



July 24, 2022

Marianne Rossio
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Department of Health
2827 Waimano Home Road, Suite #130
Pearl City, Hawaii 96872

Comments submitted to: CAB@doh.hawaii.gov

Re: Conservation Organizations' Comments on Hawaii Department of Health, Clean Air Branch, Draft Regional Haze State Implementation Plan for the Second Planning Period (2018-2028) (Docket No. 22-CA-PA-08)

Dear Ms. Rossio:

National Parks Conservation Association and Coalition to Protect America's National Parks ("Conservation Organizations") submit the following comments, attached technical report,¹ and additional 11 exhibits identified in the comments and listed on pages 17 and 18 regarding the Hawaii Department of Health, Clean Air Branch's ("DOH-CAB"), Draft Regional Haze State Implementation Plan for the Second Planning Period (2018-2028) (Docket No. 22-CA-PA-08) ("Proposed SIP").^{2,3} The Conservation Organizations regret that the requested short extension was not provided.⁴ The Conservation Organizations also regret that the State's deadline for comments fell outside of the workweek, on a Sunday. The Conservation

¹ Vicki Stamper & Megan Williams, "OIL AND GAS SECTOR REASONABLE PROGRESS FOUR-FACTOR ANALYSIS OF CONTROLS FOR FIVE SOURCE CATEGORIES: NATURAL GAS-FIRED ENGINES, NATURAL GAS-FIRED TURBINES, DIESEL-FIRED ENGINES, NATURAL GAS-FIRED HEATERS AND BOILERS AND FLARING AND INCINERATION," (March 6, 2020), which is incorporated in full as part of these comments. (Ex. 1) ("Stamper Expert Report March 2020").

² The Exhibits were transmitted via email to the email address identified above, CAB@doh.hawaii.gov.

³ Hawaii Department of Health, State of Hawaii Clean Air Branch ("DOH-CAB") Draft Regional Haze State Implementation Plan for the Second Planning Period (2018-2028) (Docket No. 22-CA-PA-08), <https://health.hawaii.gov/cab/files/2022/06/DRAFT-2021HI-RHSIP.pdf>. (Ex. 2) ("Proposed SIP").

⁴ Letter from Natalie Levine, to Michael Madsen, Clean Air Branch, Department of Health, Requesting Extension of Comment Period for Hawaii's Draft Regional Haze State Implementation Plan for the Second Implementation Period, (June 30, 2022). (Ex. 3).

Organizations appreciate the letter from you, which responded to our request and allowed for the submittal of these comments and exhibits via email, rather than by postmarked mail.⁵

National Parks Conservation Association (“NPCA”) is a national organization whose mission is to protect and enhance America’s national parks for present and future generations. NPCA performs its work through advocacy and education, with its main office in Washington, D.C. and 24 regional and field offices. NPCA has over 1.5 million members nationwide, including 6,499 NPCA members and supporters in Hawaii. NPCA is active nationwide in advocating for strong air quality requirements to protect our parks, including submission of petitions and comments relating to visibility issues, regional haze State Implementation Plans, climate change and mercury impacts on parks, and emissions from power plants, oil and gas operations and other sources of pollution affecting national parks and communities. NPCA’s members live near, work at, and recreate in all the national parks, including those directly affected by emissions from Hawaii’s sources.

The Coalition to Protect America’s National Parks (“Coalition”) is a non-profit organization composed of over 2,100 retired, former and current employees of the National Park Service. The Coalition studies, speaks, and acts for the preservation of America’s National Park System. As a group, we collectively represent over 40,000 years of experience managing and protecting America’s most precious and important natural, cultural, and historic resources.

The Conservation Organizations have concerns with Hawaii’s Proposed SIP, many of which echo concerns raised in the National Park Service’s (“NPS”) consultation comments included in Appendix P of the Proposed SIP. We reviewed the NPS’s analyses and concur with the analyses. This letter details these concerns, in particular regarding three sources and requests that DOH-CAB make substantial edits to the Proposed SIP prior to submission to the U.S. Environmental Protection Agency (“EPA”) to ensure reasonable progress is made in Hawaii’s Class I areas.

⁵ DOH-CAB Public Notice, (Conservation Organizations’ review of current Public Notices posted revealed that other public comments were allowed to be submitted via email, while public comments for the regional haze SIP were required to be “postmarked” and sent to “Pearl City, Oahu,” as explained in the public notice as follows: “[a]ll written comments on Hawaii’s draft RH-SIP must be addressed to the Clean Air Branch at the above address on Oahu and must be postmarked or received by July 24, 2022.”), <https://health.hawaii.gov/cab/files/2022/06/22-CA-PA-08.pdf>. (Ex. 4); *see also*, Letter from Marianne Rossio, P.E. Manager, Clean Air Branch, Hawaii Department of Health, to Natalie Levine, Climate and Conservation Program Manager, National Parks Conservation Association, Response to Request for an Extension of the Comment Period for Hawaii’s Draft Regional Haze State Implementation Plan for the Second Implementation Period, (July 8, 2022). (Ex. 5).

