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June 13, 2025

The Honorable Lee Zeldin
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Suite 1101A
Washington, D.C. 20460

Submitted electronically via Regulations.gov

RE: Notice of Proposed Rulemaking: "Air Plan Approval; South Dakota; Regional Haze Plan for the Second Implementation Period" (Docket ID No. EPA-R08-OAR-2024-0609)

Dear Administrator Zeldin:

We, the undersigned Attorneys General, submit the following public comment to the Environmental Protection Agency (EPA) in response to its request for comments on the proposed rule entitled "Air Plan Approval; South Dakota; Regional Haze Plan for the Second Implementation Period," 90 Fed. Reg. 20,425 (May 14, 2025). Like South Dakota, we all have submitted state plans to implement the Clean Air Act's protection of visibility in certain national parks and wilderness areas. *See* 42 U.S.C. § 7491. This policy implicates serious considerations for the States, from the protection of reliable and cost-effective energy sources to issues of federalism.

Because the EPA's policy governing those plans for the second round (the second "implementation period") respects the text of the Clean Air Act, respects the sovereignty of the States, and furthers a commonsense approach to energy generation, we support the EPA's policy. Under it, a State's plan presumptively complies with the Clean Air Act if it (1) considers four statutory factors when deciding whether emission sources may need more constraints and (2) demonstrates real-world improvements to visibility (as shown by a metric called the "uniform rate of progress" or "URP"). *See* 90 Fed. Reg. at 20,434 ("[W]here visibility conditions for a

Class I area impacted by a State are below the URP 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."). As shown further below, we support the policy's use to evaluate South Dakota's plan, and we urge its continued use to evaluate all the States' second round plans.

I. Background

The Clean Air Act set a "national goal": "[T]he prevention of any future, and the remedying of any existing, impairment of visibility" caused by humans in certain national parks and wilderness areas (known as "Class I Federal areas"). 42 U.S.C. § 7491(a)(1).

To that end, Congress commanded the EPA Administrator to promulgate regulations that require States that contain, or produce emissions that could affect, a Class I Federal area to develop an implementation plan. *Id.* § 7491(b)(2); *id.* § 7602(q) (defining "applicable implementation plan"). Those plans must include, among other things, "emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal." *Id.* § 7491(b)(2). The States' plans also must detail "a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal." *Id.* § 7491(b)(2)(B). "Reasonable progress" considers four factors: (1) "the costs of compliance," (2) "the time necessary for compliance," (3) "the energy and nonair quality environmental impacts of compliance" (*i.e.,* energy and environmental tradeoffs), and (4) "the remaining useful life of any existing [pollution] source." *Id.* § 7491(g)(1).

Following the statute's command, the EPA Administrator promulgated a regulation known as the "Regional Haze Rule." *See* 40 C.F.R. § 51.308. It interpreted the national goal to mean "natural conditions" by 2064. 40 C.F.R. § 51.308(d)(1), (f)(1)(ii). The rule requires periodic plan submissions. For the second round of submissions, the rule requires the States, in formulating their plans, to evaluate the degree of visibility impairment and "determine the emission reduction measures that are necessary to make reasonable progress." 40 C.F.R. § 51.308(f)(2)(i). The States have the flexibility to screen sources for their effect on visibility and then identify which sources to evaluate more. For those identified sources, if a State determines emissions reduction measures are necessary to make reasonable progress, a State then analyzes the four statutory factors plus additional considerations established by regulation. *See id.*

After a State submits its plan, the EPA considers whether the State has demonstrated it has made reasonable progress toward the national goal for the requisite planning period. The EPA evaluates the degree to which emissions from the

State affect visibility in Class I areas and, for sources that have a significant impact, whether the State at least has considered the four statutory factors. 42 U.S.C. § 7491(b)(2). The undersigned States maintain the best reading of the Act (as reflected in the regulation) is that a four-factor analysis is required only when "necessary to make" reasonable progress. *Id.* If a State is *already* making reasonable progress, additional measures are not "necessary to make" reasonable progress, so the Act does not require a four-factor analysis.

