



August 24, 2023

Honorable Michael S. Regan
Administrator
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 (NAAQS); Response to 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 "Good Neighbor Plan" Interim Final Rulemaking (IFR) for the 2015 ozone NAAQS. The IFR would unlawfully allow some upwind states to backslide to NO_x (Nitrogen Oxide) emissions levels achieved under a previous Federal Implementation Plan (FIP) for the 2008 NAAQS standard. This will negatively impact the ability of downwind states, including Pennsylvania, to attain the 2015 ozone NAAQS, jeopardizing the health of Pennsylvania's residents.

EPA published the IFR in response to judicial stays of the Good Neighbor FIP due to the Good Neighbor State Implementation Plan (SIP) disapprovals for six states. In the IFR, EPA takes action to stay the effectiveness of its final Good Neighbor Plan for the 2015 8-hour ozone standard for emission sources in Arkansas, Kentucky, Louisiana, Mississippi, Missouri and Texas. As part of the action, EPA also revised other regulations to ensure that sources in these six states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to previous ozone NAAQSs.

Section 110 of the Clean Air Act (CAA) requires states and EPA to do more than established requirements to mitigate interstate air pollution with respect to an earlier ozone NAAQS, 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 a rate 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 therefore, a Good Neighbor SIP is not approvable.

Secretary

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Nonattainment and maintenance issues resulting from interstate transport from many states including Kentucky continue to significantly impact the 5-County Philadelphia Region. The 5-County Philadelphia Region is the only remaining ozone nonattainment area in Pennsylvania. The IFR, as EPA's own Good Neighbor Plan modeling for both the 2008 and 2015 NAAQS shows, would allow significant contributions and interference with maintenance in downwind states to continue. EPA should ensure that the SIPs submitted by the six states in this action reduce the emissions in those states 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. Many moderate nonattainment areas are required to demonstrate attainment in 2023. 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.

Kentucky's transported emissions hurt Pennsylvanians. Kentucky's portion of reducing ozone impacts in other states are represented by the NOx reductions achieved under the tighter NOx budgets provided in EPA's Good Neighbor FIP. Kentucky's OS (ozone season) NOx allowance budget for 2023, and thereafter, under the 2008 NAAQS Revised Cross-State Air Pollution Rule, is 14,051 tons worth of Group 3 Ozone Season NOx allowances. Under the "stayed" 2015 NAAQS rule, Kentucky's Group 3 Ozone Season NOx allowance budget would have been limited to 13,601 tons worth of OS NOx allowances in 2023. The allowance budget would have fallen to an estimated 10,190 tons by 2026 and then to an estimated 7,392 of Group 3 Ozone Season NOx allowances by 2029. The NOx budget reductions that will not be realized are 450 tons in 2023, 3,861 tons by 2026, and 6,722 tons by 2029. These values represent the cost-effective emission reductions determined by EPA and are the reductions required by Kentucky to eliminate its portion of the contribution to nonattainment in downwind states. States that do not make their appropriate emission reductions, and 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.

Since signature of the IFR, courts have granted additional motions for partial stays of the SIP Disapproval Action as to Minnesota, Nevada, Oklahoma, and Utah. To comply with these additional orders, EPA will take action in the near future to extend the IFR to stay the effectiveness of the Good Neighbor Plan's requirements for sources in Minnesota, Nevada, Oklahoma, and Utah while the orders partially staying the SIP Disapproval Action with respect to these states remain in place, and sources in these states are not required to comply with the Good Neighbor Plan at this time." See the attached memorandum "Notice of Forthcoming EPA Action to Address Additional Judicial Stay Orders."

If the SIPs submitted by upwind states do not achieve NOx emission reductions similar to the reductions achieved for the EPA FIP, then the SIPs did not address significant contributions required under the CAA. Pennsylvania opposes this IFR and any additional IFR actions by EPA as suggested in the attached memorandum.

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Conclusion

Pennsylvania opposes the IFR because it will violate CAA Section 110(a)(2)(D). EPA's final Transport Rule addressing emissions from upwind states will help bring the Philadelphia area into attainment with the 2015 ozone NAAQS. Furthermore, the IFR will hurt the health of residents in Pennsylvania, other states, and Environmental Justice areas. Allowing upwind states to backslide to NO_x emissions levels achieved under a previous FIP for the 2008 NAAQS standard is inconsistent with the Clean Air Act. The Department has been and continues to support EPA's Transport FIP as originally published. Pennsylvania opposes all current and future EPA IFRs that delay or suspend the final transport FIP implementation and the lost additional emission reductions from upwind states for the 2015 ozone NAAQS. Thank you for your consideration in this matter.

This letter is being submitted to EPA electronically through Regulations.gov. Should you have any questions regarding this submission, please contact Mark Hammond, Director for Bureau of Air Quality, by e-mail at mahammond@pa.gov or by telephone at 717.787.9702.

Sincerely,



Richard Negrin Secretary

cc: Cristina Fernandez, EPA Region III
Mark Hammond, DEP, Director, Bureau of Air Quality

Attachments:

Memorandum: Notice of Forthcoming EPA Action to Address Additional Judicial Stay Orders