

State Implementation Plans/Clean Air Act: U.S. EPA Office of Inspector General Report



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) Office of Inspector General (“OIG”) issued a June 14th report titled:

EPA Has Reduced its Backlog of State Implementation Plans Submitted Prior to 2013 but Continues to Face Challenges in Taking Timely Final Actions on Submitted Plans (“Report”)

See Report No. 21-E-0163.

The states are primarily responsible for ensuring attainment and maintenance of the Clean Air Act National Ambient Air Quality Standards (“NAAQS”) once the EPA has established them. Each state is therefore required to formulate, subject to EPA approval, an implementation plan (i.e., SIP) designed to achieve each NAAQS.

States are given broad discretion in formulating SIPs. Nevertheless, the SIPs must contain measures and actions the state proposes to undertake to attain each NAAQS. These measures or actions must be enforceable through state regulations and typically include emission limits applicable to certain types of stationary sources.

The states are generally free to make their own choices as to how they will attain the NAAQS through their SIPs. However, the SIP (including revisions) must be reviewed and approved by EPA for determination that the criteria set forth in Section 110 of the Clean Air Act are met.

The EPA OIG had issued a March 25th Notice of Evaluation indicating it was going to address the status of the Clean Air Act SIP plan submittals and approvals. The objectives of this evaluation were stated to determine:

- Number of Clean Air Act SIPs awaiting approval
- Factors causing delays in SIP approvals
- Extent to which states have not submitted the required SIPs to the EPA
- Potential impacts of delays in plan processing on achieving NAAQS
- Steps the EPA is taking to address delays in SIP processing

OIG determined that since 2015 EPA has reduced the number of SIP submittals awaiting federal agency actions. This is stated to include the portion of such submittals backlogged at EPA. OIG states that an SIP submittal is considered “backlogged” when it is not addressed by EPA within 12 months from the date of a completeness determination.

OIG also states that EPA has reduced its backlog by undertaking final actions on SIPs backlogged prior to 2013. This has apparently been accomplished in part by:

- Encouraging states to withdraw some SIP submittals
- Conducting early engagement with state agencies prior to SIP submittal

OIG states that from the time period 2013-2020, 51 percent of state submittals were six months or more after the statutory deadline.

OIG therefore notes considerable EPA progress. Nevertheless, it states that as of January 1, 2020, approximately 39 percent of the 903 active SIP submittals were considered backlogged.

Factors cited as potentially impacting EPA's ability to undertake timely action include:

- Number of SIP submittals received in a given year
- Complexity of certain types of SIP submittals
- Limited regional resources
- Unresolved litigation and legal and policy issues that could set national precedence

In assessing the impact of delays in reviewing submittals, those air quality control regions not meeting NAAQS are referenced. The risks are stated to include:

- State/local air agencies not implementing plans sufficient to achieve the NAAQS
- Lack of regulatory certainty and different enforceable requirements for regulated entities

OIG's recommendations to EPA include:

- Develop and implement a process to identify which SIP elements are not submitted by statutory deadlines
- Develop and implement a plan to address regional workload disparities to ensure timely SIP actions
- Reassess certain decisions affecting the suspension of SIP requirements in Yuma, Arizona, and Mariposa, California
- Issue findings of failure to submit or take disapproval actions for areas without an EPA-approved SIP in place that continue to exceed to NAAQS beyond their required attainment dates

A copy of the OIG Report can be downloaded [here](#).