

# SIP Challenges

Abby Teener

Environmental Engineer

U.S. EPA - Region 5

[Teener.Abigail@epa.gov](mailto:Teener.Abigail@epa.gov)

# SIP Deficiencies

- Under CAA §179(a), EPA may:
  - 1) find failure to submit (FFS) complete required SIP
  - 2) disapprove (in whole or in part) a required SIP
  - 3) find a SIP requirement not being implemented

# Sanctions

- If a deficiency is for an attainment plan, EPA findings start sanctions clocks
- Unless the deficiency is corrected, the following sanctions take effect:
  - After 18 months, a requirement for new sources and major modifications have 2:1 offsets
  - After 24 months, cutoff of most highway funding

# Federal Implementation Plans (FIPs)

- Under CAA §110(c),
  - within 24 months of a finding,
    - Unless the state corrects the deficiency (ex. submits)
    - AND unless the SIP has been approved,
  - EPA is required itself to promulgate a plan meeting the applicable requirements

# FIP Examples

- Cross-State Air Pollution Rule
- Regional Haze BART (source-specific)
- Prevention of Significant Deterioration
- Detroit SO<sub>2</sub> Attainment Plan

# SIP Calls

- Under CAA §110(a)(2)(H)(ii),
  - The state must revise its plan whenever EPA finds that the plan is inadequate to attain a standard or to meet another requirement
- Examples:
  - NO<sub>x</sub> SIP Call (to address §110(a)(2)(d) for ozone transport)
  - Start-up, Shutdown, Malfunction

# SIP Lawsuits - Failure to Take Action

- Filed in District Courts
- Failures can be:
  - Failed to issue “Finding of Failure to Submit”
  - Failure to take action (generally on a SIP more than 18 months old)
  - Failure to issue a SIP Call
- A notice of intent must be filed first

# SIP Lawsuits - Petition for Review

- Can be on SIP approval or Federal rulemaking
- Filed in Circuit Courts of Appeal
  - 6<sup>th</sup> Circuit: MI, OH
  - 7<sup>th</sup> Circuit: IL, IN, WI
  - 8<sup>th</sup> Circuit: MN
  - DC Circuit: Federal Rulemakings
- Must be filed within 60 days of publication of action
- Petition for Reconsideration (request for administrative review) are sometimes sent before or with Petition for Review



# Example

Case 4:18-cv-03544-YGR Document 25 Filed 12/17/18 Page 1 of 15

1 Robert Ukeiley, (Admitted *Pro Hac Vice*)  
 2 CENTER FOR BIOLOGICAL DIVERSITY  
 3 1536 Wynkoop St., Ste. 421  
 4 Denver, CO 80202  
 5 Tel: 720-496-8568  
 6 Email: [rukeiley@biologicaldiversity.org](mailto:rukeiley@biologicaldiversity.org)

7 Jonathan Evans (Cal. Bar #247376)  
 8 CENTER FOR BIOLOGICAL DIVERSITY  
 9 1212 Broadway, Suite 800  
 10 Oakland, CA 94612  
 11 Phone: 510-844-7100  
 12 Fax: 510-844-7150  
 13 email: [jevans@biologicaldiversity.org](mailto:jevans@biologicaldiversity.org)

14 MICHAEL N. LAZORCHAK (Admitted *Pro Hac Vice*)  
 15 CSE LAW  
 16 107 STATE STREET  
 17 Montpelier, VT 05601-1385  
 18 (802)225-6495  
 19 [mnl@caroline-law.com](mailto:mnl@caroline-law.com)

20 Attorney for Plaintiffs Center for Biological Diversity,  
 21 Center for Environmental Health, and Sierra Club

22 UNITED STATES DISTRICT COURT  
 23 FOR THE NORTHERN DISTRICT OF CALIFORNIA

24 CENTER FOR BIOLOGICAL DIVERSITY, )  
 25 CENTER FOR ENVIRONMENTAL HEALTH, )  
 26 and SIERRA CLUB, )  
 27 )  
 28 )

Plaintiffs, )

v. )

ANDREW R. WHEELER, ) (Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*)  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

in his official capacity as Acting  
 Administrator of the United States  
 Environmental Protection Agency,  
 Defendant.

| TABLE 1  |   |                 |                       |
|--|---|-----------------|-----------------------|
| AREA & STATE   | ELEMENT(S)  | COMPLETION DATE | FINAL ACTION DUE DATE |
| Indianapolis, IN<br>Marion County<br>(part)                      | Attainment Demonstration,<br>Contingency Measures,<br>Emission inventory,<br>Nonattainment New Source<br>Review (NSR), Reasonably<br>Available Control<br>Measures/Reasonably<br>Available Control Technology<br>(RACM/RACT), Reasonable<br>Further Progress (RFP). | 2/25/2016       | 2/25/2017             |
| Morgan County, IN<br>Morgan County<br>(part)                     | Attainment Demonstration,<br>Contingency Measures,<br>Emission inventory,<br>Nonattainment NSR,<br>RACM/RACT, RFP.  | 2/25/2016       | 2/25/2017             |
| Southwest, IN<br>Daviness County<br>(part)<br>Pike County (part) | Attainment Demonstration,<br>Contingency Measures,<br>Emission inventory,<br>Nonattainment NSR,<br>RACM/RACT, RFP.  | 2/25/2016       | 2/25/2017             |
| Terre Haute, IN<br>Vigo County (part)                            | Attainment Demonstration,<br>Contingency Measures,  | 2/25/2016       | 2/25/2017             |