

Inside Cal/EPA

An exclusive weekly report on environmental legislation, regulation and litigation from the publishers of Inside EPA

FINAL EPA SIP RULES EXCLUDE PM EXTENSION PATH PROBED BY ARB

U.S. EPA has excluded in its final rules for state implementation plans (SIPs) an air board request that the federal agency consider allowing California an option to extend an attainment deadline for particulate matter (PM).

The exclusion of the request may limit the board's options for submitting a legally approvable SIP by next year that will meet attainment standards. But activists contend the air board is capable of drafting an acceptable plan, and intend to intensify pressure on state officials to implement tougher regulations. The EPA adoption of rules governing SIP guidelines is seen as significant to the state's efforts in meeting federal air quality standards, especially since a key legal strategy sought by the board in drafting its SIP has been denied.

EPA March 29 finalized a rule providing guidance to states on how to submit SIPs, which are used to show attainment with the federal PM 2.5 air quality standard. The EPA rulemaking has been of significant interest to the Air Resources Board as it continues developing its statewide SIP, including PM 2.5 plans for the South Coast and San Joaquin Valley air basins.

In a March 12 letter to EPA, ARB Executive Officer Catherine Witherspoon requested that EPA's rule include a legal pathway allowing California an extension of the PM 2.5 attainment date from 2015 to 2020 (*see March 23 issue, p1*). Witherspoon said in the letter this could be achieved if EPA used Clean Air Act subpart 4 provisions, which allow up to 15 years to meet the standard. Starting with the EPA's nonattainment findings in 2005, this would push back ARB's compliance date to 2020.

But following backlash from environmentalists, Witherspoon rescinded the March 12 letter, stating it was "misinterpreted" by stakeholders as an official request to delay attainment. However, she added in a March 20 letter rescinding the request, EPA should "still be mindful of California's situation in your pending federal SIP guidance to ensure California has a legally approvable pathway" to PM 2.5 attainment.

An ARB spokesman said that the EPA final SIP rule, as interpreted by ARB staff, maintains the PM 2.5 deadline at 2015, meaning that Witherspoon's request exploring the option of a 2020 PM 2.5 attainment deadline pathway was not included.

An environmentalist said the EPA final rule shows that ARB's March 12 letter has clearly been rejected all around. "Now ARB needs to plan a path to compliance by the 2015 deadline," the source said. "EPA, for its part, should accelerate its cleaner-diesel standards for trains and ships. The governor and Legislature should supply funds for replacement and retrofit of dirty diesel engines."

A second environmentalist said ARB's exploration of extending the deadline was never acceptable because the board has known for a long time it needs to meet PM 2.5 standards. "To claim it's a new challenge is totally incorrect."

At a March 27 hearing of the Senate Select Committee on Air Quality — called by the panel's chair, Sen. Dean Florez (D-Shafter), to address the ARB request — Witherspoon characterized the March 12 letter as "normal staff work" in commenting on the EPA rule, and not as improper policy-making. "It was not an official request for delay— EPA [was] in the middle of rulemaking — it was to flag EPA," Witherspoon said. "We simply wanted to preserve options; if we are as little as one month late, five tons short, we don't have a legally approvable SIP. So we contacted EPA and suggested they get ready for this possibility."

#