

## **EPA’s “Good Neighbor Plan” Response to Comply with Stay Orders Pending Judicial Review**

### **Overview Fact Sheet**

#### **Summary of Action**

In response to judicial orders partially staying a separate EPA action, EPA is amending the Good Neighbor Plan on an interim basis to implement the orders and stay the rule’s requirements to mitigate interstate air pollution with respect to the 2015 ozone NAAQS for facilities in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, and Texas when those requirements go into effect for facilities in other states on August 4, 2023. This action also ensures that facilities in these states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS.

This stay of the Good Neighbor Plan as to these states will remain in effect until EPA takes subsequent action upon the resolution of litigation over its disapproval of these states’ state implementation plan (SIP) revisions submitted to address “good neighbor” obligations for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA issued the Good Neighbor Plan in March 2023 for 23 states. Facilities in these six states will be subject to requirements promulgated in prior good neighbor rulemakings to address the transport of smog-forming air pollution for the 1997 and 2008 ozone NAAQS. For remaining states, the Good Neighbor Plan will go into effect on August 4, 2023.

#### **EPA’s SIP Disapproval Action**

Each time EPA promulgates or revises NAAQS, the Clean Air Act requires states to address “good neighbor” obligations by ensuring their State Implementation Plan (SIP) contains adequate provisions to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. EPA is then obligated to review and approve or disapprove that SIP submission. On February 13, 2023, EPA published a final action fully or partially disapproving good neighbor SIPs submitted by 21 states with respect to the 2015 ozone NAAQS (the SIP Disapproval action). When EPA disapproves a SIP submission (or finds that a state failed to submit a complete SIP submission), EPA is then obligated by the Clean Air Act to promulgate a federal implementation plan (FIP).

#### **Good Neighbor Plan to Reduce Interstate Ozone Pollution**

Consistent with Clean Air Act requirements and relying on proven, cost-effective control technologies and strategies, on March 15, 2023 EPA finalized the Good Neighbor Plan, establishing FIP requirements for both power plants and certain industrial sources in 23 states to reduce emissions of nitrogen oxide that contribute to harmful levels of ground-level ozone (or “smog”) pollution, improving air quality, saving lives, and improving public health in smog-affected downwind states and communities.

#### **Litigation to Stay the SIP Disapproval Action**

Petitioners challenging the SIP Disapproval action have filed motions in several courts for partial stays of that action with respect to the SIPs submitted by particular states. After the Good Neighbor Plan’s signature date, two courts granted motions staying the SIP Disapproval action as to Arkansas, Louisiana, Mississippi, Missouri, and Texas pending review on the merits. Additionally, a third court has

administratively stayed the SIP Disapproval action as to Kentucky pending its disposition of Kentucky's stay motion. Several additional stay motions remain pending before courts at this time.

#### Impact of Stays on the Good Neighbor Plan

EPA's authority and obligation under the Clean Air Act to establish the Good Neighbor Plan's FIP requirements for the sources in a given state is triggered by EPA's disapproval of the state's good neighbor SIP that does not meet the requirements of the Act and/or from EPA's finding of the state's failure to submit such a SIP by the statutory deadline for doing so. Accordingly, EPA must act to ensure that the Good Neighbor Plan's requirements will not take effect for power plants or industrial sources in the six listed states while a stay of the SIP Disapproval action as to that state remains in place. EPA released a memorandum on June 1, 2023 stating that the Agency would take such action. This action suspends the Good Neighbor Plan requirements in those states.

#### Maintaining the Status Quo Pending Further Action

This interim final rule will ensure that sources in these states will continue to be subject to previously established requirements to mitigate interstate air pollution with respect to other ozone NAAQS while EPA's action disapproving these SIPs is stayed. For power plants, EPA and states use allowance trading programs to implement the required emission reductions.

For power plants in Arkansas, Mississippi, Missouri, and Texas, which before the Good Neighbor Plan were covered by the "Group 2" trading program, the revisions will maintain the state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 2 trading program that was promulgated in the 2016 CSAPR Update.

For power plants in Kentucky and Louisiana, which before the Good Neighbor Plan were already covered by the Group 3 trading program as promulgated in the 2021 Revised CSAPR Update, the revisions in this action transfer the power plants to the Group 2 trading program but modify the trading program regulations as to these two states to maintain state emissions budgets, unit-level allowance allocation provisions, and banked allowance holdings reflecting the status quo for the power plants in these states under the Group 3 trading program that was promulgated in the Revised CSAPR Update. To preserve status quo boundaries between trading groups, this action also makes the allowances that Kentucky and Louisiana power plants will use for compliance in the Group 2 trading program non-interchangeable with the allowances that power plants in other states will use for compliance in the Group 2 trading program.

#### Corrections to 2023 Implementation Deadlines in the Good Neighbor Plan

In addition to responding to the stay orders, this action also revises three near-term procedural deadlines that are incorrect as published in the Good Neighbor Plan.