I. BACKGROUND INFORMATION

Hawaii has two Class I areas, Haleakalā National Park on Maui Island and Hawai'i Volcanoes National Park on Hawaii Island. DOH-CAB evaluated the following four sources, and proposed the following actions:⁶

Hawaii Island Sources:

- Kanoelehua-Hill Power Plant – Permanent shut down of Boilers Hill 5 and Hill 6 by 2028.
- Puna Power Plant – Fuel switch from fuel oil No. 6 to ULSD for the plant's boiler by four years from permit issuance.

Maui Island Sources:

- Kahului Power Plant – Permanent shut down of Boilers K-1, K-2, K-3, and K-4 by 2028.
- Maalaea Power Plant – Preliminary evaluation found that fuel injection timing retard (FITR) for Diesel Engine Generators M1, M2, and M3 and selective catalytic reduction (SCR) for Diesel Engine Generator M7 by 2028 are required. After further review, more units from this facility may require controls. Therefore, controls for the Maalaea Generating Station will be addressed in an RH-SIP revision.

Based on NPCA's research, we know these sources contribute to visibility impairment at Hawaii's Class I areas. As discussed below, we urge DOH-CAB to revise its Proposed SIP as follows.

- (1) Make the necessary corrections to the Four-Factor Analyses at the unit at the Maalaea Power Plant, which will result in emission limits;
- (2) As expeditiously as possible, either obtain from the sources or conduct the incomplete and needed Four-Factor Analyses, including SIP provisions.
- (3) Ensure that emission limitations (and shut down requirements) and monitoring, recordkeeping and reporting requirements are included in the SIP as regulatory provisions and submitted to EPA for approval, which first go through public notice and comment, and
- (4) Fully consider environmental justice impacts of emissions.

These revisions and considerations are necessary to not only clear the air in our national parks, but in our communities, including environmental justice communities that may be impacted.

⁶ Proposed SIP at PDF 4.

II. ISSUES IDENTIFIED IN THE PROPOSED SIP

A. Uniform Rate of Progress (URP) is not a “Safe Harbor”

Throughout its Proposed SIP DOH-CAB asserts that because Hawaii’s Class I areas are currently below the adjusted uniform rate of progress needed to achieve the 2064 visibility end goal and are projected to remain below the rate of progress through 2028, DOH-CAB’s sources need not install as stringent controls during this planning period. As EPA’s 2021 July 2021 Clarification Memo stated, SIPs “that conclude that additional controls, including potentially cost-effective and otherwise reasonable controls, are not needed because the Class I areas in the state (and those out-of-state areas affected by emissions from the state) are below their uniform rates of progress (URPs)” have not “answer[ed] the question of whether the amount of progress made in any particular implementation period is ‘reasonable progress.’”⁷ EPA explained that its “2017 RHR preamble and the August 2019 Guidance clearly state that it is not appropriate to use the URP in this way, *i.e.*, as a ‘safe harbor.’”⁸

The EPA Clarification memo provides:

The URP is a planning metric used to gauge the amount of progress made thus far and the amount left to make. It is not based on consideration of the four statutory factors and, therefore, cannot answer the question of whether the amount of progress made in any particular implementation period is “reasonable progress.” This concept was explained in the RHR preamble. Therefore, states must select a reasonable number of sources and evaluate and determine emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors.⁹

Therefore, it is inappropriate for DOH-CAB to use visibility conditions (including fire and volcano activity), and the status of the glideslope to justify less stringent requirements in this plan. By doing so, DOH-CAB fails to make reasonable progress to continue to clean up haze pollution incrementally. We urge the state to modify the Proposed SIP by requiring more stringent measures of pollution

⁷ Memorandum from Peter Tsirigotis, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors Regions 1-10, “Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period,” (July 9, 2019), at 15, <https://www.epa.gov/visibility/clarifications-regarding-regional-haze-state-implementation-plans-second-implementation>. (“Clarification Memo”).

⁸ Clarification Memo at 15-16; *see also* Memorandum from Peter Tsirigotis, Director at EPA Office of Air Quality Planning and Standards, to EPA Air Division Directors Regions, “Guidance on Regional Haze State Implementation Plans for the Second Implementation Period,” EPA-457/B-19-003, at 25 (Aug. 2019), https://www.epa.gov/sites/default/files/2019-08/documents/8-20-2019_-_regional_haze_guidance_final_guidance.pdf. (“Guidance”).

⁹ Clarification Memo at 15-16.

reduction to satisfy the requirement to make meaningful reasonable progress, and not lean improperly on the URP to justify doing nothing.

