



Connecticut

April 20, 2026

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Penobscot Nation

Rhode Island

St. Regis Mohawk Tribe

Vermont

U.S Environmental Protection Agency
Attention: Docket ID No. EPA-R09-OAR-2025-0152
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 *Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Hawaii; Regional Haze State Implementation Plan for the Second Implementation Period* [91 Fed. Reg. 7204 (February 17, 2026)]. 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.

In this action, the EPA is proposing to partially approve and partially disapprove Hawaii’s regional haze SIP. MANEVU is focusing our comments on two sections of EPA’s proposal. First, MANEVU disagrees with the EPA’s assertions that electric grid reliability should be considered in states’ regional haze SIPs and that the EPA has authority to include that consideration in the third factor of a four-factor reasonable progress determination. While MANEVU recognizes that the EPA says this is not grounds for disapproval in Hawaii’s regional haze SIP submittal, the EPA has subsequently issued new guidance on this topic that raises major issues for regional haze SIP planning if it is applied to future submittals. Second, MANEVU has concerns with the EPA’s characterization of “forced closings” as constitutional “takings.” These issues are discussed below.

MANEVU 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

1. The EPA’s assertions about grid reliability considerations in regional haze SIPs are without foundation and reach into state electricity generation resource planning where the EPA has no statutory authority.

Following the publication of this proposed action on Hawaii’s regional haze SIP, on February 19, 2026 the EPA issued a two-page guidance memorandum outlining “non-binding” guidance encouraging states to consider potential impacts on electric grid reliability when determining the emission reduction measures that are necessary to make reasonable progress in regional haze SIPs.¹ This new guidance greatly expands the scope of the third factor under the four-factor reasonable progress determination of CAA section 169A(g)(1).

¹ U.S. EPA Memorandum from Assistant Administrator Aaron Szabo to Regional Administrators, Regions 1-10, “Update to Guidance on Regional Haze State Implementation Plans for the Second Implementation Period,” February 19, 2026, at https://www.epa.gov/system/files/documents/2026-02/guidance_signed_regionalhazeguidance_20260210.pdf (accessed February 25, 2026).

It has always been MANEVU's understanding that Congress intended the 'energy and non-air quality factor' (the 'third factor') to focus on the energy burden that would be borne by a source to operate potential emissions controls that may be incorporated into a state's long-term strategy. The new guidance would expand the third factor into a broader consideration of the "impacts on the electrical grid and grid reliability." MANEVU has concerns about the apparent premise of the EPA's guidance and questions the EPA's authority to invoke such a broad consideration into state-specific regional haze SIP decisions.

First, the premise that state regional haze SIP developers can make electricity generation choices affecting grid reliability is without foundation. State electricity generation choices and grid reliability planning do not reside within the air agencies that develop SIPs. Electricity generation choices and grid reliability planning are long-standing responsibilities most typically under the purview of Federal Energy Regulatory Commission (FERC), North American Electric Reliability Corporation (NERC), independent system operators which run wholesale electricity markets and coordinate power flows, state utility commissions, and similar planning bodies outside of the state air agencies.² To the extent that regional haze SIPs include enforceable requirements for EGU retirements, it is important to understand that these retirements result from decisions made and outcomes of these other federal and regional grid planning and reliability processes which are completely outside the purview of state air regulators, as well as conditions in wholesale power markets. When EGU closures by chance coincide with regional haze SIP timelines, they may be incorporated into regional haze SIPs.

Second, by invoking such considerations in the third factor of a reasonable progress determination, the EPA appears to be intruding upon an area that is clearly reserved to the states. States, not the EPA, retain regulatory authority over generation resource planning.³ The EPA contradicts the "non-binding" nature of its new guidance by stating the following on its website where the new guidance is posted:

For far too long, the Clean Air Act (CAA) and the Regional Haze Program (Program) have been weaponized to compel power plant closures in an attempt to force generation shifting. Despite one of the necessary considerations in the Program being energy impacts, effects on grid reliability have not been taken into account. EPA will no longer support this misuse.⁴

The EPA's broad and unfounded statements that regional haze SIPs compel power plant closures, that regional haze SIPs must take grid reliability into account, and that the EPA "will no longer support this misuse" contradict its claim that the new guidance is "non-binding." MANEVU requests that the EPA more fully explain its statutory authority to impose its judgment on grid reliability through a regional haze SIP decision over that of a state's generation resource planning process, an area reserved to the states under the Federal Power Act.⁵ It seems

² The North American Electric Reliability Corporation (NERC) is certified by FERC as the Electric Reliability Organization (ERO) responsible for developing, monitoring, and enforcing mandatory reliability standards for the bulk power system in the U.S., Canada, and parts of Mexico.

³ Federal Power Act, 16 U.S.C. § 824(b)(1).

