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## I. **Background**

- EPA revises the NAAQS in 2015 triggering infrastructure and transport SIP submittals from states by October 2018.
- EPA issues modeling and guidance documents for states to use in SIP Development in 2017 and 2018.<sup>1 2 3 4 5</sup>
- APC&EC initiates rulemaking to adopt the 2015 ozone NAAQS in September 2018.
- Simultaneously, DEQ proposes SIP revisions to address infrastructure and transport SIP requirements.
- DEQ submitted its SIP in October 4, 2019.
- EPA makes a completeness finding on the SIP on November 7, 2019, triggering a one-year deadline (November 7, 2020) to act on the SIP.
- EPA approves the majority of the SIP on February 12, 2021.<sup>6</sup>
- EPA proposes disapproval of the transport component of the SIP on February 22, 2022.<sup>7</sup>
- EPA signs a proposed FIP on February 28, 2022 (not published in the Federal Register until April 6, 2022).<sup>8</sup>

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<sup>1</sup> January 2017. Air Quality Modeling Technical Support Document for the 2015 Ozone NAAQS Preliminary Interstate Transport Assessment [https://www.epa.gov/sites/default/files/2017-01/documents/air\\_modeling\\_tsd\\_2015\\_o3\\_naaqs\\_preliminary\\_interstate\\_transport\\_assessmen.pdf](https://www.epa.gov/sites/default/files/2017-01/documents/air_modeling_tsd_2015_o3_naaqs_preliminary_interstate_transport_assessmen.pdf)

<sup>2</sup> September 27, 2017. S. Page Memo: Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) [https://www.epa.gov/sites/default/files/2017-10/documents/final\\_2008\\_o3\\_naaqs\\_transport\\_memo\\_10-27-17b.pdf](https://www.epa.gov/sites/default/files/2017-10/documents/final_2008_o3_naaqs_transport_memo_10-27-17b.pdf)

<sup>3</sup> March 27, 2018. P. Tsigotis Memo: Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) [https://www.epa.gov/sites/default/files/2018-03/documents/transport\\_memo\\_03\\_27\\_18\\_1.pdf](https://www.epa.gov/sites/default/files/2018-03/documents/transport_memo_03_27_18_1.pdf)

<sup>4</sup> August 31, 2018. P. Tsigotis Memo: 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 [https://www.epa.gov/sites/default/files/2018-09/documents/contrib\\_thresholds\\_transport\\_sip\\_subm\\_2015\\_ozone\\_memo\\_08\\_31\\_18.pdf](https://www.epa.gov/sites/default/files/2018-09/documents/contrib_thresholds_transport_sip_subm_2015_ozone_memo_08_31_18.pdf)

<sup>5</sup> October 19, 2018. P. Tsigotis Memo: Considerations for Identifying Maintenance Receptors 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 [https://www.epa.gov/sites/default/files/2018-10/documents/maintenance\\_receptors\\_flexibility\\_memo.pdf](https://www.epa.gov/sites/default/files/2018-10/documents/maintenance_receptors_flexibility_memo.pdf)

<sup>6</sup> February 12, 2021. Air Plan Approval; Arkansas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards <https://www.govinfo.gov/content/pkg/FR-2021-02-12/pdf/2021-02760.pdf>

<sup>7</sup> February 22, 2022. Air Plan Disapproval; Arkansas, Louisiana, Oklahoma, and Texas; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards <https://www.govinfo.gov/content/pkg/FR-2022-02-22/pdf/2022-02961.pdf>

<sup>8</sup> April 6, 2022. Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard. <https://www.govinfo.gov/content/pkg/FR-2022-04-06/pdf/2022-04551.pdf>

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## **II. Timing of EPA's Proposed Rule**

### **Observations:**

- EPA did not meet a November 7, 2020 deadline to approve/disapprove the Arkansas's SIP (12 months after completeness determination).
- EPA postponed assessment of SIP submittals unless EPA's new modeling (2017 results) indicated a state's contributions were below EPA's selected linkages threshold; other SIPs were not evaluated until after Downwinders at Risk, et al., sued EPA for failure to act within Clean Air Act timeframes.<sup>9</sup>
- EPA's delay of action on SIPs in a timely manner meant that SIPs were developed by states under one set of data, and years later were assessed by EPA under a different set of data.