B. DOH-CAB Failed to Require and Conduct the Appropriate Four-Factor Analyses for Its Sources and Must Correct the Proposed SIP Before Submittal To EPA

As presented above DOH-CAB's Proposed SIP only included proposed controls for two of its sources and DOH-CAB must make the following corrections to its Four-Factor Analyses these two sources.

1. DOH-CAB Must Correct Its Errors at the Maalaeu Power Plant

We reviewed the consultation comments submitted by the NPS and as mentioned earlier, concur with that analysis.¹⁰

a. Corrections Needed for Units M10, M11, M12, M13

The NPS's comments explained that the four 12.5 MW diesel engine generators (M10, M11, M12, and M13) are currently firing diesel with a maximum sulfur content of 0.4 percent by weight.¹¹ The NPS's analysis further explained that the engines M10–M13 together account for 1,912 tons/year of NO_x emissions, this is approximately 69% of the total NO_x emissions at the facility and these four engines are rated at 17,520 hp each.¹² Hawaii DOH-CAB's cost-effectiveness for SCR on the four largest engines, M10–M13, were as follows:¹³

- \$8,757/ton NO_x removed for M10,
- \$8,895/ton NO_x removed for M11,
- \$12,423/ton NO_x removed for M12, and
- \$11,292/ton NO_x removed for M13.

As the NPS consultation comments noted, because DOH-CAB's proposed cost-effectiveness threshold was \$5,800/ton, all the above costs were not considered cost-effective. Notably, DOH-CAB's control cost threshold justification was thin in that it relied solely on the Chemical Engineering Plant Cost Index (CEPCI)¹⁴ to escalate costs between 2009 and 2019, which is a period of ten years. Using CEPCI for this purpose was inappropriate because ten years is far outside the time window

¹⁰ National Park Service (NPS) Regional Haze SIP feedback for the Hawaii State Department of Health Clean Air Branch, and workbooks (May 26, 2022). (Ex. 6). ("NPS Consultation Comments").

¹¹ NPS Consultation Comments at 4.

¹² NPS Consultation Comments at 4.

¹³ Proposed SIP, Table 4-3 at 147.

¹⁴ Proposed SIP at 76.

suitable for escalation, which is usually regarded as five years.¹⁵ Escalation with a time horizon of more than five years is typically not considered appropriate as such escalation does not yield a reasonably accurate estimate.¹⁶ Moreover, DOH-CAB's Proposed SIP acknowledged that its:

[C]ontrol cost threshold is a *guideline* for evaluating cost effective controls and is not considered a definitive line. Control measures that are above the control cost threshold may still be considered reasonable.¹⁷

Thus, from DOH-CAB's perspective, the \$5,800 figure is not cast-in-stone, rather it is a guideline it considers when evaluating whether costs are reasonable.

The NPS correctly-applied the applicable EPA SCR cost spreadsheet, and assumed a 20-year life, a 5.31% interest rate, and a NOx removal efficiency of 90% and found SCR would have a cost effectiveness of \$931/ton to \$1,240/ton of NOx removed.¹⁸ The NPS explained that "[t]his is a preliminary analysis because information was not available for all input parameters." The fact the DOH-CAB did not make the input parameters available to the public is contrary to the regulatory requirements to make all supporting information available to the public so that the Federal Land Managers and the public can review and comment. Without the input parameters, neither the NPS nor the Conservation Organizations' experts can review and comment on the cost-effectiveness options for these diesel engines. Therefore, as the NPS explained, "[a]s a result, some values required by the [NPS] worksheet (e.g., annual MW-hours) have been estimated and others (such as net plant heat rate, electricity and labor costs, etc.) were left at their default values."¹⁹ However, what is abundantly clear, is that "[t]he results suggest that SCR may be significantly more cost-effective than the estimates provided in the four-factor analysis."²⁰ Indeed, a cost effectiveness of \$931/ton to \$1,240/ton of NOx removed is clearly cost-effectively.

DOH-CAB must correct the errors in the Four-Factor Analyses for the four 12.5 MW diesel engine generators (M10, M11, M12, and M13) Maalaeu Power Plant, following those identified by the NPS. Once that is done, the figures will be cost-effective and DOH-CAB's SIP must require that the source meet emissions limits that reflect installation and operation of SCR controls at units M10, M11, M12, and M13.

¹⁵ EPA Control Cost Manual Section 1 Chapter 2, Cost Estimation: Concepts and Methodology, at 19 (Nov. 2017). (Ex. 7).

¹⁶ Control Cost Manual Section 1 Chapter 2, Cost Estimation: Concepts and Methodology, at 19 (Nov. 2017), (Ex. 7).

¹⁷ Proposed SIP at 76. (emphasis added)

¹⁸ NPS Consultation Comments at 6-7.

¹⁹ NPS Consultation Comments at 7.

²⁰ NPS Consultation Comments at 7.

