

International air emissions impact states' ability to achieve Clean Air Act visibility goals

P. Stephen Gidiere, III and David W. Mitchell

Stephen Gidiere and David Mitchell are attorneys in the Environmental and Natural Resources Section of Balch & Bingham, LLP, in Birmingham, Alabama.

When most environmental practitioners think of international environmental issues, they think of climate change or ocean resources or other complex issues that require a global response. However, international environmental issues arise right here at home and have a very real impact on domestic regulatory decisions and obligations. A prime example is the regional haze program, first enacted in 1977 when Congress amended the Clean Air Act to address visibility in Class I areas (i.e., national parks and wilderness areas). The 1977 amendments “declare[d] as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas [resulting] from manmade air pollution.” 42 U.S.C. § 7491(a)(1). Following additional revisions by Congress to the regional haze program in 1990, the U.S. Environmental Protection Agency (EPA) promulgated its regional haze rule in 1999, establishing 2064 as the target date for achieving “natural” visibility conditions at all Class I areas. EPA further revised the rule in 2005 to allow certain aspects to be satisfied by participation in the Clean Air Interstate Rule and subsequently the Cross-State Air Pollution Rule.

States comply with the regional haze program by promulgating State Implementation Plan (SIP) revisions that EPA reviews for compliance with the Clean Air Act. There are three main components of a regional haze SIP: (1) reasonable progress goals, which are visibility goals for a Class I area, (2) a long-term strategy, which is the state’s plan for meeting the reasonable progress goals, and (3) implementation of the best available retrofit technology at certain large stationary sources. These SIPs are submitted on a phased schedule, with each revision covering a 10-year period and establishing interims goals for that period.

International considerations

A central tenet of the regional haze program is the idea that visibility impairment is caused by a wide variety of activities and sources across large geographic areas. EPA’s regulations specifically define regional haze as “visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area.” 40 C.F.R. § 51.301. Thus, for states on international boundaries like those abutting Canada and Mexico and even states on coastlines, visibility impairment within their borders can be heavily influenced by foreign activities and events. For instance, electric generating units and other industrial facilities in Mexico have a drastic impact on visibility at Big Bend National Park in Texas. And visibility

at this Class I area is further impacted by wildfires, dust storms, and agricultural burning originating in Mexico.

But does EPA's domestic regional haze program fairly account for these international sources of visibility impairment? The preamble to the [1999 regional haze rule](#) sets forth principles to guide EPA in evaluating a regional haze SIP. As a general matter, EPA "does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution." 64 Fed. Reg. 35,714, 35,736 (July 1, 1999). Instead, states "should evaluate the impacts of current and projected emissions from international sources in their regional haze programs," and "EPA will work with the governments of Canada and Mexico to seek cooperative solutions on transboundary pollution problems." *Id.* For example, in Washington State, [EPA noted](#) that additional controls were not needed on Washington sources "due to the significant contribution from emissions from natural fire, the Pacific offshore, Canada, and outside the modeling domain." 77 Fed. Reg. 76,174, 76,204 (Dec. 26, 2012). Similarly, in Idaho, [EPA found](#) that sources "outside the modeling domain contribute from 45 to 51% of the [ambient] SO₂ emissions, and from 25 to 37% of the NO_x emissions that impact visibility in Class I areas in Idaho." 77 Fed. Reg. 30,248, 30,256 (May 22, 2012). EPA noted that "[t]hese sources are not under the jurisdiction of Idaho nor surrounding States" and will not be controlled in the first planning period. *Id.*

Not requiring additional controls due to the influence of international emissions makes sense, but EPA has recently indicated that it may be abandoning this traditional approach. For example, in 2009, [Texas determined](#) in its regional haze SIP submission that "52 percent of the impairment at Big Bend . . . is from Mexico and further south." Tex. Comm'n on Env'tl. Quality, Revisions to the State Implementation Plan (SIP) Concerning Regional Haze at 10-10 (Feb. 25, 2009). [Texas specifically requested](#) that EPA "initiate and pursue federal efforts to reduce impacts from international transport." 79 Fed. Reg. 74,818, 74,844 (Dec. 16, 2014). Although EPA acknowledges these international emissions, its proposed regional haze rule for Texas—currently pending—does not account for such emissions. *Id.* at 74,842–44. Ultimately, EPA has not pursued federal efforts with Mexico and has instead proposed that Texas rectify an international issue it cannot control by requiring the installation of emission controls on selected facilities.

Concluding thoughts

Although domestic in nature, the regional haze program invokes international emissions issues that EPA must address. Disregarding international emissions at the expense of domestic sources runs counter to EPA's longstanding commitment to working cooperatively with Canada and Mexico. EPA should both actively engage with the international community on reducing these impacts and work with states to develop methodologies to account for these emissions in state regional haze plans in a way that does not unfairly burden domestic activities and sources.