### **Key ask:**

EPA should act more timely on SIPs and evaluate the SIPs based on the information provided by the states.

## **III. Modeling**

### **Observations:**

- EPA relies on new modeling (EPA's 2016v2)<sup>10</sup> in the disapproval that was not available to states at the time of SIP development (EPA's March 2018 Memorandum)<sup>11</sup>, and the new data changes both the focus of emissions linkages and magnitude of downwind contributions for Arkansas.
- States and MJOs asked EPA to allow them to provide feedback and for that feedback to be incorporated into any new modeling platform before EPA uses the modeling to propose new rules.

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<sup>9</sup> On May 12, 2021, Downwinders at Risk, Sierra Club, Center for Biological Diversity, Air Alliance Houston, Texas Environmental Justice Advocacy Services, Clean Wisconsin, Appalachian Mountain Club, Earthworks, Natural Resources Defense Council, and Environmental Defense Fund ("Downwinders at Risk, et al.") filed a complaint in the United States District Court for the Northern District of California (No. 21-cv-03551, N.D. Cal). In a proposed consent decree, published in the Federal Register on October 15, 2021, the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submissions from Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin by April 30, 2022; however, if the EPA proposes to disapprove any of these SIP submissions and proposes a replacement FIP by February 28, 2022, then EPA's deadline to take final action on that SIP submission is December 15, 2022.

<sup>10</sup> January 19, 2022. Air Quality Modeling for the 2016v2 Emissions Platform Technical Support Document [https://gaftp.epa.gov/Air/aqmg/2016v2\\_Platform\\_Modeling\\_Data/AQ%20Modeling%20TSD\\_2016v2%20Platform\\_rev\\_2022\\_0119a.pdf](https://gaftp.epa.gov/Air/aqmg/2016v2_Platform_Modeling_Data/AQ%20Modeling%20TSD_2016v2%20Platform_rev_2022_0119a.pdf)

<sup>11</sup> March 27, 2018. Information on Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I). EPA Office of Air Quality Planning [https://www.epa.gov/sites/default/files/2018-03/documents/transport\\_memo\\_03\\_27\\_18\\_1.pdf](https://www.epa.gov/sites/default/files/2018-03/documents/transport_memo_03_27_18_1.pdf)

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- EPA provided 2016 v2 emissions projections to states, but ran the modeling for the proposed disapprovals and proposed FIP at the same time as states were providing feedback. The modeling upon which EPA proposes its disapprovals and its FIP does not incorporate fixes to flaws identified by over 20 states and regional groups.
- EPA partially updated its model and may use the updated modeling for finalization of their proposals.

**Key asks:**

- Rely on the information provided to states at the time of SIP development when acting on SIPs
- If EPA must use new modeling, make the fixes suggested by states and issue a notice of data availability prior to finalizing any actions related to ozone transport.

**IV. Interstate Transport Framework Step 1: Identification of Downwind Air Quality Problems**

**Observations:**

- EPA's modeling switch changes the downwind air quality problem receptors from what states evaluated during the SIP development process.
- Relying on this new set of receptors (and contributions) makes the demonstrations that DEQ included in its SIP regarding linkages and significance of contributions irrelevant.

