

Revision to Ohio's State Implementation Plan (SIP) regarding Ohio's Air Nuisance Rule (ANR)

Clean Air Act (CAA) Section 110(l) Demonstration

Ohio requests revision of Ohio's State Implementation Plan (SIP) regarding the removal of the ANR as part of the Ohio SIP.

Background

The Ohio Air Nuisance Rule (ANR) was first incorporated in Ohio's SIP in the early 1970s. Over time it has become clear that the ANR has not been used and is not needed for attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Over the years, many states have removed their respective ANR as part of the SIP.

On June 30, 2025, Governor Mike DeWine signed Amended Substitute House Bill 96. (HB 96). HB 96 directs Ohio EPA to request the removal of the ANR as part of the Ohio SIP. This provision became effective on October 1, 2025. This package is in response to the legislative mandate.

Specifically, the new provisions require Ohio EPA to request U.S. EPA to remove the ANR from the SIP. Further, the law prohibits Ohio EPA from using the ANR for attainment and maintenance of the NAAQS.

CAA 110(l) Demonstration

States wishing to revise SIP-approved programs must submit a SIP revision to U.S. EPA demonstrating that the revision does not interfere with progress towards any area in the state achieving compliance with any NAAQS. U.S. EPA's draft guidance "Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan", (hereinafter referred to as the "110(l) guidance") dated June 8, 2005¹ was used as the basis for the following demonstration.

Under CAA section 110(l), U.S. EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the CAA. Therefore, a SIP revision requesting revisions to SIP-approved rules may only be approved if the state has demonstrated that the revision will not interfere with attainment or maintenance with any NAAQS. In evaluating whether a given SIP revision would interfere with attainment or maintenance, as required by CAA Section 110(l), U.S. EPA generally considers whether the SIP revision will preserve or improve the status quo in air quality.

In accordance with Section 110(l) of the CAA, the following analysis is being provided.

As U.S. EPA has noted (85 Fed. Reg. 16309), "in the 1970s and early 1980s, thousands of state and local agency regulations were submitted to EPA for incorporation into SIPs, ostensibly to fulfill the new Federal requirements. In many cases, states submitted entire regulatory air pollution programs, including many elements not required by the CAA. Due to time and resource constraints, EPA's review of these submittals focused primarily on the rules addressing the new substantive requirements of the CAA, and we approved many other elements into the SIP with minimal review. We now recognize that some of these elements may be appropriate for state and local agencies to adopt and implement but should not become federally enforceable SIP requirements; these include rules that prohibit air pollution nuisances. Such rules generally have no connection to the purposes for which SIPs are developed and approved, namely the implementation, maintenance, and enforcement of the NAAQS."

¹ <http://www.4cleanair.org/Oldmembers/members/committee/criteria/110STAPPA.pdf>

Ohio's ANR (originally rule AP-2-07 and now Ohio Administrative Code (OAC) rule 3745-15-07), was approved by U.S. EPA into the Ohio SIP on April 15, 1974 ([39 Fed. Reg. 13542](#)). The ANR prohibits the "emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property." Ohio's ANR is not an enforceable emission limitation or other control measure, means, or technique. Nor does it provide for the enforcement of such measures, so it is not a required element of Ohio's SIP. While the ANR may improve air quality, it does not "enforce" the NAAQS.

Under the CAA, the NAAQS are not directly enforceable against regulated facilities. Rather, the states must develop plans, known as SIPs, that will achieve and maintain the NAAQS. 42 U.S.C. § 7410.

The NAAQS themselves are U.S. EPA's broad-based standards for a foundational set of six "criteria" air pollutants that affect public health or welfare and are revised from time-to-time by the agency with updated numerical limits. 42 U.S.C. § 7409(b); see also <https://www.epa.gov/criteria-air-pollutants/naaqs-table>. With its NAAQS Table, U.S. EPA publishes a list of control measures that States may use to implement their own emission reduction strategies. *Id.* at *Menu of Control Measures for NAAQS Implementation*.