The EPA created a metric to evaluate the States' goals for reasonable progress toward the national goal. That metric, the "uniform rate of progress" ("URP" or "glidepath"), is a linear trendline that starts at a plotted baseline level of visibility, measured in deciviews, and ends at the plotted desired level of visibility, natural conditions in 2064. *See* 40 C.F.R. § 51.308(d)(1)(i)(A) & (B). Put another way, in a limited sense it is like a payment plan: it estimates the monthly payment required to pay off a debt by a specified date. Here, rather than debt, the States are "paying" toward an improvement in aesthetic visibility. Also like a payment plan, States can do more than the plan asks—and sometimes even less. But unlike a payment plan, the Clean Air Act and the regulations require EPA to defer to the State's reasonable judgment (*i.e.,* a State can justify its decision on the pace of progress that is "reasonable" in light of the URP by considering the four statutory factors). In any event, the URP is a useful tool to the EPA and the States to compare the actual, or projected, visibility progress to what would be required if it improved visibility at a consistent rate over time to arrive at the desired result in 2064.

Once a State does all the work to compile a plan, the EPA's job is straightforward. It "shall approve" the plan "if it meets all of the applicable requirements of this chapter." 42 U.S.C. § 7410(k)(3). That means the EPA need only evaluate whether the State's analysis is based on "reasoned analysis" and is "reasonably moored" to the Clean Air Act's goal and its requirements. *North Dakota v. EPA*, 730 F.3d 761, 766 (8th Cir. 2013). That is all.

But in 2021, the Biden-Harris Administration tried to rewrite these requirements in a "Clarifications Memo." *See* Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period, at 6, 15 (July 2021). Rather than follow the statute's command to make "reasonable progress," the memo sought to require the States to make *more* than reasonable progress. For example, the memo stated that "a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas." *Id.* at 13. Put another way, the memo commanded that no matter how much progress a State is making toward the 2064 goal or how the four statutory factors pan out (if a particular action is necessary to make reasonable progress), a State should adopt

some controls no matter what. Further, the memo encouraged States to consider requiring efficiency improvements for existing controls—even if they already work.

The memo also put less emphasis on actual progress measured by the URP. In the memo, the EPA stated that it "reviewed several draft second planning period regional haze [state implementation plans] that conclude additional controls, including potentially cost-effective and otherwise reasonable controls, are not needed because all of the [relevant] Class I areas . . . are below their uniform rates of progress." *Id.* at 15. The memo said that sort of approach, all else equal, is "not appropriate." *Id.*

That memo focused on the wrong things—emission reduction for its own sake—with no tether to the Act's requirement of *visibility* improvements. And the memo was unmoored to the Clean Air Act because it ignored the Act's emphasis on *gradual*, not radical, improvements to visibility.

Thankfully, the EPA, now under the Trump Administration's leadership, has turned away from this mistaken view. It announced a policy that it applied to West Virginia's plan during the plan's proposed approval. *See Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period*, 90 Fed. Reg. 16,478 (proposed Apr. 18, 2025). The EPA established that "where visibility conditions for a Class I area impacted by a State are below the URP 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. 16,483. EPA's later-in-time proposed approval of South Dakota's plan applied materially the same policy. 90 Fed. Reg. 20,434 ("[W]here visibility conditions for a Class I area impacted by a State are below the URP 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.").

II. The Policy Hews to the Clean Air Act's Text and Purpose

The policy sets a combination of real-world visibility conditions (and projections) and consideration of the four statutory factors as the lodestar. In other words, the lodestar is a combination of results (URP) and analysis (consideration of four factors). Satisfying both, the EPA presumes the States' plans comply with the Act. That policy tracks the statute.

Take first the policy condition that the States demonstrate real-world improvements to visibility. To guide its evaluation of the States' plans, EPA developed a yardstick to measure States' real-world progress and projected progress toward the national goal. That tool, the URP, helps the EPA and States determine whether visibility is improving at a sufficient rate over time. If a State plots its actual

and projected progress against the URP line and falls below or matches the URP, then it is on the way to improving visibility to the 2064 goal. If a State is above the URP, that does not mean the State fails to satisfy the Act's requirements. Rather, consideration of the four factors, which we discuss next, is what determines whether the State's progress is "reasonable." Put another way, the State may still be on the way to the goal but on a different path than the URP.