**V. Interstate Transport Framework Step 2: Identifying Linkages**

**Observations:**

- In its SIP, DEQ used a 1 ppb threshold for identifying linkages consistent with EPA's August 2018 Memo on use of alternative thresholds.<sup>12</sup> DEQ provided supporting evidence as to why its threshold decision was reasonable.
- In the Proposed Rule, EPA backtracks on its thresholds memo and uses an arbitrary 1% threshold for identifying linkages.
- EPA has not revoked the guidance, but indicates that they no longer consider the threshold memo as guidance.
- In DEQ's SIP, DEQ used HYSPLIT to establish that there were no persistent or consistent relationships between air masses traveling through Arkansas hitting the Allegan County receptor on elevated ozone days.

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<sup>12</sup> August 31, 2018. P. Tsirigotis Memo: 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 [https://www.epa.gov/sites/default/files/2018-09/documents/contrib\\_thresholds\\_transport\\_sip\\_subm\\_2015\\_ozone\\_memo\\_08\\_31\\_18.pdf](https://www.epa.gov/sites/default/files/2018-09/documents/contrib_thresholds_transport_sip_subm_2015_ozone_memo_08_31_18.pdf)

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- EPA criticizes DEQ's use of HYSPLIT to identify whether potential linkages are persistent and consistent even though EPA provided comments to DEQ on refinements to HYSPLIT both prior to SIP proposal and during the public comment period. DEQ reran models after each time EPA provided feedback on the HYSPLIT modeling.
- EPA's proposed disapproval indicates that a linkage at their 1% threshold means the state has an obligation to reduce emissions. This is inconsistent with EPA's description in guidance (and the preamble of their FIP) that the threshold is a trigger for further analysis to determine if there are emission sources or emissions activities in the state significantly contributing to downwind air quality problems.

## **VI. Interstate Transport Framework Step 3: Identification and Evaluation of Air Quality, Upwind State Emissions, and Cost Factors**

### **Observations:**

- Based on DEQ's HYSPLIT modeling, DEQ determined that air parcels traveling from Arkansas to Allegan County, MI were not consistent or persistent and therefore sources and emission activities in Arkansas do not significantly contribute to downwind air quality problems.
- DEQ performed additional analysis on emissions trends in states linked to the Allegan County Monitor to support the assertion that no new controls from Arkansas were needed to bring that monitor into attainment.
- DEQ determined that there was no relationship between emissions from Arkansas EGUs and elevated ozone days at Allegan County, MI.
- DEQ performed a cost of control analysis for the largest elevated point sources of NO<sub>x</sub> in Arkansas and determined that no controls beyond existing measures were reasonable given DEQ's demonstration that Allegan County, MI would attain the NAAQS without further control strategies and that the relationship between emissions from Arkansas and elevated ozone concentrations in Allegan County, MI demonstrates that no sources or emissions activities in Arkansas are significantly contributing to that monitor.
- EPA contends that DEQ focused its analysis solely on EGUs.
- EPA asserts that DEQ's analysis is inadequate because it does not address the monitors identified at their 1% threshold based on their new modeling.
- EPA asserts that DEQ relies on their previous 1,400/ ton threshold and that that is inadequate.
- Although DEQ referred to the previous \$1400/ton EPA threshold, DEQ did not establish a threshold in the SIP.

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## **VII. Evaluation of EPA Newly-Identified Linkages**

### **Observations:**

- The length of the comment period and speed with which EPA is issuing a FIP does not provide adequate time to perform a robust analysis of the newly identified receptors and linkages based on EPA's new modeling.
- DEQ requests that EPA take pause on final SIP and FIP actions for the state until DEQ (or EPA) has completed further analysis of linkages and potential significant contributions from emission sources and activities in the state.

## **VIII. The Federal-State Partnership**

### **Observations:**

- DEQ discussed methodology, modeling, and rationale with EPA early in the process and throughout SIP development.
- EPA offered suggestions for refinement based on initial drafts, and provided additional input during the public comment period for the 2015 Ozone Transport SIP draft and associated rulemaking.
- There was at no point during this process any indication from EPA that this plan or DEQ's rationale was not approvable as DEQ was developing it, as long as the state provided rational, science-based justification for the state's decisions. DEQ did so.