The cost-effective figures calculated by the NPS are significantly lower than the cost-effectiveness thresholds being established for the second round regional haze plans by several states, including Arizona (\$4,000 to \$6,500/ton²¹), New Mexico (\$7,000 per ton²²), Oregon (\$10,000/ton²³), Washington (\$6,300/ton for Kraft pulp and paper power boilers²⁴), and Colorado (\$10,000/ton).²⁵ Thus, the NPS Four-Factor Analyses demonstrate the reasonableness of requiring additional meaningful NOx emissions reductions from the four 12.5 MW diesel engine generators (M10, M11, M12, and M13) at the Maalaeu Power Plant.

b. Additional Analyses Needed for Units M1, M2, M3

The Proposed SIP included requirements for FITR on Units M1, M2 and M3. The Conservation Organizations suggest that DOH-CAB evaluate replacement of the engines with Tier 4 engines. NPCA commissioned a comprehensive report on reasonable progress Four-Factor Analysis for the oil and gas industry. That report included cost estimates for replacement of older engines with the lowest emitting Tier 4 engines and demonstrates how it can be very cost effective depending on how frequently the engines were operated.²⁶ We included that report as an exhibit to these comments. DOH-CAB must evaluate replacement of the M1, M2 and M3 engines with Tier 4 engines and use the information in NPCA-commissioned March 2020 report included with these comments.

C. The Proposed SIP and Appendix P Lack Clarity in What DOH-CAB Intends to Include in Its SIP Submittal for the Source Retirement Provisions, Emission Limitations and Monitoring, Recordkeeping and Reporting Provisions

1. The Legal Requirements

The CAA requires that states submit implementation plans that “contain such emission limits, schedules of compliance and other measures as may be

²¹ See, e.g., Arizona Department of Environmental Quality, 2021 Regional Haze Four-Factor Initial Control Determination, Tucson Electric Power Irvington Generating Station, at 15, <https://www.azdeq.gov/2021-regional-haze-sip-planning>. (Ex. 8).

²² NMED and City of Albuquerque, Regional Haze Stakeholder Outreach Webinar #2, at 12, https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2017/01/NMED_EHD-RH2_8_25_2020.pdf. (Ex. 9).

²³ Letter from Oregon Department of Environmental Quality to Collins Forest Products, at 1-2 (Sept. 9, 2020), <https://www.oregon.gov/deq/aq/Documents/18-0013CollinsDEQletter.pdf>. (Ex. 10).

²⁴ Washington Department of Ecology, Draft Responses to comments for chemical pulp and paper mills, at 5, 6, and 8, <https://fortress.wa.gov/ecy/ezshare/AQ/RegionalHaze/docs/RespondFLM20210111.pdf>. (Ex. 11).

²⁵ Colorado Department of Public Health and Environment, In the Matter of Proposed Revisions to Regulation No. 23, November 17 to 19, 2021 Public Hearing, Prehearing Statement, at 7, <https://drive.google.com/drive/u/1/folders/1TK41unOYnMKp5uuakhZiDK0-fuziE58y>. (Ex. 12).

²⁶ Stamper Expert Report March 2020 at 99-101.

necessary to make reasonable progress toward meeting the national goal” of achieving natural visibility conditions at all Class I Areas.²⁷ The RHR requires that states must revise and update their regional haze SIP, and the:

Periodic comprehensive revisions must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress as determined pursuant to [51.308](f)(2)(i) through (iv).²⁸

Furthermore, EPA’s RH Guidance further explains these requirements:

This provision requires SIPs to include enforceable emission limitations and/or other measures to address regional haze, deadlines for their implementation, and provisions to make the measures practicably enforceable including averaging times, monitoring requirements, and record keeping and reporting requirements.²⁹

Thus, EPA’s RH Guidance recognizes EPA’s long-standing position that SIPs must contain provisions with enforceable emissions limitations and the other enforceable requirements for the SIP measures.

Additionally, while the SIP is the basis for demonstrating and ensuring state plans meet the regional haze requirements, state-issued permits must complement the SIP and SIP requirements.³⁰ State-issued permits must not frustrate SIP requirements.³¹ For example, sources with PSD and minor source construction permits under Title I must not hold permits that allow emissions that conflict with SIP requirements.³² Thus, the RP emission limits and other requirements included in DOH-CAB’s regional haze SIP must be practically enforceable and adopted into the SIP, which means they need to contain the elements necessary for enforceability.

²⁷ Guidance at 42-43 (While NPCA filed a Petition for Reconsideration regarding EPA’s issuance of the 2019 Guidance, it does not dispute the information in the Guidance referenced here regarding enforceable limitations, which cite to the “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 74 Fed. Reg. 13,498 (April 16, 1992).

²⁸ 74 Fed. Reg. 13,568 (emphasis added).

²⁹ Guidance at 42-43.

³⁰ 74 Fed. Reg. 13,498, 13,568 (April 16, 1992).

