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October 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 Additional 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 additional judicial stays of EPA's transport SIP disapprovals for certain states for the 2015 ozone NAAQS, published in the Federal Register on September 29, 2023 (88 FR 67102). This interim final rule has the effect of staying federal Good Neighbor Plan (GNP) requirements in Alabama, Minnesota, Nevada, Oklahoma, Utah, and West Virginia. This rule follows a previous EPA action similarly staying the GNP in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas.¹ Together, these rules cause continuing harm to Wisconsin and its residents, especially the hundreds of thousands who live in the areas most heavily affected by upwind emissions.

The WDNR commented on EPA's previous interim final rule on August 30, 2023. The issues and concerns raised in those comments remain germane and are compounded by this action. Following this interim final rule, of the 23 states included in the GNP, over half (12) will have no obligation to address ozone transport for this NAAQS, including many contributing states to Wisconsin. This situation undermines the ability of the GNP to fulfill its intended legal role.

Exacerbating this situation is that EPA has yet to resolve the transport obligations for several more states, which do not have approved transport SIPs and are not included in the GNP: Tennessee, Wyoming, New Mexico and Arizona.² Several states with approved transport SIPs, including Iowa and Kansas, have been subsequently shown to be significantly contributing to downwind states, including Wisconsin.³

The collective result of legal stays and EPA's inaction is that, eight years after the 2015 ozone NAAQS was set, 18 states still have no enforceable transport requirements for the standard. These states collectively contribute 9 percent to Wisconsin's ozone levels—about the same amount as Wisconsin itself contributes.⁴ This situation exacerbates Wisconsin's extraordinary challenge to attain the standard by the Act's required deadlines—a

¹ 88 FR 49295 (July 31, 2023).

² EPA proposed approval of Wyoming's transport SIP on August 14, 2023 (88 FR 54998).

³ Iowa contributes at least 1 percent of the NAAQS to Wisconsin, based on EPA's 2016v3 modeling for the final GNP.

⁴ Data is from EPA's 2016v3 modeling (data and contributions file).

challenge Wisconsin and other downwind states have diligently sought to meet since the NAAQS was promulgated in 2015.

In its comments on the first interim final rule, the WDNR identified specific actions EPA should take in light of the judicial stays to ensure a prompt “full remedy” for upwind state impacts on Wisconsin. These are:

- Act promptly to resolve the stays associated with the transport SIP disapprovals.
- Immediately address the states whose transport requirements remain outstanding.
- Revise the GNP to address the *full impact* of upwind state emissions on Wisconsin’s ozone areas and include *all* states shown to significantly contribute to Wisconsin.
- Ensure that upwind states timely reduce emissions to abide by CAA deadlines and facilitate Wisconsin’s expedient attainment.

The need for prompt and thorough action on transported pollution is clear. In 2024, Wisconsin’s 2015 ozone NAAQS nonattainment areas are expected to be reclassified from “moderate” to “serious” nonattainment, based almost entirely on the lack of effective controls on out-of-state emissions transported to Wisconsin. When that occurs, the adverse impacts of this change, both on public health and the economy, will be borne entirely by those who live in those areas, and by the business community that employs them.

EPA states it “generally anticipates that any future action bringing the Good Neighbor Plan's requirements into effect after a stay would phase in the requirements so as to provide lead times to implement the Good Neighbor Plan's identified emissions control strategies.”⁵ The need for transport to be addressed before upcoming attainment dates does not allow for any delay to further “phase in” GNP obligations. EPA should therefore ensure the original GNP compliance deadlines apply to all states included in the GNP, including those affected by SIP disapproval stays. If EPA elects to toll or otherwise postpone GNP deadlines, the agency must then supplement the strategies it included in the original GNP to fully resolve upwind state transport by attainment dates. This reevaluation should include broader consideration of contributing sources of ozone, including federally controlled mobile sources, and an evaluation of how the 2023 ozone season has impacted nonattainment areas, many of which will have not attained despite EPA’s modeled predictions.

Ozone nonattainment remains a chronic air quality and public health issue in Wisconsin and elsewhere. EPA must fulfill its full legal responsibility to resolve ozone transport obligations for the 2015 ozone NAAQS with the urgency the current situation demands.

Sincerely,

DocuSigned by:

Gail E. Good

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10/27/2023 | 8:10 AM CDT

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⁵ 88 FR 67103