

May 19, 2025

Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Penobscot Indian Nation

Rhode Island

St. Regis Mohawk Tribe

Vermont

U.S. Environmental Protection Agency

Attention: Docket ID No. EPA-R03-OAR-2025-0174

Submitted via <https://www.regulations.gov>

To Whom It May Concern:

The Mid-Atlantic/Northeast Visibility Union (MANEVU) is submitting comments to the U.S. Environmental Protection Agency (EPA) on its proposed *Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period* [90 Fed. Reg. 16478 (April 18, 2025)]. These comments are the consensus views of the MANEVU non-federal members and are not intended to represent the views of the Tribal members or federal agency partners in MANEVU.

The EPA is proposing to approve West Virginia's regional haze State Implementation Plan (SIP) revision submitted to the EPA on August 12, 2022. In doing so, the EPA further announced it is withdrawing its previously proposed disapproval of the West Virginia regional haze SIP revision submittal [90 Fed. Reg. 6932 (January 21, 2025)]. In reversing course, the EPA is announcing "the Agency's new policy that, where visibility conditions for a Class I area impacted by a State are below the [Uniform Rate of Progress] and the State has considered the four statutory factors, the State will have presumptively demonstrated reasonable progress for the second planning period for that area." [90 Fed. Reg. at 16483] MANEVU disagrees with EPA's assertion that its new policy is permissible under the statutory language of the Clean Air Act.

Section 169A(g)(1) of the Clean Air Act (CAA) explicitly provides that "in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements[.]" These are

**MANE-VU Class I Areas**

Acadia National Park

Maine

Brigantine Wilderness

New Jersey

Great Gulf Wilderness

New Hampshire

Lye Brook Wilderness

Vermont

Moosehorn Wilderness

Maine

Presidential Range

Dry River Wilderness

New Hampshire

Roosevelt Campobello

International Park

Maine/New Brunswick,

Canada

commonly referred to as the “four factors” a state must apply in evaluating potential emission reductions from sources within its borders.<sup>1</sup>

The EPA in its new policy now invokes an extra-statutory fifth factor, the Uniform Rate of Progress (URP). As framed by the EPA, this new fifth factor can override a statutory four factor analysis finding that while additional requirements placed on visibility-impairing sources constitute “reasonable progress,” these can be dismissed because the impacted Class I area is below the URP.

The CAA statutory text makes no mention of the URP as the deciding factor, or even a factor at all, in determining reasonable progress. This is because the URP is a regulatory, not statutory, construct of EPA’s Regional Haze Rule (RHR) promulgated after CAA section 169A(g)(1) was enacted into law.

Because the URP is a regulatory creation outside the CAA section 169A(g)(1) definition of determining reasonable progress, it is MANEVU’s view that use of the URP as a new factor to override a statutory four factor analysis is not permissible. CAA section 169A(g)(1) explicitly defines how to determine reasonable progress, and the EPA has received no authority from Congress to impose an additional overriding regulatory criterion that goes beyond the statutory factors [see, e.g., *Loper Bright Enterprises, et al. v. Raimondo, et al.* 603 U.S. 369 (2024)].

MANEVU further notes that it has been on record in multiple comments on regional haze SIPs that the URP is not a “safe harbor” from having to further reduce visibility impairing emissions where reasonable. The URP is simply a straight line tracking metric from the 2000-2004 baseline to the 2064 natural visibility goal set by the EPA in regulation.

Pursuant to the CAA, the Regional Haze Rule (RHR) at 40 CFR 51.308(d)(1) requires states with mandatory Class I federal areas to establish goals in their implementation plans that provide for improvement in visibility on the most impaired days and ensure no degradation in visibility on the clearest days. These goals are referred to as “reasonable progress goals” or “RPGs.” States with Class I areas establish the RPGs to achieve incremental improvement in visibility to meet the 2064 goal. While a state must consider the URP when establishing the reasonable progress goal, it is merely an “upper bound” measuring stick to indicate whether the rate of improvement remains on track, i.e., is not slower than what the URP represents so as not to delay the attainment of natural conditions by 2064.

The MANEVU members have put in extensive time and effort in developing RPGs during each planning period that fall well below the URP line at Class I areas within the MANEVU region. The RPGs are incorporated into the MANEVU states’ regional haze SIPs, which received extensive input from the public, other states, and the federal land managers, and were ultimately

---

<sup>1</sup> “A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the state has selected to assess for controls for the second implementation period.” [90 Fed. Reg., at 16479]

approved by the EPA in its final regional haze SIP decisions. The EPA now invokes the URP as the determinative metric rather than the state-determined RPGs for their Class I areas. While neither the URP nor RPG are themselves enforceable metrics by statute, it seems incongruous that the EPA would opt for a URP untethered from the CAA and ignore the extensive work of the states in determining reasonable progress goals that by the very name seeks to align the statutory requirement of “reasonable progress” into the states’ goals.

Additionally, per the RHR at 40 CFR 51.308(d)(3), a state must develop a long-term strategy to address its contribution to visibility impairment at Class I areas located in and outside of the state. The long-term strategy is developed as necessary to achieve the RPGs established for the Class I areas. States in the MANEVU region established RPGs at a level providing for incremental improvement based on certain long-term strategies consistent with the CAA’s definition of determining reasonable progress, and these were ultimately approved by EPA. EPA’s new approach in approving West Virginia’s regional haze SIP without a long-term strategy runs counter to the states’ efforts and the CAA. It redefines, or simply ignores, the RPGs for MANEVU’s Class I areas, which the states have sole responsibility for determining at their Class I areas. EPA approved the MANEVU Class I area RPGs well ahead of the West Virginia regional haze SIP and so established the obligation of contributing states to develop long-term strategies to meet them. EPA was correct when it originally proposed disapproving the West Virginia regional haze SIP for failure to provide any measures necessary to make reasonable progress consistent with the Clean Air Act.

Emissions from numerous sources in West Virginia impact visibility in nine Class 1 areas. However, the West Virginia regional haze SIP did not provide for measures consistent with the CAA’s statutory definition of determining reasonable progress. Therefore, West Virginia’s regional haze SIP should be disapproved for failure to meet the basic requirements of the Clean Air Act. The URP is outside the bounds of the Act and cannot justify a different determination.

Thank you for your consideration of MANEVU’s comments.

Sincerely,

/s/ Sharon Davis, New Jersey Department of Environmental Protection

/s/ David Healy, New Hampshire Department of Environmental Services

Co-Chairs, MANEVU Technical Support Committee

cc: MANEVU Directors