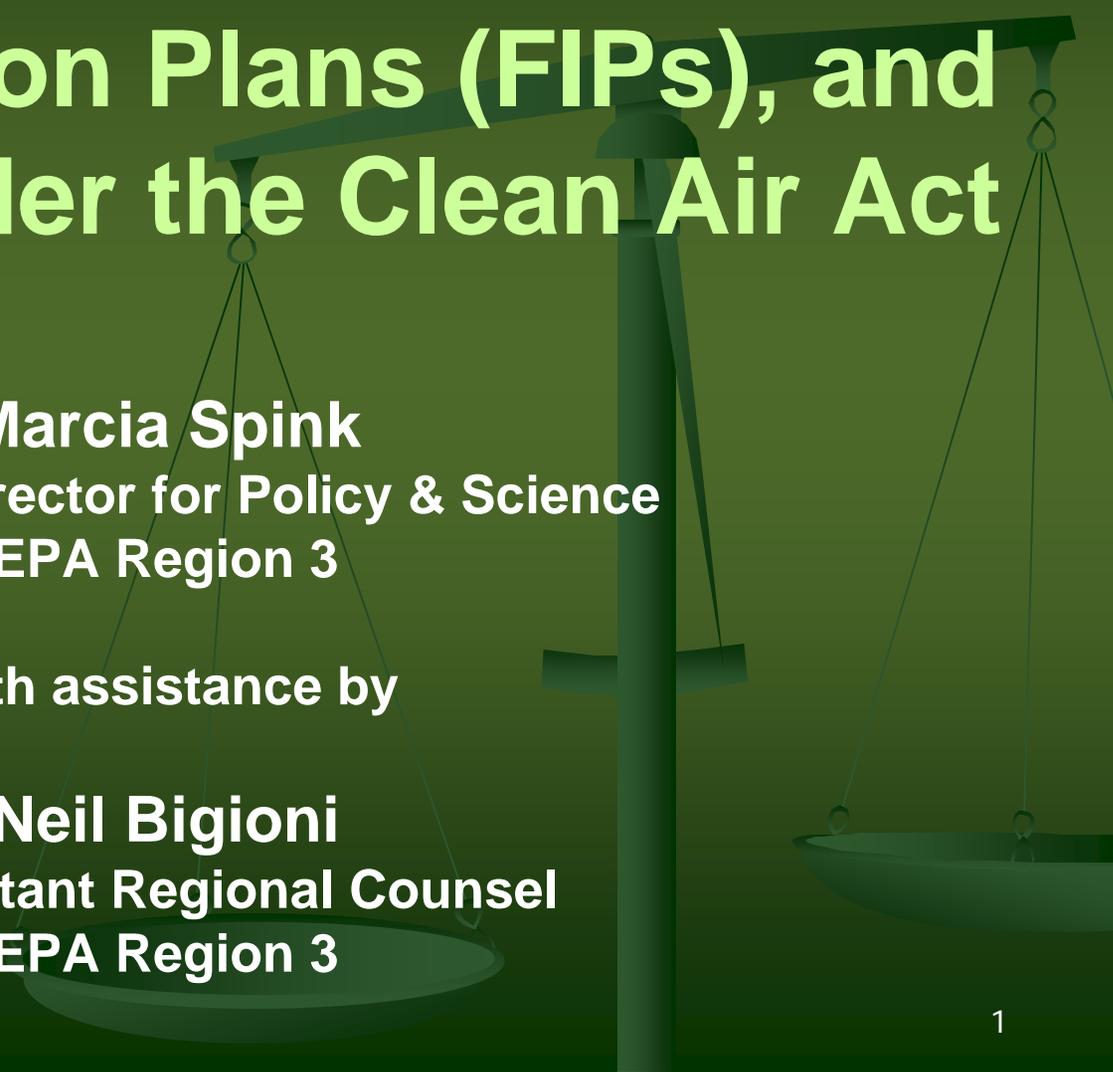


Sanctions, Federal Implementation Plans (FIPs), and SIP Calls Under the Clean Air Act



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This Training is Not Legal Advice!

