

Critical Need for 3-Year Effective Date for Any New PM NAAQS

EPA Has Legal Discretion to Set a 3-Year Effective Date

EPA has the legal discretion to set the “effective date” for a new NAAQS at 3 years (rather than the typical 60 days), consistent with the Clean Air Act and case law, including the D.C. Circuit’s *Murray Energy* court decision since adjusting the effective date is very different than “grandfathering” (exempting projects) addressed by *Murray Energy*. The *Murray* case doesn’t speak to EPA’s authority to adjust the “effective date.”

The 3 years is in the public interest to allow EPA time to make critically needed improvements to permitting tools to avoid permitting gridlock and allow modernization of U.S. manufacturing, consistent with the dual goals of the CAA to promote health and the productive capacity of our nation. Our audit of 3 dozen actual air permits issued for diverse industries under the current standard of 12 ug/m³ shows that almost 80% of those permits would have been blocked by a standard of 9 ug/m³ due to lack of “permit headroom,” and 50% would have flunked under 10 ug/m³. This permit gridlock problem can be mitigated with additional work by EPA that requires the 3 years. A gradual implementation schedule will avoid stopping manufacturing modernization projects that will install best pollution controls - typically making plants more efficient and *lowering* emissions per ton of production - and will not affect the usual state and EPA activities to make non-attainment designations (within 2+ years).

Why 3 Years is Essential for EPA, States and Industry to Adjust to a Lower NAAQS

First, 3 years allows time for EPA to develop new modeling and permitting tools plus make improvements to the monitoring network database used for designations and estimating background air quality for permits. Moreover, 3 years aligns with the existing Infrastructure SIP timeframe when states must develop a credible plan to fully implement a new NAAQS in both attainment and non-attainment areas. Permittees deserve a similar timeframe to adjust, given huge investments and long capital planning cycles. Here’s how it could work:

In year one, EPA would implement corrections to known bias in the FEM monitors. In addition, EPA would issue guidance to correct biases in certain PM test methods. Finally, EPA could promote and improve policy and permitting flexibilities, including to address exceptional events, prescribed burn emissions, and high background events. In year two, EPA would propose that emissions variability would be allowed in modeling as well as adjustments to where impacts are modelled (closer to where people actually live or work, rather than at fenceline). In year three, EPA finalizes its permitting improvements, utilizes better data from new monitoring sites while highlighting under-utilized but more realistic approaches to permitting that will support sustainable manufacturing projects across the U.S.

A 3-year effective date sounds mundane but is critically needed.