Each State then arrives at its state plan to implement, maintain, and enforce the federal standards set for the NAAQS criteria pollutants. 42 U.S.C. § 7410(a). Those plans must include "enforceable emission limitations and other control measures, means, or techniques." 42 U.S.C. § 7410(a)(2)(A). To assure that a SIP meets these requirements, U.S. EPA requires "[m]odeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis." 40 C.F.R. Part 51 – Appendix V, 2.2(e). Thus, the elements of a SIP must have measurable, quantifiable impacts on the NAAQS criteria pollutants.

In addition to the NAAQS impacts that can be formally assessed and achieved, the SIP must also "include a program to provide for the enforcement of the measures." 42 U.S.C. § 7410(a)(2)(C). This provision in § 7410 (a)(2)(C) ties the required enforcement provisions back to the compliance requirements that were modeled and demonstrated quantifiable results.

A State may, for its own purposes however, have other regulations that have the effect of improving air quality, but which do not have NAAQS compliance implications. And unless those provisions were tied to the modeled air impacts and presented to U.S. EPA for approval as part of the SIP, they cannot constitute required elements of the SIP. For example, a state may choose to regulate sources of fugitive emissions not regulated by U.S. EPA and outside its SIP, or may choose to reduce highway speed limits. Both would likely reduce air emissions, helping a state to maintain compliance with a NAAQS, but neither can be viewed as "enforcing" the NAAQS absent being included in the formal SIP approval process, including a demonstration of modeled and quantifiable results.

Ohio's SIP mirrors U.S. EPA's regime with ambient air quality standards that are numerical. Emission sources discharging those pollutants are then subject to control measures that are appropriate for each of the NAAQS. OAC 3745-15-01(E) (defining "ambient air quality standards"). See Ohio's state plan regulations approved by U.S. EPA: <https://www.epa.gov/air-quality-implementation-plans/epa-approved-regulations-ohio-sip>.

These elements are how Ohio's required plan demonstrates that Ohio will implement and maintain the federal standards required for achieving the NAAQS. 42 U.S.C. § 7410. In addition, these elements are enforceable through Ohio Revised Code (ORC) 3745.06, which makes *any violation* of Ohio's air statutes and regulations subject to enforcement in

Ohio courts —*regardless* of whether they appear in Ohio’s SIP.

If Ohio’s state regulations fail to achieve NAAQS compliance in any area of the State, that area will be designated as nonattainment, and the State must develop additional tools to attain the NAAQS. Ohio must model those additional tools, demonstrate that this time that its plan will succeed, and present the tools to U.S. EPA for approval. 42 U.S.C. § 7410(c)(1)(B).

Ohio’s ANR, on the other hand, cannot be modeled. It has no numerical criteria, no technical control measures, no specific compliance standards. See OAC 375-15-07(A) (prohibiting and declaring public nuisance for substances or combinations of substances like smoke, ashes, dust, fumes, etc. that endanger public health, safety, or welfare or cause damage to property). Ohio’s ANR’s qualitative requirement starkly contrasts with the precision and proof required by 42 U.S.C. § 7410(a) and 40 C.F.R. Part 51 and embodied in emissions control measures, compliance standards, and permit requirements under, for example, OAC Chapters 3745-14 (nitrogen oxides), 3745-17 (particulate matter), 3745-18 (sulfur dioxide). As a result, the nuisance rule is not an “enforceable emission limitations and other control measures, means, or techniques” as envisioned by 42 U.S.C. § 7410(a)(2)(A).

With no such extensive numerical and technical parameters, the nuisance rule cannot be relied on in demonstrating that a state has an approvable SIP. What is more, U.S. EPA does not reference nuisance in its *Menu of Control Measures for NAAQS Implementation*: <https://www.epa.gov/sites/default/files/2016-02/menuofcontrolmeasures.xlsx>. While Ohio’s ANR may have an impact on emissions, it is not a tool that assures Ohio’s compliance with the NAAQS as required by 42 U.S.C. § 7410(a)(2)(a).