The policy's weight on the URP dovetails with the Clean Air Act. The URP judges real-world progress toward the statute's visibility goal. The only way to know if the States' plans actually "prevent[] . . . any future, and . . . remedy[] . . . any existing, impairment of visibility" caused by humans is to make real-world observations. 42 U.S.C. § 7491(a)(1). The URP reflects those observations.[1] If a State is making real-world and projected progress toward that goal by comparison to the URP, that fact should serve as strong evidence that a State's actions in its plan achieves "reasonable progress" toward the national goal during the requisite implementation period. Putting weight on actual or projected *results* in achieving the statute's desired end is verification that reasonable progress has been or is being made.

To be sure, a State that meets or beats the URP still must justify in its plan that existing measures are already making reasonable progress and also may still consider the four statutory factors for more robust analysis. But Congress passed the Act to achieve real-world visibility results, so it is reasonable for the EPA to use a tool to track those actual and projected results. *See Chevron*, 658 F.2d at 272 (noting the Act was intended to restore visibility in "wilderness areas and national parks" that were set aside purposefully "for special protection in their natural states"). If a State is on track or ahead of the URP path, it is right for the EPA to acknowledge, and consider, what is functionally an achievement of what Congress desired in § 7491(a).

Next, if a State selects a source for evaluation, the Act itself guides the State's evaluation by establishing four factors (costs, time, environmental and energy impacts, and remaining useful life) to evaluate whether additional controls on a particular source would be reasonable and whether those controls would significantly affect visibility. 42 U.S.C. § 7491(g)(1). To be sure, the Act does not preclude States from concluding that further controls are *not* reasonable, whether or not States make progress according to some other metric (like the URP). But the bottom line remains:

[1] The Act does not impose a specific visibility mandate. As the D.C. Circuit explained, "the natural visibility goal is not a mandate, it is a goal." *American Corn Growers Ass'n v. EPA*, 291 F.3d 1, 10 (D.C. Cir. 2002). The court further explained that a goal of natural visibility in Class I Areas, which the EPA has set, "is neither 'manifestly contrary to the statute' nor 'arbitrary or capricious in substance.' Indeed, the goal is an eminently reasonable elucidation of the statute." *Id.* at 10.

requiring the States to consider the four factors when choosing whether controls are reasonable for selected sources tracks the statute.[2]

In using the phrase "reasonable progress," Congress afforded the States significant discretion. *See Util. Air Regul. Grp. v. EPA*, 471 F.3d 1333, 1340 (D.C. Cir. 2006). ("[T]he Clean Air Act leaves wide discretion about how the [national] goal is to be achieved."). The word "reasonable," in modifying progress, means "not extravagant or excessive," "moderate," or "sensible." *See* Reasonable, sense 1.a, Oxford English Dictionary (Dec. 2024); *see also* Reasonable, sense 4, Black's Law Dictionary (12th ed. 2024) ("Within sensible or rational limits; not excessive; moderate."). It does *not* mean that methods must achieve "at least as much improvement" as the best technology available. *Util. Air Regul. Grp.*, 471 F.3d at 1340. Nor does it require "improvement at each area at every instant." *Id*. at 1340–41.[3] After all, for the measure of something to be "reasonable," it is not to be "extreme."

The choice of "reasonable progress" also tracks Congress's desire for gradual improvement of visibility in Class I areas—a "purely aesthetic" goal. *See WildEarth Guardians v. EPA*, 759 F.3d 1196, 1198 (10th Cir. 2014) (quoting *Oklahoma v. EPA*, 723 F.3d 1201, 1226 (10th Cir. 2013) (Kelly, J., concurring and dissenting in part)). The Act was passed because of a "growing awareness that visibility was rapidly deteriorating in many places, such as wilderness areas and national parks, set aside for special protection in their natural states." *Chevron v. EPA*, 658 F.2d 271, 272 (5th Cir. 1981). To achieve that goal, the Act set no deadline. 42 U.S.C. § 7491(a)(1). The Act envisioned moderate progress to achieve a *distant* goal when the text itself initiated the development of "long-term (ten or fifteen years) strateg[ies] for making reasonable progress toward that goal." *Id*. § 7491(b)(2)(B).

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[2] Moreover, it makes sense that EPA would make consideration of the four factors a condition precedent for presumed compliance with the Act, given the EPA's position that "states [should] assess the potential to make further reasonable progress towards natural visibility goal in every implementation period." 90 Fed. Reg. 20,434*; see also* 82 Fed. Reg. 3,099.