³¹ Furthermore, to the extent stationary sources are granted permits by rule or other mechanisms, these other categories that allow construction and operation must also complement SIP requirements.

³² Additionally, as discussed below, the proposed SIP revisions fail to contain source-specific “measures to mitigate the impacts of construction activities.” 40 C.F.R. § 51.308(d)(3)(v)(B).

2. DOH-CAB's Proposed SIP Does not Reference the Specific Provisions in the Permits that it Intends to Request that EPA Approve as Federally Enforceable

The introductory material in the Proposed SIP provided the following explanations for how it intends to meet the Clean Air Act's emission limitation requirements:

- Air permits for the Kahului Generating Station on Maui and the Kanoelehua-Hill and Puna Generating Stations on the Big Island, subject to emission reductions, *have been revised* to incorporate the federally enforceable regional haze control measures.
- The permit for the Maalaea Generating Station *will be amended* to incorporate regional haze controls during an RH-SIP revision.³³

Thus, prior to proposing this SIP and soliciting public comment on the control measures, DOH-CAB explained that it already issued air permits with provisions for Kahului Generating Station, Kanoelehua-Hill, Puna Generating Stations. Contrary to the requirement to fully consider public comments, it appears DOH-CAB may not intend to revise any of those decisions regarding those sources as a result of this proposed rulemaking since those requirements were already incorporated and finalized in the air permits.

In Chapter 6 of the Proposed SIP DOH-CAB explained that it “sent letters to Hawaiian Electric requesting permit applications to incorporate the regional haze control measures selected for the Kahului, Kanoelehua-Hill, Maalaea, and Puna power plants.”³⁴ In response to the State's request, Hawaiian Electric “responded with new information that was not provided in Hawaiian Electric's four-factor analyses for these facilities.” At this point, the Proposed SIP referred broadly to Chapter 7 for “additional evaluation and permit amendments to incorporate the federally enforceable regional haze control measures.”³⁵ The Proposed SIP did not explain where in Chapter 7 one should look to find the control measures.

In Chapter 7 DOH-CAB explained briefly it “will incorporate the regional haze provisions into permits for these sources as follows” and then included the below table and list of four footnotes below the table as excerpted below, with the notation “(please refer to Appendix P for details):”³⁶

³³ Proposed SIP at PDF 5.

³⁴ Proposed SIP at 79.

³⁵ Proposed SIP at 79.

³⁶ Proposed SIP at 102-103.

Facility ^a	Unit	Unit Nos.	Shut Down	Fuel Switch	SCR	LNB w/ OFA/FGR	FITR
Kanoelehua-Hill	Boilers	Hill 5&6	12/31/27	--	--	--	--
Puna	Boiler	--	--	See note ^b	--	--	--
Kahului	Boilers	K1, K2, K3, & K4	12/31/27	--	--	--	--
Maalaea	DEGs	M1, M2, & M3	--	--	--	--	12/31/27 See note ^c
		M7	--	--	12/31/27 See note ^d	--	--

a. Potential control measures for Mauna Loa Macadamia Nut Corporation Plant, not listed in the table as a facility evaluated, will be provided in supplemental documents as indicated in Chapter 6.
b. Fuel switch to ULSD by four (4) years from permit issuance.
c. Compliance with the NO_x emissions limit for FITR will be verified with annual source testing.
d. Compliance with the NO_x emissions limit for SCR will be verified with a CEMS.

Appendix P of the Proposed SIP includes the following: the Regional Haze FLM consultation information; the DOH-CAB and source consultation information; and the “Hawaiian Electric Permit Amendments and Technical Support Documents.”³⁷ There is a cover page for each category of information. For example, one of the cover pages indicates that for “Draft Permit Amendment and TSD for CSP No. 0067-01-C they will “(**[... BE SUBMITTED AS A SUPPLEMENT TO HAWAII'S RH SIP]**)”,³⁸ which apparently is one of the missing Four-Factor Analyses. Thus, the Conservation Organizations will plan to review and comment on that permit amendment in a future public notice and comment SIP process. Comments on the two sources with permit information of concern to the Conservation Organizations are as follows.

“**Draft Permit Amendment for CSP No. 0232-01-C.**”³⁹ The Proposed SIP contains the draft permit amendment for the Maui Electric Company, Ltd. (Maui Electric), Kahului Generating Station, covering Four (4) Boilers. Although the Proposed SIP indicated that DOH-CAB issued a final permit for the retirement of Boilers K-1, K-2, K-3, and K-4 at the Kahului Generating Station by December 31, 2027, the Proposed SIP did not include the final permit in the SIP. The permit amendment included for the Kahului Generating Station in Appendix P was clearly marked as “draft” (as were all the permits in the Appendix). The Proposed SIP did not explain this discrepancy. Neither the Proposed SIP nor Appendix P explain whether the draft permit is a SIP permit or a Title V permit. Additionally, the draft

³⁷ Proposed SIP, Appendix P at 119.