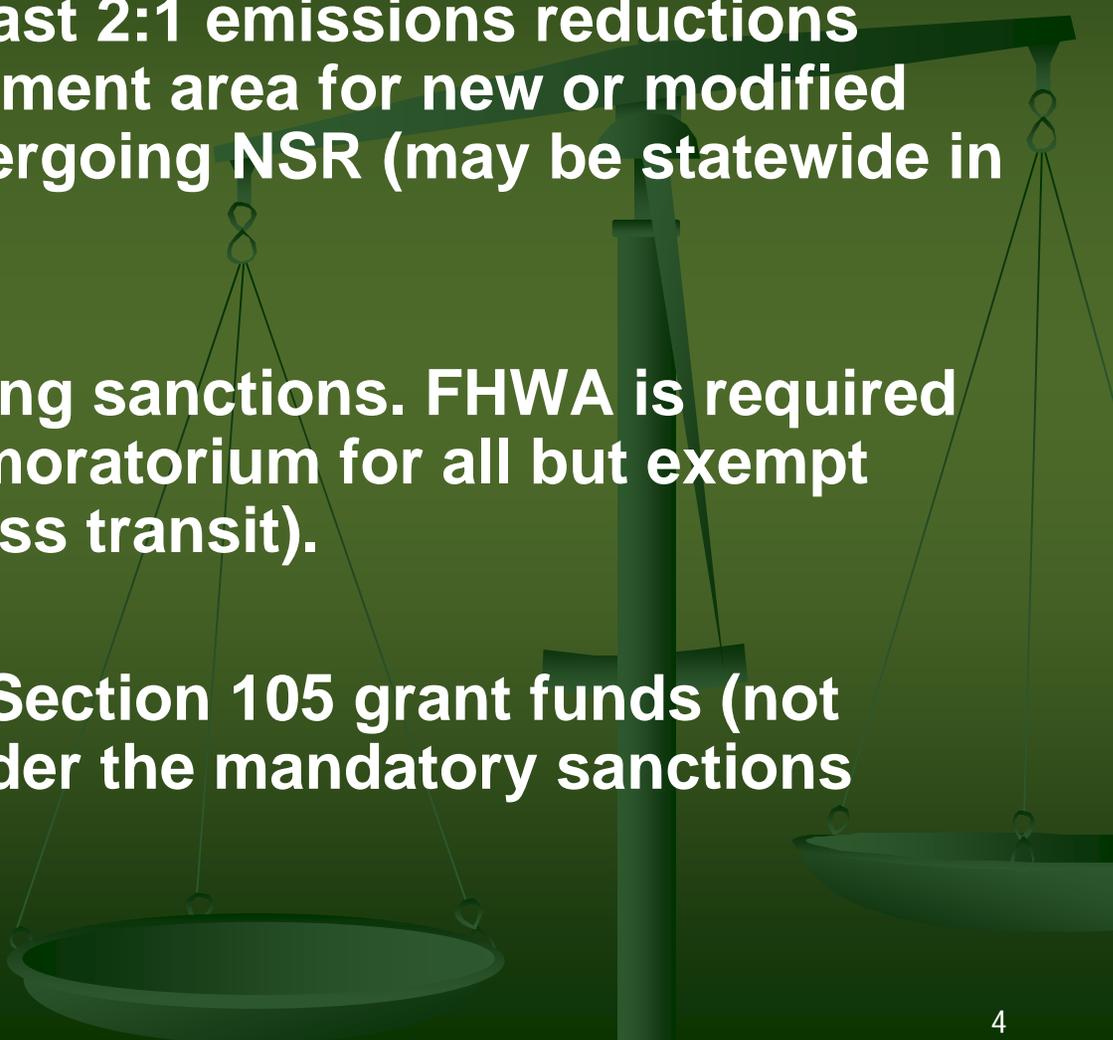
- For specific issues and legal interpretations associated with a specific State Implementation Plan (SIP) revision please consult your Regional Office.
- This training will provide the basic tenets of the 179 sanctions and FIP provisions of the CAA.
- It is targeted to State/Local Agency Employees responsible for preparing SIPs for submittal to EPA. It is also targeted to new EPA employees responsible for implementing Section 110 and Part D of the CAA.

Sanctions



- 2 sets of sanctions available to EPA
- Section 110(m) “discretionary” sanctions
- Section 179 “mandatory” sanctions

Sanctions continued



- **179 - A ratio of at least 2:1 emissions reductions within the nonattainment area for new or modified major facilities undergoing NSR (may be statewide in the OTR).**
- **179 - Highway funding sanctions. FHWA is required to impose funding moratorium for all but exempt projects (safety, mass transit).**
- **The withholding of Section 105 grant funds (not mandatory even under the mandatory sanctions provision). 179(a).**

Section 179 Sanctions



- **179 Sanctions Clocks/Sanctions Triggered upon:**
 - **Finding of failure to submit a complete Title I, Part D nonattainment area plan or revision or a Part D SIP element (incomplete submittals are treated as a failure to submit)**
 - **Finding of failure to implement any element of approved Part D SIP.**

Section 179 Sanctions continued

- **179 Sanctions Clocks/Sanctions Triggered upon:**
 - **Disapproval under of a Part D plan/revision or required element of same.**
 - **Failure to submit a SIP revision for which EPA has issued a SIP call or disapproval of the SIP revision submitted in response to a SIP call.**

Section 179 Sanctions continued

- The sanctions apply within nonattainment areas where the SIP or SIP element associated with the findings of failure or disapproval applies (could be statewide in the OTR).
- Are not triggered if an area fails to attain NAAQS on time (i.e., an approved SIP did not “work”).

