

**Comments of the Power Generators Air Coalition
On Docket ID No. EPA-HQ-OAR-2023-0262, Protection of Visibility:
Amendments to Requirements for State Plans Rule**

June 28, 2024

I. Introduction

On March 27, 2024, the United States Environmental Protection Agency (“EPA” or the “Agency”) opened a non-regulatory docket, EPA-HQ-OAR-2023-0262, “Protection of Visibility: Amendments to Requirements for State Plans Rule,” to accept public comment on potential revisions to the Regional Haze Rule “that would affect State Implementation Plans (SIPs) for the third planning period, currently due in 2028.” Memorandum, Posting EPA-HQ-OAR-2023-0262 to Regulations.gov for Public Access at 1 (Mar. 27, 2024). To help with its solicitation of public input, EPA conducted a regional haze webinar on April 10, 2024.¹ EPA’s presentation included seed questions relating to how key aspects of the program could be implemented in future planning periods.

These are the comments of the Power Generators Air Coalition (“PGen”) for the non-regulatory docket. PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies—public power, rural electric cooperatives, and investor-owned utilities—with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen is a collaborative effort of electric generators to share information and expertise in the interest of constructively evaluating and effectively managing air emissions to meet and exceed environmental laws and regulations and in the interest of informing sound regulation and public policy.² Our members include leaders in the ongoing transition to cleaner energy in the United States. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation.

PGen members have been the subject of EPA’s rules to address air pollution that impairs visibility pursuant to the Clean Air Act (“CAA”) regional haze program. As such, PGen and its members have a significant interest in the operation of the program and its substantive requirements. These comments, therefore, respond to EPA’s seed questions and also provide feedback on a number of additional matters based on the experience of PGen and its members with the regional haze program.

II. Background

The CAA’s visibility protection provisions establish as a national goal “the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” CAA § 169A(a)(1). The Act directs EPA to issue regulations designed “to assure ... reasonable progress toward meeting the

¹ EPA, Regional Haze Rule Revisions: Early Engagement Webinar (April 2024), <https://www.epa.gov/system/files/documents/2024-04/regional-haze-early-engagement-webinar.pdf> (hereinafter “Webinar”).

² Additional information on PGen and its members can be found at PGen.org.

national goal” and to require each state to submit a SIP containing “such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.” *Id.* § 169A(a)(4), (b)(2).

A regional haze SIP has three main elements: (1) a Long-Term Strategy (“LTS”), which includes all measures necessary to make reasonable progress towards the national visibility goal; (2) reasonable progress goals (“RPGs”), which are visibility goals for each mandatory Class I federal area located in the state; and (3) for the first planning period, a requirement that certain sources install “best available retrofit technology (“BART”).

Each state’s LTS to address regional haze in its Class I areas and the Class I areas in other states that are affected by emissions from the state “must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress.” 40 C.F.R. § 51.308(f)(2). States must consult with one another when emissions from one state impact Class I areas in other states, and a state that causes or contributes to visibility impairment in a Class I area in another state must “demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.” *Id.* § 51.308(f)(2)(ii)(A).

EPA’s regional haze rule calls on states, for each Class I area within their borders, to “establish reasonable progress goals (expressed in deciviews) that reflect the visibility conditions that are projected to be achieved by the end of the applicable implementation period as a result of those enforceable emissions limitations, compliance schedules, and other measures.” *Id.* § 51.308(f)(3). The rules further require that an RPG “provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period.” *Id.* To establish an RPG, a state must conduct an assessment of four factors: “[1] the costs of compliance, [2] the time necessary for compliance, [3] the energy and non-air quality environmental impacts of compliance, and [4] the remaining useful life of any potentially affected sources.” *Id.* § 51.308(f)(2)(i). These same factors are considered when states develop measures to include in their LTS.

In setting RPGs, states must determine and take into account the uniform rate of progress (“URP”) that would be needed to attain natural visibility conditions by the year 2064. *Id.* § 51.308(f)(1)(i). A state may establish an RPG that differs from the URP if the state demonstrates that the URP for the Class I area in question would not be reasonable, based on a “robust” demonstration. *Id.* § 51.308(f)(3)(ii)(A). A

States whose emissions may cause visibility impairment in another state’s Class I area and states with Class I areas that may experience visibility impairment caused by emissions from other states may be subject to an interstate-consultation requirement. *Id.* § 51.308(f)(2)(ii). The purpose of that requirement is to provide a forum for states to decide collaboratively on reasonable emission reductions and appropriate apportionment of responsibility for reducing emissions during each planning period of the regional haze program.