³⁸ Proposed SIP, Appendix P at 119 (Note: cover page only, no draft permit amendments followed. Red ink is as it appears in the appendix.).

³⁹ Proposed SIP, Appendix P at 120.

permit had an expiration date and it is unclear how that impacts the Act's SIP requirement, which requires that SIP measures must be permanent. Furthermore, the Proposed SIP included the draft Attachment to the permit not the entire permit. By only including the draft Attachment to the permit and not the entire permit, the ability of the public to comment due on the provisions of the proposed additions was restricted. For example, the Attachment includes cross-references to sections of the permit they were not provided access to (e.g., Section F cross-references Standard Condition No. 28). Standard Condition No. 28 is not in the Attachment. Additionally, the SIP must not contain conflicting methods for determining compliance and because the entire permit was not provided, the Conservation Organizations could not assess whether there were/are conflicting methods of compliance. Furthermore, the Proposed SIP is unclear if it intends to include the entire Permit Amendment/Attachment in the SIP as regulatory text, or just portions. The Proposed SIP must so specify. We urge DOH-CAB to renotify the SIP, provide clarification and full access to the missing information.

*“Draft Permit Amendment for CSP No. 0234-01-C.”*⁴⁰ The Proposed SIP contains the draft permit amendment for the Hawaii Electric Light Company, Inc. (Hawaii Electric Light) Kanoelehua-Hill Generating Station covering Two (2) Boilers, One (1) Combustion Turbine, and Four (4) Diesel Engines. The Conservation Organizations' concerns with the draft permit amendments for the Kanoelehua-Hill Generating Station are the same as those identified for the Kahului Generating Station.

D. Hawaii's Proposed SIP Failed to include all Sources: The Proposed SIP Lacks a Four-Factor Analysis and Emission Limits for the Mauna Loa Macadamia Nut Corporation Plant

The Mauna Loa Macadamia Nut Corporation Plant was ranked as one of the top three contributors to visibility impairment at Hawai'i Volcanoes National Park on Hawaii Island for nitrates, a concern identified by the NPS, which the Conservation Organizations share. The Four-Factor Analysis for Mauna Loa Macadamia Nut Corporation Plant was determined to be incomplete. Appendix P to the Proposed SIP indicated that the industry consultation documents from the source would:

BE SUBMITTED AS A SUPPLEMENT TO HAWAII'S RH SIP⁴¹

In addition to the Four-Factor Analysis from the source being incomplete, DOH-CAB failed to conduct a Four-Factor Analysis, which it was required to do since the source fail to do so. According to DOH-CAB, potential control measures for this plant will be provided in supplemental documents as a RH-SIP revision.

⁴⁰ Proposed SIP, Appendix P at 177.

⁴¹ Proposed SIP, Appendix P at 356. (Note: red ink is as it appears in the appendix.)

DOH-CAB must provide public notice and comment of its Proposed SIP prior to submitting to EPA.

E. DOH-CAB Must Do More to Analyze Environmental Justice Impacts of its Regional Haze SIP, and Must Ensure Its SIP Will Reduce Emissions and Minimize Harms to Disproportionately Impacted Communities

DOH-CAB attempted to address environmental justice issues and communities impacted by Hawaii’s polluting sources. Sources that harm the air in our treasured Class I areas are also located in environmental justice areas across the State. Although the Proposed SIP contained a one-paragraph section titled Environmental Justice as follows:⁴²

Mitigating haze-causing pollution is a vital part of our efforts to address environmental justice concerns to reduce visibility impairing emissions from anthropogenic sources that may disproportionately affect those who are socially or economically disadvantaged. The purpose of Hawaii’s RH-SIP is for implementing requirements of EPA’s Regional Haze Rule by achieving emission reductions to improve visibility in Hawaii’s national parks. The permit modifications incorporating regional haze control measures for large sources on Hawaii and Maui Islands are important measures to reduce anthropogenic visibility impacts. The DOH-CAB strongly supports the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. A hard copy of the RH-SIP was provided at designated DOH offices located on all main Hawaiian Islands for personal viewing. The RH-SIP was also posted on DOH-CAB’s website for communities to give feedback on the proposed strategy for reducing visibility impairing pollutants.

The information provided in the above paragraph excerpted from the Proposed SIP shows DOH-CAB’s support for the “fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” It also explains where and how the public could access the Proposed SIP.⁴³ But the Proposed SIP did not to meet the environmental justice and civil rights requirements. By fully evaluating the vulnerable communities and counties impacted by these sources, we believe DOH-CAB will identify emission-reducing options that if required will improve air quality and help achieve reasonable progress in this round of regional haze rulemaking.

Historically, conservation and environmental work has concerned itself with protecting nature from people and has thus “siloe” its work (*e.g.*, mainstream conservation vs. environmental justice.) While this siloe approach has led to the

⁴² Proposed SIP at 13.

