

Testimony of Neil Gormley, Earthjustice, on
EPA's Cross-State Air Pollution Authorization
August 1, 2018

Good morning. I'm here today on behalf of Earthjustice, Sierra Club, and the Appalachian Mountain Club, as well as their millions of members and supporters, to ask EPA not to finalize its proposed rule authorizing continued cross-state air pollution that contributes to unhealthy levels of ozone in downwind states. *See Proposed Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard*, 83 Fed. Reg. 31,915 (July 10, 2018) ("Cross-State Air Pollution Authorization").

EPA's proposed Cross-State Air Pollution Authorization allows upwind polluters to continue emitting harmful pollution that will cause violations of the 2008 ozone standard in downwind states. As EPA is aware, people in several states covered by this proposal are being exposed to ozone levels above the standard, increasing their risk of serious health problems including asthma attacks, scarring of the lungs, and early death. EPA itself predicted in the 2016 Cross-State Air Pollution Rule Update ("CSAPR Update") that cross-state air pollution would continue to contribute significantly to violations of the 2008 ozone standard. Sure enough, data from 2017—the last year for which certified data are available—confirm that large portions of the Eastern United States are failing to meet the standard, often by a wide margin, even after implementation of the CSAPR Update. These regions are home to millions of people who are being exposed to pollution that far exceeds health-protective levels.

The proposed Cross-State Air Pollution Authorization raises serious environmental justice concerns. Many of the downwind areas most impacted by the decision to authorize continued pollution are disproportionately home to communities of color and low-income communities. Yet EPA has failed to conduct any environmental justice analysis, saying that it won't even consider effects on environmental justice communities caused by the decision to authorize continued pollution. This is illegal and wrong. EPA should conduct a thorough analysis of the consequences of this decision for environmental justice communities, and it must not adopt a rule that worsens the disproportionate environmental burdens those communities bear.

EPA attempts to justify its failure to reduce cross-state pollution by claiming, first, that it is free to ignore contributions to non-compliance with the

2008 ozone standard until 2023 and, second, that all covered states will be in compliance in that year. Neither of these conclusions is correct.

First, EPA's focus on 2023 is contrary to the deadlines Congress established in the Clean Air Act. For most areas of the country experiencing ozone violations due to cross-state pollution, the attainment deadline for the 2008 standard expired in July of this year; others face deadlines in 2021. EPA's decision to focus on 2023, and to authorize continued cross-state pollution that contributes to air quality violations in the meantime, violates the deadlines in the Clean Air Act.

It also makes little sense to focus on 2023 because the emissions that significantly contribute to ozone pollution can be reduced much sooner. Coal-fired power plants that still lack adequate pollution controls should be required to install them expeditiously, not given a free pass to continue polluting until 2023 and beyond. And other measures could achieve dramatic emission reductions even more quickly. Many plants already have the pollution controls they need to reduce their emissions but are choosing not to run them. Other plants could easily and immediately improve the performance of their controls by adopting more frequent maintenance schedules, or more frequently replacing their catalyst. Generators could also secure pollution reductions cheaply by shifting generation to lower-emitting units and sources. Electricity generators routinely shift generation in this way, and they could achieve major reductions through generation shifting in a matter of months, not years. EPA cannot defer these immediately available pollution reductions when people are breathing unhealthy air today.

Finally, EPA's analysis of air pollution in 2023 is seriously flawed. EPA assumes pollution reductions from rules and programs that the Trump administration has stated its intention to weaken or reverse and attributes an unwarranted degree of precision to its projections. Rather than rely on flawed projections for the year 2023, EPA should comply with the deadlines in the Clean Air Act.