[3] In *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006), the D.C. Circuit blessed the EPA's standard that reasonable progress means State plans "must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period," 40 C.F.R. § 51.308(f)(3)(i). That was wrong. The court held the EPA's interpretation permissible based on extreme deference under *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), which has now been overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). *See Util. Air Regulatory Grp.*, 471 F.3d at 1340 (noting that the court was "defer[ing] to the agency's interpretation [of 'reasonable progress'] so long as it is reasonable"). Now, "instead of declaring a particular party's reading 'permissible' . . . courts use every tool at their disposal to determine the best reading of [a] statute." *Loper Bright*, 603 U.S. at 400. And there is a large delta between the "best reading" of "reasonable progress" and what the D.C. Circuit permitted—and, "if it is not the best, it is not permissible." *Id*.

Though some States may desire to achieve more than reasonable progress (and have the discretion to do so), the Act explicitly requires no more than sensible, moderate progress—"*reasonable* progress." Accordingly, evaluating the four statutory factors to determine whether additional controls are reasonable is a flexible inquiry. Flexible inquiries that require balancing economic, technical, and environmental considerations to further "moderate" or "sensible" progress toward a goal come part-in-parcel with a sort of deference by a reviewing body. *See, e.g.*, *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014) (explaining the principle that determining whether a scenario is "exceptional" relies on inherent discretion which means some deference toward that decision by a reviewing body necessitates the use of an "abuse of discretion" standard of review). The EPA's policy recognizes the Act's inherent flexibility. Under the policy, the EPA evaluates the plans to see if the States are making reasonable progress and considered the four factors. If a State meets that minimum analysis, the EPA presumes the plan complies with the Act.

Together, good results (beating the URP) and a robust analysis (including consideration of the four factors and others) should entitle a State to a presumption under the policy that its plan satisfies the Act's requirements and its goal. Both conditions dovetail with Congress's statutory command and the EPA's current position for second implementation period plans. The policy applied in the EPA's proposed approval of South Dakota's and West Virginia's plans reflects that: If visibility conditions meet or beat the URP 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. 20,434. Accordingly, if a State shows those things, the EPA "shall approve" the plan. 42 U.S.C. § 7410(k)(3).

III. The Policy's Presumption Respects the Act's Deference to States

The Clean Air Act says the EPA "shall approve" a State's plan if the plan "meets all of the applicable requirements" of the Act. 42 U.S.C. § 7410(k)(3). That function is "ministerial." *Luminant Generation Co., LLC v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012). That is why the policy's presumption makes sense. The Act gives EPA no discretion to second-guess the States' reasonable choices. Instead, the EPA's only job under the Act is to review the States' choices for reasonableness and ensure that the States make reasonable progress toward the national visibility goal. 42 U.S.C. § 7410(k)(3). That is all. So long as the States demonstrate reasonable progress with "reasoned analysis," the EPA *must* approve the plan. *See, e.g.*, *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013) (approving EPA's evaluation of a plan's substance "to ensure that it was one that was 'reasonably moored to the Act's provisions' and was based on 'reasoned analysis'"); *Texas v. EPA*, 829 F.3d 405, 428 (5th Cir. 2016) ("[T]he Clean Air Act limits EPA to a deferential role. EPA must defer to Texas's goals so long as the Texas goals comply with the Act.").

EPA's presumption policy respects the Act's deference to States. The Act requires "each applicable implementation plan for a State" to include measures "as *may* be *necessary* to make *reasonable* progress toward meeting the national goal." 42 U.S.C. § 7491(b)(2) (emphasis added). That language allows for a range of measures a State may choose to include in its plan to achieve "reasonable progress." "May be necessary" is permissive. Without "may be," the statute would mandate specific action—a plan must contain *all* measures necessary to make reasonable progress. Here, though, "may be" gives States inherent discretion to choose if measures are necessary and whether those measures achieve reasonable progress in light of the four statutory factors.

