



June 1, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

**Re: Prime Mover Institute's Comment on the Proposed Rule Entitled:
Proposed Reconsideration and Clean Air Act § 179B(b) Determination
for the Northern Wasatch Front, Utah, 91 Fed. Reg. 23,209 (Apr. 30,
2026); Docket No. EPA-R08-OAR-2024-0552**

Dear Administrator Zeldin:

Prime Mover Institute respectfully submits these comments in support of EPA's proposed determination, under Clean Air Act § 179B(b), that the Northern Wasatch Front would have attained the 2015 ozone NAAQS by its Moderate attainment date but for emissions emanating from outside the United States.¹ The proposal correctly makes three changes to restore its evaluations under § 179B(b) to the text of the statute: it no longer requires a State to show that it could not attain even after adopting all reasonably available controls; it no longer treats a demonstration as more persuasive when international contributions exceed domestic ones; and it no longer treats an area's distance from an international border, or similar characteristics, as triggering a heightened evidentiary showing. Each of those requirements was an addition to a statute that does not contain it. EPA is right to remove all three and return § 179B(b) to its text, and Prime Mover Institute urges the Agency to finalize the proposal as proposed.

The Prime Mover Institute is a new public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to

¹ Utah; Northern Wasatch Front; 2015 8-Hour Ozone National Ambient Air Quality Standards; Reconsideration and Repeal of Finding of Failure To Attain and Reclassification to a Serious Nonattainment Area; Determination of Attainment by the Moderate Attainment Date But for International Emissions, 91 Fed. Reg. 23,209 (proposed Apr. 30, 2026) (to be codified at 40 C.F.R. pts. 52, 81); Docket No. EPA-R08-OAR-2024-0552.

engage in rulemaking processes with technical information and legal arguments, calling attention to the impacts regulation has on citizens, the grid, and the rule of law.

America stands at a crossroads. A legacy of bad policy and worse ideas threatens the nation with blackouts and bill hikes, right as demand for energy rises. In order for America to scale up its energy production and avoid the worst-case scenarios, we cannot cling to the policies and procedures that got us here. Fortunately, both policymakers and the private sector realize the need for dramatic change. And courts have begun to look more skeptically at accretions of arbitrary power, accretions that government officials used to thwart energy production and use. This points the way to a future of streamlined regulation, taxpayer savings, and cheaper, more abundant energy for all.

The main obstacle to energy dominance is what Robert Bryce calls the “anti-industry industry,” the non-profits and lawyers dedicated to defending the status quo. These groups have used litigation, regulatory comments, and intimidation to forestall change. They will no doubt keep at it. But, despite their vast funding, they will not be able to maintain a policy regime that’s so far out of touch with the American public and their elected representatives. So long, that is, that the advocates of energy dominance show up to defend their ideas.

In the words of Vaclav Smil, “prime movers are energy converters able to produce kinetic (mechanical) energy in forms suitable for human uses.” In the same way, Prime Mover Institute helps convert insight into action.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
Russell Greene
Managing Director
Prime Mover Institute

BACKGROUND

Clean Air Act § 179B(b) provides that, for an ozone nonattainment area, a State that “establishes to the satisfaction of the Administrator” that the area “would have attained the national ambient air quality standard . . . by the applicable attainment date, but for emissions emanating from outside of the United States” is not subject to reclassification under § 181(b)(2).² The provision conditions relief on a single showing—but-for causation—committed to the Administrator’s satisfaction. It imposes no further precondition.

EPA’s prior practice was otherwise. In its December 2020 § 179B Guidance and in two 2022 determinations—including a proposed disapproval of this very area’s demonstration—EPA treated three recommendations as effective preconditions: that the area “could not attain” even with required controls; that international contributions exceed domestic ones for a demonstration to be “more compelling”; and that certain area characteristics “suggest the need for a more detailed demonstration with additional evidence.”³ None of the three appears in the text of § 179B(b). EPA rescinded the 2020 Guidance in 2025, applied a text-based reading in its Phoenix-Mesa, Arizona determination, and applies the same reading here.⁴ As EPA now acknowledges, its prior interpretation was “not the best reading of the statute.”⁵

EPA CORRECTLY RETURNED § 179B(B) TO ITS TEXT

Section 179B(b) supplies one condition for retrospective relief, that a State establish, “to the satisfaction of the Administrator,” that the area “would have attained . . . but for” international emissions.⁶ After *Loper Bright Enterprises v. Raimondo*, a court gives a statute its single best reading, and “if it is not the best, it is not permissible.”⁷ The best reading of § 179B(b) conditions relief on the but-for showing and nothing more. At the same time, “to the satisfaction of the Administrator” is the kind of term *Loper Bright* recognizes as one that “leaves agencies with flexibility,” committing the sufficiency of the evidence to the Administrator’s case-by-case judgment.⁸ EPA reads the phrase the same way,

² 42 U.S.C. § 7509a(b); *see* 91 Fed. Reg. at 23,213.