Finally, the regional haze rule specifies requirements for BART. States determine and require BART for “BART-eligible” sources that are “subject to BART” for the purpose of

controlling emissions that impair visibility in Class I areas. Determining BART for a specific eligible source generally requires consideration of five factors as they apply to that source. CAA § 169A(g)(2); *see also* 40 C.F.R. § 51.301 (definition of BART). EPA's BART rules also permit states, instead of requiring a source to install, operate, and maintain BART, to establish a "BART alternative" that would "achieve greater reasonable progress than would be achieved through the installation and operation of BART." *Id.* § 51.308(e)(2). The BART requirement was largely addressed during the first planning period of the program.

III. Revisions to the Regional Haze Rule Must Effectuate the Respective Roles of EPA and the States.

Any revisions to the visibility rules must reflect the role Congress intended for the states when it enacted the regional haze provisions of the CAA. The D.C. Circuit described the states' role in *American Corn Growers Association v. EPA*, 291 F.3d 1 (D.C. Cir. 2002) ("*Corn Growers*"). The court explained that "[t]he Haze Rule calls for states to play the lead role in designing and implementing regional haze program to clear the air in national parks and wilderness areas." *Id.* at 2. Applying that principle, the court struck down elements of EPA's 1999 regional haze rule relating to the BART requirement, holding that those provisions were "inconsistent with the Act's provisions giving the states broad authority over BART determinations." *Id.* at 8.³ The decision relied in particular on legislative history demonstrating that Congress purposely rejected broad EPA authority and determined that "Congress intended the states to decide which sources impair visibility and what BART controls should apply to those sources." *Id.* Accordingly, where EPA issues a rule that "attempts to deprive the states of some of th[eir] statutory authority" under the regional haze program, it does so "in contravention of the Act." *Id.*

The *Corn Growers* decision restates and applies in the regional haze context the general legal standard governing review of EPA decisions to disapprove SIPs that was announced by the Supreme Court over 40 years ago:

The Act gives the Agency *no authority to question the wisdom of a State's choices* of emission limitations if they are part of a plan which satisfies the standards of [CAA] § 110(a)(2), and the Agency *may devise and promulgate* a specific plan of its own *only if a State fails to submit an implementation plan which satisfies those standards*. [CAA] § 110(c). Thus, so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.

Train v. Natural Res. Def. Council v. EPA, 421 U.S. 60, 79 (1975) (emphases added); *see also*,

³ The provisions were unlawful because EPA's rule would have required states to weigh one of the five BART factors more heavily than the others. The court found that states, not EPA, were authorized to decide how to weigh the BART factors. *Corn Growers*, 291 F.3d at 8. For the reasons identified by the Court in *Corn Growers*, EPA similarly cannot constrain state discretion to determine how to weigh the reasonable progress factors or other considerations, like visibility impacts, the balancing of which the Act assigns to the states.

e.g., CAA § 107(a)(1) (“Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State . . .”). *Train* construed section 110(a)(2) of the CAA, which includes section 110(a)(2)(J)’s requirement that SIPs address requirements for visibility protection under sections 169A and 169B in Part C of Title I of the Act. As *Corn Growers* illustrates, states have, if anything, even more latitude with respect to their actions under sections 169A and 169B than they do generally under section 110(a)(2). *See also, e.g., Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016) (addressing the breadth of state discretion under the regional haze reasonable progress program: “The Clean Air Act gives each state ‘wide discretion in formulating its plan’ for achieving the air quality standards set by EPA.”) (quoting *Union Elec. Co. v. EPA*, 427 U.S. 246, 250 (1976)).