⁴³ Proposed SIP at 13.

protection of many vulnerable habitats, it ignores the reality that people live in concert with and are a part of nature; to protect one and not the other is a job half done. By considering watershed protection and environmental justice at the same time, we can collectively begin to dismantle the silos that exist in conservation and environmental work and chart a new path forward.

1. DOH-CAB can facilitate EPA’s consideration of environmental justice to comply with Federal Executive Orders

There are specific legal grounds for considering environmental justice when determining reasonable progress controls. Under the CAA, states are permitted to include in a SIP measures that are authorized by state law but go beyond the minimum requirements of federal law.⁴⁴ Ultimately, EPA will review the Final Haze Plan that submits, and EPA will be required to ensure that its action on DOH-CAB’s Haze Plan addresses any disproportionate environmental impacts of the pollution that contributes to haze, and is subject to the current Administration’s “Executive Order on Tackling the Climate Crisis at Home and Abroad.”⁴⁵ Hawaii can facilitate EPA’s compliance with these Executive Orders by considering environmental justice in its SIP submission.

2. DOH-CAB ignored EPA’s Regional Haze Guidance and Clarification Memo, which directs states to take environmental justice concerns and impacts into consideration

EPA’s 2021 Clarification Memo directs states to take into consideration environmental justice concerns and impacts in issuing any SIP revision for the second planning period.⁴⁶ EPA’s 2019 Regional Haze Guidance for the Second Planning Period specifies, “States may also consider any beneficial non-air quality environmental impacts.”⁴⁷ This includes consideration of environmental justice in keeping with other agency policies. For example, EPA also pointed to another agency program that states could rely upon for guidance in interpreting how to apply the non-air quality environmental impacts standard:

⁴⁴ See *Union Elec. Co v. EPA*, 427 U.S. 246, 265 (1976) (“States may submit implementation plans more stringent than federal law requires and . . . the Administrator must approve such plans if they meet the minimum requirements of s 110(a)(2).”); *Ariz. Pub. Serv. Co. v. EPA*, 562 F.3d 1116, 1126 (10th Cir. 2009) (citing *Union Elec. Co.*, 427 U.S. at 265) (“States may submit implementation plans more stringent than federal law requires and [] the [EPA] must approve such plans if they meet the minimum [CAA] requirements of § 110(a)(2).”); *BCCA Appeal Group v. EPA*, 355 F.3d 817, 826 n.6 (5th Cir. 2003) (“...the states can adopt more stringent air pollution control measures than federal law requires...”)

⁴⁵ Exec. Order No. 14008, 86 Fed. Reg. 7,619 (Jan. 27, 2021).

⁴⁶ Clarification Memo at 16.

⁴⁷ Guidance at 49.

When there are significant potential non-air environmental impacts, characterizing those impacts will usually be very source- and place-specific. Other EPA guidance intended for use in environmental impact assessments under the National Environmental Policy Act may be informative, but not obligatory to follow, in this task.⁴⁸

Additionally, a collection of EPA policies, guidance and directives related to the National Environmental Policy Act (“NEPA”) is available at <https://www.epa.gov/nepa/national-environmental-policy-act-policies-and-guidance>. One of these policies concerns Environmental Justice.⁴⁹ Hawaii should consider these sources of information in conducting a meaningful environmental justice analysis.

3. EPA must consider environmental justice when it reviews and takes action on Hawaii’s SIP

As occurred in the first planning period, if a state fails to submit its SIP on time, or if EPA finds that all or part of a state’s SIP does not satisfy the Regional Haze regulations, then EPA must promulgate its own Federal Implementation Plan (“FIP”) to cover the SIP’s inadequacy. Should EPA promulgate a FIP that reconsiders a state’s Four-Factor Analyses, it is completely free to reconsider any aspect of that state’s analysis. The two Presidential Executive Orders referenced above require that federal agencies integrate Environmental Justice principles into their decision-making. EPA has a lead role in coordinating these efforts, and EPA Administrator Regan directed all EPA offices to clearly integrate environmental justice considerations into their plans and actions.⁵⁰ Consequently, should EPA promulgate a FIP for Hawaii sources, it has an obligation to integrate Environmental Justice principles into its decision-making. The non-air quality environmental impacts of compliance portion of the third factor, is a pathway for doing so.

4. DOH-CAB must consider environmental justice under Title VI of the Civil Rights Act

As EPA must consider Environmental Justice, so must DOH-CAB and all other entities that accept Federal funding. Under Title VI of the Civil Rights Act of 1964, “no person shall, on the ground of race, color, national origin, sex, age or

⁴⁸ Guidance at 33.

⁴⁹ See EPA, “EPA Environmental Justice Guidance for National Environmental Policy Act Reviews,” <https://www.epa.gov/nepa/environmental-justice-guidance-national-environmental-policy-act-reviews>.