Interpreting a different statute, the D.C. Circuit read "may be necessary" to mean "not . . . unreasonable means." *Cellco P'ship v. FCC*, 357 F.3d 88, 91 (D.C. Cir. 2004) (quoting *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 793 (1978)). There is nothing in the Clean Air Act to suggest Congress meant anything different when it used the same phrase here. *See, e.g., Northcross v. Bd. of Ed. of Memphis City Sch.*, 412 U.S. 427, 428 (1973) ("The similarity of language in [two different statutes] is, of course, a strong indication that the two statutes should be interpreted pari passu."). So the EPA cannot deny a State's plan because it disagrees with its choice from the menu of "not unreasonable means" to achieve reasonable progress. So long as the State's choice is on the menu of "not unreasonable" options and the State is making reasonable progress, EPA owes the State's discretionary choice due deference. That's what the Act's text demands—and the presumption policy rightly acknowledges.

Except for the "Clarifications Memo," the EPA has consistently recognized the States' wide discretion. *See, e.g.,* 64 Fed. Reg. 35,714, 35,760 (July 1, 1999) ("The flexibility for State discretion is, of course, exactly what the regional haze rule provides."); Guidance on Regional Haze State Implementation Plans for the Second Implementation Period, at 37 (Aug. 2019) (explaining that States have "reasonable discretion to consider the anticipated visibility benefits of an emission control measure along with the other factors when determining whether a measure is necessary to make reasonable progress"). The deference in the policy mirrors that past deference to States.

The policy's deference to the States also makes sense within the broader statutory scheme. The Act itself "is an experiment in cooperative federalism." *Texas v. EPA*, 132 F.4th 808, 819 (5th Cir. 2025) (cleaned up). The Act's text even acknowledges that "air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). EPA's policy does what it should: presumptively defer to a State's determinations when real-world evidence shows it is on track to meet the national goal.

Courts have confirmed that the EPA must even defer to the States' selection of sources to analyze. In one case, the EPA rejected Texas's "holistic analysis of emissions controls for [a] range of sources" because it preferred a "source-specific analysis" of "particular power plants." *Texas v. EPA*, 829 F.3d 405, 427 (5th Cir. 2016). The Fifth Circuit corrected the EPA, explaining that if the Act "empowered EPA to draft reasonable progress goals on a blank slate" (i.e., if the EPA were the one empowered ex ante to create the plans and goals), then it "may be permissible" for it to make source selections. *Id.* at 428. But the "Clean Air Act limits EPA to a deferential role"—the "EPA must defer to Texas's goals so long as the Texas goals comply with the Act." *Id.*

EPA's presumption policy correctly puts each State in the driver's seat by affording deference to its determinations and analyses.

IV. The EPA Appropriately Applies this Policy Through its Proposed Approvals of Individual State Plans

If finalized, the proposed approval of South Dakota's plan is inherently a local, not national, decision. The Clean Air Act's venue provision assigns the review of nationally applicable actions to the D.C. Circuit and locally or regionally applicable actions to the regional circuits. But 42 U.S.C. § 7607(b)(1) says that plan approvals or disapprovals are per se locally or regionally applicable. EPA's policy for evaluating plans has not changed: EPA maintains its position that States must consider the four statutory factors (regardless of whether reasonable progress has been or is already being made). All that changed was that the EPA now presumes that a State complies with the Act if the State considered the four factors and the relevant visibility conditions are below the URP in its individual plan. Because South Dakota's plan here, like all the others now being evaluated under EPA's policy, hinges on the details of local conditions and information, decisions like these are not "nationwide" in scope or effect.

The proposed approval of South Dakota's plan is one the Clean Air Act explicitly says is local in nature. Approving a state-specific plan that sets forth how the Act's goal of visibility "will be achieved and maintained within . . . such State" is inherently a local decision. 42 U.S.C. § 7407(a).

That distinction has consequences. Certain enumerated actions, like "approving or promulgating any implementation plan" or "any other final action" under the Act "which is locally or regionally applicable," may be reviewed only in the appropriate regional circuit. 42 U.S.C. § 7607(b)(1). By contrast, only certain enumerated actions or "any other nationally applicable . . . action taken," "may be filed only" in the D.C. Circuit. *Id.* And locally or regionally applicable actions that are "based on a determination of nationwide scope or effect" are reviewable in the D.C. Circuit, too, but only if the EPA publishes a finding of nationwide scope. *Id.*

This proposed approval is local in scope. That contrasts with past amendments based on common nationwide grounds. *See, e.g., Dayton Power & Light Co. v. EPA*, 520 F.2d 703, 705 (6th Cir. 1975) ("The regulations were developed through a unitary rule-making procedure, and they have the effect of amending every state's air quality implementation plan in precisely the same way."). South Dakota's plan, like West Virginia's and every other State's, individually must provide state-specific information to meet national standards. That is how the Clean Air Act operates.

