

**Featured Professionals**

Jeremy P. Greenhouse

**Related Services**

Environmental Law

## EPA Rejects Minnesota's and 20 Other States' SIPs for 2015 Ozone NAAQS; "Good Neighbor Plan" FIP Forthcoming

**Legal Update**

03.10.2023

*Originally published in the March 2023 issue of Bench & Bar of Minnesota Environmental Law Update, Minnesota State Bar Association.*

On January 31, 2023, the U.S. Environmental Protection Agency (EPA) disapproved the implementation plans of Minnesota and 20 other states addressing interstate transport for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA, *Final Disapprovals: "Good Neighbor" State Implementation Plans Addressing Interstate Transport Obligations for the 2015 Ozone National Ambient Air Quality Standard* (Jan. 31, 2023), 88 Fed. Reg. 9336 (Feb. 13, 2023).

EPA's disapproval arose under section 110 of the Clean Air Act. 42 USC § 7410. Within three years after the agency has promulgated a new or revised NAAQS, each state is required to submit to EPA a plan for implementing, maintaining, and enforcing the NAAQS within the state. Section 110(a)(2)(D)(i) requires these "state implementation plans" (SIPs) to include, among other things, provisions adequate to prevent in-state emissions from causing adverse impacts to downwind states' ability to meet the NAAQS. This so-called "good neighbor" or "interstate transport" regulation contains two prongs, which EPA and states must evaluate independently: (1) for downwind states that have not yet attained the NAAQS, the SIP must prohibit any source or other emission activity from contributing to the nonattainment, and (2) for states that are in attainment with the NAAQS, the SIP must prohibit any source or other emission activity from interfering with the state's maintenance of the NAAQS. Under section 110(c), if EPA disapproves a SIP, the agency must promulgate a federal implementation plan instead (FIP) within 2 years, unless the state corrects the deficiency (and EPA approves the revised SIP) before EPA issues the FIP.

On October 1, 2015, EPA promulgated a revised NAAQS for ozone, setting both the primary and secondary standards to 0.070 parts per million (ppm). The Minnesota Pollution Control Agency (MPCA) submitted its SIP for the 2015 Ozone NAAQS on October 1, 2018. MPCA concluded that the state's emissions of volatile organic compounds (VOCs) and nitrogen oxide (NOx) (ozone precursor chemicals) were not projected to contribute above 1 percent of the NAAQS to any downwind state, a threshold EPA has established to determine if a state is linked to a downwind air quality problem. In addition, MPCA pointed to steadily decreasing emissions of NOx

# EPA Rejects Minnesota's and 20 Other States' SIPs for 2015 Ozone NAAQS; "Good Neighbor Plan" FIP Forthcoming

and VOCs in Minnesota between 2002 and 2015, particularly in the power sector. Accordingly, MPCA concluded that Minnesota would not contribute significantly to nonattainment (prong 1) or interference with maintenance in downwind states (prong 2) and that therefore no additional emission reductions were required to comply with the Good Neighbor rule for the 2015 Ozone NAAQS. On February and May 2022, EPA proposed to disapprove the SIP submissions for 21 states, including Minnesota. Meanwhile, in April 2022, EPA issued a proposed FIP—the "Good Neighbor Plan" for the 2015 Ozone NAAQS—to replace all of the state SIPs. EPA intends to finalize the FIP by March 15, 2023.

EPA has developed and used the following 4-step interstate transport framework to evaluate a state's obligations to eliminate interstate transport emissions under the interstate transport provision for the ozone NAAQS: (1) Identify monitoring sites that are projected to have problems attaining and/or maintaining the NAAQS (i.e., nonattainment and/or maintenance receptors); (2) identify states that impact those air quality problems in 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; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

Applying this framework to Minnesota's SIP, EPA concluded that updated air modeling indicated Minnesota was linked to a downwind attainment/maintenance area (Cook County, Illinois) under step 2 of the interstate transport framework and that the SIP thus failed to identify and adopt enforceable emission reduction measures (steps 2 and 3). However, EPA only partially disapproved Minnesota's SIP because it agreed with MPCA that Minnesota is not linked to any nonattainment receptors.

EPA's forthcoming FIP is expected to jointly address all 21 of the disapproved SIPs. According to EPA's proposed rule, the FIP will establish NO<sub>x</sub> emissions budgets requiring fossil fuel-fired power plants in 25 states to participate in an allowance-based ozone season trading program beginning in 2023. In addition, the Agency for the first time is proposing to establish NO<sub>x</sub> limitations applicable to certain other industrial stationary sources with an earliest possible compliance date of 2026. These industrial source types are:

- Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas
- Kilns in Cement and Cement Product Manufacturing
- Boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing;

# EPA Rejects Minnesota's and 20 Other States' SIPs for 2015 Ozone NAAQS; "Good Neighbor Plan" FIP Forthcoming

- Furnaces in Glass and Glass Product Manufacturing; and
- High-emitting equipment and large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products