Other decisions by the federal appellate courts confirm that Congress gave states broad decision-making discretion under the regional haze program and that EPA’s authority to disapprove SIPs is narrowly circumscribed. For instance, in *North Dakota v. EPA*, 730 F.3d 750 (8th Cir. 2013), the court explained that under the CAA, the states have primary responsibility for implementing CAA programs and emphasized that EPA has authority to substitute its decisions for those of a state by promulgating a federal implementation plan (“FIP”) only when the state fails to submit a SIP, submits an incomplete SIP, or submits a SIP that does not meet the Act’s requirements. *Id.* at 757. In other decisions, including even those where EPA was not held to have acted unlawfully when it disapproved SIPs, the courts have recognized that a “higher standard”—i.e., a more demanding standard of review—is applied in judicial scrutiny of EPA disapproval of a regional haze SIP than it is in review of EPA decisions promulgating regional haze FIPs. *See, e.g., Oklahoma v. EPA*, 723 F.3d 1201, 1213 n.7 (10th Cir. 2013).

Most recently, in litigation over interstate transport obligations for the 2015 ozone national ambient air quality standards, more than half of the Courts of Appeals in the United States (the Fourth, Fifth, Sixth, Eighth, Ninth,⁴ Tenth, and Eleventh Circuits) have found that there is a likelihood that the foundational SIP disapprovals that are a legal prerequisite to issuing FIPs like those in the Good Neighbor Plan were unlawful. This trend, combined with the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, No. 22-451 (June 28, 2024) overturning *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984), suggests that EPA actions to disapprove SIPs are and will continue to receive significant scrutiny.

Although the courts have not been uniform in their descriptions of the precise nature of and constraints on EPA’s role in reviewing regional haze SIPs, “[t]he Clean Air Act confines EPA’s role in implementing air quality standards ‘to the ministerial function of reviewing SIPs for consistency with the Act’s requirements,’” *Texas*, 829 F.3d at 411 (quoting *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012)). As a consequence, EPA’s revisions to the regional haze rule must conform to the fundamental guiding principle of state primacy in implementation of the visibility program, including state primacy with respect to establishment of RPGs for Class I areas, evaluation of potential reasonable progress emission control requirements for possible inclusion in the state’s LTS, interstate consultation, and other aspects of visibility SIPs.

⁴ EPA has published notice of a proposed settlement in the Ninth Circuit case that, if approved, would lift the judicial stay entered by that court. 85 Fed. Reg. 35,091 (May 1, 2024).

IV. EPA Should Extend the Deadline For Submittal of SIPs for the Regional Haze Program's Third Planning Period.

As it did for the second planning period, EPA should extend the deadline for state submittal of SIPs for the third planning period of the program. EPA finalized updates to the Regional Haze Rule to govern the second planning period in 2017. 82 Fed. Reg. 3,078 (Jan. 10, 2017). Among those revisions, EPA extended the deadline for submittal of second planning period regional haze SIPs from July 31, 2018, to July 31, 2021. *Id.* at 3,080. At that time, EPA explained that its extensions would allow states “to obtain and take into account information on the effects of a number of other regulatory programs that will be impacting sources over the next several years.” *Id.* EPA further explained that the extension would allow for “more integrated” planning with respect to implementing these various programs and that such planning would “result in greater environmental progress than if planning for these multiple programs were not as well integrated. *Id.*

EPA’s Webinar in support of these proceedings states: “As with the 2nd planning period, EPA anticipates that it may be appropriate to extend the 3rd planning period SIP due date.” Webinar at 10. PGen agrees that such an extension is warranted.

First, there is no legal impediment to a SIP submittal deadline extension. Nothing in section 169A or section 169B of the CAA establishes any specific SIP submittal deadlines for the third planning period or limits EPA’s ability to extend such deadlines by rulemaking. Second, as was the case at the beginning of the second planning period, there are numerous EPA regulations coming into effect or under development that will have significant impacts on sources that may also be subject to future regional haze requirements. EPA should grant additional time to allow states to coordinate these requirements with any future requirements to address visibility. *See* 81 Fed. Reg. at 26,944 (additional time to develop SIPs “is anticipated to result in greater environmental progress than if planning for these multiple programs were not as well integrated”). Similarly, allowing states additional time to assess ongoing transition efforts in the electric generating industry will further help states and sources manage their resources.

Because states continue to make progress towards the national visibility goal, an extension of the deadline for submitting third planning period SIPs will lead to better decision-making without risking environmental values. In determining the length of the extension, EPA should take into account the length of time since its deadline for SIP submittals for the second planning period, the number of states that missed that deadline, and the length of time EPA has and continues to take to review SIPs that have been submitted. Indeed, it is not reasonable to expect states to begin working on SIPs for the third planning period until issues relating to the second planning period have been resolved. Accordingly, PGen suggests that an extension at least as long as the extension granted in the 2017 rule is appropriate and that a longer extension is likely warranted, given progress to date on second planning period SIP review and implementation.