The Order of 179 Sanctions

- Please see 40 CFR 52.31 – often referred to as “EPA’s Order of Sanctions Rule”
- This rule is a comprehensive “roadmap” detailing when and how the mandatory Section 179 sanctions clocks and the mandatory sanctions are triggered.
- It also explains when and how the Section 179 sanctions clocks are halted and any already imposed sanctions are lifted.

The Order of 179 Sanctions

continued

The mandatory order of 179 sanctions:

- 18 months after trigger = offset sanctions
- 24 months after trigger = highway sanctions

EPA Not Limited to What is Mandatory

- Section 110(m) -The CAA gives EPA the discretionary authority to impose either or both sanctions any time after a finding or disapproval is made.

179 Sanction & FIP Clocks

- Sanction and FIP clocks commence when the action taken by EPA to make a finding or to disapprove is effective. (The FR notice's effective date).
- Usually the 179 sanction clocks “run” for 18 and 24 months.
- The FIP clocks “run” for 24 months.

Turning Off 179 Sanctions & Sanction Clocks

- If before 18 months - EPA can issue an “interim final determination” (IFD) that deficiency is corrected to defer all sanctions pending EPA final action on corrective SIP/revision.
- If between 18 and 24 months, IFD will stay offsets and defer highway sanctions.
- If after 24 months IFD will stay both sanctions.

Turning Off 179 Sanctions & Sanctions Clocks continued

- For sanctions resulting from finding of failure to submit = EPA's final action is a letter to the Governor that submitted the SIP/revision that is administratively and technically complete, and corrects the deficiencies.
- For sanctions resulting from an EPA final action to disapprove a SIP/revision = EPA's final action is the final rulemaking action to approve a SIP/revision that is administratively and technically complete, and corrects the deficiencies.
- For sanctions resulting from an EPA finding of failure to implement = EPA's final action is a FR notice that the State is implementing its SIP.

Federal Implementation Plans (FIPs)

- 24 months after EPA disapproves or makes a finding of failure to submit a required plan, it has a nondiscretionary duty to promulgate a FIP.
- The FIP should correct the deficiency in the SIP, no more, no less.
- Clock (or alternatively, the FIP itself) turned off only after EPA approves the SIP/revision.

110(m) Sanctions

- Applies to non-Part D plans/elements as well as part D plans (applies to any “plan or plan item required under this chapter,” i.e. the CAA).
- Because they apply “at any time” after trigger, they provide EPA the discretionary authority to shorten the 18/24 month clocks for a Part D SIP, SIP element, or SIP call.
- Offset sanctions only apply where the nonattainment NSR SIP requirements apply.
- Highway sanctions may apply in both attainment and nonattainment areas.

Conformity Implications of Disapprovals of Part D Control Strategy Plans

- In both the Rate of Progress Plan and the whole Attainment Plan (including the attainment demonstration) for a given nonattainment area, mobile budgets must be identified for the NAAQS pollutant and/or its precursors.
- Disapproval of either of these control strategy plans has Transportation Conformity implications.

Conformity Implications of Disapprovals of Part D Control Strategy Plans continued

- **Conformity Freeze-** If a control strategy SIP/revision is disapproved only projects within the 1st 4 years of current conformity transportation plan can be funded and move forward until a new SIP/revision is submitted and its mobile budgets are found adequate or the SIP approved.
- **A conformity freeze is effective immediately upon the effective date of the disapproval of the control strategy SIP/revision. Not 18 or 24 months later.**

