:

“In the Revised CSAPR Update, the EPA established several options for states to revise their SIPs to modify or replace the FIPs applicable to their sources while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. As in effect before this rule, § 52.38(b)(10), (11), and (12) established options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in 2023 or later years, respectively.⁴²⁵ As discussed in section VI.D, the EPA is retaining these SIP revision options and is making them available for all states covered by the Group 3 trading program after the geographic expansion.”

In our previous comments on the EPA's July 29, 2023 IFR, the DEP pointed out Kentucky's continued contribution to nonattainment and maintenance issues concerning the Philadelphia nonattainment area. In this new IFR, the EPA's action impacts the Philadelphia nonattainment area for a second time, as now West Virginia will also be able to continue to significantly contribute and interfere with maintenance with Pennsylvania's ability to meet the 2015 Ozone NAAQS. Pennsylvania and other Northeastern states are depending on the Good Neighbor Plan transported NOx emission reductions from other states to achieve attainment with the 2015 ozone standard by the statutory ozone attainment deadlines. Those reductions are required under the CAA.

The 5-County Philadelphia Region is the only remaining ozone nonattainment area in Pennsylvania where the monitored design value has failed to attain the 2015 standard. The result has been a “bump up” of the area from marginal nonattainment to moderate nonattainment. If the area continues to monitor nonattainment in 2023, upwind states like West Virginia and Kentucky still significantly contribute to the Philadelphia Area's nonattainment and interference with maintenance of the 2015 NAAQS. The IFR, when analyzing the EPA's own Good Neighbor modeling for the 2008 NAAQS shows West Virginia's contribution of 1.96 ppb to the nonattainment at the Bucks County monitor in the Philadelphia nonattainment area in 2023. After the Good neighbor Plan for the 2015 NAAQS, EPA modeling shows West Virginia's

modeled contribution dropped to 1.78 ppb in 2023. In the case of the Bucks County monitor, the 0.18 ppb difference can be the difference in complying with the 2015 NAAQS and a mandatory reclassification of the Philadelphia area to serious nonattainment from its current moderate nonattainment classification. If the significant contributions from other states result in this reclassification, a new attainment demonstration will be required. This will include a requirement for Pennsylvania's Philadelphia area to lower its major source RACT threshold from 50 tons from 100 tons of NO_x per year. Additionally, it will require and may not be limited to a new enhanced I/M Maintenance Program Certification, more stringent Reasonable Further Progress requirements, and new or recalculated contingency measures. The EPA should ensure that the SIPs submitted by the six additional states in this action including West Virginia, reduce the emissions and ozone contributions to address each state's portion of the contribution to nonattainment in affected downwind states to a degree that is equivalent to or better than the stayed good neighbor FIP.

Moderate nonattainment areas are required to demonstrate attainment, for all practical purposes, by the end of the 2023 ozone season. The EPA's failure to require upwind states to address significant contribution and interference with maintenance for the 2023 ozone season is inconsistent with the requirements of Section 110 (a)(2)(D) of the CAA. States like West Virginia that fail to eliminate their significant contribution and interference with maintenance impacts on nonattainment and maintenance areas in downwind states will cause the compliance obligations to be shifted to the specific nonattainment areas in those downwind states.

The SIPs submitted by upwind states that did not reduce their ozone contributions to downwind states with similar or greater reductions to those achieved by the EPA Good Neighbor Plan will have significant impacts on Pennsylvania and the ability of the Philadelphia region to achieve the 2015 NAAQ standard. As such, Pennsylvania opposes this IFR.

Conclusion

Pennsylvania opposes the IFR because it will violate CAA Section 110(a)(2)(D). The EPA's final Good Neighbor Rule addressing emissions from upwind states will help bring the Philadelphia area into attainment with the 2015 Ozone NAAQS. Furthermore, the IFR will impact Pennsylvania's air quality and hurt the health of residents in Pennsylvania, other states, and Environmental Justice areas. Allowing upwind states to backslide to NO_x emissions levels or ozone contribution levels achieved under a previous FIP for the 2008 NAAQS standard is inconsistent with the CAA. The Department has been and continues to support EPA's final Good Neighbor Plan as originally published. Pennsylvania opposes this second IFR as it delays or suspends the final transport FIP implementation and Pennsylvania's ability to attain the 2015 NAAQS.

Thank you for your consideration in this matter. This letter is being submitted to the EPA electronically through Regulations.gov. Should you have any questions regarding this submission, please contact Nicholas Lazor, Director for Bureau of Air Quality, by e-mail at nlazor@pa.gov or by telephone at 717.783-9268.

Sincerely,

A handwritten signature in cursive script that reads "Richard Negrin". The signature is written in black ink and is positioned above the printed name and title.

Richard Negrin
Secretary

cc: Cristina Fernandez, EPA Region III
Nick Lazor

Attachments