

**Summary of Comments and Responses**  
**Oklahoma's I-SIP Submittal for the 2008 Primary Ozone (O<sub>3</sub>) NAAQS**  
CAA Requirements Under § 110(a)(1) & 2

DEQ received no request for a public hearing during the notice period, therefore, as stated in the public notice, a hearing was not held. One set of comments was received during the comment period, submitted on April 30, 2014 by Laurie Williams, Associate Attorney, on behalf of Sierra Club.

**Sierra Club**

Sierra Club (SC) prefaced its specific comments with considerable background discussion of the Ozone NAAQS and I-SIP<sup>i</sup> requirements under the federal Clean Air Act (CAA) and EPA rules and policies, which required no response. The following is a summary of specific comments and responses.

**Comment:** Oklahoma's I-SIP fails to ensure that its sources are not significantly contributing to nonattainment or interference with maintenance of the NAAQS in downwind states. (page 15)

**Response:** Per EPA's *Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)*, dated September 2013, the Oklahoma Department of Environmental Quality (DEQ) is not addressing transport in this SIP. The D.C. Circuit lifted the stay on CSAPR on October 23, 2014, and states currently await EPA's directive regarding their §110(a)(2)(D)(i)(I) obligations after the EME Homer City decisions. While this *I-SIP submittal* does not make an assertion regarding §110(a)(2)(D)(i)(I), Oklahoma's SIP does not rely solely on the Oklahoma Administrative Code (OAC) 252:100-8-35 to provide protection against interstate transport of pollution.

**Comment:** Oklahoma's Draft I-SIP fails to include emission limits and other restrictions on sources of ozone precursors, including anthropogenic sources like nitrogen oxides ("NO<sub>x</sub>") and volatile organic compounds ("VOCs"), to ensure that areas not designated nonattainment will attain and maintain the 2008 eight-hour Ozone NAAQS. (page 8)

**Response:** In 77 Fed.Reg. 30,088, 30,141-142 (May 21, 2012) *Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards; Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes; Final Rules*, Oklahoma was designated Attainment for the 75 ppb ozone standard. A combination of National (mobile source), and co-benefit (NO<sub>x</sub> reductions due to

Regional Haze, Greenhouse Gas, and Mercury rules) reductions have returned the state of Oklahoma to attainment of the 75 ppb ozone standard in 2014.

**Comment:** ODEQ has not even attempted to demonstrate that emissions allowed by the draft I-SIP will ensure compliance with the eight-hour ozone standard. (page 10)

**Response:** A demonstration that emissions allowed by the current Oklahoma SIP are adequate to attain a new ozone standard is required for an attainment SIP not an infrastructure SIP. SIP-quality photochemical modeling is a very time intensive process and takes about three years to complete. That is why it is not required for Marginal areas. In CAA Section 181, Classification and Attainment Dates, Marginal areas (The classification Oklahoma might have been designated based on 2011 through 2013 ozone design values.) are only given three years to attain the standard. For all practical purposes, if photochemical modeling is required for an attainment SIP, it would take three years to complete the photochemical modeling, and an additional two to three years to develop and go through the EPA approval process for the necessary emission limits.

**Comment:** Adding control devices and emission limits on electric generating units are a cost effective option to reduce NO<sub>x</sub> and attain and maintain the 2008 Ozone NAAQS. (page 11)

**Response:** DEQ implemented and enforced federal measures that are applicable to electric generating units and delegable to states. Based on reliable but not yet certified data for 2014, all areas in Oklahoma currently attain the 2008 O<sub>3</sub> NAAQS. In the last ten years over 3,000 megawatts of wind generation (zero emissions) has been added in the State of Oklahoma. Also, since 2011, emissions of NO<sub>x</sub> from acid rain reporting electric generators dropped by 36%.

**Comment:** The Draft I-SIP fails to include measures that ensure compliance with section 110(a)(2)(A) (enforceable emission limits, schedules and timetables for compliance to meet the requirements of this act) of the Act regarding the 2008 Ozone NAAQS. (page 13)

**Response:** This is an Infrastructure SIP, not an Attainment SIP. As stated by EPA on March 27, 2014 (79 Fed.Reg. 17046) “In light of the structure of the CAA, EPA’s long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.”