There are no determinations on facts that are nationwide in scope or effect. All the EPA does is evaluate South Dakota's plan to see whether (1) the analyzed areas are below the URP and (2) whether the State considered the four statutory factors for emissions controls. 90 Fed. Reg. 20,434. If the answer is yes to those two inquiries, the EPA presumes South Dakota satisfies what the Clean Air Act requires. 90 Fed. Reg. 20,434. EPA has not changed what it expects the States to present in their plans. All that has changed is how the EPA will evaluate States' submissions when it does so state-by-state or regionally. That decision depends on what each State presents in their plans. Review of those decisions, if they be challenged at all, belong in the regional circuits.

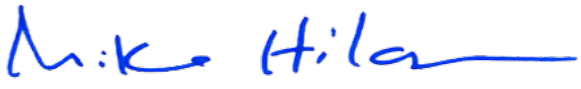
Nearly every federal court of appeals to consider the question has held that plan approvals and disapprovals were locally or regionally applicable actions. Indeed, approvals or disapprovals of state plans are "paradigmatic examples of locally or regionally applicable actions." *Id.* The D.C. Circuit itself has described these actions as "the *prototypical* 'locally or regionally applicable' action." *Sierra Club v. EPA*, 47 F.4th 738, 743 (D.C. Cir. 2022) (quoting *Am. Rd. & Transp. Builders Ass'n v. EPA*, 705 F.3d 453, 455 (D.C. Cir. 2013)) (emphasis in original). Likewise, the Fourth Circuit has held that plan approvals or disapprovals are locally or regionally applicable because they are "applicable *only to*" a single State and "particular to [that State's] circumstances." *West Virginia v. EPA*, 90 F.4th 323, 331 (4th Cir. 2024) (emphasis in original). The exception is the Tenth Circuit. It incorrectly held that whether or not the EPA's final action involves facts unique to each state's individual plan, the approval of more than one plan is *functionally* national in scope if the content of those plans' approvals use "uniform statutory interpretation and common analytical methods." *Oklahoma v. EPA*, 93 F.4th 1262, 1266 (10th Cir. 2024), *cert. granted sub nom. Oklahoma v. EPA*, 145 S. Ct. 411 (2024). Just this past March, the Fifth Circuit rightly rebuffed the Tenth Circuit's anomaly and held, like the other circuits, that approvals or disapprovals of a state plan are "plainly 'locally or regionally applicable' because their legal effect is limited to those states." *Texas v. EPA*, 132 F.4th 808, 827 (5th Cir. 2025). After all, the Clean Air Act directs courts "to evaluate the effect of the challenged 'final action'—here, 'disapproval[s]' under § 7410(k)(3)—not to focus on the contents of a 'rule' (a term used elsewhere in § 7607(b)(1))." *Id.* at 828.

The proposed approval of South Dakota's plan, if finalized, is explicitly and effectively not of a national character. Although we see no error in the EPA's use of its policy to guide review of South Dakota's plan, should a challenge arise, it belongs in a regional circuit.

V. Conclusion

EPA's presumption policy is rooted in the Clean Air Act's text and EPA's preexisting interpretations of it. EPA correctly applied its presumption in proposing to approve South Dakota's plan. The signatories support EPA's proposed approval of that plan.

Sincerely,



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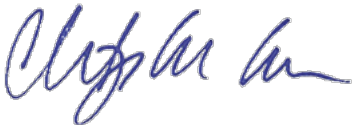

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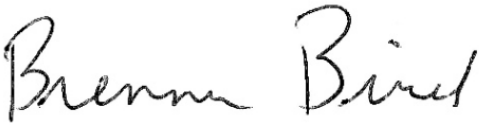

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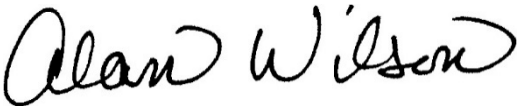

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