



Connecticut

Delaware

District of Columbia

Maine

Maryland

Massachusetts

New Hampshire

New Jersey

New York

Pennsylvania

Penobscot Nation

Rhode Island

St. Regis Mohawk Tribe

Vermont

October 20, 2025

U.S. Environmental Protection Agency
Attention: Docket ID No. EPA-R04-OAR-2019-0308
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; Tennessee; Second Planning Period Regional Haze Plan* [90 Fed. Reg. 40272 (August 19, 2025)]. These comments, which are detailed in the sections below, 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.

1. Use of the Uniform Rate of Progress to presumptively demonstrate reasonable progress

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

In this notice, the EPA is proposing to fully approve Tennessee’s SIP, submitted to the EPA on February 23, 2022. In doing so, the EPA states “that, where visibility conditions for a Class I area impacted by a State are below the [Uniform Rate of Progress] and the State has evaluated potential control measures and 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 40287] It is MANEVU’s position that this policy is not permissible under the statutory language of the Clean Air Act.

In a new policy first announced in the EPA’s proposed approval of West Virginia’s regional haze SIP for the second implementation period [90 Fed. Reg. 16478 (April 18, 2025)], the EPA now invokes an extra-statutory fifth factor, the Uniform Rate of Progress (URP). As framed by the EPA, this fifth

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 “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 planning period.” [90 Fed. Reg., at 40274]

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 factor to supersede 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)].

Similarly, the EPA “believes that this policy aligns with the purpose of the statute and RHR, which is achieving ‘reasonable’ progress, not maximal progress, toward Congress’ natural visibility goal.” [90 Fed. Reg., at 40287]. MANEVU disagrees that this aligns with the purpose of the Clean Air Act. Instead, it undermines Congress’ goal to achieve “reasonable progress.” Based on MANEVU’s understanding of the EPA’s new policy, the EPA could dismiss requirements to achieve progress below the URP because it would be considered “maximal progress” even if “reasonable progress” as determined using the four Clean Air Act statutory factors would result in greater progress than the URP. Use of the non-statutory URP metric in this manner conflicts with the intent of Congress. Congress defined “determining reasonable progress” to be based on the four explicitly listed statutory factors. To the extent “maximal progress” would be a consideration, it must be relative to Congress’ definition for determining reasonable progress using the four statutory factors. The URP metric is an extra-textual reference line that may lie above what otherwise would be determined as “reasonable progress” under the plain language of the Clean Air Act, and is therefore an impermissible reframing of “reasonable progress” from what Congress intended.

MANEVU has submitted to the EPA 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. Use of the URP metric as an extra-textual reference line to not achieve what otherwise would be determined as “reasonable progress” using the four statutory factors is an impermissible reframing of “reasonable progress” from what Congress intended.

Pursuant to the CAA, the 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 into 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 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.

2. Comments specific to Tennessee's haze SIP submission

In a letter dated December 1, 2021, MANEVU provided comments² to the Tennessee Department of Environment and Conservation (TDEC) on its pre-hearing draft Regional Haze State Implementation Plan (SIP) for the Second Implementation Period dated October 21, 2021 that was made available for review. This followed a constructive exchange between MANEVU and TDEC regarding MANEVU's technical analysis in determining which states MANEVU reasonably anticipated to contribute to visibility impairment at MANEVU Class I areas.³ Tennessee was among the states MANEVU identified as a contributor in this analysis. TDEC documents these and earlier exchanges in its SIP submittal.⁴

Based on MANEVU's technical analysis, it developed a "MANEVU Ask" that was sent to Tennessee and the other identified states with five requests for consideration during the upwind states' second regional haze SIP planning effort. These "Asks" concerned the following areas:

- Ask #1: EGUs ≥ 25 MW with installed controls, ensure that controls are run year round.
- Ask #2: For emissions sources having a 3.0 Mm^{-1} impact or greater at MANEVU Class I areas, perform a four-factor analysis.
- Ask #3: Adopt an ultra-low sulfur fuel oil standard.

² MANEVU Comments to the Tennessee Department of Environment and Conservation, Division of Air Pollution Control, *Re: Tennessee Regional Haze State Implementation Plan, Pre-Hearing Draft, October 21, 2021* (December 1, 2021), at https://otcair.org/manevuUpload/Publication/Correspondence/MANE-VU_Comments_TN_RH_SIP_20211201.pdf.

³ M.W. Owenby, Director, TN DEC Division of Air Pollution Control, to P. Miller, MANEVU Lead Manager, *Subject: MANE-VU Inter-RPO Ask for the Regional Haze Second Planning Period*, (January 13, 2021), available at https://otcair.org/manevuUpload/Publication/Correspondence/TN_Response_to_MANE_VU_Ask_Final_Signed.pdf; H. Hales, Director, Air Quality and Climate Division, Vermont Department of Environmental Conservation, and MANE-VU Chair's Representative, response to *Letter from TDEC-APC to Paul Miller, MANE-VU Lead Manager, dated January 13, 2021*, (February 17, 2021), available at https://otcair.org/manevuUpload/Publication/Correspondence/MANE-VU_Response_Letter_to_TNDEC_20210217_final%20signed.pdf.

⁴ TDEC, Appendix F-4, "TDEC-APC and VISTAS Consultation Documentation with MANE-VU," EPA Docket No. EPA-R04-OAR-2019-0308-0010.

Ask #4: For EGUs and other large sources, pursue enforceable mechanisms to lock in lower emission rates.

Ask #5: Encourage and promote energy efficiency and clean technologies.

MANEVU recognizes TDEC's request to include specific permit conditions for the Eastman facility, consistent with MANEVU's Ask #4. At the same time, however, it is unclear if projected emissions reductions from the Kingston Fossil Plant that were given as the basis for not doing a four-factor analysis of the facility are enforceable. If not, we would have concerns whether those reductions will in fact occur.⁵

The MANEVU members greatly appreciated the open exchanges we have had with TDEC, and the efforts it has taken to consider and respond to each of MANEVU's Asks. With regard to TDEC's responses, MANEVU reiterates its replies in its letter sent to TDEC on February 17, 2021.⁶

Summary

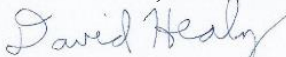
For the above reasons, MANEVU disagrees with the EPA's use of the URP as a factor in finding a state has "presumptively demonstrated" reasonable progress in its haze SIP. MANEVU also reiterates its Asks to Tennessee for incorporation into its regional haze SIP.

Thank you for your consideration of MANEVU's comments.

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

⁵ See, e.g., WVLT News, "Coal power gets second look as TVA Kingston gas plant comes under construction," (May 27, 2025), <https://www.wvlt.tv/2025/05/27/coal-power-gets-second-look-tva-kingston-gas-plant-comes-under-construction/>.

⁶ H. Hales, Director, Air Quality and Climate Division, Vermont Department of Environmental Conservation, and MANE-VU Chair's Representative, response to *Letter from TDEC-APC to Paul Miller, MANE-VU Lead Manager, dated January 13, 2021*, (February 17, 2021), available at https://otcair.org/manevuUpload/Publication/Correspondence/MANE-VU_Response_Letter_to_TNDEC_20210217_final%20signed.pdf.