

Final Notice: Findings of Failure to Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Ozone NAAQS

FACT SHEET

ACTION

- On January 4, 2013, the U.S. Environmental Protection Agency (EPA) notified 28 states, the District of Columbia, and the Commonwealth of Puerto Rico that they have not submitted complete State Implementation Plans (SIPs) that include the infrastructure elements necessary to ensure implementation of the 2008 ozone national ambient air quality standard (NAAQS). Infrastructure elements are the building blocks for state air quality management programs.
- Today's action is a finding, required by the Clean Air Act, that each of these areas has not made a complete submission for all or for some of the specific infrastructure SIP elements for the 2008 ozone NAAQS.
 - The Clean Air Act requires states to submit infrastructure SIPs within 3 years of EPA issuing the standard.
- The EPA is committed to working with these states and areas to expedite the needed submissions and to review and act on their infrastructure SIPs submission in accordance with the requirement of the CAA.
- The list below shows the District of Columbia, the Commonwealth of Puerto Rico, and the 25 states that failed to submit any complete infrastructure SIP elements for the 2008 ozone NAAQS.

List of Findings of Failure to Submit Any Infrastructure SIP for 2008 ozone NAAQS

Region 1: Maine, Massachusetts, and Vermont

Region 2: the Commonwealth of Puerto Rico, New Jersey, and New York

Region 3: the District of Columbia, and Pennsylvania

Region 5: Michigan, Minnesota, and Wisconsin

Region 6: Arkansas, Louisiana, and Oklahoma

Region 7: Iowa, Kansas, Missouri, and Nebraska

Region 8: Montana, North Dakota, South Dakota, Utah, and Wyoming

Region 9: California, Hawaii, and Nevada

Region 10: Washington

- The list below shows the states that failed to submit certain elements of the infrastructure SIP for the 2008 ozone NAAQS, resulting in a finding of failure to submit for only the specified elements.

List of Findings of Failure to Submit Certain Elements of the Section 110(a) Infrastructure SIP for the 2008 ozone NAAQS

Region 5: Illinois (elements related to prevention of significant deterioration were not submitted)

Region 6: New Mexico (the submitted SIP covered only Bernalillo County)

Region 9: Arizona (some elements related to prevention of significant deterioration were not submitted)

- These findings establish a 24-month deadline by which, for each state subject to a finding, the EPA must either approve a SIP or finalize a FIP that addresses the outstanding SIP elements.

BACKGROUND

- In March 2008, the EPA revised the primary and secondary ozone National Ambient Air Quality Standards (NAAQS) from a level of 0.08 parts per million (ppm) to 0.075 ppm. Accordingly, pursuant to CAA section 110(a), each state was required to submit an infrastructure SIP that provides for the implementation, maintenance, and enforcement of the revised NAAQS, by March 12, 2011.

The EPA acknowledges that many states would have made infrastructure SIP submissions for purposes of the 2008 8-hour ozone NAAQS but for the uncertainty of the submission date requirement as a result of the EPA's reconsideration process for the 2008 8-hour ozone NAAQS, the EPA's associated interim advice to states regarding implementation of those NAAQS, and lack of guidance from the EPA regarding what such infrastructure submission should include.

- On November 22, 2011, WildEarth Guardians filed a complaint against EPA pertaining to infrastructure SIPs for the 2008 ozone NAAQS and claimed that the EPA has a mandatory duty to make findings of failure to submit with respect to one or more infrastructure SIP elements for certain states that had not made submissions. Similarly, on December 13, 2011, Midwest Environmental Defense Center and Sierra Club filed a similar complaint. These similar complaints were consolidated by the court.
- In a Court Order issued October 17, 2012 for the consolidated complaint, the U.S. District Court in the Northern District of California directed the EPA to, by January 4, 2013, make findings of failure to submit for certain states, the District of Columbia, and the Commonwealth of Puerto Rico.
- In response to the court's order, the EPA is taking this action for specified states and areas that have failed to submit infrastructure SIP.
- Because 22 states submitted complete infrastructure SIPs before January 4, 2013, the total number of states and areas receiving a finding of failure will be reduced to 28 states and two areas, from the 38 named states and two areas in the consolidated complaint.

- The EPA is not, in this notice, issuing any findings of failure to submit interstate transport SIPs addressing section 110(a)(2)(D)(i)(I) of the CAA. The D.C. Circuit Court's recent opinion in *EME Homer City Generation v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012), concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. This decision is not yet final as the mandate has not been issued and the EPA has petitioned for rehearing *en banc*, asking the full court to reconsider that conclusion. Nonetheless, during the pendency of the appeal, the EPA intends to act in accordance with the holdings in the *EME Homer City* opinion. Therefore, at this time the EPA is not making findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I).
- The EPA is not, in this notice, making findings of completeness. These findings of completeness are being addressed in separate letters from the Regional Offices.
- The district court in California also ordered the EPA to sign a final rule or rules taking action on infrastructure SIP submittals from Tennessee and Kentucky. The date for these final actions was subsequently extended by the court to March 4, 2013. These actions will be addressed in separate *Federal Register* notices.

FOR MORE INFORMATION

- To download this action from the EPA's website, go to Recent Actions at <http://www.epa.gov/airquality/ozonepollution/actions.html#impl>.
- Today's action and other background information are also available either electronically at <http://www.regulations.gov>, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located at the EPA Headquarters, room number 3334 in the EPA West Building, 1301 Constitution Avenue, NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
 - Materials for this proposed action can be accessed using Docket ID No. EPA-HQ-OAR-2012-0943.
- For further information about this action, contact Mr. Lynn Dail of EPA's Office of Air Quality Planning and Standards, at (919) 541-2363 or by e-mail at dail.lynn@epa.gov, or Dr. Karl Pepple of EPA's Office of Air Quality Planning and Standards, at (919) 541-2683 or by e-mail at pepple.karl@epa.gov.