⁴ U.S. EPA, Update to Guidance on Regional Haze State Implementation Plans for the Second Implementation Period, <https://www.epa.gov/visibility/update-guidance-regional-haze-state-implementation-plans-second-implementation-period>, last updated February 20, 2026 (accessed February 24, 2026).

⁵ Federal Power Act, 16 U.S.C. § 824(b)(1). *See also*, Motion to Intervene and Protective Request for Rehearing by the Attorneys General of Maryland, Washington, Illinois, Michigan, Minnesota, Arizona, Colorado, Connecticut,

highly unlikely that Congress would give the EPA such sweeping authority to supersede state electricity generation resource planning under the Federal Power Act by hiding it away in the third factor of the Clean Air Act’s regional haze reasonable progress determination.⁶

The EPA has previously acknowledged that the third factor focuses solely on direct energy consumption at a facility due to operation of potential emissions controls.⁷ The EPA has now expanded the third factor into a broader assessment of a state’s electric grid reliability and generation planning choices. This constitutes a major change in national policy. Such a significant change warrants a robust notice-and-comment process that would give the public, the regulated industries, and states an opportunity to analyze impacts and provide feedback. MANEVU requests that the EPA remove discussion of grid reliability from this proposed action and withdraw its recent guidance memorandum until this new policy can be thoroughly vetted through public notice-and-comment.

2. The EPA’s view of constitutional “takings” as grounds for partial disapproval conflicts with past comments to states by the Federal Land Managers (FLMs).

During Regional Haze Rule (RHR) consultations, the states received comments from FLMs on their draft haze SIPs which indicated that when a state is asserting a facility closure or change in operations as part of their reasonable progress determination, those changes should be made enforceable in their regional haze SIPs. For example, the National Park Service and U.S. Forest Service provided the comment below during New Jersey’s haze SIP consultation process:

New Jersey should consider adding references and/or footnotes regarding the permanent shut down of the BL England [EGU] facility, in particular references to the applicable Administrative Consent Orders, in Section 7.2. It is recommended that New Jersey cite regulations enforcing New Jersey actions in response to two of the Mid-Atlantic/Northeast Visibility Union (MANE-VU) Asks: the BL England shut down and the permits, enforceable agreements and/or rules to lock in lower emissions rates for operations that have switched to lower emitting fuels.⁸

New Jersey incorporated the FLM-requested references in its haze SIP, which the EPA approved.⁹

Similarly, the National Park Service commented on Colorado’s draft haze SIP during the state’s RHR consultation process with the following:

The Colorado analyses assumed equipment lifetimes of 20 years in the various analyses. In general, we recommend these assumptions are too low. In our experience reviewing similar facilities in other states, very old compressor

and New York, *In re: Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid, July 2025*, submitted to the U.S. Department of Energy (August 6, 2025).

⁶ *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001) (holding that in altering “the fundamental details of a regulatory scheme in vague terms or ancillary provisions,” Congress does not “hide elephants in mouseholes.”)

⁷ 91 Fed. Reg. at 7218, “[T]he EPA’s 2019 Guidance provided a limited scope of considerations generally involved under the ‘energy and non-air quality factor,’ which did not include grid reliability.”

⁸ New Jersey Department of Environmental Protection, Final Regional Haze SIP Appendix K, Public Participation, (August 22, 2019), p. 2, <https://dep.nj.gov/wp-content/uploads/airplanning/RegionalHazeSIP2020-AppendixK.pdf>.

⁹ 88 Fed. Reg. 78650 (November 16, 2023).

turbine/RICE sources (70+ years old), coal boilers and cement kilns do not anticipate ceasing operation before the 25-30-year lifetime of the control equipment. The [EPA Control Cost Manual] recommends longer equipment lifetimes are assumed in cost analyses for many of the equipment types considered for the Colorado facilities. [citation omitted] Unless Colorado requires federally enforceable shutdown dates for these units as part of Colorado's RH SIP, we recommend that longer equipment lifetimes should be assumed in the analyses.¹⁰

Further, in past comments to states during their RHR consultation processes, MANEVU has requested that where a state is indicating that reductions in haze-forming pollution will be achieved through planned facility shutdowns or other changes, such as fuel-switching or operational changes, the states should make those shutdowns or other changes enforceable.¹¹ The EPA's more recent assertions that these may be constitutional "takings" conflict with prior federal requests. MANEVU requests a fuller explanation from the EPA for its departure from past practice.

¹⁰ NPS Air Resources Division (ARD) and Intermountain Region (IMR) Air Staff Review of the Colorado Department of Public Health and Environment – Air Pollution Control Division's (CDPHE-APCD) Regional Haze Four-Factor Analysis – Initial Control Determinations (June 24, 2021), p. 5.

