

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Tony Evers, Governor
Adam N. Payne, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



August 30, 2023

Michael S. Regan
Administrator
U.S. Environmental Protection Agency (EPA)
EPA Docket Center, Air and Radiation Docket
Attn: Docket ID No. EPA-HQ-OAR-2021-0668
1200 Pennsylvania Ave, NW
Washington, DC 20460

Subject: Comments on EPA’s Interim Final Rule: 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, Docket ID No. EPA-HQ-OAR-2021-0668

Dear Administrator Regan:

The Wisconsin Department of Natural Resources (WDNR) submits these comments on EPA’s interim final rule issued in response to judicial stays of EPA’s transport SIP disapprovals for certain states for the 2015 ozone NAAQS, published in the Federal Register on July 31, 2023 (88 FR 49295). This interim final rule has the primary effect of staying federal Good Neighbor Plan (GNP) requirements in six states: Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas. This rule will immediately harm Wisconsin and its residents, especially the hundreds of thousands who live in the areas most heavily affected by upwind emissions.

EPA promulgated the GNP to address the Clean Air Act (CAA) transport obligations of 23 states for the 2015 ozone NAAQS. As WDNR noted in its comments on the proposed rule, the GNP failed to fully and timely address the impact of upwind states’ emissions on areas in Wisconsin that are currently classified as “nonattainment” or “maintenance” as to the 2015 ozone NAAQS.¹ Nonetheless, on June 5, 2023, EPA finalized the GNP as a purportedly “complete remedy” for interstate transport for the 2015 ozone NAAQS in those 23 states.²

As the GNP was being developed, numerous states challenged EPA’s disapprovals of their transport SIPs. As a result of those challenges, EPA’s SIP disapprovals have been stayed in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas, pending completion of judicial review. As these SIP disapprovals are a prerequisite to EPA applying the federal GNP, EPA’s interim final rule stays implementation of certain components of the GNP in those states until further notice.

In this rule, EPA correctly notes it has “no discretion” to stay the effectiveness of GNP requirements in these states, given the judicial stays of the underlying SIP disapprovals. However, EPA’s responsibility should not be ignored. The challenges to EPA’s SIP disapprovals revolve primarily around timing: first, that EPA relied on policies and data developed after states had submitted their SIPs, and second, that EPA did so after its statutory deadline to act had passed. Regardless of their merit, these arguments would be moot had EPA acted on transport

¹ WDNR’s comments on EPA’s proposed Federal Implementation Plan Requirements for the 2015 Ozone NAAQS (June 21, 2022). Available at: <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0668-0324>.

² See, for example, EPA discussion at 88 FR 36693 (“Severability”).

SIP submittals by the applicable CAA deadlines using the information it initially made available to states for this purpose. EPA did not take timely action, and now courts have determined these arguments provide sufficient justification for a judicial stay.

Regardless of cause, the result of this interim final rule is that the final GNP, which was already inadequate to address emissions transported to Wisconsin, has been significantly weakened. Consequently, Wisconsin has lost the opportunity to obtain upwind state emissions reductions in 2023, to the substantial detriment of the 33 percent of Wisconsinites who reside in those areas that would have most benefitted from the GNP's modest emissions reductions.

Notably, there are additional factors in play that will further weaken the GNP or otherwise undermine the pressing need to address the transport of ozone into Wisconsin:

- Four additional states have had their transport SIP disapprovals partially stayed: Nevada, Oklahoma, Minnesota, and Utah. EPA has stated this will result in an upcoming stay of the GNP in these states.³
- At least two additional GNP states (Alabama and West Virginia) are known to be challenging their SIP disapprovals, which may well result in a judicial stay of those actions.
- EPA has yet to address the transport obligations for these six states, which neither have approved transport SIPs nor are included in the GNP: Iowa, Tennessee, Kansas, Wyoming, New Mexico and Arizona.

The collective impact of these factors and the interim final rule is that 18 states either have, or soon will have, no enforceable transport requirements for the 2015 ozone NAAQS. These states collectively contribute 9 percent to Wisconsin's ozone levels—about the same amount as Wisconsin itself contributes. This group includes 3 of the 6 states that contribute at least 1 percent of the NAAQS to Wisconsin monitors (“significant” contributors for transport purposes) and some of the states most responsible for Wisconsin's ozone levels.⁴

EPA must urgently reevaluate its entire approach to addressing interstate transport for this NAAQS to ensure the GNP achieves emission reductions and the air quality improvement necessary to be a “full remedy” for upwind state ozone transport obligations. This should include:

- Acting promptly to resolve the stays associated with the transport SIP disapprovals.
- Immediately addressing the six states whose transport requirements remain outstanding.
- Revising the GNP to address the *full impact* of upwind state emissions on Wisconsin's ozone areas and includes *all* states shown to significantly contribute to Wisconsin.
- Ensuring that upwind state emissions reductions in the GNP occur sooner to abide by CAA deadlines and facilitate Wisconsin's expedient attainment.

Contrary to EPA's GNP projections, none of Wisconsin's remaining 2015 ozone NAAQS nonattainment areas will attain in 2023, all but guaranteeing future reclassifications to “serious” (with the attendant health and economic consequences).⁵ Since only 10 percent of Wisconsin's ozone is due to in-state emissions, these nonattainment areas will persist unless there is additional, consequential, and immediate federal action to address emissions from other states. To date, EPA's efforts to address transport for the 2015 ozone NAAQS have been

³ EPA memo of August 3, 2023. Available at: <https://www.epa.gov/csapr/epa-response-judicial-stay-orders>.

⁴ These states are projected to contribute at least 1 percent of the NAAQS to a Wisconsin monitor in either 2023 or 2026: Illinois, Indiana, Iowa, Michigan, Ohio, and Texas. The top ten states contributing to Wisconsin's ozone are (in rank order): Illinois, Indiana, Wisconsin, Ohio, Texas, Missouri, Michigan, Iowa, Oklahoma, and Pennsylvania. Data is from EPA's modeling for the final GNP (data and contributions file), found at: <https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>.

⁵ Based on preliminary 2023 monitoring data. Wisconsin's remaining 2015 ozone NAAQS nonattainment areas are the Milwaukee area and parts of Sheboygan and Kenosha counties, all of which are classified as “moderate.”

well short of the need. It is critical that EPA take additional action on this issue now with the urgency the situation demands.

Sincerely,

DocuSigned by:
Gail E. Good
9AA91D46A40C4A3... 8/29/2023 | 3:07 PM CDT

Gail E. Good
Director, Air Management
Wisconsin Department of Natural Resources

cc: David Lifland, EPA OAQPS
Chet Wayland, EPA OAQPS
Scott Mathias, EPA OAQPS
John Mooney, EPA Region 5
Doug Aburano, EPA Region 5
Brianna Denk, AM/7
Phillip Bower, LS/8
Max Levins, LS/8