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**ENERGY AND ENVIRONMENT CABINET
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April 25, 2022

Daniel Blackman, Regional Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, GA 30303

Re: Comments relating to *Air Plan Disapproval; Kentucky; Interstate Transport Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standard*; Docket ID: EPA-R04-OAR-2021-0841

Dear Mr. Blackman,

On behalf of the Commonwealth of Kentucky and the Energy and Environment Cabinet, the Division for Air Quality (Division) respectfully submits the following comments relating to the United States Environmental Protection Agency's (EPA) proposed action in the February 22, 2022 Federal Register, soliciting comments on the proposed *Air Plan Disapproval; Kentucky; Interstate Transport Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standard*.¹

The Division disagrees with EPA's proposed disapproval of the Interstate Transport portion of Kentucky's Infrastructure State Implementation Plan (I-SIP), submitted to EPA for approval on January 11, 2019. In the spirit of consistency, the Division believes that a more appropriate method to correct inadequacies identified by EPA would have been to issue a call for plan revisions, which is provided for under 42 U.S.C. § 7410(k)(5). EPA's proposed disapproval relies, in part, on newly available modeling and data that EPA is applying nationally. Issuing a call for plan revisions would allow EPA to incorporate and rely upon this modeling and data consistently and efficiently, while providing states the opportunity to review the data and incorporate it into their analysis. A call for plan revisions could have reduced, or eliminated, the need for EPA to issue the proposed federal implementation plan (FIP) for Kentucky, published on April 6, 2022.²

¹ 87 Fed. Reg. 9,498 (Feb. 22, 2022).

² 87 Fed. Reg. 20,036 (Apr. 6, 2022).

Mr. Daniel Blackman

April 25, 2022

Page 2

The Division appreciates EPA's consideration of the attached comments. If you have questions or comments, please contact me at, Michael.Kennedy@ky.gov, at your convenience.

Sincerely,

 Recoverable Signature

X *Michael Kennedy*

Signed by: Michael Kennedy

Michael Kennedy, P.E., Director
Kentucky Division for Air Quality

Kentucky Comments regarding the February 22, 2022 proposed EPA action to disapprove the Interstate Transport requirements for Kentucky's 2015 8-hour Ozone NAAQS I-SIP submittal

Lack of Timeliness of EPA Action

Kentucky disagrees with EPA's proposed disapproval of its State Implementation Plan (SIP) regarding the interstate transport requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) because EPA's inaction prohibited Kentucky from addressing any deficiencies identified or submitting a revised SIP for approval. Kentucky's final 2015 8-hour Ozone NAAQS Infrastructure SIP (I-SIP) was transmitted to EPA on January 9, 2019, and included the interstate transport requirements. EPA did not make a completeness determination within 60 days, and the SIP was deemed complete by operation of law under 42 U.S.C. § 7410(k)(1)(B) six months later, on July 9, 2019. Once a completeness determination occurs by operation of law, EPA has 12 months to take action on the SIP submittal.¹ EPA was required to act on Kentucky's entire I-SIP by July 9, 2020. EPA approved the majority of the SIP requirements on July 1, 2020,² and approved sections addressing Clean Air Act (CAA) sections 110(a)(2)(C), 110(a)(2)(D)(i) Prong 3, 110(a)(2)(J), and 110(a)(2)(K) via a second approval on October 2, 2020.³ However, EPA took no action on the requirements for Interstate Transport, specifically prongs 1 and 2, until February 22, 2022, over 12 months past the statutorily required date for action.

EPA's delayed disapproval of Kentucky's I-SIP regarding prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(1) prevented Kentucky from addressing deficiencies or submitting SIP revisions. Kentucky would appreciate the opportunity to address these identified deficiencies through a revised SIP submission, which may eliminate the need for a Federal Implementation Plan.

EPA's Use of Revised Modeling Data Not Available to States prior to Deadline for 2015 Infrastructure Submittal

At the time of Kentucky's final 2015 Ozone I-SIP submittal, there were several guidance documents from EPA as well as modeling data available to review and use for the Interstate Transport demonstration. Specifically, two memos from EPA's Office of Air Quality Planning and Standards (OAQPS), dated March 27, 2018, and August 31, 2018, were available. Additionally, EPA provided updated modeling information with the March 27, 2018 memo for states to consider in developing their Interstate Transport SIPs. Kentucky used the information provided in EPA's March 27, 2018 memo and associated modeling, and the recommended 1 part per billion (ppb) threshold from the August 31, 2018 memo to evaluate the impacts that Kentucky emissions may have on downwind monitors. The result, using Step 2 of EPA's framework, was that one maintenance monitor, located in Harford, MD, was identified to be evaluated for potential impact downwind.

In the current action, EPA has proposed disapproval of Kentucky's Interstate Transport requirements of the I-SIP submittal based on a second version of newly modeled data that was

¹ 42 U.S.C. § 7410(k)(2).

² 85 Fed. Reg. 33,021 (June 1, 2020).

³ 85 Fed. Reg. 54,507 (Sept. 2, 2020).