¹¹ MANEVU comments to the Missouri Department of Natural Resources, Air Quality Planning Section, on "Missouri Regional Haze Plan for the Second Planning Period, April 28, 2022," (May 3, 2022), available at <https://otcair.org/MANEVU/Upload/Publication/Correspondence/manevu-comments-on-missouri-proposed-haze-sip-20220503.pdf>; MANEVU comments to the West Virginia Department of Environmental Protection, Division of Air Quality, on "West Virginia Regional Haze State Implementation Plan (SIP) Revision for the Second Planning Period, December 2021" (January 10, 2022), available at <https://otcair.org/MANEVU/Upload/Publication/Correspondence/MANE-VU%20Final%20Comments%20on%20WV%20RH%20SIP%2020220110.pdf>; MANEVU comments to the Tennessee Department of Environment and Conservation, Division of Air Pollution Control, on "Tennessee Regional Haze State Implementation Plan, Pre-Hearing Draft, October 21, 2021," (December 1, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/MANE-VU_Comments_TN_RH_SIP_20211201.pdf; MANEVU comments to the Indiana Department of Environmental Management, Office of Air Quality, on "Draft Indiana Regional Haze State Implementation Plan for the Second Implementation Period," (November 5, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/MANE-VU_Comments_IDEM_RH_SIP_20211105.pdf; MANEVU comments to the North Carolina Department of Environmental Quality, Division of Air Quality, on "Pre-hearing draft of the Regional Haze State Implementation Plan (SIP) for North Carolina Class I Areas for the Second Planning Period (2019 – 2028)," (October 12, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/MANE-VU_Comments_NC_RH_SIP_20211012%20final.pdf; MANEVU comments to the Michigan Department of Environment, Great Lakes, and Energy Air Quality Division, SIP Development Unit, on "Proposed SIP Revision: State Implementation Plan Submittal for Regional Haze Second Planning Period," (June 28, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/MI_RH_SIP_MANE-VU_Comments_final_20210628.pdf; MANEVU comments to the Ohio Environmental Protection Agency, DAPC, on "DRAFT Regional Haze State Implementation Plan for the Second Implementation Period," (June 28, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/OH_RH_SIP_MANE-VU_Comments_final_20210628.pdf; MANEVU comments to the Texas Commission on Environmental Quality, Air Quality Division, on "2021 Regional Haze SIP Revision," (January 6, 2021), available at https://otcair.org/MANEVU/Upload/Publication/Correspondence/TX_RH_SIP_MANE-VU_Comments_final_20210106.pdf.

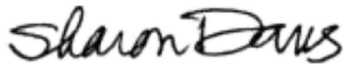
3. When enforceable facility closures are part of a state’s regional haze SIP, MANEVU requests that the EPA not disapprove such SIPs based on a constitutional “takings” argument. This approach has no judicial precedent.

The EPA invokes a constitutional “takings” rationale for “forced closures” of facilities to partially disapprove Hawaii’s haze SIP. This approach creates deep uncertainty for states in obtaining the lowest cost emission reductions in their SIPs from facility shutdowns that have already been planned by a state’s applicable utility commission. MANEVU disagrees that planned facility shutdowns that happen to coincide with regional haze SIP timelines constitute “forced closures.” If a state cannot include enforceable planned facility retirements in SIP attainment demonstrations, the state will have to base its emissions control decisions on an assumed level of emissions that is not accurate (i.e., is higher than it needs to be because some of the assumed emissions no longer exist in reality). This will in turn impose additional control costs on the regulated community to achieve additional enforceable emission reductions that would otherwise be unnecessary.

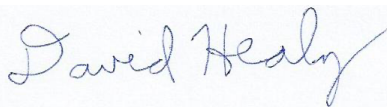
The EPA acknowledges that there is no judicial controlling precedent for its new “takings” rationale.¹² MANEVU agrees and therefore the EPA should not speculate on one here. MANEVU notes that in the courts, the typical judicial review approach is to seek to resolve issues through other available legal avenues before considering constitutional claims. In previous EPA actions where commentors asserted constitutional objections, the EPA has deferred such determinations to the courts.¹³

Thank you for your consideration of MANEVU’s comments and requests.

Sincerely,



Sharon Davis, New Jersey Department of Environmental Protection



David Healy, New Hampshire Department of Environmental Services
Co-Chairs, MANEVU Technical Support Committee (TSC)

cc: MANEVU Directors
MANEVU TSC

¹² 91 Fed. Reg. at 7217.

¹³ See, e.g., U.S. EPA, California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The “Omnibus” Low NOx Regulation; Waiver of Preemption, Decision Document, EPA-420-R-24-028 (December 2024) at 89, stating, “Even if [the EPA] were to consider constitutional questions, the resolution of such issues ‘is the most important of judicial functions, “one that even the judiciary is reluctant to exercise.”” Citing *Motor and Equipment Manufacturers’ Association v. EPA (MEMA I)*, 627 F.2d 1095, 1115 (D.C. Cir. 1979), quoting *Panitz v. District of Columbia*, 112 F.2d 39, 41 (D.C. Cir. 1940).