⁵⁰ See EPA News Release, “EPA Administrator Announces Agency Actions to Advance Environmental Justice, Administrator Regan Directs Agency to Take Steps to Better Serve Historically Marginalized Communities,” (April 7, 2021), <https://www.epa.gov/newsreleases/epa-administrator-announces-agency-actions-advance-environmental-justice>.

disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity...”. DOH-CAB has an obligation to ensure the fair treatment of communities that have been environmentally impacted by sources of pollution. That means going beyond the flawed analysis conducted and ensuring “meaningful involvement” of impacted communities; environmental justice also requires the “fair treatment” of these communities in the development and implementation of agency programs and activities, including those related to the SIP.

DOH-CAB must conduct a thorough analysis of the current and potential effects to impacted communities from sources considered in the SIP. By not conducting this analysis and including the benefits of projected decline in emissions to these communities in their determination of the included emission sources, Hawaii is not fulfilling its obligations under Title VI. Moreover, the state is making a mockery of Title VI by not using the SIP requirements to bring about the co-benefits of stronger reductions measures and reduce harms based on continued emissions.

CONCLUSION

In conclusion, we request that DOH-CAB revise the Proposed SIP in the following ways before submitting to the EPA:

1. Remove reliance on URP as a “safe harbor.” That Hawaii’s Class 1 areas are on or below the so-called glidepath is not an excuse for avoiding emission reductions.
2. Require additional SIP measures of air pollution reduction in order to satisfy the Act’s requirement that reasonable progress is made.
3. Clarify provisions regarding emission limits, source retirements, monitoring, record keeping and reporting requirements.
4. Conduct and provide an opportunity for public comment on the missing Four-Factor Analyses.
5. Reduce impacts of air pollution at both the Class I areas and on the environmental justice communities.

Thank you for the opportunity to review the Proposed SIP. We look forward to seeing a revised plan that takes our comments into consideration.

Sincerely,

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Enclosures

List of Exhibits

1. Vicki Stamper & Megan Williams, “OIL AND GAS SECTOR REASONABLE PROGRESS FOUR-FACTOR ANALYSIS OF CONTROLS FOR FIVE SOURCE CATEGORIES: NATURAL GAS-FIRED ENGINES, NATURAL GAS-FIRED TURBINES, DIESEL-FIRED ENGINES, NATURAL GAS-FIRED HEATERS AND BOILERS AND FLARING AND INCINERATION,” (March 6, 2020).
2. Hawaii Department of Health, State of Hawaii Clean Air Branch, Draft Regional Haze State Implementation Plan for the Second Planning Period (2018-2028) (Docket No. 22-CA-PA-08), <https://health.hawaii.gov/cab/files/2022/06/DRAFT-2021HI-RHSIP.pdf>.
3. Letter from Natalie Levine, to Michael Madsen, Clean Air Branch, Department of Health, Requesting Extension of Comment Period for Hawaii’s Draft Regional Haze State Implementation Plan for the Second Implementation Period, (June 30, 2022).
4. DOH-CAB Public Notice for Regional Haze SIP, <https://health.hawaii.gov/cab/files/2022/06/22-CA-PA-08.pdf>.
5. Letter from Marianne Rossio, P.E. Manager, Clean Air Branch, Hawaii Department of Health, to Natalie Levine, Climate and Conservation Program Manager, National Parks Conservation Association, Response to Request for an Extension of the Comment Period for Hawaii’s Draft Regional Haze State Implementation Plan for the Second Implementation Period, (July 8, 2022).
6. National Park Service (NPS) Regional Haze SIP feedback for the Hawaii State Department of Health Clean Air Branch, (May 26, 2022).
7. EPA Control Cost Manual Section 1 Chapter 2, Cost Estimation: Concepts and Methodology, (Nov. 2017).
8. Arizona Department of Environmental Quality, 2021 Regional Haze Four-Factor Initial Control Determination, Tucson Electric Power Irvington Generating Station, <https://www.azdeq.gov/2021-regional-haze-sip-planning>.
9. NMED and City of Albuquerque, Regional Haze Stakeholder Outreach Webinar #2, https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2017/01/NMED_EHD-RH2_8_25_2020.pdf.

10. Letter from Oregon Department of Environmental Quality to Collins Forest Products, (Sept. 9, 2020), <https://www.oregon.gov/deq/aq/Documents/18-0013CollinsDEQletter.pdf>.
11. Washington Department of Ecology, Draft Responses to comments for chemical pulp and paper mills, <https://fortress.wa.gov/ecy/ezshare/AQ/RegionalHaze/docs/RespondFLM20210111.pdf>.
12. Colorado Department of Public Health and Environment, In the Matter of Proposed Revisions to Regulation No. 23, November 17 to 19, 2021 Public Hearing, Prehearing Statement.