



March 10, 2020

Scott Mathias, Acting Director, Air Quality Policy Division (C504-01)
Ashley Keas, Project Lead, Geographic Strategies Group, AQPD (C539-04)
United States Environmental Protection Agency
Research Triangle Park, NC 27711

Submitted electronically to Docket No. EPA-HQ-OAR-2019-0668

Re: Western Energy Alliance Comments on EPA's Draft "Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions." Docket No. EPA-HQ-OAR-2019-0668

Dear Mr. Mathias and Ms. Keas:

The draft "Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for Nonattainment Areas Affected by International Transport of Emissions" appropriately recognizes the need for flexibility when demonstrating the impact of international emissions. Allowing demonstrations for non-border states will help western states achieve ozone attainment. The Alliance strongly supports EPA's acknowledgment that Section 179B applies nationwide, to all nonattainment areas, not just areas bordering Mexico or Canada. We appreciate the opportunity to comment on the draft.

EPA's statements that the analysis is non-binding and does not limit the information or analyses states may use to demonstrate that an area would have attained the NAAQS but for international emissions is appropriate. However, there is additional flexibility that should be granted to the states to make demonstrations that take into consideration the challenges and opportunities afforded by the latest science in modeling and monitoring. The Alliance's comments primarily address the application of Section 179B and the Draft Guidance to ozone nonattainment areas in the Rocky Mountain West that are located away from international borders.

Western Energy Alliance (Alliance) represents 300 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fourteen employees.

Early Collaboration and Review

The Alliance supports early collaboration between states and the EPA. We believe that consistency and collaboration will lead to a greater likelihood that states will be equipped to submit 179B demonstrations that EPA will approve. It is encouraging that the guidance document offers the regional EPA office an opportunity to provide input prior to data collection and analysis. This will better enable

the states and EPA to meet applicable deadlines and will provide additional clarity and certainty to state agencies when developing their determinations. EPA could improve this coordination by allowing state agencies to submit preliminary or draft demonstrations well ahead of key regulatory deadlines.

The guidance suggests in section 4.3.3 that due to the statutory deadline for EPA to publish reclassification decisions within six months after the applicable attainment date, state agencies should both contact EPA in advance of a potential failure to attain by the attainment date and submit retrospective determinations as soon as practicable after the attainment date. Even when states do so, EPA will have limited time to evaluate what may be very complex demonstrations of international impacts. The complexity of these evaluations will likely be compounded for non-border areas. In order to allow additional time to prepare and review Section 179B demonstrations, the Alliance encourages EPA to accept and review preliminary demonstrations using uncertified ambient air monitoring data. States could supplement or revise the preliminary demonstrations after the final monitoring data is certified. This approach will facilitate implementation of Congress' intent that states not be penalized for emissions beyond their control and reduce the risk that a Section 179B demonstration may not be completed or reviewed before the reclassification deadline.

Methods of Demonstrating International Impacts in Non-Border Areas

The Draft Guidance should better differentiate between the technical evaluations that may be appropriate for border areas and non-border areas, particularly for ozone impacts. International contributions to ozone nonattainment areas near the Canadian or Mexican border are more likely to be traceable to a specific source region. International contributions to non-border areas may be diffused by atmospheric mixing and other phenomena over the long distances travelled by the relevant air masses. We encourage EPA to develop additional tools and provide additional flexibility for non-border areas.

The Draft Guidance acknowledges there may be differences between the two categories of nonattainment areas. EPA nonetheless appears to expect that non-border areas may evaluate international ozone contributions using generally the same methods as border areas, subject to narrow modifications. Among other things the Draft Guidance suggests using in-situ wind analysis, trajectory analyses, and comprehensive emissions analysis. Guidance at 29-37. These methods may be unhelpful or infeasible for non-border areas.

In-situ wind analysis infers sources of pollution based on the speed and direction from which the wind blows. Guidance at 29. Backward trajectory analyses follow an air mass as it moves through space and retraces the path a particle would have taken to arrive at a point. *Id.* at 30. Neither of these methods are well suited to analyzing the impact of air masses that originated across the globe and may have circled the globe more than once. Tracing the air mass further back in time and space will identify additional points of origin and increase the uncertainty of the in-situ wind analysis or trajectory analysis.

Comprehensive emissions analysis separates the emissions from a selected region into international and domestic components, and considers the magnitude of domestic versus international emissions, emission controls, foreseeable changes in future emissions, and the existence of international agreements to address these emissions. The analysis includes developing inventories of domestic and international emissions. Guidance at 36. These steps have little apparent utility to non-border areas or to Section 179B(b) demonstrations. Notably, the Draft Guidance offers an example of applying

comprehensive emissions analysis to the border city of Nogales, AZ, and does not explain how a non-border area would inventory global emissions or analyze emission controls, future changes in emissions, and international agreements covering large areas of the globe.

Given these concerns, the Final Guidance should suggest alternative methods of demonstrating the impact of international emissions in non-border areas. It should acknowledge that the technical factors that inform and shape a 179B demonstration are complex and are different for border and non-border areas. It may be appropriate for non-border areas to rely more heavily on weight of evidence analyses.

The weight of the evidence standard as applied to non-border area demonstrations would consider the breadth of the scientific literature associated with long-range transport. Section 2 of the Draft Guidance discusses a number of published studies that evaluate international impacts on domestic ambient air quality. These studies “show that contributions from international emissions to U.S. O₃ concentrations come from a combination of diffuse background and identifiable plumes from intercontinental transport.” Guidance at 8. The studies also show that “high-altitude locations with complex topography may experience greater impacts from international transport of O₃.” *Id.* at 9. EPA should give greater significance to these studies and their conclusions in a weight of evidence analysis for non-border areas where other analytic methods are problematic.

