

Phoenix PM₁₀ Plan: Transportation Conformity Implications and Timelines

Issue:

Due to continuing violations of the standard and other issues, the EPA intends to propose disapproval of the submitted PM₁₀ 5% plan for Phoenix. Any path forward will have implications for transportation conformity.

Background:

EPA found the Motor Vehicle Emissions Budget (MVEB) in the 5% plan to be adequate in May 2008. The MVEB for PM₁₀ under the previous approved plan was 59.7 metric tons per day (mtpd); the new budget is 103.3 mtpd. The most recent Transportation Improvement Plan shows 101.8 mtpd of PM₁₀ emissions from on-road sources in 2028. The Metropolitan Planning Organization, Maricopa Association of Governments (MAG) would not be able to show conformity to the old 59.7 mtpd budget.

On Dec. 2, 2009, EPA was sued for failing to act on the plan within the timelines specified in the Clean Air Act. We are currently in settlement negotiations with the litigant. The negotiations will result in a consent decree that sets the latest date by which EPA can act on the plan.

Plan Disapproval Implications:

Timeframe	Milestone
Date set in consent decree	Regional Administrator (RA) signs final disapproval of plan
30-90 days after final disapproval in Federal Register ¹	Disapproval action becomes final, conformity process freezes ²
18 months after disapproval in the Federal Register	Emission offset sanctions: The state must ensure that each ton of emissions created by a new stationary source of PM-10 in the nonattainment area is offset by a two ton reduction in existing stationary sources in the area.
24 months after final disapproval in Federal Register	Highway funding sanctions; conformity lapse; FIP imposed

A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed³. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform until a new 5% plan is submitted, and EPA finds the budget in that SIP adequate for conformity purposes. If adequate budgets are not in place in time, the freeze will turn into a lapse in conjunction with the imposition of highway sanctions which normally occurs two years after the SIP disapproval without a protective finding, or by the next required conformity determination as required by the frequency requirements of 40 CFR §93.104, whichever occurs first.

If the EPA were disapproving the plan for administrative reasons unrelated to the attainment demonstration, the 5% requirement and reasonable further progress (RFP) demonstration, then EPA could issue the disapproval with a protective finding. This would avoid the conformity freeze. This is not the case and therefore EPA does not believe that a protective finding is applicable to the current situation with the Phoenix PM₁₀ plan.

¹ EPA has the administrative flexibility to set an effective date as much as 90 days after publication of the final disapproval of the plan (See 68 FR 38974, at 38986 June 30, 2003).

² See 40 CFR §93.120(a)

³ This does not include exempt projects such as transportation control measures, safety projects and non-regionally significant state and locally funded projects.

The MVEB submitted in the new 5% plan should be consistent with both the RFP and the attainment demonstrations. Note that EPA can act on the RFP budgets separately from the attainment budgets if the attainment target set in the plan is deemed adequate. If the State can develop an RFP plan that meets EPA requirements, this approach allows for transportation planning to continue while EPA and the State work to resolve concerns about the attainment demonstration.

In the unlikely event of a conformity lapse, DOT can only make approvals or grants for: projects that are exempt from the conformity process and transportation control measures (TCMs) that are included in approved SIPs. Therefore only the following six types of transportation projects may proceed for purposes of funding and implementation:

1. TCMs in Approved SIPs;
2. Non-Regionally Significant Non-federal Projects;
3. Regionally Significant Non-federal Projects - only if the project was approved by all necessary non-federal entities before the lapse⁴
4. Project phases that received funding commitments or an equivalent approval or authorization prior to the conformity lapse.
5. Exempt Projects - identified under 40 CFR §93.126 and 40 CFR §93.127; and,
6. Traffic Synchronization Projects

Note that the conformity lapse would be imposed at the same time as federal highway funding sanctions.

Plan Withdrawal Implications:

If Arizona were to withdraw the current Phoenix PM₁₀ 5% plan, they would have to also withdraw the MVEB. This means that the area would revert to its previous approved MVEB of 59.7 mtpd. Since the current transportation plans show emissions exceeding that level, MAG would in effect be in a conformity freeze since no new conformity determinations could be made.

Also, upon withdrawal of the plan, EPA would immediately issue a finding of failure to submit, which would start the clock on highway sanctions and conformity lapse⁵.

Timeframe	Milestone
Date determined by ADEQ	Current plan withdrawn: Approved MVEB drops to 59.7 mtpd, conformity freezes; RA signs finding of failure to submit starts clock on lapse and highway sanctions;
18 months after Finding of Failure to Submit is published in the Federal Register	Emission offset sanctions: The state must ensure that each ton of emissions created by a new stationary source of PM-10 in the nonattainment area is offset by a two ton reduction in existing stationary sources in the area.
24 months after Finding of Failure to Submit is published in published in the Federal Register	Highway funding sanctions; conformity lapse; FIP imposed

⁴ See Transportation Conformity Reference Guide, Section C., Chapter 4 (http://www.fhwa.dot.gov/environment/conformity/ref_guid/chap4.htm#nonfed) for more details.

⁵ see 40 CFR 93.120(b)