Furthermore, EPA has explicitly addressed this issue in its September 2013 “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1)

and 110(a)(2)” (Guidance). There, EPA states that I-SIPs merely “should identify existing EPA-approved SIP provisions or new SIP provisions” that “limit emissions of pollutants relevant to the subject NAAQS,” but “emissions limitations and other control measures needed” will be due on a later date for those areas designated nonattainment. EPA has further confirmed this by stating that when evaluating I-SIPs, it has “long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due” and that “EPA is not evaluating the existing SIP provisions for this purpose[;] instead, EPA is only evaluating whether the state’s SIP has basic structural provisions for the implementation of the NAAQS.” 79 Fed.Reg. 27241 at 27245-27246 (May 13, 2014). Thus, it is not necessary for an air agency to provide additional emissions limitations or control measures until a designation of nonattainment has been made.

**Comment:** Oklahoma’s draft I-SIP fails to include information regarding the Emergency Episode Plan. (page 16)

**Response:** The State of Oklahoma has an Approved Emergency Episode Plan (EEP). EEPs are a 1948 vintage concept. An EEP was beneficial when pollutants could be predicted to build-up over multiple days or weeks, to a level that would greatly exceed the NAAQS, and many sources could be required to shutdown. The proposed I-SIP documents Oklahoma’s EPA-approved EEP for all covered pollutants in Chapter 6 of the state’s SIP, which was submitted in 1972 and revised in 1988. (*see* 40 C.F.R. §§ 52.1934 and 52.1960(c)(38)). DEQ acknowledges that the full original SIP document is not currently available online; however, it is subject to the Open Records Act. No request for a copy of the EEP was received during the comment period.

The EEP is not a functional concept in Oklahoma in 2014, mainly because: 1) the first action level (Alert level) for the EEP for ozone is .100 ppm for a 12 hour average (Due to the normal diurnal fluctuation in ozone concentrations, exceeding this level is very rare in Oklahoma.); and 2) the larger sources of ozone precursors are not easily shutdown and started up again (electric generating facilities). By the time a DEQ representative could contact the sources to shutdown, the level of ozone concentration would have dropped well below the .100 ppm Alert level. With regard to the O<sub>3</sub> Warning Level, DEQ has no record that Oklahoma has ever recorded a Warning level (0.40 ppm), or an Emergency level (0.60 ppm).

Oklahoma’s EEP has never been used in response to an ozone emergency episode or that of any other pollutant. The DEQ does not believe that it is anyone’s intent to force DEQ to waste resources revising a plan that will never be used.

Starting in 1991, for the Tulsa metropolitan area, and 1992 for the Oklahoma City metropolitan area, the DEQ has called ozone watches. These watches are called by 4:00 pm the day before, and advertised in many ways to encourage the public to do what they can to reduce their emissions and exposure. Additionally, for the last five years, the DEQ has issued health

advisories when it has determined that actual ozone or Particular Matter (PM) concentrations measured at locations across the state may exceed the NAAQS. The DEQ has determined that this is a more practical use of resources and better protects public health from the effects of air pollution.

**Comment:** EPA regulations implementing the Clean Air Act require that Infrastructure SIPs must impose emission limits adequate to prohibit NAAQS exceedance in areas not designated nonattainment. 40 C.F.R. Section 51.112(a). The regulation clearly states that all SIPs must contain emission limits that adequately ensure the NAAQS are achieved. (page 4)

**Response:** As stated by EPA on March 27, 2014 (79 Fed.Reg. 17049) “Thus, the present-day 40 CFR 51.112 contains consolidated provisions that are focused on control strategy SIPs and the infrastructure SIP is not such a plan.” Thus, section 51.112 does not apply to this infrastructure SIP.

**Comment:** Consistent with the Clean Air Act, prior EPA interpretations of the act require infrastructure SIPs to impose emission limits adequate to prohibit NAAQS exceedance in areas not designated nonattainment. – *See* Approval and Promulgation of Implementation Plans; State of Missouri, 71 Fed.Reg. 12,623, 12,624 (Mar. 13, 2006). - *See* Approval of Air Quality implementation plans; Indiana; Disapproval of State Implementation Plan Revision for ArcelorMittal Burns Harbor; Final Rule, 78 Fed.Reg.78,720, 78,721 (Dec. 27, 2013). (page5)

**Response:** Neither of the referenced SIPs are Infrastructure SIPs, thus they are irrelevant to proving the requirements of infrastructure SIPs. Please refer to the above responses regarding the elements of infrastructure SIPs under the CAA.

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<sup>i</sup> Note that in its comments, Sierra Club uses the term Infrastructure SIP or ISIP to refer to the state’s full existing and EPA-approved program and SIP, as distinguished from the state’s “I-SIP submittal,” i.e., its review and certification of the adequacy of its program and SIP.