Nor is Ohio’s ANR an element of “a program to provide for the enforcement of the measures” adopted pursuant to § 7410(a)(2)(a), as required by 42 U.S.C. § 7410(a)(2)(C). As mentioned above, provisions required by § 7410(a)(2)(C) must tie back to the compliance requirements that have been modeled and that demonstrated quantifiable results. Ohio’s ANR does not, and cannot, do that. Rather, it sets its own standard for when a nuisance exists, and that standard in no way connects to the modeled compliance requirements.

An air nuisance violation under Ohio’s ANR may rest on grounds entirely separate from NAAQS compliance. It is possible that, while addressing a nuisance violation, a facility may reduce emissions of a criteria pollutant. That coincidence of result is not the same as using the ANR for the purpose of “enforcing” or maintaining and achieving the NAAQS.

Ohio does not rely on the ANR for attainment of the National Ambient Air Quality Standards (NAAQS). U.S. EPA dictates a rigorous methodology for the approval of a SIP to address a revised NAAQS or a violation of the NAAQS. For example, the various steps in developing an attainment demonstration SIP are involved and lengthy. These include:

1. Initial discussions with U.S. EPA about project scope, potential issues, available guidance, scheduling needs, and feasibility.
2. Pre-development engagement with U.S. EPA on modeling protocol and inventory development
3. U.S. EPA reviews and comments on modeling protocol and inventory development plan
4. State develops Reasonably Available Control Measures (RACM) and control strategies
5. Iterative photochemical modeling of RACM and control strategies
6. State develops attainment year emissions inventories
7. Draft modeling results, draft control strategy, and draft emissions inventory sent to U.S. EPA
8. U.S. EPA reviews and comments on modeling results, draft control strategy, and draft emissions inventory
9. Rulemaking by state to make control strategies federally enforceable
10. State develops entire SIP package with inventories, modeling, control strategies/RACM and rulemaking, among other required elements such as contingency measures and triggers and reasonable further progress

11. Early engagement draft of SIP sent to U.S. EPA
12. U.S. EPA feedback on early engagement draft including any approvability issues
13. Follow-up meetings between state and federal agencies
14. Public comment period and public hearing on draft SIP
15. State evaluates public comments, including those from U.S. EPA, and develops a response to comments
16. State submits SIP

These steps are fleshed out in the U.S. EPA publication: *State Implementation Plan (SIP) Lean Toolkit for Collaboration Between EPA and Air Agencies* (December 6, 2019). There is no Reasonably Available Control Measures document for nuisance emissions. The ANR is simply not a “necessary or appropriate” emissions limitation or other control strategy that is needed to be part of a SIP. Clean Air Act, section 110 (a)(2)(A). See *Environmental Committee of Florida Electric Power Coordinating Group, Inc. v EPA*, 94 F.4th 77 (D.C. Circuit, 2024).

Ohio has not utilized the ANR for the SIP strategies for the recent 2015 moderate ozone standard², the 2012 particulate matter standard³, and the 2010 sulfur dioxide standard⁴. In fact, Ohio EPA has not utilized the ANR for any SIP strategy. As such, the removal of the ANR from Ohio’s SIP is not a relaxation of Ohio’s SIP, will have no impact on emissions or air quality, and will not interfere with the attainment or maintenance of the NAAQS. As a result, the removal of the ANR from the Ohio SIP meets the requirements of Section 110(l) of the CAA.

² https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/27/sip/Nonattain/CleveModAttainDemo-2015O3_Final.pdf

³ <https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/27/sip/attain/2012pm25attainDemo-FINAL.pdf>

⁴ <https://epa.ohio.gov/divisions-and-offices/air-pollution-control/state-implementation-plans/state-implementation-plan-sip-2010-one-hour-so2-standard>