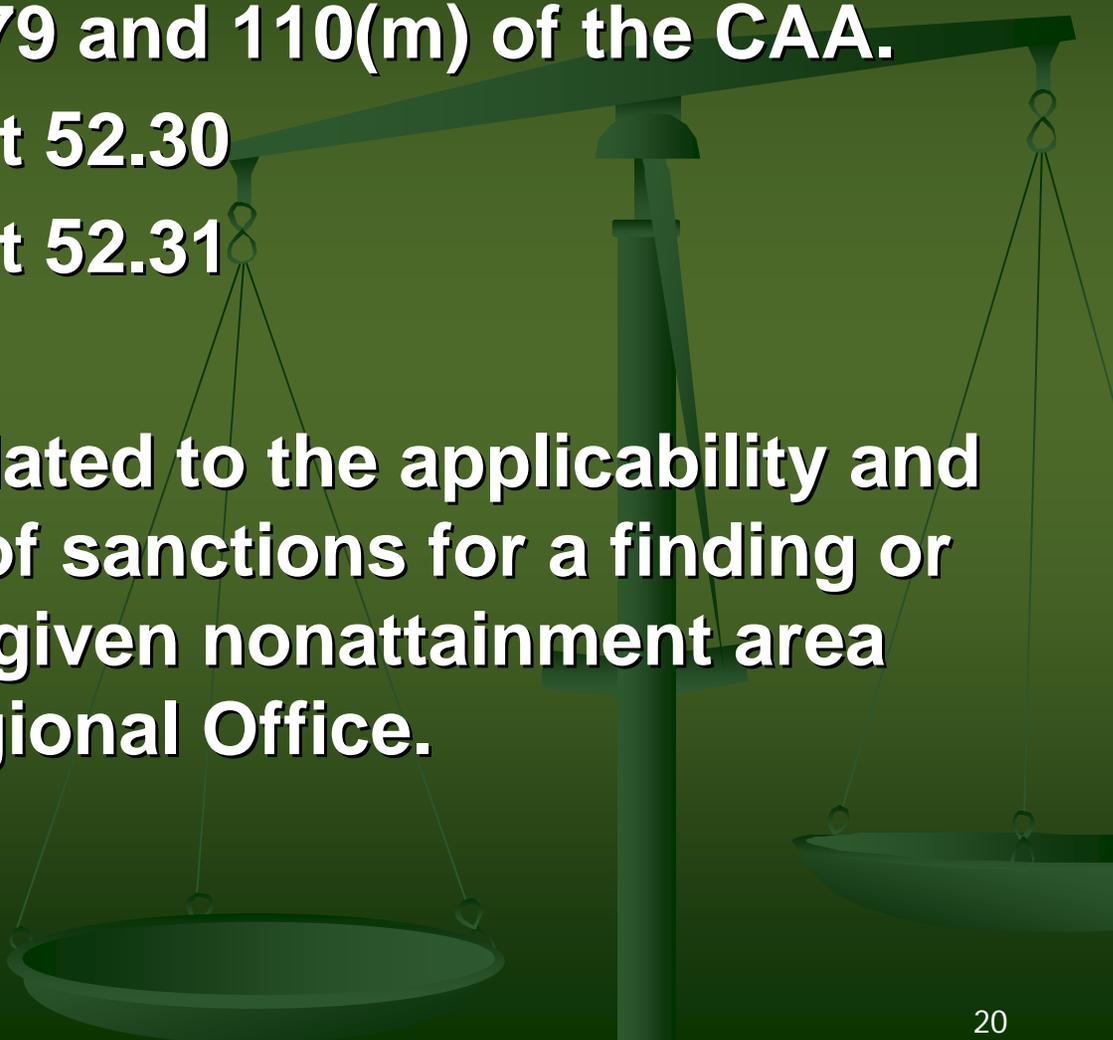
Conformity Implications of Disapprovals of Part D Control Strategy Plans continued

- **Conformity Lapse** — Once the highway sanctions have been imposed for the disapproval or non-submittal of a control strategy SIP, no new TIP, plan or project can be funded or found to conform until the new SIP submitted. A new TIP or plan cannot be approved until the mobile budgets in the new SIP are found adequate or approved.
- **Protective Finding**—prevents the freeze (but not the lapse) if the disapproved SIP nevertheless contained enforceable measures to achieve all required emissions reductions.

SIP Calls

- If EPA finds approved SIP is “substantially inadequate” to attain or maintain NAAQS or otherwise comply with CAA:
 - EPA may call on state to revise its SIP to correct the inadequacies by a given due date.
 - If not submitted by the due date or the SIP submission is disapproved, the state may be subject to both the 179 and 110(m) sanctions process.

Resources & Recommendations



- Read Sections 179 and 110(m) of the CAA.
- Read 40 CFR Part 52.30
- Read 40 CFR Part 52.31
- For questions related to the applicability and implementation of sanctions for a finding or disapproval in a given nonattainment area contact your Regional Office.

Regional Office Contacts

- **Region 1 – Anne Arnold**
- **Region 2 – Rick Ruvo**
- **Region 3 – Cristina Fernandez (Maria Pino, Acting)**
- **Region 4 – Dick Schutt**
- **Region 5 – Jay Bortzer**
- **Region 6 – Guy Donaldson**
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- **Region 9 - Lisa Hanf**
- **Region 10 - Michael McGown**