³ 91 Fed. Reg. at 23,215 (EPA reciting the prior policy); *see* 87 Fed. Reg. 21,842, 21,852 (Apr. 13, 2022); 87 Fed. Reg. 50,030, 50,033–34 (Aug. 15, 2022).

⁴ 91 Fed. Reg. 13,777 (Mar. 23, 2026); *see* 91 Fed. Reg. at 23,213–14.

⁵ 91 Fed. Reg. at 23,215.

⁶ 42 U.S.C. § 7509a(b).

⁷ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

⁸ *Loper Bright*, 603 U.S. at 394–95.

concluding that it “provides inherent flexibility to the EPA to determine what analyses are sufficient.”⁹ Each of the three rescinded preconditions departs from that text.

The control-obligations precondition. EPA previously required, as a condition of concurrence, that “the weight of evidence should show the area could not attain with on-the-books measures and potential reductions associated with controls required for that particular NAAQS and classification that are to be implemented by the attainment date.”¹⁰ Section 179B(b) imposes no such requirement; it asks only whether the area would have attained but for international emissions. EPA now recognizes that § 179B(b) “does not expressly require that a State meet all CAA requirements for an area’s classification as a precondition.”¹¹ Removing the precondition excuses no emission controls. A § 179B(b) determination is not a redesignation to attainment; the area retains its existing classification and remains obligated “to adopt and submit the required SIP elements for its existing classification, with the exception of contingency measures.”¹²

The international-greater-than-domestic weighting. EPA previously treated a demonstration as “more compelling” when international contributions exceeded domestic ones.¹³ But § 179B(b) asks a question of causation, not comparative magnitude—whether the area “would have attained . . . but for” international emissions. A contribution can satisfy that test without being the larger share. If subtracting the international increment would yield attainment, international emissions are a but-for cause of the area’s nonattainment even where domestic contributions are greater. EPA reads the statute the same way, explaining that a factor “is the ‘but for’ cause of an event if the event would not have occurred absent that factor.”¹⁴ The relative size of the international and domestic contributions may be probative of that causal question in a particular record, but the statute does not permit it to operate as a threshold—an “international must exceed domestic” rule—that defeats an otherwise-sufficient but-for showing. EPA is right to abandon that comparative-magnitude rule.

The heightened-scrutiny characteristics. EPA previously identified characteristics—beginning with “affected monitors are not located near an

⁹ 91 Fed. Reg. at 23,214.

¹⁰ 91 Fed. Reg. at 23,215 (quoting the prior policy); *see* 87 Fed. Reg. 50,030, 50,034 (Aug. 15, 2022).

¹¹ 91 Fed. Reg. at 23,215.

¹² 91 Fed. Reg. at 23,215; *see* 42 U.S.C. § 7511(b)(2).

¹³ 91 Fed. Reg. at 23,215 (quoting the prior policy); *see* 87 Fed. Reg. at 21,852.

¹⁴ 91 Fed. Reg. at 23,216.

international border”—that “would suggest the need for a more detailed demonstration with additional evidence,” placing a heavier burden on interior areas.¹⁵ But § 179B(b) is not limited to border areas; it is available to “any State” and may account for emissions from any country, wherever an area’s monitors sit.¹⁶ Whether a demonstration carries its evidentiary burden is the Administrator’s weight-of-evidence judgment, not a fixed checklist, and EPA is right to stop treating those characteristics as automatic triggers for a heightened showing.¹⁷

Because these points rest on the text of § 179B(b), they are not unique to the Northern Wasatch Front; EPA should read the statute the same way in every § 179B(b) demonstration it evaluates.

CONCLUSION

EPA’s proposal restores the best reading of § 179B(b) and rests on a lawful change of policy. Prime Mover Institute respectfully urges EPA to finalize the determination as proposed. Thank you for the opportunity to comment.

¹⁵ 91 Fed. Reg. at 23,215 & n.56 (quoting the prior policy); *see* 87 Fed. Reg. at 21,852.

¹⁶ 91 Fed. Reg. 13,777, 13,779 (Mar. 23, 2026); *see* 83 Fed. Reg. 62,998, 63,010 (Dec. 6, 2018).

¹⁷ 91 Fed. Reg. at 23,215.