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Interstate Transport/Ozone NAAQS: U.S. Environmental Protection Agency Proposed Disapproval of Arkansas/Louisiana/Oklahoma/Texas State Implementation Plan Submittals

02/22/2022

The United States Environmental Protection Agency (“EPA”) published a proposed rule in the February 22nd Federal Register disapproving State Implementation Plan (“SIP”) submittals from the following states:

- Arkansas
- Louisiana
- Oklahoma
- Texas

See 87 Fed. Reg. 9798.

A number of other states received proposed disapprovals in the same edition of the Federal Register.

The state SIP submittals address interstate transport for the 2015 8-Hour Ozone National Ambient Air Quality Standards (“NAAQS”).

In 2015 EPA promulgated a revision to the 8-Hour Ozone NAAQS. The federal agency lowered the level of both primary and secondary standards to 0.070 parts per million.

Air transport refers to pollution from upwind emission sources that impact air quality in a particular location downwind. The total pollution in any area forms from the combination of local and upwind sources. The transport of pollutants across state borders is often denominated “interstate air pollution transport.” Transport of interstate air pollution transport may in some cases affect downwind states’ ability to meet NAAQS for ozone.

The Clean Air Act contains a “good neighbor” provision which requires that EPA and the states address interstate transport of air pollution that affects down states’ ability to attain and maintain NAAQS. Clean Air Act Section 110(a)(2)(B)(i)(I) requires that each state in its SIP prohibit emissions that will:

- Significantly contribute to nonattainment of a NAAQS
- Interfere with maintenance of a NAAQS in a downwind state

A state’s SIP must prohibit sources in that state from “emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of a NAAQS in another state.”

If EPA determines that an SIP is inadequate it must require that the state revise the SIP (i.e., a SIP call). A SIP call can be issued to multiple states at the same time. EPA may therefore issue a SIP call whenever it determines that the SIP is substantially inadequate to attain or maintain a particular NAAQS to ensure that the state's sources do not contribute significantly to a downwind state's nonattainment.

EPA may eventually adopt a federal implementation plan for a state that is unable to develop an approvable SIP.

EPA describes the "good neighbor" or "interstate transport" requirement as part of a broader set of "infrastructure" SIP requirements. The agency deems them necessary to ensure that the structural components of each state's air quality management program are adequate to meet its responsibilities under the Clean Air Act.

EPA's Federal Register preamble describes the four-step interstate transport framework that it utilizes to evaluate states' SIP submittals addressing the interstate transport provision for the 2015 ozone NAAQS. The four steps include:

1. Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS
2. Identify states that impact those air quality problems in other downwind states sufficiently such that the states are considered linked and therefore warrant further review and analysis
3. Identify the emissions reductions necessary (if any) applying a multifactor analysis, to eliminate each linked upwind state's significant contribution to nonattainment or interference with maintenance of the NAAQS at the locations identified in Step 1
4. Adopt permanent and enforceable measures needed to reduce those emissions reductions

EPA notes that the Arkansas Department of Energy & Environment – Division of Environmental Quality ("DEQ") made a SIP submission addressing interstate transport on October 10, 2019. The DEQ SIP submission is stated to have provided an analysis of Arkansas's air emissions impact to downwind states using the four-step framework and an analytic year of 2023.

DEQ concluded that the state's air emissions will not contribute significantly to nonattainment or interfere with maintenance of the 2015 NAAQS in other states.

EPA proposes to find that the DEQ submission does not meet the obligation with respect to prohibiting emissions that contribute significantly to the nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state based on EPA's evaluation of the SIP submission using the four-step framework.

The components of EPA's analysis of DEQ's SIP submission in the Federal Register include:

1. Summary of ADEQ SIP Submission Addressing Interstate Transport of Air Pollution for the 2015 Ozone NAAQS
2. EPA Evaluation of the ADEQ SIP Submission
 1. Evaluation of Information Provided by ADEQ Regarding Step 1
 2. Evaluation of Information Provided by ADEQ Regarding Step 2
 3. Results of the EPA's Step 1 and Step 2 Modeling and Findings for Arkansas
 4. Evaluation of Information Provided by ADEQ Regarding Step 3
 5. Evaluation of Information Provided by ADEQ Regarding Step 4

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