Kentucky Comments regarding the February 22, 2022 proposed EPA action to disapprove the Interstate Transport requirements for Kentucky's 2015 8-hour Ozone NAAQS I-SIP submittal

not made available to Kentucky until well past the statutory deadline for Kentucky's I-SIP submittal and EPA's action regarding that submittal. Specifically, EPA states, "EPA must act on SIP submittals using the information available at the time it takes such action."⁴ In the spirit of cooperative federalism, Kentucky would appreciate and expect the opportunity to submit a revised SIP in accordance with the revised data and modeling, rather than having the SIP disapproved after the fact.

Identification of newly impacted monitors without opportunity for States to review and develop an appropriate SIP submittal

EPA is taking action to disapprove the remaining Interstate Transport portion of Kentucky's SIP submittal using newly updated data, specifically the 2016v2 platform, which was not available at the time of Kentucky's I-SIP submittal. Additionally, the monitors previously linked as being impacted by Kentucky have changed with the newly available data. Kentucky was not afforded the opportunity to evaluate the potential linkages or provide additional information regarding these potential linkages. Specifically, using the 2016v2 platform, EPA has identified the Bucks County, PA monitor and the New Haven, CT monitor as linked to Kentucky in using the newly updated data. The Bucks County, MD monitor was not listed as either a nonattainment or maintenance monitor in the modeling data provided with the March 2018 memo. As such, Kentucky was not afforded the opportunity to evaluate the potential impact of emissions for either area prior to submitting the 2015 Ozone I-SIP. An opportunity to submit a revised SIP would provide Kentucky with the ability to review the 2016v2 platform, as well as the data and modeling associated with the platform.

Change in the interpretation of requirements for an Infrastructure SIP

Since the requirement for submitting an Infrastructure SIP for each NAAQS was implemented, Kentucky has provided a document demonstrating that the state has the authority, regulations, and required programs in place to address all requirements of CAA section 110(a). Beginning with the 2008 Ozone NAAQS, EPA significantly changed their perspective regarding the purpose of the I-SIP, requiring an in-depth technical demonstration, with extensive modeling, data analysis, and demonstration of whether or not potential upwind emissions are contributing to downwind problems. In this proposed action, EPA specifies that if a state must make emission reductions to prevent emissions from impacting a downwind monitor, the state must submit a separate SIP revision that makes those emission reductions permanent and enforceable.⁵ Kentucky maintains that the purpose of the I-SIP is to verify that the state has the authority, regulations, and programs in place to address the requirements of the CAA, not to determine if, and how much, an upwind source may be impacting a downwind monitor. If an upwind state impacts a downwind state and EPA is called upon to determine the reductions necessary, then EPA's authority comes from a different section of the CAA, specifically section 126.

⁴ 87 Fed. Reg. 9498, 9502 (Feb. 22, 2022).

⁵ 87 Fed. Reg. at 9515.

Kentucky Comments regarding the February 22, 2022 proposed EPA action to disapprove the Interstate Transport requirements for Kentucky's 2015 8-hour Ozone NAAQS I-SIP submittal

EPA Reversal on use of 1% Contribution Threshold

In assisting states in the development of Interstate Transport SIP requirements for the 2015 Ozone 8-hour NAAQS, EPA published several memos containing guidance and recommendations. Specifically, the August 31, 2018 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" (August 2018 memo) provided additional information for states in the potential use of 1 ppb as the screening threshold for determining downwind monitors impacts by upwind emissions.

In the August 2018 memo, EPA states, "The data in the tables below indicate that, for the 2015 ozone NAAQS, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable to the amount captured using a threshold equivalent to 1 percent of the NAAQS. Overall, using a 1 ppb threshold captures 70 percent, which is a similar and only slightly lower amount of contribution."⁶ Due to the close correlation between the use of a 1% threshold and a 1 ppb threshold, Kentucky chose to use the 1 ppb threshold for screening purposes in Step 2 of the framework, following EPA's published guidance. EPA has not provided any new information for rejecting the use of the 1 ppb threshold. Rather, the proposed rule states, "EPA's experience since the issuance of that [August 2018] memorandum has revealed substantial programmatic and policy difficulties in attempting to implement this approach."⁷

Kentucky's use of 1 ppb as the threshold indicated that the state was linked to a maintenance monitor in Harford, MD, and the evaluation of Kentucky's possible contribution to this monitor was the focus of the SIP submittal. Kentucky had no opportunity to provide any evaluation or information regarding the two newly identified downwind monitors.

Many states that submitted a 2015 Ozone Transport SIP to EPA for approval did use the 1 ppb threshold. Given the reliance on the August 2018 memo, it would have been appropriate for EPA to, via a SIP Call, rescind the memo and request that states submit revised SIPs that did not use the 1 ppb threshold.

In this proposed action, EPA is relying on the 1% threshold to evaluate a state's contribution to a nonattainment or maintenance monitor. , EPA identifies the need for consistency in its evaluation across all of its Interstate Transport requirements, for all NAAQS. Kentucky believes retraction of the August 2018 memo and issuance of a call for plan revisions under 42 U.S.C. § 7410(k)(5) would further promote consistency across states' evaluations of their SIPs,

⁶ Peter Tsigotis, Analysis of Contribution Thresholds for Use in CAA section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, EPA OAQPS Memorandum, August 31, 2018.

⁷ 87 Fed. Reg. at 9551