V. Reasonable Progress

EPA's early engagement Webinar on regional haze requirements for the third planning period poses two questions regarding reasonable progress:

- Given these observed visibility improvements, how should the Regional Haze Program balance ongoing emissions reductions programs with the implementation of additional controls for the purpose of addressing visibility in Class I areas?
- Considering the CAA requirements, what type(s) of benchmarks (e.g., URP or other tracking metrics) could be used to determine if "reasonable progress" has been made in a Class I area?

Webinar at 14. EPA has traditionally recognized that Congress intended the Agency to leverage emission reductions achieved under other provisions of the CAA, along with other efforts that may affect visibility-impairing emissions, to address the requirements of the Act's visibility provisions in the most efficient way possible. *See, e.g.,* Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period (July 8, 2021) ("There exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs; however, we also expect states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements."); 70 Fed. Reg. 39,104, 39,143 (July 6, 2005) ("EPA does not believe that anything in the CAA or relevant case law prohibits a State from considering emissions reductions required to meet other CAA requirements when determining whether source by source BART controls are necessary to make reasonable progress.").

Recognizing the considerable progress toward the national visibility goal to date, *see* Webinar at 14, EPA should revise the regional haze rule to properly take emission reductions under other CAA programs, as well as state law-based programs.

EPA could most efficiently give effect to the goal of leveraging other CAA requirements by placing greater emphasis on the URP and by allowing states to rely on consistency with the URP as a safe harbor against the requirement to take further action to address reasonable progress. The version of the regional haze rule in effect for the first planning period allowed for the use of the URP in this manner. The rules provided that states must consider the URP in developing their SIPs. They further provided:

If the State determines that the amount of progress identified through the analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.

64 Fed. Reg. at 35,732 (emphases added). Since that time, EPA has taken the opposite position in guidance. Clarifications Memo at 2 (“use of the uniform rate of progress (URP) is not a safe harbor”). EPA has further stated that the URP “is not based on consideration of the four statutory factors and, therefore, cannot answer the question of whether the amount of progress made in any particular implementation period is ‘reasonable progress.’” *Id.* at 15.

EPA should address this issue by reverting to the original regulatory language addressing the URP and further explain that it can be relied upon as a safe harbor, consistent with the CAA. EPA could accomplish this by providing in its rules that when a state has determined that it has met or exceeded the URP, it may satisfy the requirement to address reasonable progress by considering the four factors generally for the state’s sources as a whole, giving particular weight to visibility considerations as well, and reasonably conclude that additional action is not necessary to achieve reasonable progress. A combined assessment of consistency with the URP and a general analysis of the four factors is sufficient to satisfy the CAA’s requirements.

In addition to allowing the URP to serve as a safe harbor, EPA could adopt additional policies to that further seek to leverage emission reductions from other state and federal programs and that recognize progress made to date and continuing to be made. EPA has, for instance, previously adopted rules specifically allowing certain sources to rely on compliance with EPA’s Clean Air Interstate Rule and Cross-State Air Pollution Rule to satisfy regional haze requirements. EPA should undertake a similar analysis and rulemaking to determine that compliance with EPA’s most recent CAA rules, such as the Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standards and the Greenhouse Gas Standards and Guidelines for Fossil Fuel-Fired Power Plants,⁵ satisfy reasonable progress requirements for the third planning period.

EPA has also acknowledged in guidance that effectively controlled sources can be address their regional haze requirements without a full review of the four factors. Guidance on Regional Haze State Implementation Plans for the Second Implementation Period at 22-25 (Aug. 20, 2019) (hereinafter “2019 Guidance”). As discussed further below, EPA should adopt in the regional haze rule provisions allowing states and sources to rely on recently installed state-of-the-art controls to obviate the need for further analysis of controls for a facility. This would conserve needed resources with minimal environmental impact.

Additionally, in its 2017 revisions to the regional haze rule, EPA added a new requirement that states make a “robust” demonstration that additional emission reductions are not reasonable if the state’s RPG does not meet or exceed to URP. 40 C.F.R. § 51.308(f)(3)(ii)(A). This vague requirement does not further the CAA’s national visibility goal; it causes confusion. Depending on the manner in which EPA implements it, the requirement may run afoul of the CAA’s direction that states make their control determinations based on the four factors, as weighed in the state’s discretion. EPA should remove the robust demonstration requirement.