The western states in which Western Energy Alliance’s members operate are particularly susceptible to long-range impacts for ozone. Given the generally elevated levels of ozone found in the western states, more weight should be afforded to the evidence of long-range transport and influence than on individual monitor data. This consideration applies even if individual single-day demonstrations are not as certain because long-range impacts are not going to be as simple to demonstrate as near-border impacts. Contrary to demonstrations for near-border transport, the complexity of long-range international influence on ozone makes it difficult to provide specific days where international influence impacted a meter’s value. Instead, modeling data showing the general influence of international emissions over a region should be provided more evidentiary weight in evaluating a demonstration submitted by a state.

The Same Legal Standard Applies to All Nonattainment Areas

The Draft Guidance states that additional lines of evidence may be required when the affected monitors are not located near an international border and when specific international sources and/or their contributing emissions are not identified or are difficult to identify. These factors would apply to all or almost all demonstrations for long-range influence on ozone attainment in interior states. The Draft Guidance as written suggests that interior states face a heightened burden for demonstrating the impact of international emissions. Imposing a heightened burden on interior states is inconsistent with Section 179B, which establishes the same legal test for all nonattainment areas: regulatory relief is available whenever a state demonstrates that its implementation plan would be adequate or that an area would have attained “but for emissions emanating from outside the United States.” C.A.A. § 179B(a) and (b).

The impacts of international emissions on western state ozone concentrations are well documented. Any guidance document implementing Section 179B should give credence to these known impacts without creating additional barriers to utilizing Section 179B in western states or non-border areas.

Types of Demonstrations

The guidance begins its statutory framework discussion in section 1.2 by creating a distinction between demonstrations completed under 179B section (a) and those under sections (b) (c) and (d) that Western Energy Alliance believes is not necessary. While the grammatical difference in tense between the phrasing of “would be” and “would have” is meaningful for determining the kind of demonstration being made, and this may impact the timing of the demonstration’s official filing, the analysis required for each should not be constrained by the type of demonstration being made. SIP attainment modeling should not be precluded from use in retrospective demonstrations.

Comments on Specific Sections

Section 1.3

EPA recommends that 179B demonstrations focus on international *anthropogenic* emissions in section 1.3. The statute does not require this. The statute only requires that the emissions be “emanating from outside the United States.”¹ The statute allows consideration of biogenic international emissions. As such, EPA should omit language in section 1.3 and throughout the document requiring international emissions influencing attainment to be anthropogenic.

Section 3.1

The discussion of the extension of attainment date within section 3.1 is unclear with respect to how a 179B demonstration would interact with an attainment date extension. If EPA grants an attainment date extension, the 179B demonstration should be made for that later attainment date. In addition, it would be beneficial if the two pathways to receive an extension could be pursued at the same time, as each provides different benefits dependent on the situation. However, the guidance states that in situations where air agencies may be eligible for an extension and a 179B demonstration, “the attainment date extension pathway may offer different advantages relative to the 179B pathway,” which seems to imply that agencies should choose to pursue a 179B demonstration or an attainment date extension. The guidance should be clarified to state that both pathways could be pursued concurrently, so that if either of the two were denied, the other had the potential to provide the state agency relief.

Section 6.3.2

The Draft Guidance states that comprehensive emissions analyses should include international emissions inventories. As described above, these analyses should be limited to border areas. With respect to border areas, the guidance appropriately permits the use of international emissions databases developed by external agencies, but suggests they must be developed in a manner consistent with EPA’s emission inventory guidelines. While international emissions inventories may be developed in line with EPA’s guidelines, there may be inventories developed according to other international, regional, or even local guidelines that still provide valuable evidence for making a demonstration. EPA should remove the requirement that other country’s emissions inventories are developed according to

¹ 42 U.S.C. § 7509a(a), (b), (c), & (d)

the US EPA's guidelines, and evaluate the quality of the data presented in the emissions databases on a case by case basis, with a presumption that the data is useful for a 179B demonstration.

Section 6.3.3.1

Simulation results conducted for a regulatory program in lieu of developing modeling specifically for a 179B demonstration are permitted in Section 6.3.3.1. The Alliance supports the use of simulations, including source apportionment simulations, in Section 179B demonstrations. However, the purpose of simulation's creation should have no bearing on its ability to inform a 179B demonstration. Simulation results may be developed for a variety of reasons, but in so far as they are sufficiently robust enough for use in a demonstration, they should be allowed to be used in a demonstration, regardless of their genesis.

Conclusion

Western Energy Alliance appreciates that this guidance provides a much-needed tool for western states to achieve ozone attainment. We want to continue to encourage EPA's collaboration with regional offices and states. As more research on international emissions is conducted, technical evaluations of the international transport of pollution will continue to get more robust and methods and processes for demonstrations will increase. Western Energy Alliance believes that with the additional flexibility and collaboration that would be afforded by our suggested revisions to the guidance, the results of those new methods, techniques, and research could be appropriately applied to nonattainment determinations. Thank you for the opportunity to provide comment on the ways this guidance will provide relief for states heavily influenced by emissions outside of their control and jurisdiction.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K M Sgamma', with a long horizontal flourish extending to the right.

Kathleen M. Sgamma
President
Western Energy Alliance