

COMMENTS OF MIDWEST OZONE GROUP

NOVEMBER 17, 2016

OTC MEETING

WASHINGTON, D.C.

Skipp Kropp

SIP TIMING

Midwest Ozone Group (MOG) members operate some 90,000 MW of fossil-fuel fired electric generating capacity in the Midwest and Pennsylvania. MOG is concerned about SIP due dates and the resulting inability of states to consider the air quality benefits of multiple programs, required to be implemented prior to the 2023 attainment deadline, in their Good Neighbor SIPs for the 2015 70 ppb Ozone NAAQS.

As the focus on attainment of the 2015 Ozone NAAQS continues, there must be a recognition that air quality will continue to improve between the 2018 due date for Good Neighbor SIPs and the 2023 attainment deadline as a result of programs including Federal measures, federally mandated state RACT rules, nonattainment infrastructure SIPs, and Good Neighbor SIPs. While the Federal measures, state RACT rules, and nonattainment infrastructure SIPs will all significantly improve air quality in the OTR, those programs will all be implemented after the Good Neighbor SIPs are due, which means that states will need to carefully consider how best to address those air quality improvements as part of their Good Neighbor SIP submittals.

Those same programs, many of which are already in place or imminent, will also improve air quality sufficiently that any Section 126 petitions that have been or will be filed in the near term will be mooted since successful prosecution of a Section 126 petition depends on continuing nonattainment and there is no monitored nonattainment even now in the OTR except for the few Connecticut monitors that are being impacted primarily by local (nearby) sources.

MOG is concerned that failure to include the benefits of these programs in Good Neighbor SIPs will result in overcontrol of upwind states, which MOG believes is illegal given the Supreme Court decision in EPA v. EME Homer City Generation in which the Supreme Court stated that the appeals court was correct in stating the EPA cannot require an upwind state to reduce its output of pollution by more than necessary to achieve attainment in every downwind state. Recognizing that the Good Neighbor SIP is a "down payment" on attainment and not a stand alone attainment program, MOG notes that numerous control programs will take effect between the 2018 Good Neighbor SIP due date and the 2023 attainment deadline. Accordingly, the Good Neighbor SIPs that are due in 2018 necessarily must take into account the impact of legally mandated controls on air quality by the attainment date to avoid violating the prohibition against over-control.

MOG is aware that the OTC is currently addressing a number of significant sources of ozone precursor emissions, including HEDD, RACT, Tier 3, aftermarket catalysts, lightering, and SmartWay, among others. MOG congratulates the OTC on these efforts and urges the OTC to convert the results of these programs to air quality benefits that can be accounted for in Good Neighbor SIP submittals.