⁵ The rules are both the subject of ongoing litigation. Most recently, the U.S. Supreme Court stayed implementation of the Good Neighbor Plan. *Ohio v. EPA*, No. 23A349 (June 27, 2024). PGen’s recommendation that EPA deem compliance with these rules sufficient to satisfy regional haze requirements is not intended to suggest either rule is lawful or will be upheld by the courts.

VI. Four-Factor Analysis

EPA asks three questions regarding the four-factor analysis provisions of the regional haze rule:

- What are some examples of criteria that EPA could implement to help states identify sources to select for four-factor analysis?
- What types of rule revisions would help States identify cost-effective controls?
- If EPA were to identify a minimum cost-threshold, how could it be developed and applied?

Webinar at 15. These questions touch upon but do not directly address one of the biggest concerns emerging from implementation of the second planning period, which is the burden imposed by the four-factor analysis requirement. In several of the regional haze SIPs that EPA has reviewed to date, the Agency has proposed to find that certain aspects of the four-factor analyses that states have conducted are inadequately documented, failed to include a sufficient number of sources for evaluation, or were based on inadequate demonstrations of current effective controls (obviating the need for further four-factor assessment), among other purported flaws in the states' four-factor assessments. *See, e.g.*, 89 Fed. Reg. 47,398 (May 31, 2024) (proposed partial approval and partial disapproval of regional haze SIP for Arizona). As a first principle, EPA should seek to help states to avoid having to undertake unnecessary four-factor analysis whenever possible by creating clear standards for when states may rely on abbreviated analysis, such as when effective controls are in place, when the URP has been satisfied, or when a certain percentage of sources have been brought forward for four-factor analysis. Further, rather than relying on vague documentation requirements, EPA should set clear standards that states may rely on when adopting an abbreviated analysis because circumstances, like being below the URP or having effective control in place) renders further analysis unnecessary.

With respect to criteria for identifying sources for four-factor analysis, EPA should make clear in new rules to govern the third planning period that states have discretion when selecting sources or categories of sources for evaluation during each planning period and that EPA will not second-guess reasonable determinations regarding which sources to evaluate pursuant to the four factors. This is consistent with longstanding EPA guidance, the D.C. Circuit's decision in *Corn Growers*, and the CAA's division of responsibilities between states and EPA. *See, e.g.*, "Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program" (June 1, 2007).

EPA could further facilitate appropriate source selection in a number of ways. EPA could for instance, identify the range of "Q/d" threshold values used by states to decide which sources to evaluate for reasonable progress to assist states in selecting an appropriate threshold for the third planning period. Similarly, EPA could specify that if a state were to evaluate sources accounting for a specified percentage of the state's visibility-impairing air pollution, then such source selection would be deemed sufficient. With regard to establishing that sources are already effectively controlled, and do not need additional four-factor analysis, as noted above, EPA

should adopt the effective controls descriptions contained in its guidance as presumptions that state may rely upon without further analysis. *See* 2019 Guidance at 22-25.

As with source selection, EPA should revise the Regional Haze Rule to reflect that state's have discretion in how to consider the cost fact when conducting a four-factor analysis. EPA should in particular confirm expressly that states are free to adopt methodologies that differ from EPA's Control Cost Manual. Further, in past regional haze rulemaking actions, EPA has disapproved SIPs on the basis that states did not provide adequate documentation of the site-specific costs they identified. *E.g.*, 89 Fed. Reg. 47,398, 47,429 (May 31, 2024); 79 Fed. Reg. 5032, 5090 (Jan. 30, 2014). Providing states with clear standards as to what constitutes adequate documentation would be a significant improvement over the vague and unworkable standard EPA has used in the past.

Finally, if EPA were to develop a cost-effectiveness threshold, it should be based on past state determinations as to cost-effectiveness. Any threshold EPA were to establish, moreover, should serve as a presumptively approvable threshold but should not be stand as an impediment to states adopting different thresholds of their own. Indeed, EPA should adopt rules making it clear that states have broad discretion to adopt cost-effectiveness thresholds, taking multiple factors, including visibility impacts, into account.

