

**POSITION STATEMENT OF THE MIDWEST OZONE GROUP
WITH RESPECT TO CSAPR REMAND "RED LINES" ANALYSIS**

April 24, 2013

A. Introduction

Since the issuance of the August 21, 2012, opinion of the D.C. Circuit which vacated and remanded the Cross State Air Pollution Rule ("CSAPR"), the Midwest Ozone Group ("MOG") has been reviewing the rule not only to understand its significance to the development of an alternative to CAIR, but also in developing state implementation plans ("SIP") related to new or revised NAAQS requirements.

B. Rules

The Court opinion established several "red lines" which were offered by the Court as directives for the development of SIPs implementing the "good neighbor" provisions of the Act. The following is MOG's interpretation of these "red lines" and how they should be applied:

1. Basic rule - An upwind State's obligation is limited to its own significant contribution and it cannot be directed to reduce emissions to account for any other factors impacting a downwind State's nonattainment.
2. Proportionality of Downwind States - A downwind State is responsible for that portion of the above-NAAQS amounts that are not attributable to significant contributions from upwind States.
3. Proportionality of Upwind States - The ratio of an individual upwind State contribution to the total contribution should be used as scalar to determine how the total upwind contribution is allocated among upwind States.
4. The Role of Costs - EPA may reduce some or all of the obligations of upwind States to avoid the imposition of unreasonable costs.
5. Insignificance - Once contributions are determined, a State is not required to address more than that contribution amount minus the significance threshold.
6. NAAQS Attainment - Once an area meets the NAAQS, no additional upwind emission reductions are required.
7. Over-Control - When multiple downwind areas are concerned, reductions associated with one downwind area should be reviewed in other areas to ensure unnecessary over control is not achieved

C. Analytical Steps

MOG recommends that the starting point for this analysis should be use the scaling of current monitoring data with future year modeling to determine which monitors will be in non-attainment with the applicable NAAQS. This would be followed by the application of source apportionment modeling to assess responsibility for undertaking additional emission reductions. We believe this is best accomplished through the application of the following analytical steps:

- ▶ Step 1: Determine scaled CAIR design value (DV)
- ▶ Step 2: Apply source apportionment data to DV from Step 1 to determine contribution from upwind States, downwind State, background

- ▶ Step 3: Using contributions from Step 2, determine what portion of any amount over DV is attributable solely to upwind States
- ▶ Step 4: Allocate upwind States' collective contribution (Step 3) to each upwind State in proportion to their contribution to downwind DV (Step 2)
- ▶ Step 5: Select from among state contributions in Step 4, those upwind States that have contributions to the DV that exceed the significance level
- ▶ Step 6: Make appropriate adjustments to the subset of an upwind State's contribution as necessary to avoid the imposition of unreasonable costs

The slide presentation found at the following site illustrates how these analytical steps might be applied to an example data set that MOG had developed for application to the ozone NAAQS of 75 ppb: [http://midwestozonegroup.com/files/CSAPR Remand Red Line Analysis-2010 OSAT.pdf](http://midwestozonegroup.com/files/CSAPR_Remand_Red_Line_Analysis-2010_OSAT.pdf).

D. Multi-Area Application

MOG recognizes the likelihood that this analysis will need to be applied in situations of greater complexity than time and resources have allowed us to address at this time. These additional complexities include (a) the situation in which an upwind state may contribute to one downwind non-attainment areas to a much greater extent than it does to another and (b) the situation in which a downwind non-attainment area is itself contributing to non-attainment in another state, raising the question about the order in which emission reduction requirements are implemented

E. Other Considerations

MOG also recognizes that a full analysis of this matter will almost certainly involve consideration of such matters as:

- (a) the role of a downwind State as the state with the primary responsibility for attaining NAAQS within its borders;
- (b) the implications of the establishment of alternative thresholds for significance;
- (c) the cost levels that should be deemed to be unreasonable; and
- (d) how best to address motor vehicles as the single largest contributor in most upwind States to downwind non-attainment.

The development and implementation by the States of "good neighbor" SIPs is the proper place to address such questions as whether additional controls are needed on one or more units or whether it is necessary for units to be operated differently, or at different emission rates, than is provided by otherwise applicable regulatory requirements.

F. Conclusion

The Midwest Ozone Group appreciates the opportunity to join with others in the conversation about how the transport provision of the Clean Air Act should be implemented. Questions or comments about this statement should be directed to David Flannery (telephone: 304-340-1017; email: dmflannery@jacksonkelly.com).