VII. Long-Term Strategy

EPA requests comment on how States and EPA should “determine which measures are necessary for reasonable progress and therefore must be included in the SIP?” Webinar at 16. For the reasons explained above, determinations as to how to weigh the four reasonable progress factors and as to control and other measures needed to make reasonable progress are assigned to the states. EPA's regional haze rule should clearly reflect the expectation that states will make these decisions and have considerable discretion in how to do so.

Support for state discretion as to LTS determinations is found throughout EPA guidance on implementation of the program. State discretion is reflected, for example, in:

- Recognition of state authority to analyze emissions source-by-source or by source category.
- Recognition that states need not evaluate all sources during each planning period.
- State discretion to identify and exempt from further review effectively controlled sources.

EPA should adopt rules that adequately reflect the scope of state authority over the weighing of the four factors, consideration of visibility, and individual control determinations in the preparation of an LTS.

VIII. Future SIP Obligations

Under the heading of “Future SIP Obligations,” EPA asks a number of crosscutting questions concerning future implementation of the program.

- Should all states be required to submit a SIP revision for each planning period (every 10-15 years)?
- Considering the CAA requirements, what criteria could EPA establish to determine that in some cases, no further revisions to the existing Long-term Strategy (LTS) are necessary (for a particular planning period)?
- When should Class I areas be considered to have achieved the national goal?
- What should be required for contributing states to ensure these areas do not backslide?
- Should EPA establish a statewide “de minimis” visibility contribution threshold value? How could a statewide contribution threshold value be developed? What SIP requirements should exist for states that contribute less than a “de minimis” contribution to all Class I areas?

Many of these questions can best be resolved by developing rule provisions that recognize state primacy in planning for the implementation of the regional haze program. For instance, just as EPA guidance recognizes that states have discretion to decide which pollutants and which industries to evaluate for reasonable progress, EPA should provide that states may opt out of submitting a SIP for an individual planning period if the state demonstrates that it is already making reasonable progress. EPA should further allow states to make relatively simple showings of adequate reasonable progress by adopting a URP safe harbor policy.

With respect to the potential for backsliding, EPA should acknowledge that degradation in air quality due to increased emissions from regulated sources is highly unlikely. Indeed, those sources will remain subject to emission limitations consistent with their obligations under the regional haze program. Moreover, before EPA designs provisions intended to prevent backsliding, it must fully evaluate the potential for backsliding to occur and design a regulatory response appropriate to the risk. In the absence of such information, EPA cannot make an informed decision about the need for or structure of any anti-backsliding requirements.

Finally, EPA asks about the establishment of a threshold for de minimis contribution to visibility impairment. EPA has previously identified a 0.5 deciview standard for finding that an individual source contributed to visibility impairment. 70 Fed. Reg. at 39,119. Such a threshold is tied to human perceptibility of visibility impairment and is, therefore, the most reasonable approach and the only approach with precedent to back it up. Translating a standard for contribution based on perceptibility into a state-wide figure could be accomplished by adjusting the threshold to account for the number of sources in each state. As it did in its 2005 regional haze rule revisions, EPA should recognize state authority to devise thresholds for contribution to visibility impairment that reflect their unique circumstances: “Because circumstances will vary in different

locations, we believe that States should have discretion to set an appropriate threshold depending on the facts of the situation.” *Id.* at 39,121.

IX. Conclusion

Progress toward the national visibility goal has proceeded faster than many anticipated. Many Class I areas are already below the URP glidepath, indicating that they are moving toward natural conditions more quickly than EPA’s benchmark. Ongoing changes in the power sector, coupled with a number of new EPA regulatory requirements, mean that additional reductions in visibility-impairing pollutants are going to occur even without additional EPA action. Consistent with congressional intent and longstanding EPA practice, the Agency should seek to maximize the leveraging of these emission reductions to mitigate burden that might otherwise be imposed under the regional haze program. This should include regulatory provisions allowing state to opt out of submitting SIPs under reasonable circumstances. EPA should revise its rules to empower states to make those decisions. It should also assist the states in carrying out its obligations by (1) extending the deadline for the next round of SIP submittals; (2) ensuring that the regional haze rule reflects state discretion as the primary decision-maker under the regional haze program; and (3) providing states with sufficient guidance and presumptively approvable options for issues such as cost-effectiveness and visibility impairment thresholds, while making clear that states have latitude to adopt alternative approaches.